THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-002011
Appellate Case No. 2023-002010
Appellate Case No. 2023-002009
Circuit Court Case No. 2023-CP-40-01759

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.; Flowserve 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, Inc.; 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,

of which

Asbestos Corporation Limited is the..... Appellant,

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

Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the ..... Appellants.

PETITION FOR REHEARING
BY APPELLANTS CHARTER CONSOLIDATED LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD.

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Counsel for Third-Party Defendants Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd.

Appellants Charter Consolidated Ltd. ("Charter"), ESAB Corporation ("ESAB"), and Central Mining and Investment Corporation Ltd. ("Central Mining," and collectively, "Appellants") hereby respectfully submit this Petition for Rehearing of the Court's Order of May 9, 2024 dismissing the appeal (the "May 9 Order"). The May 9 Order granted the Motion to Dismiss Appeals filed by Peter D. Protopapas, in his purported capacity as the court-appointed receiver for Cape PLC ("Mr. Protopapas" or "Receiver").

The Court, in issuing the May 9 Order, overlooked and/or misapprehended the following:

1. The order appointing Mr. Protopapas as receiver over Cape PLC in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727 ("*Park* case") is void for failure to comply with the condition precedent set forth in S.C. Code Ann. § 15-65-60 (1976 as amended). *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343, 348 (1928) (interpreting the provision under the previous receivership statute containing substantively identical language to Section 15-65-60 and holding that "[t]he provision for inserting a clause fixing the value of the property in the order appointing a receiver is mandatory, and without such clause the order is void.")

2. The order appointing Mr. Protopapas as receiver over Cape PLC in the *Park* case ("Park Receiver Order") is highly irregular, was improper, and should be vacated for numerous independent reasons: a) because the Park Plaintiff did not move for the appointment of a receiver until after the *Park* case had resolved - without either a judgment or default finding as to Cape PLC; b) because the *Park* Plaintiff did not allege that Cape PLC, a foreign company, had any assets in South Carolina; c) because the *Park* Plaintiff was not a creditor of Cape PLC nor did he allege that Cape PLC had any judgment creditors (or any other creditors), d) because there is no South Carolina Law or Statute that allows the pre-judgment appointment of a receiver over a foreign corporation that is not insolvent or in danger of becoming insolvent; and e) because the *Park* Plaintiff never served Cape PLC with the Summons and Complaint, Motion to Appoint Receiver over Cape PLC, or the Park Receiver Order.

3. Cape PLC, without notice of the Park receivership motion or order, did not challenge, oppose or appeal the Park Receiver Order.

4. The Park Receiver Order is limited to the *Park* case (and not effective in the present matter - *John A. Tibbs and Margaret B. Tibbs v. 3M Company*, Case No. 2023-CP-40-01759 ("*Tibbs* case")). A receiver has no general authority as a receiver to sue or be sued or defend. *See In re Fiftv-Four First Mortg. Bonds*, 15 S.C. 304 (1881); Gadsden v. Whaley, 14 S.C. 210 (1880) ("A receiver cannot interfere in [another

case] until he has been made a party to the action by order of the court.") Further, the Park Receiver Order clearly stated: "the Court hereby appoints Peter Protopapas be and hereby is appointed Receiver **in this case** pursuant to the South Carolina Law…" Additionally, S.C. Code Ann. § 15-65-10 *et seq.* only allows appointment of a receiver in a single "cause."

5. Mr. Protopapas could have attempted to bring his third-party action in the *Park* case (where he was appointed) instead of the *Tibbs* case (where he had no appointment).

6. Mr. Protopapas was not granted authority to act in the *Tibbs* case. *Tibbs* Plaintiff did not file a motion to appoint a receiver in the *Tibbs* case (or any other case). *Tibbs* Plaintiff filed a Summons and Complaint naming Cape PLC, but never filed proof of service as to Cape PLC. Mr. Protopapas did not request or receive leave of the circuit court to become a defendant in the *Tibbs* case, to act as receiver in the *Tibbs* case, or to file a third-party complaint in the *Tibbs* case. Accordingly, there is no receiver for Cape PLC in the *Tibbs* case, and Mr. Protopapas had/has no authority to act in the *Tibbs* case.

