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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Court of Common Pleas
The Honorable Jean H. Toal, Circuit Court Judge

Civil Action No. 2023-CP-40-01759
Appellate Case No. 2023-002007

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; 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., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers US, Inc., Anglo 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 (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) 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 S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC……...**THIRD-PARTY DEFENDANTS**,

Of which ArranCo US, LLC, Hawk Bidco US Inc., and Sparrows Offshore, LLC are the..……**PETITIONERS**.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED[1]

1. Did the court of appeals err in ruling the circuit court's December 6, 2023 Order's *granting* of a receivership over Cape Intermediate Holdings Limited was not immediately appealable pursuant to subsection 14-3-330(4) of the South Carolina Code?

2. Did the court of appeals err in ruling the circuit court's December 6, 2023 Order's *continuation* of a receivership over Cape PLC from an entirely different circuit court case was not immediately appealable pursuant to subsection 14-3-330(4) of the South Carolina Code?

3. Did the court of appeals err in ruling the circuit court's December 6, 2023 Order's *nunc pro tunc modification* of a receivership over Cape PLC from the circuit court's own order in a different case—at the request of the Receiver—was not immediately appealable pursuant to subsection 14-3-330(4) of the South Carolina Code?

4. Did the court of appeals err in ruling the circuit court's December 6, 2023 Order's erroneous rulings as to personal jurisdiction were not appealable along with the issues properly before the court of appeals relative to questions presented (1), (2), and (3)?

INTRODUCTION

The court of appeals' dismissal of this appeal violates South Carolina law and the General Assembly's clear and unambiguous policy decision in section 14-3-330 of the South Carolina Code as to what matters *require* immediate appeal. Against that foreground is the otherwise complicated history of this case. It is closely, if not wholly, intertwined with Appellate Case Number 2024-000916 currently pending before this Court, and is the reason for the arguments presented in that appeal and the ongoing litigation in the circuit court. Distilled to its most basic facts, however, it

[1] By continuing to prosecute this appeal, Petitioners do not intend to waive, and expressly preserve, all defenses to the underlying action, including the defense of lack of personal jurisdiction and impropriety of the purported receiverships over CIHL and Cape PLC.

becomes clear that what is occurring in the circuit court cannot stand. As it violates South Carolina law and public policy as set forth by the General Assembly, this Court should reverse the court of appeals to allow hearing on the merit of these important issues.

The circuit court appointed a pre-judgment receiver over Cape PLC at the request of plaintiffs' counsel in a prior case. Then, in a separate and later case, upon reading the filings of the parties to this appeal, the Receiver realized the entity over which a receivership could have been sought, if at all, was actually Cape Intermediate Holdings Limited ("CIHL"). But, CIHL was never placed into a receivership under the applicable statutes, nor was it even a party in the case in which the circuit court deemed the receivership to exist over CIHL. Rather than properly seek a receivership, the Receiver urged the circuit court to simply deem it a case of misnomer, ignore all of the many fatal substantive and procedural issues involved, and transmute the Cape PLC pre-judgment receivership into a pre-judgment receivership over CIHL as well. This all occurred by order of the circuit court on December 6, 2023.

As this was the first time CIHL could *ever* have been placed into a receivership, it was clear the December 6 Order effectuated—at minimum—the *granting* of a new receivership. Upon closer examination, and by comparison of the December 6 Order with the appointment order from the prior case, it became apparent the December 6 Order was also a *modification* of the Cape PLC receivership. Moreover, under any understanding of the word *continuation*, the circuit court continued the Cape PLC receivership.

Relatedly, the circuit court ignored the lack of evidence as to personal jurisdiction to rely on novel theories to find personal jurisdiction over Petitioners[2] in the same December 6 order

[2] The Sparrows Appellants are ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC. They were formed, in Delaware, in the twenty-first century: Sparrows Offshore in *2003*; ArranCo in *2008*; and Hawk Bidco in *2012*. The Sparrows Defendants do not now, nor have they

granting a new CIHL receivership and modifying and continuing the prior one over Cape PLC. Relying on the plain language of subsection 14-3-330(4) of the South Carolina Code, as enacted by the General Assembly, and this Court's precedent regarding appealability of personal jurisdiction issues with other properly appealable issues, Petitioners sought to appeal the rulings due to the clear errors contained in the December 6 Order.

The court of appeals dismissed the appeal based on a two-page motion to dismiss that contained no substantive argument. Then, after requesting a Return to Petitioners' petition for rehearing, the court of appeals dismissed the appeal without explanation. This was error, and this Court should now reverse the court of appeals, reinstate this appeal as required by the appealability statute, and either consider this appeal on the merits or remand the case to the court of appeals with instructions to hear the merits of the issues involved in Petitioners' appeal.

STATEMENT OF THE CASE

The circuit court appointed Peter D. Protopapas as the Receiver over one entity: "Cape PLC." That appointment occurred only in the case *Park v. Armstrong International, Inc., et al.*, 2021-CP-40-02727. Cape PLC was one—amongst 50+—named defendants in *Park*, and CIHL was a separately[3] named defendant.[4] Relying on demonstrably incorrect facts set forth in the motion seeking appointment of the Receiver, Cape PLC was purportedly placed into a pre-judgment receivership, in violation of the statutory scheme that allows for the extraordinary

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ever, maintained their registered office or principal place of business in South Carolina. Instead, from its Texas principal place of business, Sparrows Offshore is in the crane business, while ArranCo and Hawk Bidco are Delaware holding companies. *None of them have ever had any affiliation with or contacts to South Carolina or any plausible connection to asbestos.*

[3] This makes sense, as Cape and CIHL are two different legal entities. *See* note 9, *infra*.

