THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting Circuit Court Judge

Civil Action No. 2023-CP-40-01759

Appellate Case No. 2024-000916

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation;

Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC,

Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff / Respondent

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC,

Third-Party Defendants,

of which

Of which Mohed Altrad, Altrad Investment Authority SAS, ArranCo US, LLC, Hawk Bidco (US) Inc., Sparrows Offshore, LLC, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the

Petitioners.

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

1. Whether the Court of Appeals properly concluded the discovery order compelling Petitioners to provide substantive and complete discovery responses, produce documents responsive to the discovery requests, and designate 30(b)(6) witnesses was an interlocutory order that is not immediately appealable?
2. Whether the circuit court properly proceeded with the matter where there was no stay and the order Petitioners attempted to appeal was interlocutory and not immediately appealed such that their notices of appeal did not transfer jurisdiction to the appellate courts?

INTRODUCTION

This case is yet another appeal in a long line of improper appeals from interlocutory orders related to court-ordered receiverships that have plagued our appellate courts in recent years and prevented efficient adjudication in the circuit court. Stated simply, the goal of this interlocutory appeal is to delay the disposition of this case. Petitioners have been effective in abusing our appellate procedures to facilitate this goal. In defiance of orders of the circuit court, the Court of Appeals, and this Court, Petitioners have refused to participate in the underlying proceedings – opting instead to pursue multiple appeals from interlocutory orders that are not immediately appealable.

This Court warned receivership litigants in 2021 about the impropriety of litigation tactics undertaken only to delay the disposition of a case:

> We, in turn, expect the parties and their attorneys in this and any other case to fully cooperate with the trial court in order to ensure the case is tried or otherwise disposed of in a timely manner. Any action undertaken for the purpose of delaying the disposition of this case will, under appropriate circumstances, merit the imposition of sanctions under Rule 269, SCACR.

See March 9, 2021 Order, Appellate Case No. 2020-001670. However, since this admonition, our appellate courts have only seen an increase, not a decrease, in the number of filings by litigants objecting to the institution of receiverships, attacking the receivership court, disregarding court orders, seeking review of unappealable interlocutory orders, and seeking appellate review

simultaneously in different appellant courts; all in an effort to delay the adjudication of receivership cases and prevent the Receiver from engaging in his court-appointed duties.[1]

Following the increase in interlocutory appellate activity, this Court took the unusual step of certifying an interlocutory appeal involving the Payne & Keller receivership. In requesting certification of that appeal, Travelers Casualty & Surety Company ("Travelers") stated: "Granting the Motion for Certification would ensure that this appeal is resolved efficiently and expeditiously, and it would provide much-needed guidance to the Bench and Bar regarding legal errors that are pervasive within the Asbestos Docket."[2] Appellate Case No. 2023-000727, Travelers' Joinder to Motion for Certification at pp. 2–3 (filed Jan. 11, 2024). Travelers attached a list of receivership appointments to its joinder and noted that the issues involved in the *Childers* appeal "permeate[d] multiple cases" such that a resolution of the *Childers* appeal "would serve the interests of judicial economy by eliminating numerous inevitable appeals raising these issues."[3] *Id.* at pp. 4–7, i–ii. Travelers, by and through the same counsel who represents two of the petitioners here, listed the Cape receivership as one such receivership that would be bound by the *Childers* decision. *See id.* at p. i.

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[1] Since December 2023, at least twenty separate notices of appeal, now consolidated into thirteen appeals, have been filed in the Court of Appeals from cases involving receiverships. *See* Appellate Case Nos. 2023-002006, 2023-002007, 2023-002008, 2023-002009, 2023-002010, 2023-002011, 2024-000342, 2024-000348, 2024-000341, 2024-000337, 2024-000501, 2024-000501, 2024-000674.

[2] The same counsel that represented Travelers in the *Childers* appeal represents Petitioners Mohed Altrad and Altrad Investment Authority, S.A.S. ("the Altrad Petitioners") in this case.

[3] The other insurers requesting certification in *Childers* echoed this sentiment, invoking "ongoing patterns in the asbestos docket" and the applicability of this Court's rulings in *Childers* on numerous receivership cases in the asbestos docket. Appellate Case No. 2023-000727, AIG Insurers' Reply to Motion for Certification at p. 5 (filed Feb. 5, 2024); AIG Insurers' Motion for Certification at p. 16 (filed Jan. 3, 2024).

No doubt relying on the litigants' assurances that an early resolution of the *Childers* appeal by this Court would eliminate the need for further interlocutory appeals in other receivership cases, this Court issued an order on March 27, 2024, dismissing the *Childers* appeal as not immediately appealable. The order involved in *Childers* was an order denying several insurers' Motions to Dismiss Third-party claims brought by the Receiver and Dissolve the Receivership.[4] In their memoranda on appealability and petitions for rehearing, the *Childers* appellants argued the interlocutory order was immediately appealable under section 14-3-330(4) because they construed the denial of dissolution of the receivership to as "granting, continuing, modifying or refusing the appointment of a receiver." *See* Appellate Case No. 2023-000727. This Court rejected those arguments, finding instead that an interlocutory order denying a motion to dissolve a receivership did not fall under the exceptions listed in section 14-3-330. The *Childers* appellants also raised Rule 205 arguments, which were rejected twice by the Court of Appeals in orders in September and November 2023. *See* September 8, 2023 Order and November 21, 2023 Order, Appellate Case No. 2023-000727. The Court of Appeals has also rejected identical Rule 205 arguments in other interlocutory receivership appeals. *See* Order, *Welch v. Advance Auto Parts*, Appellate Case No. 2024-000337 (filed April 12, 2024) ("Appellant Continental Insurance Company filed a motion to enforce this court's exclusive jurisdiction over this matter . . . . The motion is denied."); Order, *Mitchell v. 3M Company*, Appellate Case No. 2024-000341 (filed April 12, 2024) ("Appellant

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[4] On March 27, 2024, this Court granted certification, dispensed with further briefing, vacated the denial of sanctions, and dismissed the appeal "because the underlying circuit court order at issue is not immediately appealable." The AIG Insurers and Travelers filed petitions for rehearing on April 11, 2024. This Court denied rehearing and sent the remittitur on April 17, 2024.

Continental Insurance Company filed a motion to enforce this court's exclusive jurisdiction over this matter . . . . The motion is denied.").[5]

Now that this Court has ruled in *Childers* that an interlocutory order denying a motion to dissolve a receivership did not fall under the exceptions listed in section 14-3-330, litigants and the same counsel who once argued *Childers* would eliminate the need for further interlocutory appeals, have done an about-face and incredulously claim *Childers* does not apply to them. To worsen matters, Petitioners are not only ignoring the applicability of the *Childers* opinion, they argue that the declarations from this Court are legally incorrect and do not apply to **any** other case, including this one. The Altrad Petitioners characterize this Court's *Childers* Order as an "inapplicable and nonprecedential" order that "has nothing to do with this case, or any other." [6] Appellate Case No. 2023-002006, Petition for Rehearing at p. 3 (filed May 24, 2024). The Sparrows Petitioners[7] characterize this Court's *Childers* Order as a "two sentence order . . . without reference or citation to the controlling subsection 14-3-330(4) of the South Carolina Code" that "is not to be relied on." Appellate Case No. 2023-002007, Petition for Rehearing at p. 10, 12 (filed May 24, 2024). The Charter Petitioners characterize this Court's *Childers* Order as a "certain non-binding unpublished order[in a] different case[]" that is "inapplicable and not controlling." *See* Appellate Case Nos. 2023-002009, 2023-002010, 2023-002011, Petitions for Rehearing at p. 14–

[5] These rejected Rule 205 motions were filed by Continental Insurance Company, who was represented by the same counsel who represents Charter Consolidated Ltd., ESAB Corporation, and Central Mining and Investment Corporation Ltd. ("the Charter Petitioners") in this appeal. Continental Insurance Company was also one of the appellants who requested certification of the *Childers* appeal. The *Welch* and *Mitchell* appeals were dismissed by the Court of Appeals and remitted on June 6, 2024.

