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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
Acting Circuit Court Judge

Court of Appeals Case No. 2023-002006
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. Hesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply,

Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ... Defendants,

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

Mohed Altrad and Altrad Investment Authority SAS are the........... Petitioners.

ALTRAD DEFENDANTS’ PETITION FOR A WRIT OF CERTIORARI

WOMBLE BOND DICKINSON (US) LLP

M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
Kevin A. Hall
S.C. Bar No. 15063
kevin.hall@wbd-us.com
M. Elizabeth O’Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

Attorneys for Petitioners Mohed Altrad and Altrad Investment Authority SAS

September 10, 2024

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INTRODUCTION

For months, the Receiver has bombarded the State's appellate courts with correspondence loaded with misleading talking points and *ad hominem* attacks. (*E.g.*, Letter from Smith Robinson (July 2, 2024), in Case No. 2024-000916.) But that correspondence is missing one critical thing: the law.

What is happening below has no analog in South Carolina jurisprudence, or in jurisprudence from anywhere in the United States. The Receiver purports to be operating on behalf of two active European companies: Cape PLC (located in the Bailiwick of Jersey), and Cape Intermediate Holdings Limited (located in the United Kingdom) ("CIHL"). But neither of these companies has any assets or any connection to South Carolina. Neither has any judgments entered against them in South Carolina. Neither has any claims pending against them in South Carolina.

These European companies are truly strangers to this State and to these proceedings, yet the Receiver pretends to be acting on their behalf and is attempting to extract "billions" of dollars from so-called "third-party defendants" who also have nothing to do with this State. It is inexplicable and without precedent—so much so that it is being scrutinized by courts in England.

The order on appeal involves the circuit court's modification of its initial appointment of a Receiver over Cape PLC to expand the receivership appointment—at the Receiver's request—to include CIHL, while simultaneously continuing the prior appointment. That falls squarely within the express terms of the appealability statute:

> 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).

Yet, after the Altrad Defendants and the other appellants filed their initial appellate briefs, the Court of Appeals dismissed this appeal through a single-judge order that did not address either the plain language of this statute or the substance of the order on appeal.

That was clear error and needs to be corrected without delay, as the Receiver's conduct is unlawful and cannot be allowed to persist—the Receiver is attempting to speak on behalf of active foreign companies that have specifically instructed him that he has no authority to do so, and he is using the fiction that he speaks for those companies to demand "billions" of dollars from foreign companies and individuals that are not within the jurisdiction of the South Carolina state courts.

Accordingly, the Court should grant this Petition, reverse the Court of Appeals' dismissal order, reinstate the appeal at the same point in the process as it stood when the appeal was improperly dismissed, and resolve this appeal on its merits as addressed in the Altrad Defendants' already-filed initial brief.

QUESTIONS PRESENTED FOR REVIEW

In addition to the Statement of Issues regarding the impropriety and invalidity of the receivership appointments contained in the Altrad Defendants' initial appellate brief (App. 764), which is incorporated by reference as if fully restated herein, this Petition presents the following question:

1. South Carolina Code § 14-3-330(4) provides for an immediate appeal as a matter of right of "an interlocutory order . . . granting, continuing, modifying, or refusing the appointment of a receiver." The order on appeal did three of these four things. Did the Court of Appeals err when it dismissed this appeal?

STATEMENT OF THE CASE

I. The circuit court appointed a receiver over Cape PLC, a Jersey company with no connection to South Carolina, in the *Park* case, but did so approximately nine months after *Park* was fully resolved and without even conducting a hearing.

The receivership at issue originated in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727. There, an asbestos plaintiff named both Cape PLC and Cape Intermediate Holdings Limited as defendants within a sea of asbestos defendants. (App. 348.) Mr. Park alleged that each of these entities is a presently-operating company organized under the laws of the United Kingdom with its principal place of business in England. Publicly available information shows that Mr. Park was incorrect, as Cape PLC is a Jersey company that was created in 2011. (App. 420.) Regardless, there are no other allegations specific to either of these entities anywhere else in that or any other pleading filed in *Park*.

The circuit court ordered *Park* to begin trial on June 20, 2022. (App. 426.) On June 3, 2022, Mr. Park's counsel reported to the Court that the case was "fully resolved." (App. 432; Email from McVey to 479 recipients (June 3, 2022).)