7. Mr. Protopapas was not granted authority to act as receiver in the *Tibbs* case until the circuit court denied the Appellants' motions to dismiss and motions to dissolve receivership (in the order on appeal ("December 2023 Order") . By allowing Mr. Protopapas to maintain the Third-Party Action (and by denying Third-Party Defendants' Motions to Dismiss and Motion to Dissolve Receivership), the Court granted a new receivership appointment over Cape PLC in the *Tibbs* case and/or modified the Park Receiver Order (to allow Mr. Protopapas to act beyond the *Park* case.)

8. By allowing Mr. Protopapas to act as receiver for a new entity, Cape Intermediate Holdings LTD (a separate corporate entity from Cape PLC, that was not referenced in the Park Receiver Order, and that is not a defendant in the Tibbs case), the circuit court granted a new receivership in the *Tibbs* case and/or modified the Park Receiver Order (to add Cape Intermediate Holdings LTD ("CIHL").

9. The new receivership(s) granted by the circuit court's December 2023 Order violate Appellants' pre-judgment statutory right to provide a bond and vacate the receiver appointment. Mr. Protopapas in the *Tibbs* case alleges that Appellants are in possession of assets belonging to Cape PLC, which Mr. Protopapas is attempting to obtain for the receivership. Appellants are entitled to the pre-judgment statutory protections afforded by S.C. Code Ann. § 15-65-60 which specifically requires a clause in an appointment order fixing the value of the property being sought to be placed in the hands of the receiver, such that the party in possession of the assets may submit a bond which vacates the receiver appointment. The South Carolina Supreme Court has interpreted this section as being a condition precedent to the appointment of a receiver: "[t]he provision for inserting a clause fixing the value of the property in the order appointing a receiver is mandatory, and without such clause the order is void." *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343, 348

(1928). Appellants' ability to enforce their statutory pre-judgment protections will be moot if not appealable now. *Cf. Duncan v. GEICO*, 331 S.C. 484, 449 S.E.2d 580 (1994) (an interlocutory order that affects a substantial right and prevents a judgment from which an appeal may be taken is immediately appealable under S.C. Code Ann. § 14-3-330 (2)).

10. Appellants were/are not parties to the *Park* case and received no notice of *Park* Plaintiff's receivership motion or the Park Receiver Order. Appellants received no notice of the Park Receiver Order or Mr. Protopapas' request to act as receiver in the *Tibbs* case (via his third-party complaint) until they were served with the third-party complaint in the *Tibbs* case. Mr. Protopapas' third-party complaint was in effect his motion to be appointed receiver in the *Tibbs* case. Not until the circuit court granted Mr. Protopapas the authority to act as receiver in *Tibbs* (by denying Appellants' motions to dismiss and to dissolve the receivership) did Appellants have their first opportunity to appeal the interlocutory orders granting, continuing, and/or modifying the appointment of a receiver. The order on appeal is immediately appealable pursuant to S.C. Code Ann. § 14-3-330(4)(allowing immediate appeal of interlocutory order granting, modifying or continuing appointment of receiver.)

INTRODUCTION

The December 2023 Order is immediately appealable because it grants the appointment of Mr. Protopapas as receiver for Cape PLC and CIHL in the *Tibbs* case. The December 2023 Order may also have had the effect of modifying and/or continuing the Park Receiver Order. All of the above should be immediately appealable pursuant to S.C. Code Ann. § 14-3-330(4).

Additionally, the December 2023 Order is immediately appealable under S.C. Code Ann. § 14-3-330 (2) because it affects a substantial right and prevents a judgment from which an appeal may be taken. The relevant receivership statutes require certain **pre-judgment** protections for those whose assets are sought by a receiver (here Appellants). Specifically, "[w]henever the court … shall appoint a receiver **before final judgment in the cause** there **shall** be inserted in the order of appointment **a clause fixing the value of the property for which the bond may be given**, as prescribed in Section 15-65-50. And upon the due execution and filing of such bond thereafter **before final judgment in the cause** the court or judge **shall vacate the appointment of such receiver**…." S.C. Code Ann. § 15-65-60 (emphasis added). The circuit court denied

Appellants' right to these protections by the December 2023 Order. These substantial pre-judgment statutory rights will be lost (moot) if not appealable until after final judgment. Accordingly, these issues must be appealable now. Section 14-3-330(2).