[4] No Third-Party Defendants named in the underlying case were sued in *Park*.

measure of appointing a receiver. After incorrectly noting "Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case," the order appointing the Receiver over "Cape PLC" (and somehow inclusive of "its subsidiaries and global affiliates"[5]) set forth accompanying rights and duties, including the mandate that the Receiver "take any and all steps necessary to protect the interests of Cape whatever they may be." This same appointment order also contained a number of limitations: (1) the Receiver's appointment was only "in this [*Park*] case" (and by the terms of the order of appointment, not beyond *Park*); (2) the enumerated powers afforded did not also include the express power to pursue derivative claims (a power that would have been inconsistent with the improper, pre-judgment appointment in any instance); and (3) the specific claims contemplated to be pursued were limited to the *insurance* context.

Thereafter, and notwithstanding the circuit court's express and logical limitations in this *Park* order of appointment and the fact no judgment has been entered in either *Park* or in *Tibbs*, the Receiver nevertheless filed, in the *Tibbs* case underlying this appeal, a Third-Party Complaint that first named Petitioners.[6] The Receiver's third-party pleading alleged groupings of Third-Party Defendants—none of whom are insurance carriers—were each, in some way, involved in the mining, importation, sale, or distribution of asbestos into the United States on behalf of Cape PLC. That is even though each of these Petitioners was **formed** in **Delaware in the 2000s** and then **later acquired in mid-2022** by an entity distantly, and only recently related, via multiple tiers of corporate hierarchy, to the Cape PLC entity over which the Receiver was appointed and even more

[5] No notice or other due process was afforded any "subsidiaries and global affiliates," inclusive of Petitioners, relative to the purported "Cape PLC" receivership.

[6] Since the filing of this appeal, it has become apparent through comments of *Tibbs* Plaintiff's counsel and filings by other Third-Party Defendants that the *Tibbs* Plaintiffs' claims against Cape PLC have been fully dismissed and tolled by virtue of a tolling agreement, making the third-party action wholly inappropriate for a number of reasons, including violation of Rule 14, SCRCP.

distantly to the separate CIHL entity over which—as part of the rulings in the December 6 Order pertinent to this appeal—this receivership has been deemed to exist. The Receiver's pleading now seeks "a day of reckoning" for conduct that occurred decades prior in the asbestos industry in which these Petitioners have never participated, to which they have no relation, and for which they have received no benefit.

In the circuit court, Petitioners filed a motion seeking dissolution of the Cape PLC receivership, attempting to remedy the litany of fatal factual, substantive, and procedural errors that plagued the creation of the receivership in *Park*. This litany of errors which has *never* been reviewed—and would never be reviewed unless done so here because of the manner in which it occurred (after the *Park* case was "fully resolved" based on communications between counsel therein and the circuit court)—warrants this Court remanding this case to the court of appeals requiring full briefing of the issues and oral argument, or taking up the case on the merits and reversing the circuit court's decision: (1) denying every ground for relief and allowing the defective receivership to continue; (2) modifying the receivership; and (3) granting a new receivership over CIHL in the face of substantive and procedural defects and in disregard of the constitutional rights of both the entity(ies) in receivership and the purported targets thereof.

Short of doing so, Petitioners' statutory right to an immediate appeal will have been vanquished; subsection 14-3-330(4)—the protections of which have been unchanged for well over a century—will have been rendered meaningless; and the circuit court's order granting, modifying, and continuing a receivership—each a "drastic" action—will have been left unreviewable.

ARGUMENT

In South Carolina, "[t]he right of appeal arises from, and is controlled by, statutory law. The determination of whether a party may immediately appeal an order issued before or during

trial is governed primarily by section 14-3-330 of the South Carolina Code." Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 140 (3d ed. 2016) ("[A]n order generally must fall into one of several categories set forth in section 14-3-330 to be immediately appealable."). The appealability statute is clear:

> The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: . . . (4) An *interlocutory order* or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or *granting*, *continuing*, *modifying*, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330(4) (emphasis added).

Subsection 14-3-330(4) is designed specifically to route actions related to receiverships directly to the appellate courts to avoid the exact situation that transpired in the circuit court below. But, without explanation or analysis as to the effect of the December 6 Order separate from its nomenclature, without citation to the controlling statute, and contrary to fundamental statutory interpretation principles engrained in our jurisprudence, the court of appeals, within hours of receiving the motions, dismissed an appeal of a clearly appealable order. *See, e.g.*, *Beaufort County v. S.C. State Election Comm'n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011) ("The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly."); *Rainey v. Haley*, 404 S.C. 320, 323, 745 S.E.2d 81, 83 (2013) (holding that courts have "no right to impose another meaning" when words in a statute are "clear and definite" (quotation omitted)); *A.O. Smith Corp. v. S.C. Dep't of Health & Envtl. Control*, 428 S.C. 189, 202, 833 S.E.2d 451, 458 (Ct. App. 2019) ("An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute." (quotation omitted)).

Moreover, Respondent has never rebutted any of these points in seeking to have this appeal dismissed, nor did the court of appeals address them. The dismissal below was based on a flawed procedural analysis—based on nomenclature used in one of this Court's orders that, on its face, was never meant to have precedential value—rather than a robust, case-by-case review of the substantive issues. *See, e.g.*, *Spalt v. S.C. DMV*, 423 S.C. 576, 584, 816 S.E.2d 579, 583 (2018) (holding that labels and nomenclature do not control); *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 540, 773 S.E.2d 144, 147 (2015) (appellate courts must "evaluate the trial court's order as what it is—not merely what it appears to be"); *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013) (appealability is a function of "substance rather than nomenclature").