[6] Again, this is in direct contradiction to the statements of counsel for the Altrad Petitioners in *Childers* on behalf of their client, Travelers, urging this Court to speak on these issues once and for all for the entire asbestos docket.

[7] The Sparrows Petitioners refers to ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC.

15 (filed May 24, 2024). Now, contrary to the request for finality in *Childers*, our appellate courts continue to be bombarded by interlocutory appeals in receivership actions and the meritless pursuit of appeals from orders denying motions to dismiss and to dissolve receiverships.[8]

Despite having a clear answer from this Court on the appealability of orders denying motions to dissolve receiverships, litigants like Petitioners continue to inundate the appellate courts with improper interlocutory appeals. Petitioners' refusal to accept this Court's pronouncement in *Childers* and their disingenuous attempt to rename an interlocutory discovery order shows that Petitioners will stop at nothing to delay the orderly administration of the South Carolina asbestos court and South Carolina jurisprudence generally.

Disturbingly, these abuses of our appellate court system have drastically increased since this Court's 2021 warning that litigants who interpose appellate filings merely for delay will be subject to sanctions. This warning has been no deterrent, as shown by the vast amount of appellate activity in cases involving receiverships, most of which that has been summarily dismissed as inappropriate:

No.	Date	Case	Court	Ruling
1	10/16/2019	*Zurich American Insurance Company v. CBS Corp.*, Appellate Case No. 2019-001651	Supreme Court	Denying petition for writ of certiorari filed by USF&G, Sentry, and Zurich related to interlocutory discovery order

[8] The instant appeal arises from an interlocutory order granting the Receiver's motions to compel discovery responses of third-party defendants and the 30(b)(6) depositions of Arranco US, LLC and Central Mining & Investment Corporation Ltd. However, Petitioners' Rule 205 and injunctive relief arguments are entirely based on their continued pursuit of improper appeals from an interlocutory order of the circuit court denying their motions to dissolve the receivership and motions to dismiss for lack of jurisdiction. *See* Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, 2023-002011. The dissolution appeals were dismissed by the Court of Appeals on May 9, 2024, but Petitioners' requests for rehearing is still pending.

2	10/16/2019	*Zurich American Insurance Company v. CBS Corp.*, Appellate Case No. 2019-001654	Supreme Court	Denying petition for writ of certiorari filed by USF&G, Sentry, and Zurich related to interlocutory discovery order
3	11/1/2019	*Hartford Accident & Indemnity Company v. Covil Corporation*, Appellate Case No. 2019-001764	Court of Appeals	Appellant Hartford withdrew appeal
4	11/18/2019	*Hartford Accident and Indemnity Company v. Covil Corporation*, Appellate Case No. 2019-001758	Supreme Court	Granting request to withdraw petition for a writ of certiorari
5	2/13/2020	*Zurich American Insurance Company v. CBS Corporation,* Appellate Case No. 2020-000206	Court of Appeals	Dismissing appeal of Zurich and USF&G because timely post-trial motion still pending before circuit court
6	5/22/2020	*Tracy Jolly Pavlish v. Covil, Hutto v. Covil, Hagan v. Covil, Rampey v. Covil, Reilly v. Covil, Jonas v. Covil, and Murphy v. Covil*, Appellate Case No. 2020-00749	Supreme Court	Denying Zurich's petition for a writ of mandamus to reconsider motion to recuse Justice Toal as not appropriate
7	6/17/2020	*United States Fidelity & Guaranty Company v. Protopapas,* Appellate Case No. 2020-000791	Supreme Court	Dismissing petition for a writ of supersedeas because no appeal pending
8	7/30/2020	*United States Fidelity & Guaranty Company v. Protopapas (In re Roxanne Falls)*, Appellate Case No. 2020-000845	Court of Appeals	Granting motion to dismiss because USFG was not a party to the action
9	10/22/2020	*Protopapas v. Wall, Templeton*, Appellate Case No. 2020-001322	Court of Appeals	Appellant's request for dismissal granted

10	12/15/2020	*Protopapas v. Wall Templeton*, Appellate Case No. 2020-001322	Court of Appeals	Appellant's (Zurich) request to withdraw its appeal granted
11	1/4/2021	*Finch v. United States Fidelity and Guaranty Co.*, Appellate Case No. 2020-001670	Supreme Court	Appellant withdrew its Petition for Writ of Prohibition
12	1/6/2021	*Finch v. United States Fidelity & Guaranty Company*, Appellate Case No. 2020-001663	Court of Appeals	Dismissing appeal because underlying order not appealable
13	3/9/2021	*Finch v. United States Fidelity and Guaranty Co.*, Appellate Case No. 2020-001670	Supreme Court	Supreme Court denied Covil's Motion for Sanctions but cautioned any "action taken for the purpose of delaying the disposition of this case will, under appropriate circumstances, merit the imposition of sanctions"
14	4/5/2021	*Finch v. United States Fidelity & Guaranty Company*, Appellate Case No. 2020-001663	Court of Appeals	Petition to rehear dismissal of appeal denied
15	7/6/2021	*Finch v. United States Fidelity & Guaranty Co.*, Appellate Case No. 2021-000462	Supreme Court	Denying petition for a writ of certiorari
16	1/5/2022	*Covil Corporation v. Pennsylvania National Mutual Casualty Insurance Company*, Appellate Case No. 2020-001239	Court of Appeals	Affirming partial summary judgment for Covil
17	5/21/2021	*Protopapas v. Wall Templeton*, Appellate Case No. 2020-001437	Court of Appeals	Appellant consents to the Receiver's motion to dismiss the *Hutto* claim in this appeal (remaining issues fully briefed)

18	8/9/2022	*Covil Corporation v. Pennsylvania National Mutual Casualty Insurance Company*, Appellate Case No. 2022-000761	Court of Appeals	Granting Covil's motion to dismiss, finding that the discovery orders on appeal are not immediately appealable.
19	8/23/2022	*Covil Corporation v. Pennsylvania National Mutual Casualty Insurance Company*, Appellate Case No. 2022-000785	Supreme Court	Denying petition for a writ of certiorari.
20	11/15/2022	*Covil Corporation v. Pennsylvania National Mutual Casualty Insurance Company*, Appellate Case No. 2022-000761	Court of Appeals	Order denying petition for rehearing of August 9, 2022 dismissal of appeal
21	1/12/2023	*Covil Corporation v. Pennsylvania National Mutual Casualty Insurance Company*, Appellate Case No. 2022-001764	Supreme Court	Denying petition for writ of certiorari
22	2/8/2023	*Covil Corporation v. Pennsylvania National Mutual Casualty Insurance Company*, Appellate Case No. 2022-001722	Court of Appeals	Order dismissing appeal
23	6/6/2023	*Covil Corporation v. Pennsylvania National Mutual Casualty Insurance Company*, Appellate Case No. 2022-001722	Court of Appeals	Order denying petition for rehearing from 2/8/2023 dismissal of appeal
24	4/13/2023	*Southern Insulation Inc. v. OneBeacon, et al.*, Appellate Case No. 2023-000252	Court of Appeals	Order dismissing appeal as not immediately appealable
25	7/6/2023	*Southern Insulation Inc. v. OneBeacon, et al.*, Appellate Case No. 2023-000252	Court of Appeals	Order denying petition for rehearing from 4/13/2023 dismissal of appeal