PROCEDURAL HISTORY

The details of the receivership appointment are chronicled in Appellants' Initial Brief in this Appeal and that Brief is incorporated herein by reference.[1] An abbreviated procedural history is provided below.

Both Cape PLC and CIHL were named defendants in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727. Both Cape PLC and CIHL were alleged to be current and active entities.[2] *Park* plaintiff never filed proof of service pursuant to Rule 5(d), SCRCP, as to either Cape PLC or CIHL. Nine months after the *Park* plaintiff reported to the circuit court that the case was "fully resolved," the *Park* plaintiff moved to appoint Mr. Protopapas as receiver over Cape PLC (CIHL was not mentioned). The Receiver, while unhappy about the *Park* plaintiff's decision to not seek a receivership over CIHL, clearly pled that Cape PLC (a Jersey entity) and CIHL (a United Kingdom entity) are distinct and separately existing active companies.[3]

The *Park* plaintiff sought appointment of a receiver over Cape PLC even though Cape PLC was never served with the *Park* complaints, was never served with a motion to appoint receiver, is a foreign company with no assets in South Carolina. The circuit court granted the *Park* plaintiff's

[1] *Cf.* Rule 208(b)(6), SCACR.

[2] *Park* First Amended Complaint, filed November 17, 2021, at p. 1; ¶¶ 15, 26-27. *See* R. p. ___; *Tibbs* Third-Party Complaint ("Third-Party Compl.") at ¶¶ 40, 45, 113; Oct. 25, 2023 Hr'g Tr., at 42. (Sparrow Appellants Appendix to Return at 1).

[3] *Tibbs* Third-Party Complaint ("Third-Party Compl.") at ¶¶ 40, 45, 113; Oct. 25, 2023 Hr'g Tr., at 42.

ex parte motion, relying on "facts" that the Receiver has since admitted are simply not true, including that Cape PLC had been dissolved.[4] The Park Receiver Order specifically limited the appointment to the *Park* case: "the Court hereby appoints Peter Protopapas be and hereby is appointed Receiver **in this case** pursuant to the South Carolina Law…"[5]

On April 5, 2023, Mr. and Mrs. Tibbs filed the present action and named Cape PLC as a defendant, alleging that: "CAPE PLC … **is** a private liability company organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland with its court appointed Receiver maintaining its principal place of business in South Carolina. … CAPE PLC is sued as a Product Defendant. Plaintiffs' claims against CAPE PLC arise out of this Defendant's business activities in the State of South Carolina."[6] CIHL is **not** a defendant in *Tibbs*. Mr. Protopapas is not a defendant in *Tibbs*. *Tibbs* plaintiffs never filed proof of service pursuant to Rule 5(d), SCRCP, as to Cape PLC (or CIHL).

Cape PLC, itself, has not answered or otherwise made an appearance in the *Tibbs* case – presumably because it was never served. The law firm of Rikard & Protopapas filed a "General Denial" for Cape PLC "by and through its Receiver Peter D. Protopapas…"[7] There was no request for a receivership by the *Tibbs* plaintiffs, there was no order in the *Tibbs* case appointing a receiver, and there was no order otherwise allowing Mr. Protopapas leave to file the third-party complaint.

Nonetheless, the following day, Mr. Protopapas filed a document entitled "Third-Party

[4] Park Receiver Order at 1 (filed Mar. 17, 2023, in *Park*). (Sparrow Appellants Appendix to Return at 418).

[5] Park Receiver Order at 1 (filed Mar. 17, 2023, in *Park*). (*Id.*)

[6] *Tibbs* Complaint at ¶ 41 (filed April 5, 2023).