I. The December 6 Order *granted* a new receivership.

The events leading up to the *Park* pre-judgment receivership over Cape PLC and the subsequent (and purported) *Tibbs* pre-judgment receivership over CIHL are key to understanding why the December 6 Order is immediately appealable. Upon full conclusion of *Park*—after Plaintiffs' counsel emailed the circuit court and other counsel that the case was "fully resolved"—both Cape PLC and CIHL were left with no adjudication of damages nor liability. *See* June 3, 2022 Email from Parks' Counsel, attached as Ex. C to Petitioners' Motion to Dissolve Receivership, filed Aug. 21, 2023 [hereinafter Motion to Dissolve]; **(App. 215)**. Neither Cape PLC nor CIHL were served with the Second Amended Complaint in *Park* prior to the full resolution of that case.[7] *See* Petitioners' Reply on Motion to Dissolve, filed Oct. 23, 2023, at 5–6; **(App. 330–32)**.

[7] On August 28, 2023, an affidavit of a U.K. process server was filed in *Park* stating only that the "First Amended Summons" was mailed, via Royal mail, to an address in the U.K., which the circuit court used to find proper service as to both Cape PLC and CIHL. *But see* Rule 4(d), SCRCP ("The

Nine months later, on March 6, 2023, counsel for the Parks filed a lengthy motion seeking appointment of Peter Protopapas as Receiver over "**Cape PLC** and its subsidiaries, affiliates, successors, and assigns" [hereinafter Motion to Appoint]. *See* Ex. D to Motion to Dissolve (emphasis added); **(App. 142)**. This Motion to Appoint the Receiver was never—and thus far has never been—served on Cape PLC, and no proof of service has been provided as to CIHL.[8] *See* Reply on Motion to Dissolve at 6, n.9; **(App. 332)**. Eleven days later, and without a hearing, on March 17, 2023, the circuit court granted the Motion to Appoint pursuant to subsections 15-65-10(4) and (5) of the South Carolina Code (2005). **(App. 418)**. After noting "Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case," the order appointing the Receiver over "**Cape PLC**" and "its subsidiaries and global affiliates" set forth the specific rights and duties, including:

> Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law with the power and authority fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be. This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape's insurance carriers.

summons and complaint must be served together."). Per this filed affidavit, the service of the "First Amended Summons" was asserted to have been effected on December 16, 2021—one week before the *Park* Plaintiffs filed their Second Amended Complaint. Cape PLC was never served with any summons or pleading—initial or amended—in the Bailiwick of Jersey.

[8] The circuit court found Cape PLC was served with the Motion to Appoint via DHL solely because the *Park* Plaintiffs, in the Motion to Appoint itself, stated: "Plaintiffs have placed into the hands of DHL, an international carrier, a copy of this motion and its exhibits, for delivery to the same address at which service was perfected." **(App. 228)**. Petitioners have opposed that finding as not being supported by any affidavit or DHL delivery confirmation receipt and by noting the fact that the referenced "same address" in the U.K. was incorrect for Cape PLC, a Jersey entity. *See* Reply on Motion to Dissolve at 6, n.9; **(App. 332)**. Respondent has yet to challenge this assertion.

See Ex. E to Petitioners' Motion to Dissolve (limiting receivership to the *Park* case only; omitting express power to pursue derivative claims; and contemplating pursuit of claims against insurance companies) [hereinafter *Park* Appointment Order]; **(App. 418–20)**.

Cape PLC is the only entity actually identified by name in this order. *Id.*[9] Cape PLC is, and was at the time of the Receiver's appointment, an active Jersey entity. It was first registered there in 2011. The circuit court and all parties have now acknowledged the error in such statement: Cape PLC (just like CIHL) has not forfeited its charter nor has it (or CIHL) dissolved. *See* Dec. 6 Order at 25, n.16; **(App. 368, 445)**. That admission of the fatal, material flaws in the *Park* appointment Order unequivocally resolves any doubt as to the impropriety of these receiverships.

Petitioners challenged the receivership in the circuit court, and have brought this appeal, in part, on the grounds that **CIHL**—the entity over which Respondent seemingly seeks control—is decidedly *not* the **Cape PLC** entity over which the circuit court created a receivership in *Park*. The receivership over Cape PLC was granted in *Park* based upon the misinformation detailed above, and then a new receivership was granted over CIHL in this case. Through the erroneous use of the doctrine of misnomer,[10] the December 6 Order denied the legitimate arguments as to the demonstrably incorrect circumstances underpinning the initial appointment of the Receiver over

[9] The *Park* Appointment Order states further and incorrectly that Cape PLC is the "successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)." Through the United Kingdom's official public corporate database, it is clear that Cape Asbestos Company Ltd. (U.K. Company Number 00040203) was incorporated in the U.K. in 1893 has been named "Cape Intermediate Holdings Limited" since 2013. Through Jersey's official public corporate database, it is equally clear that Cape PLC (Jersey Registration Number 108031) was incorporated there in 2011 and has always been named Cape PLC. It is uncontroverted that they are two separate and distinct, active corporate entities.

[10] This ruling—choosing to characterize what occurred as "misnomer"—presents another key issue within the December 6 Order that should be addressed, after full briefing, on the merits.

Cape PLC in *Park* and the subsequent granting of a new receivership over CIHL in *Tibbs* and ruled:

> To the extent it was error for the service paperwork to include the "formerly known as" name of the entity, the Court finds that misnomer does not render service of process ineffective. South Carolina law is clear that a misnomer does not render service ineffective. *See Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992) ("A suit at law is not a children's game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court. If it names them in such terms that every intelligent person understands who is meant, as is the case here, it has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else. As a general rule the misnomer of a corporation in a notice, summons, or other step in a judicial proceeding is immaterial if it appears the corporation could not have been, or was not, misled." (internal citations omitted)).

December 6 Order at 19; **(App. 362)**.