26	11/7/2023	*Covil Corp. v. Pennsylvania National Mutual Casualty Insurance Company*, Appellate Case No. 2023-001079	Supreme Court	Order denying petition for writ of certiorari from Court of Appeals order dismissing appeal
27	11/22/2023	*Covil Corp. v. United States Fidelity & Guaranty Company*, Appellate Case No. 2020-001437	Court of Appeals	Opinion affirming circuit court
28	12/1/2023	*Welch v. Atlas Turner, Inc.*, Appellate Case No. 2023-001096	Court of Appeals	Order Denying Appellant's Motion to Confirm Automatic Stay or, Alternatively, Verified Petition for Supersedeas
29	3/27/20234	*Childers v. Davis Mech, et al.*, Appellate Case Nos. 2024-000005 and 2023-000727	Supreme Court	Order dismissing appeal
30	4/12/2024	*Mitchell v. 3M, et al.*, Appellate Case No. 2024-000341	Court of Appeals	Order dismissing appeal and denying Continental's motion to enforce exclusive jurisdiction
31	4/12/2024	*Welch v. Advance Auto Parts, et al.*, Appellate Case No. 2024-000337	Court of Appeals	Order dismissing appeal and denying Continental's motion to enforce exclusive jurisdiction
32	4/12/2024	*Link v. 3M, et al.* and *Donaghy v. 3M, et al.*, Appellate Case No. 2024-000342	Court of Appeals	Order dismissing appeal
33	4/17/2024	*Childers v. Davis Mech, et al.*, Appellate Case Nos. 2024-000005 and 2023-000727	Supreme Court	Order denying petitions for rehearing
34	4/17/2024	*Tibbs v. 3M Company, et al.*, Appellate Case No. 2024-000524	Court of Appeals	Order dismissing appeal

35	4/30/2024	*Mitchell v. 3M, et al.*, Appellate Case No. 2024-000341	Court of Appeals	Order denying petition for rehearing
36	4/30/2024	*Welch v. Advance Auto Parts, et al.*, Appellate Case No. 2024-000337	Court of Appeals	Order denying petition for rehearing
37	4/30/2024	*Link v. 3M, et al.* and *Donaghy v. 3M, et al.*, Appellate Case No. 2024-000342	Court of Appeals	Order denying petition for rehearing

Despite the repeated warnings and orders instructing vexatious appellants to cease these tactics, it is clear such warnings have fallen on deaf ears. To be sure, these improper appeals and refusals to abide by court orders have successfully accomplished the intended result of delay and obstruction. Pursuing legitimate appeals in good faith is one thing. Repeatedly pursuing rejected arguments and refusing to recognize orders of South Carolina courts is another matter. Petitioners are more litigants in a long line that have made it clear that they will continue their abuse of the appellate process until this Court refuses to allow it. Absent decisive and meaningful consequences, there will be no change in this contemptuous behavior. As such, the Receiver requests this Court deny the petitions and impose sanctions against Petitioners to finally put a stop to this inappropriate behavior and deter other litigants from similar tactics.

COUNTER-STATEMENT OF THE CASE

This action, and the appointment of the Receiver, stem from an underlying asbestos lawsuit in which Cape was named but refused to participate. On June 4, 2021, Isabella Park filed a lawsuit asserting personal injury claims arising from asbestos exposure against (among others) an English entity, Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd. *See* Compl., *Park v. Armstrong Int'l, Inc. et al.*, No. 2021-CP-4002727 (June 4, 2021), at 1, 7. Ms. Park sought relief after being "diagnosed with mesothelioma caused by exposure to asbestos dust and

fibers" unintentionally "brought home" for years "as a result of her husband's work with and around asbestos-containing products." *Id.* at ¶ 4.

On June 9, 2021, less than five months from her diagnosis, and only five days after filing her lawsuit, Ms. Park passed away. On November 17, 2021, Ms. Park's son, Keith, amended the complaint, appearing individually and as personal representative to Ms. Park's estate (the "*Park* Plaintiffs"), to assert a wrongful death action. *See* First Amended Compl., *Park et al. v. Armstrong Int'l, Inc., et al.*, No. 2021-CP-4002727 (Nov. 17, 2021). The amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) (together with all predecessors in interest, "Cape") as a defendant. Cape Intermediate Holdings Limited and Cape PLC—both referring to the same English company originally named Cape Asbestos Co. Ltd.—were identified as successors in interest to Cape Asbestos Company Ltd. *Id.* at 9; *see also id.* at ¶¶ 26–27. In December 2021, the *Park* Plaintiffs served the named Cape entities, which (as has been their practice for decades) never answered, moved, or otherwise responded.

On March 17, 2023, the circuit court appointed a receiver for an entity identified as Cape PLC as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd. pursuant to S.C. Code § 15-65-10(5), as well as § 15-65-10(4) in the alternative. Order, *Park et al. v. Armstrong Int'l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) ("Appointment Order"), at 1. Pursuant to the Appointment Order and South Carolina law, the Receiver has "power and authority [to] fully administer all assets of Cape, . . . engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape"—in proper satisfaction of claims against Cape — "whatever they may be." *Id.* The Appointment Order further vested the Receiver with "rights, authority and powers with respect to" Cape's property, including to "obtain from any . . . third party, any financial records belonging to or pertaining to" Cape. *Id.* at 2.

On June 30, 2023, the Receiver filed the Third-Party Complaint, asserting claims against Petitioners for (i) unjust enrichment (first cause of action), (ii) constructive trust (second cause of action), (iii) alter ego and veil-piercing liability (third cause of action), and (iv) accounting (fourth cause of action). *See* Third-Party Compl., *Tibbs v. 3M Company, et al.*, No. 2023-CP-40-01759 (June 30, 2023). Each of the Third-Party Defendants named in the Third-Party Complaint are alleged to have facilitated, caused, or directed Cape's U.S.-based asbestos sales and liability-avoidance scheme, or otherwise acted as successors in interest to or beneficiaries of entities involved in that scheme, and are therefore responsible for the bodily injury underlying the claims against Cape, including specifically those claims asserted by South Carolinians.

The Sparrows Petitioners and the Altrad Petitioners filed motions to dissolve the Cape receivership and motions to dismiss the third-party complaint on August 21, 2023, and September 1, 2023. The Charter Petitioners filed motions to dismiss the third-party complaint on September 1, 2023. Petitioners later filed motions for protective order and to dissolve the receivership.[9] These motions sought protection from discovery and 30(b)(6) depositions during the pendency of the motions to dissolve and dismiss.

The circuit court held a hearing on the pending motions to dissolve the receivership, motions to dismiss, and motions for protective order on October 25, 2023. At the hearing, the circuit court orally ruled that a discovery stay would be in place until the Court ruled on the dispositive motions.