[7] General Denial for Cape PLC in *Tibbs* (filed June 29, 2023).

Complaint," purporting to be the "duly appointed receiver" over "Cape PLC" asserting causes of action against Appellants alleging that they are alter egos of CIHL (the successor to Cape Asbestos Company Ltd.).

Appellants filed motions to dismiss and to dissolve and challenged, among other things, 1) the propriety of the *Park* Receiver Order, 2) the authority of the Receiver named in the *Park* case to act outside of *Park*, 3) the authority of Mr. Protopapas to act as the receiver for Cape PLC in the *Tibbs* case, and 4) the authority of Mr. Protopapas to act as a receiver for CIHL in the *Tibbs* case. The December 2023 Order found: 1) that the circuit court in the *Park* case "appointed a receiver for Cape PLC";[8] 2) that the entities presently known and Cape PLC and CIHL are different and distinct entities;[9] 3) that Mr. Protopapas is seeking through his third-party complaint to assert claims on behalf of CIHL (not the presently existing Cape PLC),[10] 4) and that Mr. Protopapas may now act as the receiver for Cape PLC and CIHL in the *Tibbs* case.

[8] December 2023 Order page 4. (Sparrow Appellants Appendix to Return at 461).

[9]December 2023 Order page 6, 17. The circuit court explained: "Cape PLC (as it was known from 1989 to 2011, and as is now known as Cape Intermediate Holdings Ltd.) is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)…." December 2023 Order Page 6. "The second Cape PLC, on the other hand, is a new entity allegedly created in the Bailiwick of Jersey in April 2011…. Other than the common name, there is no evidence the Park Plaintiffs meant to sue the new Bailiwick of Jersey entity as a defendant in their asbestos exposure lawsuit. The new entity was not organized in the United Kingdom; the new entity has existed for less than 20 years; and there is no indication in the record the new entity was the same entity that historically sold asbestos in the United States (nor could there be given its relative infancy)." December 2023 Order Page 17. (*Id.*)

[10] December 2023 Order pages 6-9 summarizing third-party complaint allegations of "Cape" that all predate Cape PLC's 2011 formation. (*Id.*)

ARGUMENT

A. Because a Pre-Judgment Receivership Order over a Foreign Entity is Limited to the Case in which the Receiver is Appointed (*Park*), The December 2023 Order Grants the Appointment of a Receiver in *Tibbs*.

1. South Carolina courts may not appoint receivers to manage the affairs of foreign corporations.

South Carolina law comports with the universal rule in American jurisdictions that courts may not appoint corporate receivers for foreign corporations.[11] The only provision of South Carolina law that authorizes appointment of a receiver to manage the affairs of a corporation (corporate receiver) is found in Title 33 (Corporations), and the statute explicitly excludes any "foreign corporation" from its scope. S.C. Code Ann. §§ 33-14-320(a) & 33-1-400(4)

[11] Boynton v. Consolidated Indem. & Ins. Co., 180 S.C. 279, 294, 185 S.E. 731, 737 (1936) (circuit court "was without authority to appoint a receiver" for New York corporation because it "is a foreign corporation; there is a total failure of any proof that it has property in this state"); Pollock v. Carolina Interstate Bldg. & Loan Ass'n, 48 S.C. 65, 74-75, 25 S.E. 977, 980 (1896) (if one state cannot dissolve corporations formed in other states, a fortiori it cannot appoint a receiver for foreign corporations; "Having the right to appoint a receiver in their territory alone, such appointee is a creature of the appointing power, and cannot have greater power than his creator;" "If a corporation is not dissolved ipso facto by the appointment of a permanent receiver, with how much greater force does it apply to the appointment of a temporary receiver!"); Holbrook v. Ford, 39 N.E. 1091, 1094 (Ill. 1894) ("The general rule is that a court of equity will not appoint a receiver for a foreign corporation where such corporation has no property in the state"); Frankland v. Remington Phono. Corp., 119 A. 127, 127-28 (Del. Ch. 1922) (proposition that courts can appoint general receivers for foreign corporations is "beyond doubt as not tenable"); Republic Mtn. Silver Mines v. Brown, 58 F. 644, 648 (8th Cir. 1893) (Colorado federal court had no power in equity to appoint liquidator to wind up corporation formed in Great Britain; "It is hardly necessary to remark that if courts of equity . . . have no jurisdiction to dissolve a domestic corporation, and to wind up its affairs, much less can the exercise such powers with respect to a foreign corporation."); Stafford & Co. v. Mills, 13 R.I. 310, 310 (1881) (court had "no power to appoint a receiver of the estate of a foreign corporation"); North State Copper & Gold Min. Co. v. Field, 20 A. 1039, 1040-41 (Md. 1885) (citing Stafford; Maryland had no jurisdiction to control the internal affairs of a North Carolina corporation; "Our courts possess no visitorial power over [foreign corporations], and can enforce no forfeiture of charter for violation of law. . . . These powers belong only to the state which created the corporation.").