The following facts are undisputed, are matters of public record, appear to have been understood by the plaintiffs in both *Park* and *Tibbs,* along with the Receiver following his purported appointment, and should, therefore, be dispositive of *any* question as to appealability:

1) Cape PLC and CIHL are two different legal entities, both of which are solvent and active.
2) Cape PLC is a registered public company in the Bailiwick of Jersey, an island in the English Channel.
3) Cape PLC came into existence in 2011.
4) Cape Asbestos Company Limited was incorporated in the United Kingdom in 1893 and is now known as CIHL.
5) The *Park* Plaintiffs, and their counsel, were clearly aware Cape PLC and CIHL were different because the *Park* Plaintiffs named them both, as separate defendants, in their pleadings.
6) The *Park* Plaintiffs sought a pre-judgment receivership over only Cape PLC.
7) The circuit court granted the requested pre-judgment receivership over only Cape PLC in the *Park* case only.

8) The *Tibbs* Plaintiffs specifically requested a jury trial and named only Cape PLC in their pleadings.

9) Only Cape PLC, through the purported Receiver, filed the *Tibbs* Third-Party Complaint, against non-insurance companies and on a purported "derivative" basis.

10) Neither Cape PLC nor CIHL have any property in, connection to, or judgment awarded against either in South Carolina.

On December 5, before the circuit court ruled on the Motion to Dissolve, Cape PLC was in a receivership (which should have been limited only to the "resolved" *Park* case). The next day, on December 6, by erroneous order, the receivership was now over CIHL in the separate *Tibbs* case. This is because—without any notice, hearing, or other process or proceeding under the South Carolina statutory receivership scheme—the circuit court misused a novel concept of a "n/k/a"[11] to connect the undisputedly disparate entities of Cape PLC and CIHL. And, this was done without anyone having ever sought to put CIHL—an existing, solvent entity—in a receivership, providing the requisite statutory notice thereof, or complying with the substantive and procedural due process requirements in order to do so.

In *Porter v. Brown*, this Court assessed the legality of a receiver appointed over "New York Civic Opera Company," which in the underlying complaint was referenced, in error, as a corporation organized under New York law when, in fact, the entity was a Florida corporation. 149 S.C. 151, 152, 146 S.E. 810, 810–11 (1929). Unlike the uncontroverted history of the instant case, the actual entity was served through an officer in New York as well as through a designated agent in Florida. *Id.* at 153, 146 S.E. at 811. In finding that the receiver had been unlawfully appointed and as further noting that all proceedings connected therewith were *coram non judice* and void, the Supreme Court explained:

[11] South Carolina law is clear the doctrine of misnomer does not apply in the way the circuit court attempted to use it at Respondent's request. *McCall v. IKON*, 363 S.C. 646, 653, 611 S.E.2d 315, 318 (Ct. App. 2005) (noting that when a defendant is "misled" misnomer has no applicability).

> It is clear that a *fatal mistake* was made when the following words were added: "A corporation organized under the laws of the state of New York." This was vital in this case; there is no such corporation, *and all proceedings based on this error must fall*. A receiver was appointed for something that did not exist, because plaintiff bases his power and authority on an alleged act and creation of a corporation by the state of New York, and, when it appeared that the state of New York had created no such corporation, then there is an end to the matter. The existence of a person, corporation, or partnership for which an appointment of a receiver is sought is *fundamental*; and if there be no such person, corporation, or partnership, then it follows that there *can be no legally appointed receiver*. The existence of the New York corporation is the foundation of the alleged receivership proceedings, and, when it appears that there is no such New York corporation, then it follows that there can be no receiver who can bring any suit, and it also follows that, when [the receiver] attempts to bring any action against the defendant as such receiver, the defendants, who are the appellants in this case, have the right to object that the said [receiver] is not the legally appointed receiver in this case. It is therefore plain that the order appealed from must be reversed.

Id. at 157, 146 S.E. at 812–13 (emphasis added); *see also id.* at 161 & n.1, 146 S.E. at 813–14 & n.1 (Cothran, J., concurring) (collecting authorities for the propositions that: (1) "[i]t is well settled as a general rule that the appointment of a receiver is an ancillary remedy in aid of the primary object of the litigation between the parties" and (2) "[i]f the Court is without jurisdiction to appoint a receiver[,] the order is void and may be attacked or disregarded whenever it comes collaterally in question" and "may be assailed collaterally and with impunity by anybody" (quotations omitted)).

Porter is binding authority that conclusively establishes the circuit court's reliance on "misnomer" to transform Cape PLC (a Jersey entity) into CIHL (a separate UK entity) is impermissible because the initial creation of a receivership over Cape PLC was a "fatal mistake." *Porter*, 149 S.C. 151, 146 S.E. at 812. The receivership over Cape PLC is void and uncorrectable pursuant to *Porter*, and thus, the subsequent creation of a receivership over CIHL means that, by

definition, the December 6 Order "granted" a new receivership over CIHL, which is immediately appealable under *Porter* and subsection 14-3-330(4). This is the quintessential "granting" of a receivership contemplated in subsection 14-3-330(4) and is a distinct and dispositive factual circumstance that is absent from any of the other receivership litigation currently or previously proceeding before this Court. *See, e.g.*, *N. River Ins. Co. v. Gibson*, 244 S.C. 393, 397, 137 S.E.2d 264, 266 (1964) ("To deny means to withhold, to refuse to grant." (quoting *Ballentine's Law Dictionary*, at 360)). In the context of receiverships, this Court has previously held that "granting" is synonymous with "appointing" a receiver. *See Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479–80, 602 S.E.2d 83, 86–87 (Ct. App. 2004) (holding that an order appointing a custodian was not immediately appealable under subsection 14-3-330(4) because a "custodian" and a "receiver" are not the same under the law, while indicating that an order "appointing" a receiver would be immediately appealable).