On December 6, 2023, the circuit court issued an order denying the motions to dissolve the receivership and the motions to dismiss for lack of personal jurisdiction. The circuit court issued

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[9] The Sparrows Petitioners filed their motion on September 5, 2023; the Altrad Petitioners filed their motion on September 20, 2023; and the Charter Petitioners filed their motions on October 6, 2023.

an order on December 15, 2023, denying Petitioners 12(b)(1) and 12(b)(6) motions. On December 15, 2024, the Receiver served amended notices of deposition on Arranco and Central Mining for depositions to begin in January 2024. Petitioners filed notices of appeal of the December 6, 2023 order denying the motions to dissolve the receivership and motions to dismiss based on lack of personal jurisdiction ("Dissolution Appeals"). *See* Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, 2023-002011.

Despite the circuit court's ruling that a discovery stay was only in place until the court ruled on the pending dispositive motions, Petitioners have refused to participate in any discovery in the case, pointing to the pendency of the Dissolution Appeals as an excuse to avoid their discovery obligations. Petitioners have failed to provide substantive responses to discovery, instead serving objections based on Rule 205, and refused to produce witnesses for scheduled depositions.

On January 12, 2024, the Receiver filed motions to compel Petitioners' participation in discovery. The Receiver cited to the Court of Appeals' September 8, 2023 order in *Childers* and applicable South Carolina law. Specifically, the Court of Appeals stated:

> After consideration of Respondent's [i.e., the Receiver's] "motion to clarify the court's order on appealability," as well as the returns and reply, we clarify that Appellants' appeal of the circuit court's March 31, 2023 order denying their motion to dismiss third-party claims and dissolve the Payne & Keller receivership shall proceed. ***We further clarify that the March 31, 2023 order is not stayed during pendency of this appeal.*** *See* Rule 62(a), SCRCP ("Unless ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal."); S.C. Code Ann. § 14-3-450 (2017) ("In case of an appeal under item (4) of Section 14-3-330 the proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below."). ***Accordingly, the receivership action and the receiver's ability to carry out his duties are not stayed.***

Appellate Case No. 2023-000727, September 8 Order (emphasis added).[10]

The Sparrow Petitioners filed a memorandum in opposition to the motion to compel on February 16, 2024, titling the memorandum as a "combined (I) memorandum in opposition to the Receiver's motions to compel discovery responses and 30(b)(6) deposition, (II) objection to the Receiver's February 9, 2024 proposed order, and (III) cross-motion to enjoin all activity by Receiver." The Altrad Petitioners filed a "Cross-Motion to Enjoin All Activity by the Putative Cape PLC Receiver and Opposition to Motion to Compel" on February 16, 2024. The Charter Petitioners also filed a memorandum in opposition on February 16, 2024, titling their memorandum as a "memorandum in opposition to third-party plaintiff's motion to compel discovery responses of third-party defendants and motion to compel 30(b)(6) deposition of Central Mining and Investment Corporation Ltd. and incorporated cross-motion for injunctive relief." On February 27, 2024, the Charter Petitioners filed a twenty-three page "objection to [the circuit] court ruling on their motions for protective order or Receiver's motions to compel," asking the circuit court from refraining to rule on any pending motions in the case, but, if it did decide to rule, then to grant Petitioners' motions for injunctive relief. In direct contradiction to the September 8 order of the Court of Appeals in *Childers*, the Charter Petitioners stated: "the Receiver lacks any authority to 'proceed at all,' whether with respect to purportedly marshalling assets, conducting discovery from the litigants, conducting discovery from third parties, negotiating with asbestos plaintiffs, filing additional complaints/third-party complaints, or anything else." (Feb. 27 Objection at p. 22.)

[10] This Court granted certification of the *Childers* appeal on March 27 and dismissed the appeal as not immediately appealable. Notably, in the March 27 order, the Court vacated a previous order of the Court of Appeals denying the Receiver's motion for sanctions, but the Court did not vacate any other orders issued by the Court of Appeals, including the September 8 Order or the November 21 Order.

On March 12, 2024, the Circuit Court issued the Order Granting the Receiver's Motions to Compel Discovery Responses of Third-Party Defendants and 30(b)(6) Depositions of Arranco US, LLC and Central Mining & Investment Corporation Ltd. The circuit court noted: "The Court notes that although Third-Party Defendants included in the[] February 16 filings what they have terms as 'cross-motions' for 'injunctive relief,' the Court advised the parties by email on February 21, 2024, that those requests for injunctive relief will remain under the Court's advisement to be addressed at another time." (March 12 Order at p. 3.) In the March 12 order, the Court directed all Third-Party Defendants "(i) to provide responsive, substantive, and complete answers to the Receiver's Discovery Requests with 14 days of entry of this Order and (ii) to begin producing documents in response to the Receiver's Requests for Production the same day," and (iii) as to Arranco and Central Mining, "to designate witnesses for . . . Rule 30(b)(6) depositions" by March 19 and "produce those witnesses" by April 2. (March 12 Order at 13).

On March 19, 2024, Petitioners filed notices of appeal from the March 12 Order ("the Discovery appeal"). Petitioners attempted to unilaterally rewrite the March 12 Order as an order denying an injunction instead of a discovery order to manufacture immediate appealability. In their Notices of Appeal, Petitioners stated: "This order is immediately appealable pursuant to South Carolina Code § 14-3-330(4) because, among other things, it refused to enter an injunction that the Appellants sought due to the pendency of [the Dissolution Appeals] before the South Carolina Court of Appeals." The Receiver filed a Motion to Dismiss the Discovery Appeal on April 1, 2024. The Court of Appeals dismissed the Discovery Appeal on April 17, 2024. Petitioners filed petitions for rehearing, which were denied by the Court of Appeals. Now, Petitioners have filed this request for certiorari from the dismissal of the Discovery Appeal.

On May 9, 2024, the Court of Appeals dismissed the Dissolution Appeals. *See* Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, 2023-002011. Petitioners filed petitions for rehearing from the dismissals on May 24, 2024. The Court of Appeals requested the Receiver file a return to the petitioners for rehearing, and the Receiver filed the return on June 10, 2024. The petitions for rehearing are pending and under consideration by the Court of Appeals.

Due to appellate and procedural gamesmanship and their outright refusal to abide by orders of courts in this state adverse to their positions, Petitioners have succeeded in delaying this case for nearly a year. Trial in this matter was set to commence on April 15, 2024, but was continued based on Petitioner's refusal to participate during the pendency of the Dissolution Appeals. To date, Petitioners have provided no substantive information in discovery and have unilaterally refused to participate in depositions despite being ordered by the circuit court.

The court-ordered deadlines to provide substantive responses to the Receiver's discovery have long passed, and Petitioners' flagrant violations of the circuit court's March 12 order and pursuit of appeals from orders that are clearly not immediately appealable persist.[11] The Receiver has been forced to exert additional time and resources in a continued effort to have Petitioners comply with existing orders of the Court and laws of this State—something that has yet to be achieved. Petitioners' misconduct—both in the circuit court by refusing to abide by basic discovery obligations and in our appellate courts by improperly pursuing numerous interlocutory appeals—has caused delays in this case and prejudiced the Receiver's ability to investigate and bring his claims.

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[11] As a result of the gross discovery misconduct, the circuit court issued an order on May 23, 2024, awarding attorneys' fees and certain adverse inferences against Petitioners pursuant to Rule 37(b)(2), SCRCP, in connection with the motions to compel.