(2005). The circuit court did not purport to appoint Mr. Protopapas as receiver pursuant to Title 33.

2. South Carolina law limits appointment of a receiver for foreign corporations to only the South Carolina assets of the foreign corporation.

The only provision of South Carolina law that authorizes appointment of a receiver in connection with a foreign corporation is S.C. Code Ann. § 15-65-10(4), which authorizes a receiver for the "property within this State of foreign corporations." However, this section is only applicable where the corporation "has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights…" S.C. Code Ann. § 15-65-10(4).

Both the Receiver and the circuit court disclaimed that Mr. Protopapas was appointed as receiver for Cape PLC pursuant to Section 15-65-10(4). See Receivership Order; See Order on Motion to Dissolve Receivership, p.13, *Mitchell v. 3M Co.*, No. 2022-CP-40-02979 (Feb. 26, 2024). As the circuit court recognized, the Appointment Order's reference to Section 15-65-10(4) was incorrect because Cape PLC is not "dissolved."[12] Further, the Receiver offered no evidence that Cape PLC has any assets in South Carolina. S.C. Code Ann. § 15-65-10(4).

Accordingly, it is undisputed that Mr. Protopapas was not (and could not be) appointed receiver over a foreign corporation (either Cape PLC or CIHL) or its assets pursuant to S.C. Code Ann. § 15-65-10(4).

[12] December 2023 Order page 23-25. The circuit court stated: "Although the Order appointing the Receiver incorrectly described Cape as "dissolved," even though Cape is still a going concern in the United Kingdom that does not impact the legality of the Receivership, as dissolution of the entity placed in receivership is not required under subsection (5)." December 2023 Order Page 25, fn 16. See also generally December 2023 Order page 23-25 where the circuit court relies entirely on S.C. Code § 15-65-10(5). (*Id.*)

For the above reasons, there was no basis under South Carolina law to appoint a receiver over Cape PLC in *Park*, nor was there a basis to appoint a receiver over either Cape PLC or CIHL in *Tibbs*.

3. S.C. Code Ann. § 15-65-10(5) does not support the appointment of a receiver over a foreign corporation.

The Receiver argues and the circuit court stated that the receivership appointment was pursuant to S.C. Code Ann. § 15-65-10(5), which authorizes a court to appoint a receiver only where "provided by law" or "in accordance with the existing practice." The Receiver however could point to no "existing practice" that allowed a receiver to be appointed over a foreign corporation with no South Carolina assets. If a receiver could be appointed over a foreign corporation pursuant to § 15-65-10(5) (which Appellants dispute) the receivership would be limited to the foreign corporation's in-state assets. *Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 293, 185 S.E. 731, 737 (1936) (reversing appointment of a receiver because there was a "total failure of any proof" that the foreign company "has property in this state"). As there has been no suggestion by any party that either Cape PLC or CIHL have any South Carolina assets, there is no basis for the appointment of a receiver under this section either.