As noted, critically, CIHL was not named in the original appointment order. Cape PLC and CIHL were separately named defendants in *Park* where the original receivership over Cape PLC was sought and created (meaning the misnomer doctrine cannot apply because the *Park* plaintiffs *intentionally* sued them as two separate entities). And, Cape PLC and CIHL were incorporated in different foreign jurisdictions over one-hundred years apart. At a bare minimum, the court of appeals should have adjudicated this critical jurisdictional dispute after full merits briefing—an outcome Respondent clearly sought to avoid below due to the implications to the overall receivership. The import and validation of the errors in the case at hand and as fully detailed in Petitioners' initial brief to the court of appeals—and further given the binding precedent of the Supreme Court in *Porter*—in conjunction with the actual effect of the circuit court's finding that one receivership in a prior case could cover two active, distinct foreign entities, one over which

a receivership was never sought, renders the circuit court's December 6 Order immediately appealable. *See* S.C. Code Ann. § 14-3-330(4).

II. The December 6 Order also *modified* the Cape PLC receivership.

Subsection 14-3-330(4) specifically notes that when a receivership is "modified," that decision is immediately appealable. The circuit court's March 17 Order in *Park* which created the receivership over Cape PLC stated:

> Plaintiffs have moved this Court to appoint a Receiver over Cape PLC, pursuant to S.C. Code §15-65-10(4)-(5). This Court finds that the application is meritorious under the applicable statute because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) ("Cape Asbestos") and its subsidiaries and global affiliates (collectively, "Cape" or the "Company") ***have dissolved and Cape, a foreign corporation, has forfeited its charter*** and has further failed to answer this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.
>
> Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver *in this case* pursuant to the South Carolina Law . . . .

(App. to Return 231) (emphasis added).

Then, on December 6, the circuit court modified the Cape PLC receivership. First, by footnote, the circuit court specifically noted: "Although the Order [in *Park*] 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)." Dec. 6 Order at p.25 n.16 **(App. to Return 368)**. Seemingly, *by footnote*, in an order in a completely separate case, the circuit court "resolved" the fatal errors in its prior *Park* appointment order. For that to be anything other than modification defies logic, apart from the fact it was otherwise wholly erroneous.[12] *See generally*

[12] This retroactive application of law and fact with no support is a modification, and, such a modification is not permitted by South Carolina law. *Ex parte Strom*, 343 S.C. 257, 264–65, 539

Modification, BLACK'S LAW DICTIONARY at 1095 (9th ed. 2009) (defining "modification," in pertinent part, as "[a] change to something; an alteration" and further as "[a] qualification or limitation of something"). Moreover, the extension of the receivership—which the *Park* appointment order ruled was only to be "in this [*Park*] case"—into *Tibbs* is clearly a modification of the scope of the receivership itself by both its express terms and the impact thereof. The same is true as to the pre-judgment Receiver's pursuit of a not-specifically-authorized "derivative" action against a foreign person and numerous foreign entities, none of which are insurers. To find a court order that, on its face, limits a receivership to one circuit court case and includes specific restrictions is now extended to and permanent in all unrelated cases, seemingly without limitation, is not supported in the law and should not be overlooked by this Court.

III. The December 6 Order also *continued* the Cape PLC receivership.

Subsection 14-3-330(4) specifically notes that when a receivership is "continued," that decision is immediately appealable. A continuation can be looked at two ways. First, a continuation can be the general ruling that a receivership may simply carry on its activity. *Pickett v. Fid. & Cas. Co. of New York*, 60 S.C. 477, 38 S.E. 160, 163 (1901); *see also, e.g.*, *Poly-Med, Inc. v. Novus Sci. Pte. Ltd.*, 437 S.C. 343, 348–49, 878 S.E.2d 896, 899 (2022) (describing the "blackletter definition" of the "continuing claim doctrine" as one where "a series of distinct events" is treated "as a single continuing event" for purposes of assessing a statute of limitations); *Townsend v. Singleton*, 257 S.C. 1, 10, 183 S.E.2d 893, 897 (1971) ("After such termination [of a lease], one continuing to occupy the premises, absent a new agreement, express or implied, comes

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S.E.2d 699, 702–03 (2000) ("*Nunc pro tunc* is a phrase applied to acts allowed to be done after the time when they should have been done, with a retroactive effect. Nunc pro tunc orders can only be used to place in the record evidence of judicial action that has actually taken place. 'A prerequisite for a nunc pro tunc order . . . is some previous action by the court that is not adequately reflected in its record.'" (internal citations omitted)).

squarely within the definition of a tenant at will."). Second, it can be the more specific ruling that the receivership can carry on its activity in a case outside of the one in which it was created. Here, both have occurred; the receivership was "continued" as contemplated in subsection 14-3-330(4).

As to the first possible definition of "continue," the circuit court clearly held in the December 6 Order—through the erroneous refusal to dissolve the receivership and prevent it from acting further in *Tibbs*—that the Cape PLC receivership was properly created, legally sound, and able to continue acting. As to the second possible definition of "continue," the circuit court made two decisions that indicate the Cape PLC receivership from *Park* could continue in *Tibbs*. First, in the face of the court's own appointment order stating the Receiver was appointed "in this case" (*Park*), the same court decided that the Receiver could then act in *Tibbs*. Second, after being made aware of all the errors in *Park*, rather than granting the motion to dissolve, the circuit court allowed the receivership to *continue* into *Tibbs*. Under any common understanding of the word "continue," the December 6 Order, among other things, continued the Cape PLC receivership. *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535–36, 725 S.E.2d 693, 695 (2012) ("[Courts] must follow the plain and unambiguous language in a statute and have 'no right to impose another meaning.'" (citing *Cabiness v. Town of James Island*, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011))). Thus, the court of appeals erred in not addressing this ground for appealability.