In defense of this coordinated strategy of non-participation, the only excuses offered by these Petitioners are frivolous, in essence claiming a right—above the authority of our courts—to fully relitigate the merits (or lack thereof) of their numerous motions to dismiss and dissolve that were denied by the circuit court in early December 2023. Petitioners continue to argue that Rule 205, SCACR, poses a jurisdictional bar preventing the third-party action from continuing or the Receiver from fulfilling his court-appointed duties, because by simply appealing those denied motions to dissolve the receivership and by slipping a so-called "cross-motions for injunction" into their briefing opposing the underlying motions to compel, they can deprive the trial court of jurisdiction for an indeterminate time period.

These very same arguments, however, have been repeatedly dismissed by this Court and the Court of Appeals.[12] Our appellate courts have identified such attempts to appeal as interlocutory and not immediately appealable. This Court and Court of Appeals have made clear that—categorically—the denial of motions to dismiss and dissolve a receivership, like discovery orders, are not immediately appealable under South Carolina law. Despite those decisions implicating the same appealability issues invoked by Petitioners in the Dissolution Appeals,

[12] *See* Order Denying Rehearing, *Childers v. Davis Mech., et al.*, Appellate Case Nos. 2024-000005 and 2023-000727 (Sup. Ct. Apr. 17, 2024); Order Dismissing Appeal, *Childers v. Davis Mech., et al.*, Appellate Case Nos. 2024-000005 and 2023-000727 (Sup. Ct. Mar. 27, 2024); Order, *Childers v. Davis Mech.*, et al., Appellate Case No. 2023-000727 (Ct. App. Nov. 21, 2023); Order, *Childers v. Davis Mech.*, et al., Appellate Case No. 2023-000727 (Ct. App. Sept. 8, 2023); Order Denying Rehearing, *Link v. 3M Company, et al.*, Appellate Case No. 2024-000342 (Ct. App. Apr. 30, 2024); Order Dismissing Appeal, *Link v. 3M Company, et al.*, Appellate Case No. 2024-000342 (Ct. App. Apr. 12, 2024); Order Denying Rehearing, *Mitchell v. 3M Company, et al.*, Appellate Case No. 2024-000341 (Ct. App. Apr. 30, 2024); Order Dismissing Appeal and Denying Rule 205 Motion to Enforce, *Mitchell v. 3M Company, et al.*, Appellate Case No. 2024-000341 (Ct. App. Apr. 12, 2024); Order Denying Rehearing, *Welch v. Advance Auto Parts, Inc., et al.*, Appellate Case No. 2024-000337 (Ct. App. Apr. 30, 2024); Order Dismissing Appeal and Denying Rule 205 Motion to Enforce, *Welch v. Advance Auto Parts, Inc., et al.*, Appellate Case No. 2024-000337 (Ct. App. Apr. 12, 2024).

Petitioners have steadfastly continued to pursue their appeals. Thus, the legal basis for the Discovery Appeal and Petitioners' refusal to participate in discovery and comply with the circuit court's orders is legally untenable—indeed, frivolous and flatly inconsistent with those recent, directly applicable decisions of this Court and the Court of Appeals—while furthering an improper purpose, *i.e.*, to delay progress in this matter.

ARGUMENT

I. The Court of Appeals Properly Dismissed Petitioners' Appeal of the Interlocutory Discovery Order

The Court of Appeals properly dismissed Petitioners' improper appeal of the interlocutory discovery order. This appeal seeks inappropriate, interlocutory review of an order compelling discovery participation, bearing the title "Order Granting the Receiver's Motions to Compel Discovery Responses of Third-Party Defendants and 30(B)(6) Depositions of Arranco US, LLC and Central Mining & Investment Corporation Ltd." South Carolina law is clear—and has been clear for many years—that an order granting a motion to compel and directing a party to participate in discovery is an interlocutory order that is not immediately appealable. *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) (holding discovery orders are interlocutory and are not immediately appealable because they do not involve the merits of the action or affect a substantial right); *Ex Parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986) ("An order directing a party to participate in discovery is interlocutory and not directly appealable under S.C. Code Ann. § 14–3–330 (1976)"); *Ex Parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005) ("[A]n order denying or compelling pretrial discovery is not directly appealable since it is an intermediate or interlocutory decision.").

Pursuant to section 14-3-330 of the South Carolina Code, appellate courts have jurisdiction over interlocutory orders only if the interlocutory order involves the merits; affects a substantial

right; or grants, continues, modifies, or refuses an injunction or receivership. "An order involves the merits when it finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense," *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017) (internal quotations omitted), and affects a substantial right when it "(a) in effect determines the action and presents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial, or (c) strikes out an answer or any part thereof or any pleading in any action," S.C. Code Ann. § 14-3-330(2). None of those scenarios exist here.

The March 12 Discovery Order is a garden-variety order compelling discovery from parties that repeatedly refused to participate in discovery at all. It arose from steadfast failures (1) by Petitioners to respond to **any** of the written discovery the Receiver began serving on them **eight months ago** (the "Discovery Requests")[13] and (2) by Central Mining and Arranco to designate or appear for 30(b)(6) depositions noticed to begin in January 2024 following the circuit court's disposal of all potentially-dispositive motions Petitioners filed. After repeated outreaches to

[13] As to the Petitioners, the materials before the circuit court indicated the Receiver served his Discovery Requests on the following dates:

- As to the Charter Petitioners, Receiver served his First Set of Interrogatories and Requests for Production on ESAB Corporation on July 20, 2023, and on Central Mining and Charter Consolidated Ltd. on September 6, 2023.

- As to the Sparrows Petitioner, Receiver served his First Set of Interrogatories and Requests for Production on July 20, 2023.

- As to the Altrad Petitioners, Receiver served his First Set of Interrogatories and Requests for Production on September 6, 2023.

In addition, the Receiver noticed depositions of various Petitioners pursuant to Rule 30(b)(6), SCRCP, including serving Arranco on August 30, 2023, and Central Mining on September 6, 2023, with both depositions scheduled for October 2023, which the Receiver voluntarily postponed to allow the circuit court to first resolve the pending motions to dismiss and to dissolve the Cape Receivership. The Receiver subsequently issued amended notices for depositions of those two entities, after the circuit court resolved the pending motions.

Petitioners to address their failure to engage in any discovery at all, the Receiver filed six Motions to Compel on January 12, 2024:

1. Motion to Compel Discovery Responses of the Oppenheimer Third-Party Defendants;[14]

2. Motion to Compel Discovery Responses of the Altrad Owners Third-Party Defendants;

3. Motion to Compel Discovery Responses of the Altrad Sparrows Third-Party Defendants;

4. Motion to Compel Discovery Responses of the Charter Third-Party Defendants;

5. Motion to Compel 30(b)(6) Deposition of Central Mining; and

6. Motion to Compel 30(b)(6) Deposition of Arranco

(together, the "Motions to Compel").

Petitioners responded to the Motions to Compel by pointing to two sets of filings, which they erroneously claim excuse them from engaging in any discovery: (1) the Dissolution Appeals, which seek interlocutory review of the circuit court's December 6, 2023 order rejecting their personal jurisdiction arguments for dismissal and their requests to dissolve the Cape Receivership and (2) their motions for protective order and/or to stay discovery, filed prior to the circuit court's October 2023 hearing, **which the circuit court decided during that hearing**—in the Third-Party Defendants' favor no less—by ordering a temporary stay of discovery while the circuit court considered the dismissal and dissolution motions. Although the circuit court's temporary stay of discovery expired by its own terms upon entry of the December 6 Interlocutory Order, Petitioners

[14] The Oppenheimer defendants are Anglo American PLC, De Beers Centenary AG, De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., and De Beers, PLC. These defendants are not pursuing the Dissolution Appeal and did not file an appeal from the discovery order at issue here. *See* Appellate Case No. 2023-002008 (appeal by the Oppenheimer defendants of order denying motion to dissolve Cape receivership remitted June 6, 2024).

attempted to resurrect their previously-filed-and-decided Protective Order Motions as a shield against discovery participation. And they claim the filing of the Dissolution Appeals—twelve days after the December 6 Interlocutory Order—prevents the Receiver from engaging in discovery and prevents the circuit court from ruling on any discovery motions until the Court of Appeals and this Court fully and finally resolve the Dissolution Appeals.