4. Per Existing Practice - Receiver may not act beyond case where appointed.

Even if a receiver could be appointed over a foreign corporation pursuant to S.C. Code Ann. § 15-65-10(5), such appointment would be limited to the case in which the appointment occurred. Importantly, the "existing practice" cited in S.C. Code Ann. § 15-65-10(5) is the practice of Courts of Equity prior to passage of the statute in 1870. As the Supreme Court held in *Virginia-Carolina Chem. Co. v. Hunter*, this provision requires an inquiry into what Courts of Equity had jurisdiction to the 1870 passage of Code of Procedure (1870 S.C. Acts 423 *et seq.*):

> [Section 265, now 15-65-10(5)] gives the old practice the force of a statute by the enactment that a receiver may be appointed "in such other cases as are now

> provided by law, or may be in accordance with the existing practice, except as otherwise provided in this Code of Procedure." *The first inquiry* is whether the record shows a case warranting the appointment of a receiver *under the general jurisdiction and practice of the court of equity*, aside from the special provisions of the Code of Procedure. . . .

84 S.C. 214, 220, 66 S.E. 177, 179 (1909) (Emphasis added.)

Under the pre-Code "existing practice" a receiver appointed to hold assets had no authority to act in other cases. *Clinkscales v. Pendleton Mfg. Co.*, 9 S.C. (9 Rich.) 318, 323 (1878) (where a receivership was issued in a particular case *pendente lite*, "the sole object of the Receivership is to preserve the property, to answer the purposes of a decree, as between the parties to the suit, without affecting the interest of third persons not parties"); *Gadsden v. Whaley*, 14 S. C. 210 (1880) ("In a proper case the court will appoint a receiver who is an executive officer – the hand of the court – to administer the assets of the estate…. By virtue of any general authority as receiver, he has no right to sue be sued, or defend"); *In re Fiftv-Four First Mortg. Bonds*, 15 S. C. 304 (1881).

5. The *Park* receivership Order is Limited to the *Park* Case by its own terms.

The circuit court in the *Park* case appeared to have agreed with the state of the law limiting a receiver's actions to one case. The *Park* Receiver Order specifically states: "the Court hereby appoints Peter Protopapas be and hereby is appointed Receiver **in this case** pursuant to the South Carolina Law…" (emphasis added). The order in no way states that Mr. Protopapas may act for Cape PLC in other cases.

6. S.C. Code Ann. § 15-65-10, *et seq.* demonstrates that a receiver appointment is limited to single cause.

That the appointment of a receiver is limited to a single case or cause is supported by the plain language of the receivership statutes. (S.C. Code Ann. § 15-65-10 *et seq.).* SC. Code Ann. §§ 15-65-50 and 15-65-60 demonstrate the clear intent for a receiver appointed pursuant to Title 15 to be limited to the cause in which he was appointed. The statutes repeatedly limit the

appointment of a receiver to "the cause" (singular) and refer to "before final judgment" (again refering to a single case):

First, the receivership statute that allows a party to avoid a pre-judgment appointment of a receiver by providing a bond sufficient to satisfy a judgment clearly demonstrates that an appointment is limited to a single cause. S.C. Code Ann. § 15-65-50 ("No receiver of the property of any …corporation shall be appointed **before final judgment** **in the cause** if the party claiming the property so sought to be placed in the hands of a receiver …shall offer a bond…to meet and satisfy any decree or **judgment** or order that may be made **in the cause**.") It is undisputed that the receivership(s) at issue are pre-judgment.

Second, the receivership statute that allows a party to vacate a pre-judgment appointment of a receiver by providing a bond also demonstrates that an appointment is limited to a single case. S.C. Code Ann. § 15-65-60 ("Whenever the court … shall appoint a receiver **before final judgment** **in the cause** there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-50. And upon the due execution and filing of such bond thereafter **before final judgment** **in the cause** the court or judge shall vacate the appointment of such receiver….")