IV. The court of appeals' dismissal was contrary to South Carolina's statutory scheme, jurisprudence, and public policy regarding receiverships.

Not only did the dismissal of Petitioners' appeal circumvent the clear statutorily protected right to an immediate appeal afforded by subsection 14-3-330(4), but it also runs afoul of long-established jurisprudence and underlying public policy as to judicial oversight of receiverships. *See, e.g.*, 1901 S.C. Acts No. 358 (codifying appellate jurisdiction over "[a]n interlocutory order or decree in the Court of Common Pleas . . . granting or continuing or modifying or refusing the

appointment of a Receiver"); *Lyles v. Williams*, 96 S.C. 290, 293, 80 S.E. 470, 471 (1913) (recognizing that the Supreme Court had a "clear[] duty . . . to pass upon the questions raised" per the 1901 Act and declining to dismiss an appeal of an interlocutory order refusing appointment of a receiver). Judicial oversight is critical because receiverships exist strictly to take the property of another, a concept at odds with traditional and constitutional property rights and privileges, which is precisely why receivers are to be rarely appointed in the first place. *See, e.g.*, *Miller v. S. Land & Lumber Co.*, 53 S.C. 364, 367, 31 S.E. 281, 282 (1898) ("While the court of equity, in proper cases, has the power to place a debtor's property in the hands of a receiver, this power should be exercised with great caution, *lest the injury thereby caused be far greater than the injury sought to be averted*." (emphasis added)). Because the appointment of a receiver is a drastic remedy, as is the continuation and modification of such an appointment, the General Assembly has ***prohibited*** receivers from: **(i)** being appointed unless and until strict compliance with notice requirements is accomplished, *see* S.C. Code Ann. §§ 15-65-20 to -30; **(ii)** being appointed on a pre-judgment basis unless a bond is also established such that the property in dispute can be appropriately secured, *see* S.C. Code Ann. §§ 15-65-50 to -80; *see also Truesdell v. Johnson*, 144 S.C. 188, 204, 142 S.E. 343, 348 (1928) (holding that an order appointing and continuing a receivership "is void" because it failed to contain the "mandatory" bond provision); and **(iii)** reaching outside of the State of South Carolina, squarely at issue here as set forth in prior briefing.

By dismissing this statutorily permitted appeal, the court of appeals left Petitioners without any way to exercise appellate rights guaranteed by statute and will have left unchecked—contrary to its duty and mandate to do so—clear violations of each of these prohibitions relative to

receiverships that should never have been granted in the first place,[13] and the consequences will be severe.[14] This Court should continue to uphold the established statutory scheme, jurisprudence, and public policy of this state as to receiverships by reinstating this appeal and ordering briefing and hearing on the merits.

V. Personal jurisdiction issues were properly before the court of appeals.

For all of the reasons above, the court of appeals should have addressed the merits-based issues of the creation, continuation, and granting of both the Cape PLC and CIHL receiverships. The December 6 Order also ruled in error on issues as to personal jurisdiction, and the issues of personal jurisdiction are inextricably intertwined with the propriety of the pre-judgment receivership itself. Attempting to enforce the South Carolina receivership statutes against active, solvent foreign entities over which the court has no personal jurisdiction—in order to seize foreign assets, generally, and on a pre-judgment basis, specifically—violates, inter alia, the Due Process Clause of the United States Constitution. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–92, 611 S.E.2d 505, 508 (2005). "Although a pre-trial motion to dismiss based on lack of personal jurisdiction is not usually immediately appealable, it can be considered when other appealable issues are presented to an appellate court." *QZO, Inc. v. Moyer*, 358 S.C. 246, 252, 594 S.E.2d 541, 545 (Ct. App. 2004). Stated differently, "an order that is not directly appealable will be considered if there is an appealable issue before the court." *Cox v. Woodmen of World Ins. Co.*,

[13] As explained in Petitioners' initial brief (filed Feb. 22, 2024), incorporated herein in full, the circuit court had no authority to create receiverships over Cape PLC or CIHL—active, foreign entities—and doing so was violative of federal and state law and constitutional protections.

[14] *See generally* Amicus Curiae Brief of Underwriters at Lloyd's, London at p.20–27 (filed Apr. 26, 2024, in Appellate Case No. 2023-001461) (explaining that if left uncorrected by this Court, "the receivership order [involving an active Canadian company] will destabilize insurance markets, harm South Carolina insureds, and damage South Carolina's economy").

347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001). This has long been a part of South Carolina law. These are clearly established tenets of the appealability of orders in South Carolina law.

The court of appeals should have heard the personal jurisdiction issues as part of the requisite case-by-case, merits-based inquiry given the other appealable issues before it. *See, e.g.*, *QZO, Inc. v. Moyer*, 358 S.C. 246, 252, 594 S.E.2d 541, 545 (Ct. App. 2004) ("Although a pre-trial motion to dismiss based on lack of personal jurisdiction is not usually immediately appealable, it can be considered when other appealable issues are presented to an appellate court."). The key inquiry should have been whether the personal jurisdiction issues were presented with another issue that is immediately appealable under South Carolina law. Clearly, it was. As set forth above, the December 6 Order's granting, continuation, and modification of the "Cape PLC" Receivership is immediately appealable pursuant to the facts of this case, the nature of the order, and subsection 14-3-330(4) of the South Carolina Code. And, while not normally appealable at this stage of litigation, the circuit court's findings are so erroneous that judicial economy warrants resolution of all of these issues at this time. Accordingly, this Court should find that portion of the December 6 Order addressing personal jurisdiction was immediately appealable. The circuit court did not conduct a proper analysis of any personal jurisdiction issues raised by Petitioners below, ignored the abandonment of arguments by Respondent, and found in a cursory and conclusory manner personal jurisdiction existed using a novel theory incorrectly applied to these Petitioners.[15] Accordingly, the personal jurisdiction findings in the December 6 Order were (and are) appealable.