The March 12 Discovery Order is a discovery order that is not the proper subject of an interlocutory appeal under South Carolina law. This Order granted the Motions to Compel following a detailed recitation of the case's procedural history, which made clear: "[T]here [was] no active stay of discovery in th[e] proceeding, nor [did] Third-Party Defendants have any pending Protective Order Motions that require[d] resolution" by the circuit court. (March 12 Discovery Order at 10). The March 12 Discovery Order also highlighted the Third-Party Defendants' failure to seek a stay from either the circuit court or the Court of Appeals and cited recent orders from the Court of Appeals that had already addressed—and rejected—arguments that discovery was automatically stayed when, as here, a party has appealed an interlocutory order denying a motion to dissolve a receivership:

> [T]he Court of Appeals [has] expressly found that the appeal of a dissolution order does **not** stay the Receiver's ability to carry out his duties in the case below. *See* Order, *Childers v. Davis Mech. Contractors, Inc. et al.*, No. 2023-000727 (S.C. Ct. App. Sept. 8, 2023) (ruling that the "receivership shall proceed" and the "order is not stayed during pendency of this appeal," such that "the receivership action and the receiver's ability to carry out his duties are not stayed"); *see also* Order, *Childers v. Davis Mech. Contractors, Inc. et al.*, No. 2023-000727 (S.C. Ct. App. Nov. 23, 2023).

(March 12 Discovery Order at 12). Finally, the March 12 Discovery Order reiterated "[d]iscovery was to continue"—a finding consistent with the Receiver's express communication **three months earlier** to both the Court and the Third-Party Defendants that discovery could proceed and no

Protective Order Motions remained pending—**a communication to which no Third-Party Defendant responded at all**, much less challenged. *Id.* (quoting a December 8, 2023 email sent by counsel for the Receiver that he expected "fulsome responses to [discovery] requests . . . on or before January 5, 2024, with depositions to start soon after."). Pursuant to the March 12 Discovery Order, Petitioners were to produce documents and provide "responsive, substantive, and complete answers" to the Discovery Requests by March 26, and Arranco and Central Mining were to designate witnesses for the 30(b)(6) depositions by March 19 and produce those witnesses by April 2. *Id.* Yet, Petitioners refuse.

Nor can these Petitioners' efforts to use the Dissolution Appeals as a discovery excuse be reconciled with the Court of Appeals' prior orders authorizing the Receiver to continue with his duties even while an appeal of an order refusing to dissolve the Receivership is pending. After filing the inappropriate Discovery Appeal, Petitioners proclaim both the Receiver and the receivership court cannot take any actions during the pendency of the Dissolution Appeals. But engaging in discovery is exactly what the Court of Appeals has said the Receiver may do even while the Receivership is being challenged on appeal. *See* Order, *Childers v. Davis Mech. Contractors, Inc. et al.*, No. 2023-000727 (Ct. App. Sept. 8, 2023) (ruling that the "receivership shall proceed" and the "order is not stayed during pendency of this appeal," such that "the receivership action and the receiver's ability to carry out his duties are not stayed"); *see also* Order, *Childers v. Davis Mech. Contractors, Inc. et al.*, No. 2023-000727 (Ct. App. Nov. 23, 2023) (denying motion to enforce exclusive jurisdiction); *see also* Order, *Childers v. Davis Mech. Contractors, Inc. et al.*, No. 2023-000727 (Sup. Ct. Mar. 27, 2024) (vacating the Court of Appeals' order denying sanctions but not vacating the Sept. 8 or Nov. 23 orders).

This appeal was ripe for dismissal. It is not an authorized interlocutory appeal but rather another attempt by Petitioners to delay the case, neglect their legal obligations to participate in discovery, and avoid going to trial on the underlying issues. *See Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 14 (2000) (noting "the avoidance of a trial is not a sufficient reason to justify immediate appellate review").

Petitioners also attempt to circumvent the well-established case law holding interlocutory discovery orders are not reviewable by an appellate court until a final order or judgment has been entered in the case by unilaterally renaming the discovery order as an order refusing their injunction request. These so-called requests for injunctive relief—that these Third-Party Defendants claim were "decided" by the Court in its March 12 Order despite a clear statement in that order to the contrary—***remain pending*** in the lower court. They were eleventh-hour requests tacked on to Petitioners' February 16 memoranda opposing the Receiver's January 12 Motions to Compel. And five days after these "injunctive" requests materialized, the Court informed Petitioners by email on February 21 that the Court would allow the parties to submit proposed orders on the fully briefed motions to compel, but that these recent motions for injunctive relief would be considered at a later time.

Petitioners have taken it upon themselves to mischaracterize this appeal as an "injunction appeal" **when the March 12 Discovery Order made clear it contains no ruling on any request for an injunction**. Indeed, footnote 1 of the March 12 Order expressly stated the Third-Party Defendants' eleventh-hour insertion of requests for "injunctive relief" in their responses to the Motions to Compel were not under submission yet for the Court's consideration:

> Although Third-Party Defendants included in [their] February 16 filings [submitted in opposition to the Receiver's Motions to Compel] what they have termed to be 'cross-motions' for 'injunctive relief,' the Court advised the parties by email on

> February 21, 2024, that those requests for injunctive relief will remain under the Court's advisement to be addressed at another time.

(March 12 Order at 3 n.1). A rose by any other name is still a rose: Petitioners cannot simply rebrand an order compelling discovery to be the "denial of injunctive relief" in an effort to circumvent South Carolina's threshold for interlocutory appeals, and they certainly cannot do so when the circuit court expressly stated in the March 12 Order that it was not ruling on injunctive requests. The crafty renaming of a discovery order as an injunctive order to prolong an improper appeal is far outside the scope of good faith legal filings. A defendant cannot unilaterally convert a discovery order into an immediately appealable issue by slipping a so-called "cross-motion for injunction" into their briefing opposing the underlying motions to compel. Otherwise, any litigant could manufacture an immediately-appealable issue out of ***any order at any point*** by simply opposing the underlying motion with a "gotcha" request to enjoin the moving party from taking any action. Then, the party could appeal the "order refusing the injunction" and any other orders that were not immediately appealable. This would set a dangerous precedent and undoubtedly lead to piecemeal appeals that prevent the effective adjudication of cases in South Carolina. Petitioners efforts to rope in undecided "cross-motions" for injunctive relief is unfounded and does not justify this improper interlocutory appeal.

Discovery disputes occur in nearly every case, and circuit courts are well-equipped to handle them during litigation. Allowing parties to obtain appellate review on interlocutory discovery orders because the petitioners have attempted to poorly disguise the order as injunction orders would burden this Court and impede the administration of justice throughout our state due to the resulting delays in the final adjudication of matters while this Court considers the disputes. These delays could last years. As explained by this Court,

> The rule in restriction of piecemeal appellate procedure, dating back to the common law, is based upon sound reason and practical utility. If it were otherwise, endless delays would be encountered—delays which are unnecessary in cases similar to the one now before us, which can be decided upon an appeal from such final judgment as may later be entered by the trial Court.