For the above reasons, Mr. Protopapas' appointment under the *Park* Receiver Order was limited to the *Park* case. Mr. Protopapas had/has no authority under the *Park* Receiver Order to act as receiver in the *Tibbs* case. Accordingly, there must have been a new receivership granted in *Tibbs* in order for Mr. Protopapas to act. The circuit court order at issue allowing Mr. Protopapas to act as receiver over both Cape PLC and CIHL in the *Tibbs* case had the effect of granting a new

receiver appointment in *Tibbs* (and possibly modifying the Park Receiver Order.)[13] The order must be immediately appealable. Section 14-3-330(4).

B. The December 2023 Order must be immediately appealable because it not only grants a new receiver appointment, but also denies Appellants' Critical Substantial Pre-Judgment Statutory Rights

As argued by Appellants' in their motions to dismiss/dissolve, the *Park* Receiver Order is defective on its face because it appoints a pre-judgment receiver but does not provide the *mandatory* "clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-60." S.C. Code Ann. § 15-65-60. This statutory right has been in place for over one hundred years and has been upheld by the South Carolina Supreme Court. *Truesdell v. Johnson*, 144 S.C. 188, 197, 142 S.E. 343, 348 (1928). The *Truesdell* court first fully quoted Subdivisions 8 and 9 of *Section 524* of the Code of Civil Procedure (1922), which are substantively identical to S.C Code Ann. § 15-65-60 and 15-65-50. The court then reasoned as follows:

> The appellant urges that these subdivisions are applicable in all cases where a ***receiver*** is appointed before final judgment in the cause, that they are intended to assure to the person claiming or in possession of the property sought to be placed in the hands of a ***receiver*** the right to retain or to replevy the same, and that the provision in Subdivision 9 for the insertion in the order appointing the ***receiver*** of

[13] This Court must look to the order's actual effect (all effects) to determine whether it is appealable. See Spalt v. S.C. Dep't of Motor Vehicles, 423 S.C. 576, 584, 816 S.E.2d 579, 583 (2018) ("The label given to the order is not determinative of its immediate appealability."); Thornton, 391 S.C. at 304, 705 S.E.2d at 479 ("[A]n appellate court should look to the effect of an interlocutory order to determine its appealability . . . ."); Cape Romain Contractors, Inc. v. Wando E., LLC, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013) (explaining that whether an order is immediately appealable is a function of "substance rather than nomenclature"). The relief requested by the Appellants was to vacate the Park receivership order and to disallow Mr. Protopapas from acting as receiver for either Cape PLC or CIHL in Tibbs. The December 2023 Order allowed Mr. Protopapas to act as receiver in a new case (Tibbs) and over a new entity (CIHL). Accordingly, the effect of the March 2023 Order was to grant the appointment of a receiver, modify the appointment of a receiver and/or continue the appointment of a receiver – all of which are immediately appealable.

> a clause fixing the value of the property is mandatory. The respondent contends that it was a condition precedent to the insertion in the order of a clause fixing the value of the property that the person in possession should "offer" the bond before the order appointing the ***receiver*** was granted, and that, as the appellant did not "offer" the bond at the hearing on the application for appointment of a ***receiver***, he cannot now complain of the omission of the clause fixing the value of the property.
>
> We do not agree with the respondent's position. The appointment of a ***receiver***, as we have said, is a drastic measure, and the Legislature has made provision for protecting the interests of the person claiming or in possession of the property for which a ***receiver*** is sought….
>
> Nor do we agree with the respondent that the order of the Judge directing the ***receiver*** to make an inventory of the assets of the company was equivalent to a clause fixing the value of the property. All other considerations aside, the law does not provide for vacating the appointment of the ***receiver*** upon the filing of a bond with penalty fixed according to the *inventory value* of the property, and the appointment of the ***receiver*** would not be vacated upon a bond with penalty so fixed--the penalty must be double the value of the property *as fixed in the order appointing the* ***receiver***. The provision for inserting a clause fixing the value of the property in the order appointing a ***receiver*** is mandatory, and without such clause the order is void.

Truesdell v. Johnson, 144 S.C. 188, 203-204, 142 S.E. 343, 348 (1928)(emphasis in original). Accordingly, as the *Park* Receiver Order does not contain the mandatory clause, it is void.