[15] These issues are fully and extensively briefing in Petitioners' February 22, 2024 initial brief to the court of appeals.

VI. Only the facts of this specific case should have been relied upon to determine appealability.

The court of appeals dismissed this appeal by granting a motion to dismiss which improperly relied on procedural orders filed in other matters to ask the court of appeals to summarily rule that this appeal is without merit and the December 6 Order is not immediately appealable. South Carolina law is clear that issues of appealability are not one size fits all, but rather must be determined "case-by-case." *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015) ("By its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis."). Accordingly, the facts set forth above determine why the December 6 Order is appealable. Yet, Respondent posited orders in other appellate cases are determinative here due to the fact they are "identical to this appeal." Such a claim is wrong on its face. And, errors in the December 6 Order cannot be the basis to find that this case is similar to the others. At the most basic level, even if those extraneous orders are relevant here (which they are not), *none* of those appeals dealt with an order in which the circuit court **granted a new receivership in a subsequent case**. Similarly, *none* of those appeals were as to circuit court orders that included inextricably linked issues as to personal jurisdiction over alleged affiliates targeted by the entity in receivership under non-traditional bases for exercising specific jurisdiction over entities with no connection with, or contacts to, South Carolina. These jurisdictional issues are foundational, touch nearly everything currently before this Court, and further distinguish the circumstances relevant to the requisite "case-by-case" appealability inquiry to be conducted here.

a. This Court's March 2024 *Payne & Keller* order is not dispositive.

On January 2, 2024, in *Childers v. Davis Mechanical Contractors, Inc., et al.* (hereinafter "*Payne & Keller*"), a number of third-party-defendant **insurers** filed a motion for certification of

their appeal to this Court. *See* C-Track entry dated January 3, 2024 in Appellate Case No. 2023-000727. That motion sought to certify an issue as to whether a continued receivership over Payne & Keller was appropriate in light of this Court's denial of a motion to dissolve. By signed order, the Court decided the issue, stating:

> Appellant AIG Property Casualty Company (AIG) has filed a motion for certification of Appellate Case No. 2023-000727 pursuant to Rule 204(b), SCACR. Appellant Travelers Casualty and Surety Company has filed a motion joining AIG's motion for certification.
>
> We grant the motion for certification and motion for joinder, dispense with further briefing, vacate the court of appeals denial of sanctions, and dismiss the appeal because the underlying circuit court order at issue is not immediately appealable.

Payne & Keller, S.C. Sup. Ct. Order, dated March 27, 2024 (Appellate Case No. 2024-000005).

The *Payne & Keller* order should have had *no* bearing on the appealability of the order in this case because of the stark factual distinctions between the receivership at issue there and the receivership in this matter. Review of the motion to certify filed in that case reveals issues of: (1) a receivership over a dissolved corporation resurrected by the circuit court in a foreign jurisdiction; and (2) issues relating to insurance coverage of an entity placed into a receivership. As may be evident from the factual recitation above—and as set forth more fully in Petitioners' February 22, 2024 initial brief to the court of appeals—despite the Receiver's assertions in this appeal, there is *zero* congruency between the facts in *Payne & Keller* and the facts in this case. Since appealability is determined case-by-case, blind reliance on a Supreme Court order in a case as factually distinct as that one would be wholly inappropriate.

More specifically, in *Payne & Keller*, the insurer third-party defendants sought appellate review of a circuit court ruling denying the receivership dissolution relief sought. In response to the court of appeals' inquiry into appealability, a number of the insurers explained how the circuit

court order fit within subsection 14-3-330(4), under the specific facts and procedural posture in that case, by arguing: (1) a denial of a motion to dissolve in effect and as a direct consequence thereof necessarily *continues* a receivership and (2) by permitting the Receiver to act outside of his appointment mandate—to "take any and all steps necessary to protect the interests of Payne & Keller whatever they may be"—through pursuit of a revocation of Payne & Keller's Texas termination, this Court in effect and as a direct consequence thereof necessarily *modified* the receivership. *See* Response to Court of Appeal's Appealability Inquiry of AIG et al., dated May 15, 2023, at 9–10 (Appellate Case No. 2023-000727); Travelers' Response Regarding Appealability, dated May 15, 2023, at 5–7 (Appellate Case No. 2023-000727).

Here, the appealability inquiry as to the circuit court's December 6 Order denying Petitioners' motions to dissolve the receivership is fundamentally and factually different, as the relevant issue at hand concerns the circuit court's *granting* of an entirely new receivership (in *Tibbs*) over a legal entity (CIHL) separate and distinct from Cape PLC named in the court's underlying Order of Appointment (in *Park*).[16] *See* **(App. 418–21, 362)**. By *granting* an entirely new receivership, misconstruing the inapplicable doctrine of "misnomer," and ignoring South Carolina binding precedent, including as stated in *Porter* (discussed above), the circuit court in fact also *modified* and *continued* a receivership. *See* **(App. 418–21, 362)**. This is especially clear given that the circuit court's December 6 Order was issued following briefing by the Receiver expressly requesting amendment and modification to the underlying Order of Appointment. *See, e.g.*, Third-Party Plaintiff's Omnibus Opposition to Motions to Dissolve, filed October 18, 2023,

[16] As referenced above, Cape PLC and CIHL were separately named defendants in *Park*; however, the *Park* Order of Appointment only named and identified Cape PLC. Subsequently, in its December 6 Order in *Tibbs*, the Court has now identified CIHL as the entity over which the Receiver has been appointed.

at p.17, n.13 ("The Court can simply amend the Appointment Order to clarify . . . if the Court finds that appropriate."); **(App. 445)**; *id.* at p.20, n.15 ("The Receiver would have no objection to the Court's amendment of the Appointment Order to identify Cape Intermediate Holdings Ltd., if the Court finds that appropriate. *See, e.g., Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 ("If it later appears that the true name of the corporation is different . . . , the misnomer is properly a subject of amendment."); S.C. Code § 33-14-320(c) (permitting amendment of appointment order)."); **(App. 448)**.