Good v. Hartford Acc. & Indem. Co., 201 S.C. 32, 21 S.E.2d 209, 213 (1942). *See also Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 13–14 (2000) ("The current case reveals why such appeals are disfavored. . . . Already the progress of this case has been delayed several years over the issue of venue.").

The entire purpose of reserving our appellate courts' limited resources for review of only final orders and judgments except in the direst circumstances is to prevent overburdening our court system. *See Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017) (explaining appellate rules related to interlocutory orders are "construed narrowly" with the goal of avoiding "circuitous litigation and needless appeals"); *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005) ("Piecemeal appeals should be avoided[.]"); *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) ("The provisions of section 14-3-330 are narrowly construed and serve the underlying policy of favoring judicial economy by avoiding 'piecemeal appeals.'" (quoting *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709)). This goal is accomplished not only by reducing the number of cases being reviewed by our appellate courts but also by ensuring our appellate courts are not reviewing unnecessary decisions—only those that play a decisional role in the merits of a case. *See Watson v. Underwood*, 407 S.C. 443, 458, 756 S.E.2d 155, 163 (Ct. App. 2014) ("The basic policy behind denying immediate review of pretrial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted." (quoting *Breland*, 339 S.C. at 94, 529 S.E.2d at 13)). Our appellate courts generally do not consider discovery matters until the end of a case when a court is able to determine whether

any perceived error in a discovery order had any effect on an order or judgment. Allowing Petitioners appeal here would be approving of likewise conduct in the future by other litigants—slipping injunctive requests in opposition briefing to create appealability grounds.

The fact that a party will have to expend resources to comply with an order is not a reason to justify this unprecedented review. In fact, it is well-established that the avoidance of trial is not a substantial right. *See Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991). Thus, denials of motions to dismiss are not immediately appealable, and this Court recently held that denials of motions to dissolve receiverships are likewise not immediately appealable. *See Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995); Order, *Childers v. Davis Mech. Contractors, Inc. et al.*, No. 2023-000727 (Sup. Ct. Mar. 27, 2024). Our courts have decided that the fact that a party will have to expend resources to continue litigating a case is not a good enough reason to deviate from established precedent and allow for an immediate appeal from an interlocutory order. Similarly, the fact that Petitioners will have to expend resources to comply with this discovery order is not a reason to make an exception for them here.

The Court should reject Petitioners' attempts to create a "'stop-and-start' enterprise." *State v. Ledford*, 422 S.C. 244, 249, 810 S.E.2d 868, 870 (2018). As the Court stated in *Oncology & Hematology Associates*, this Court's "willingness to review a discovery order by way of a writ of certiorari will be as rare as the proverbial 'hen's tooth.'" 387 S.C. 380, 388, 692 S.E.2d 920, 924 (2010). Accordingly, the Court should deny the Petitions for Writ of Certiorari.

II. The Circuit Court Acted Within its Jurisdiction in Granting the Receiver's Motion to Compel

This Court should further deny certiorari because the circuit court acted within its jurisdiction in granting the Receiver's motion to compel. Petitioners' Rule 205 arguments are far

from "undeniably correct" because every court to consider them—the circuit court, the Court of Appeals, and this Court—has denied them. (Charter Pet. at 16.)

Petitioners' arguments that the Receiver cannot take any action while the Dissolution Appeals remain pending is directly contradictory to the Court of Appeals September 8 Order in *Childers*. Specifically, the Court of Appeals stated:

> After consideration of Respondent's [i.e., the Receiver's] "motion to clarify the court's order on appealability," as well as the returns and reply, we clarify that Appellants' appeal of the circuit court's March 31, 2023 order denying their motion to dismiss third-party claims and dissolve the Payne & Keller receivership shall proceed. ***We further clarify that the March 31, 2023 order is not stayed during pendency of this appeal.*** *See* Rule 62(a), SCRCP ("Unless ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal."); S.C. Code Ann. § 14-3-450 (2017) ("In case of an appeal under item (4) of Section 14-3-330 the proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below."). ***Accordingly, the receivership action and the receiver's ability to carry out his duties are not stayed.***

Appellate Case No. 2023-000727, September 8 Order (emphasis added). In the briefing leading up to the September 8 Order, the appellants raised Rule 205 jurisdiction arguments which were denied by the Court of Appeals in the September 8 Order. Further, following this order, the *Childers* appellants sought an order from the Court of Appeals enforcing its exclusive jurisdiction, raising the same Rule 205 arguments that Petitioners raise here. The Court of Appeals denied the Emergency Motion to Clarify and Enforce Rule 205 on November 21, 2023. Appellate Case No. 2023-000727, November 21 Order. The Court of Appeals has issued other orders in receivership appeals rejecting Rule 205 motions asking the Court to enforce its exclusive jurisdiction while similar dissolution appeals were pending. *See* Order, *Welch v. Advance Auto Parts*, Appellate Case No. 2024-000337 (filed April 12, 2024) ("Appellant Continental Insurance Company filed a

motion to enforce this court's exclusive jurisdiction over this matter . . . . The motion is denied."); Order, *Mitchell v. 3M Company*, Appellate Case No. 2024-000341 (filed April 12, 2024) ("Appellant Continental Insurance Company filed a motion to enforce this court's exclusive jurisdiction over this matter . . . . The motion is denied.").

Our state's policy regarding receiverships underscores why the duties of the receiver can continue to be carried out while an appeal proceeds. Section 14-3-450 and Rule 62(a) are the vehicle that allows the courts of this state to protect the assets of a corporation under receivership, even during the pendency of an appeal. Allowing receiverships to be halted while an appeal, or as in this case, multiple improper appeals, are pending would simply raise the "potential harm in not having an unbiased party to protect a corporation's assets." *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479, 602 S.E.2d 83, 87 (Ct. App. 2004). A finding to the contrary would allow any corporation wanting to defy a receivership to moot the litigation by liquidating or wasting the company's assets while the appellate courts consider the appeal. *See Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." (alterations in original) (quoting *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973))).

It is clear that Petitioners attempt to use Rule 205 as a mechanism to halt progress in the case as they appeal every order of the circuit court, whether appealable or not.[15] This is directly

[15] Petitioners' argument is a feat of mental gymnastics as they argue both that the circuit court did not have jurisdiction to take any actions on motions pending before it and that the circuit court should have taken action to grant their "cross-motions for injunctive relief." Under Petitioners' arguments, the circuit court would have had no power to act on the injunctive relief requests. These

contrary to South Carolina law. This Court has explained that, "Where an order is interlocutory, and thus not appealable, the notice of intent to appeal **does not transfer jurisdiction to this Court, not does it stay further proceedings in the lower court**." *S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 536 (1986) (emphasis added). In *Arnold*, this Court rejected an appellant's argument that "the lower court was without jurisdiction to try the case prior to this Court's issuance of remittitur, since the filing of the notice of intent to appeal vested this Court with exclusive jurisdiction." *Id*. at 585–86, 340 S.E.2d at 536. The Court stated: "Since this Court granted respondents' motion to dismiss on the grounds that the consolidation order was interlocutory, and not appealable, the Circuit Court never lost jurisdiction and properly proceeded to trial." *Id.* at 586, 340 S.E.2d at 536. Here, the Court of Appeals dismissed the Dissolution Appeals as not immediately appealable, and this Court has similarly found parties cannot immediately appeal from orders refusing to dissolve receivership actions. Thus, jurisdiction has not transferred to the appellate courts. *See also Dibble v. Schade*, 308 S.C. 88, 93, 417 S.E.2d 104, 107 (Ct. App. 1992) ("When an order is interlocutory and not immediately appealable, the service and filing of a notice of intent to appeal does not transfer jurisdiction to the Supreme Court and does not stay the proceedings in the trial court."); *Brown v. Greenwood Sch. Dist. 50 Bd. Of Trustees*, 344 S.C. 522, 524–25, 544 S.E.2d 642, 643 (Ct. App. 2001) ("Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to the [appellate] [c]ourt ..." (quoting *Arnold*, 287 S.C. at 586, 340 S.E.2d at 536)).