Likewise, with regard to the December 2023 Order in *Tibbs* allowing Mr. Protopapas to act as receiver of Cape PLC and CIHL (granting the new receivership), the circuit court has failed to provide the *mandatory* "clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-60." S.C. Code Ann. § 15-65-60. As Appellants are the "part[ies] claiming the property so sought to be placed in the hands of a receiver," they are entitled to know the amount "for which the bond may be given" so that they have the opportunity to file "such bond … **before final judgment in the cause** [to] vacate the appointment of such receiver…." S.C. Code Ann. §§15-65-50 -15-65-60. As the mandatory clause does not exist in an appointment order in *Tibbs*, any such receiver appointment in *Tibbs* is also void. *Truesdell v. Johnson*, 144 S.C. 188, 203-204, 142 S.E. 343, 348 (1928).

This Court should not deny Appellants' right to appeal the circuit court's refusal to provide this pre-judgment statutory protection. S.C. Code Ann. §§15-65-50 -15-65-60 clearly mandate this statutory right/protection for Appellants "before final judgment in the cause." It is a substantial right. The identity of the "part[ies] claiming the property so sought to be placed in the hands of a receiver" (Appellants) was not known prior to the Receiver filing the third-party complaint in *Tibbs*. Accordingly, regardless of whether the receiver was appointed in *Park* or *Tibbs*, the Appellants (as the entities owning the property that is being sought by the Receiver) would only have the ability to enforce their pre-judgment statutory rights (including but not limited to the right to file and bond and vacate the receivership) by challenging the receiver appointment in the *Tibbs* case – which they are here. By denying Appellants' motions, the circuit court appointed Mr. Protopapas to act as receiver over both Cape PLC and CIHL in the *Tibbs* case, but refused to provide the mandatory statutory protections. The December 2023 Order must be immediately appealable or Appellants will be denied the ability to enforce their pre-judgment statutory protections. *Cf. Duncan v. GEICO*, 331 S.C. 484, 449 S.E.2d 580 (1994) (an interlocutory order that affects a substantial right and prevents a judgment from which an appeal may be taken is immediately appealable under S.C. Code Ann. § 14-3-330 (2)). Allowing the appointment of the receiver to continue without the statutory protections until after final judgment would moot the protections. Appellants should be allowed to have this issue decided by the appellate court now.

C. The Appealability of the December 2023 Order Granting and/or Modifying the Appointment of a Receiver Is Not Changed By the Recent Appellate Orders Cited by the Receiver.

On its face, the December 2023 Order is an appealable order because it grants a new receivership in *Tibbs* and/or modifies the *Park* Receiver Order. Both of these things squarely fall within the gambit of S.C. Code Ann. § 14-3-330(4). The Receiver's sole argument to the contrary is that the Court should be bound by certain non-binding unpublished orders in different cases that

rejected a party's request to dissolve a receivership claiming that failure to do so equated to an order continuing the appointment of a receiver. Beyond being non-binding precedent, however, each of these cases is meaningfully distinguishable as none involved granting and/or modifying the appointment of a receiver. An order creating a new receivership, in a new case, over two entities (one entirely new) is vastly different than an order refusing to dissolve an already existing receivership. As such, the cases cited by the Receiver are inapplicable and not controlling, and the December 2023 Order is immediately appealable under Section 14-3-330(4).

CONCLUSION

For the reasons set forth herein, Appellants respectfully request this Court grants Appellants' petition for rehearing.[14]

Dated: May 24, 2024

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[14] Per Rule 208(b)(6), SCACR, Appellants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by similarly situated Appellants Mohed Altrad, Altrad Investment Authority S.A.S., ArranCo US, LLC, Hawk Bido (US) Inc., and Sparrows Offshore, LLC. Additionally, Appellants specifically adopt and incorporate by reference all of their prior appellate filings, as well as all appellate filings by their co-third-party appellants in this and all related matters before the Court.

PROOF OF SERVICE

I, the undersigned of the law offices of Gordon Rees Sculls Mansukhani LLP, attorneys for Appellants Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd., do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd.'s Petition for Rehearing

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