Moreover, the South Carolina Appellate Court Rules make clear the *Payne & Keller* opinion should not have been relied on in the way Respondent presents it. Rule 220(a) provides: "The appellate court shall make its decisions in writing by published opinions or memorandum opinions, with any concurring or dissenting opinions attached." That has not occurred here. Additionally, Rule 220(b) requires that "[i]n every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case."[17] Likewise, that too has not occurred, including because no authority has been cited and no explanation has been provided.

[17] Rule 220(b), SCACR, has exceptions that either (i) do not apply or (ii) reinforce that this South Carolina Supreme Court Order has no precedential value:

> This rule does not apply to the following:
>
> (1) The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, *the Supreme Court determines that a published opinion would have no precedential value* and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which are or are not clearly erroneous; (B) that the evidence to support a jury verdict is

With the nuanced facts of an entirely different receivership, parties, circumstances, circuit court order, appellate procedure, briefing, and other significant substantive differences, a three-sentence Order—devoid of explanation and citation—cannot have bearing on the issues in this case.[18] Respectfully, the December 6 Order is appealable pursuant to subsection 14-3-330(4) and is untied to the non-precedential procedural orders in the distinguishable *Payne & Keller* case.

b. The April 2024 Orders in *Welch*, *Mitchell*, and *Link* are likewise inapplicable to the appealability determination here.

On April 12, 2024, the court of appeals issued three Orders denying appeals brought pursuant to subsection 14-3-330(4) of the South Carolina Code, finding each not immediately appealable. *See Mitchell*, Appellate Case No. 2024-000341; *Link & Donaghy*, Appellate Case No. 2024-000342; and *Welch*, Appellate Case No. 2024-000337. Two of those appeals (*Welch* and *Mitchell*) were brought by *insurers* under the same or similar *Payne & Keller* argument that by denying a motion to dissolve a receivership, the circuit court in effect and as a direct consequence thereof necessarily *continued* the receivership. *See* Travelers' Response Regarding Appealability in both *Mitchell* and *Welch*, each dated March 25, 2024, at 6–9 (Appellate Case Nos. 2024-000341 & 2024-000341).

> or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears.

Rule 220(b)(1) (emphasis added).

[18] The same is true with respect to the South Carolina Supreme Court's April 17, 2024 Order denying the insurers' petition for rehearing of the Supreme Court's earlier March 27, 2024 Order, in which the basis for the denial was simply that, per Rule 221(a), SCACR, "Appellants have failed to show this Court overlooked or misapprehended any point in the order." *Payne & Keller*, S.C. Sup. Ct. Order, dated April 17, 2024 (Appellate Case Nos. 2024-000005 and 2023-000727).

The *Link & Donaghy* appealability argument—while flowing from the circuit court's order denying the Receiver's motion to terminate representation of the active-and-solvent-entity-in-receivership's counsel of choice and directing such client-engaged counsel to cooperate with the Receiver—stems from the same basis, *i.e.*, that the effect of such ruling was to *continue* the underlying receivership. *See* Appellants' Memorandum on Appealability in *Link* & *Donaghy*, dated March 25, 2024, at 6 (Appellate Case No. 2024-000342). For the same reasons that the *Payne & Keller* order cannot determine appealability, these Orders—which *do not* address appealability of a circuit court granting a new receivership following an earlier appointment in a separate tort case—*cannot* be summarily dispositive of the issues posited in Petitioners' initial brief, which was submitted based on separate, distinct, distinguishable, and nuanced facts with respect to entirely different receiverships pertaining to unrelated parties, discrete circumstances, and a unique circuit court order, among other dissimilarities. Without in-depth exploration of the issues implicated in the December 6 Order, the court of appeals should not have dismissed this appeal.

CONCLUSION

For the reasons set forth above, this Court should reverse the court of appeals' dismissal and either consider this appeal on the merits or remand this case for full merits briefing on the issues involved in Petitioners' appeal. Because the December 6 Order included the granting of a receivership over CIHL, the continuation of the Cape PLC receivership, and the modification of its scope as created in *Park*, three separate grounds for appealability—as set forth by the General Assembly—are met. And, as a result of these validly appealable issues, issues as to the circuit court's December 6 rulings on personal jurisdiction issues should also be heard.

Respectfully submitted,

/s Steven J. Pugh

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ATTORNEYS FOR PETITIONERS ARRANCO US, LLC, HAWK BIDCO (US) INC., AND SPARROWS OFFSHORE, LLC

Date: September 10, 2024

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., on behalf of Petitioners ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC, do hereby certify that I have this date served the foregoing **PETITION FOR WRIT OF CERTIORARI**, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated April 24, 2024, on all counsel of record using the primary email addresses listed in the Attorney Information System (if applicable).

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Subject:	John A. Tibbs v. Asbestos Corporation Limited (Appellate Case No. 2023-002007)
Date:	Tuesday, September 10, 2024 4:50:20 PM
Attachments:	Petition for Writ of Certiorari (Dec. 6 Order) 09-10-24 (3497471).pdf

Good afternoon,

Please find served upon you the Petition for Writ of Certiorari on behalf of ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC, in the above-referenced case which we will be filing with the Supreme Court of South Carolina later today.

Thank you!

Ashwin

HOME BIO LOCATION

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