Similarly, in *Fibkins v. Fibkins*, the Court of Appeals held:

> First Maryland also argues the master had no jurisdiction to issue his order of September 28, 1988, because the case was already under appeal pursuant to a July 13, 1988 order, issued by the master. We find no merit to this argument. The master's

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contradictory arguments illustrate exactly what Petitioners are after in the Dissolution Appeals and the Discovery Appeals—delay.

> order of July 13 clearly indicated it was an interim order and a final order would be issued once a transcript was received. The July order stated it was issued only to facilitate scheduled bidding. The July 13 order was interlocutory and did not stay proceedings in the master's court. *S.C. Public Serv. Auth. v. Arnold*, 287 S.C. 584, 340 S.E.2d 535 (1986). Thus, the master was empowered to enter the September 28 order which provided the detailed findings of fact and conclusions of law. It is clearly the final appealable order in the case.

303 S.C. 112, 116–17, 399 S.E.2d 158, 161 (Ct. App. 1990).

This is the same across the country. For example, in *Woznicki v. Musick*, the Colorado Court of Appeals held "a premature notice of appeal does not render void for lack of jurisdiction acts of the trial court taken during the interval between the filing of the invalid notice of appeal and the dismissal of the appeal by" the appellate courts. *Woznicki v. Musick*, 94 P.3d 1243, 1247 (Colo. App. 2004), aff'd, 136 P.3d 244 (Colo. 2006). The *Woznicki* court noted this is "the position taken by a majority of federal and state courts," and cited to this Court's decision in *Arnold* as well as countless other decisions, including the Tenth Circuit, Ninth Circuit, Fifth Circuit, Eleventh Circuit, Second Circuit, Sixth Circuit, Arizona, Minnesota, Montana, Nevada, North Carolina, North Dakota, and Ohio. *Id.*; *See also Holste v. Burlington N. R. Co.*, 256 Neb. 713, 727, 592 N.W.2d 894, 906 (1999) (collecting cases, including this Court's *Arnold* case, and holding "the notice of appeal from a nonappealable order does not render void for lack of jurisdiction acts of the trial court taken in between the filing of the notice and the dismissal of the appeal"). The rationale behind this rule was aptly explained by the Court of Special Appeals of Maryland:

> To apply any other rule would be utterly unthinkable. Any party would then be able, at any time before final judgment, to bring the trial of a case to an abrupt halt by merely filing an order for appeal from any ruling of the court. Control of the judicial process would thus pass from the courts to the parties and their counsel. Mistrials and continuances would be available without limitation at the whim of any party. The trial court must have, and does have, the power to determine whether its jurisdiction to proceed has been ousted. Should any abuse of that power ever arise, such abuse could undoubtedly be corrected by prompt appellate action.

Smiley v. Atkinson, 12 Md. App. 543, 550–51, 280 A.2d 277, 282 (1971), aff'd, 265 Md. 129, 287 A.2d 770 (1972).

Here, it is clear Petitioners are abusing the appellate process in an attempt to stop the proceedings below. The Dissolution Appeals are improper, interlocutory appeals and follow a long line of creative but highly improper maneuverings intended to delay and frustrate the orderly operation of the courts and the court-appointed Receivers. This Court and the Court of Appeals have dismissed and remitted at least **four** identical or similar appeals for being not immediately appealable, including the Oppenheimer defendants' appeal of the very same order on appeal in the Dissolution Appeals. *See* Appellate Case Nos. 2023-002008, 2024-000341, 2024-000337, 2023-000727. Petitioners' improper pursuit of the Dissolution Appeals did not transfer jurisdiction to the appellate courts.

Petitioners' argument that the Court of Appeals' November 21, 2023 Order in *Childers* requires them to appeal the discovery order is baseless and ignores subsequent appellate court rulings. *See* Order, *Welch v. Advance Auto Parts*, Appellate Case No. 2024-000337 (filed April 12, 2024) ("Appellant Continental Insurance Company filed a motion to enforce this court's exclusive jurisdiction over this matter . . . . The motion is denied."); Order, *Mitchell v. 3M Company*, Appellate Case No. 2024-000341 (filed April 12, 2024) ("Appellant Continental Insurance Company filed a motion to enforce this court's exclusive jurisdiction over this matter . . . . The motion is denied."). The November 21, 2023 Order in *Childers* reiterated that the Court would only make findings related to orders once those orders were properly on appeal. It did not change the appellate court rules to allow for interlocutory review of orders that are otherwise not immediately appealable.

Accordingly, based on the clear rulings of the Court of Appeals that receivership actions are not stayed during an appeal and South Carolina law that improper interlocutory appeals do not transfer jurisdiction to the appellate courts, the Court should deny certiorari.

SANCTIONS

In light of Petitioners' abuse of the appellate process for the purposes of delay, waste of the limited resources of our courts, and outright refusal to accept and abide by court orders and their obligations and repeated improper filings, Receiver respectfully requests the Court award sanctions pursuant to Rule 269, SCACR.

The South Carolina Appellate Court Rules allow this Court to impose sanctions when a filing is "frivolous or taken solely for the purposes of delay." Rule 269, SCACR. Specifically, Rule 269 provides:

> Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days['] notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

In light of Petitioners' abuse of the appellate process for the purposes of delay, waste of the limited resources of our courts, and outright refusal to accept and abide by court orders and their obligations, the Receiver respectfully requests the Court award sanctions pursuant to Rule 269, SCACR. Furthermore, due to Petitioners' recalcitrance, the Receiver respectfully requests this Court make it clear to Petitioners that they are required to participate in the circuit court proceedings regardless of the pendency of the Dissolution Appeals or any other improper interlocutory appeals they or other parties in receivership actions may pursue.

CONCLUSION

The Court should deny certiorari in this discovery appeal and award sanctions pursuant to Rule 269, SCACR. Despite the nomenclature Petitioners prefer to use, the March 12, 2024 Order

remains an unappealable interlocutory discovery order. The Court of Appeals properly dismissed the appeal.

Additionally, Petitioners are still improperly pursuing the Dissolution Appeals despite this Court's order in *Childers*. Petitioners' petitions for rehearing of the Court of Appeals' dismissal of the Dissolution Appeals are currently pending. However, it is expected that Petitioners will attempt to petition for a writ of certiorari from the dismissal of the Dissolution Appeals as an attempt to further delay the matter. Therefore, the Receiver requests the Court make it clear that Petitioners are required to participate in the circuit court proceedings even if they continue to pursue the Dissolution appeals or grant certification over the Dissolution Appeals and dismiss them as interlocutory as the Court did in the *Childers* case.

Respectfully Submitted,

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