Other than stipulations of dismissal being filed, the case was over, and no damages or liability were ever attributed to Cape PLC or CIHL. There was no motion for entry of default or default judgment entered against either Cape PLC or CIHL in the Park lawsuit.

But nine months later, without a live case or controversy pending, counsel for Mr. Park—whose case was already "fully resolved"—filed a 130-page motion with exhibits to have the circuit court appoint a receiver over "Cape PLC and its subsidiaries, affiliates, successors, and assigns," a group that is undefined in the motion. (App. 119.)

On March 17, 2023, the Court granted that motion without a hearing, explaining: "This Court finds that the application [to appoint Mr. Protopapas as receiver] 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." (App. 437.)

The appointment order was sweeping and not limited to marshaling South Carolina assets, stating that the Receiver has "the power and authority to 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." (*Id.*) The order also purported to give the Receiver power to "collect all accounts receivable of Respondent and all rents due," to "endorse and cash all checks and negotiable instruments payable to Respondent," and even to "sell any real property . . . belonging to Respondents," all without regard to where these assets are located. (App. 437–438.) But it did limit the Receiver's authority to "this case"—the *Park* case. (App. 437.)

To be sure, the appointment order reads as if it was appointing a custodian to run the daily affairs of Cape PLC, rather than a receiver of its (nonexistent) domestic assets, even though South Carolina law does not allow a court to appoint a custodian over foreign companies. *See* S.C. Code Ann. §§ 33-14-320(a) & (c)(2) (authorizing the circuit court to appoint a custodian to "exercise all of the powers" of domestic corporations only).

II. When the numerous problems with the Cape PLC receivership appointment were revealed, the circuit court modified the appointment—at the Receiver's request—to create a new receivership over Cape Intermediate Holdings Limited.

Three months later, Mr. Protopapas, in his supposed capacity as the receiver for "Cape PLC," filed a third-party complaint in *Tibbs v. 3M Company*, Case No. 2023-CP-40-01759. But rather than plead a case whereby Cape PLC attempts to shift derivative liability to a third-party

defendant—which is the only permissible use of third-party practice recognized by Rule 14, SCRCP, and which would make no sense here, as Cape PLC has no predicate liability and has never had any—the Receiver alleged that he is crusading against dozens of companies and one foreign individual citizen, all of whom the Receiver alleges have shielded Cape PLC from having liability, trumpeting that his pleading "begins their reckoning." (App. 10.)

In other words, rather than "protect the interests" of Cape PLC as is his obligation, the Receiver is instead attempting to manufacture liability against Cape PLC and the other named third-party defendants in *Tibbs*. Faced with claims asserted by a Receiver who had no authority to act under state or federal law, Mr. Altrad and AIA immediately filed a motion to dismiss for lack of personal jurisdiction, and a conditional motion to dissolve the receivership and motion to dismiss under Rules 12 and 14, SCRCP, both of which were subject to their personal jurisdiction objections. While the Receiver could do nothing to fix the substantive defects in his appointment, his opposition to the motion to dissolve made a series of incorrect or misleading statements in an effort to obscure the procedural defects.

First, when presented with undeniable proof that Cape PLC was never served with anything in the *Park* case, the Receiver attempted to conflate Cape PLC with CIHL by liberally using the "n/k/a" or "now known as" acronym that appears nowhere in the *Park* pleadings, in the motion to appoint the receiver, or the order appointing the receiver. And the "n/k/a" label is nowhere to be found in *Park* for an obvious reason: Cape PLC is a standalone Jersey entity that was created in 2011, and Cape PLC is not "now known as" CIHL. What's more, even though CIHL was separately named as a defendant in *Park*, it was not mentioned in the motion or the order appointing a receiver over Cape PLC. (App. 119–127 (motion), 437–439 (order).)

Despite the admitted separateness of these two entities and the total absence of CIHL from any of the filings that created this receivership, the Receiver and his counsel argued that the circuit court could swap the name CIHL for Cape PLC and retroactively rewrite the original appointment order from *Park* in this case to make a new appointment over CIHL. He made this argument despite conceding every material point that rebuts it:

1. Cape PLC is not the same entity as CIHL. (App. 569.)

2. Cape PLC—the Jersey entity that is the subject of the receivership order—was never served with any pleading or the motion to appoint the receiver in Park. (App. 576.)

3. Neither the motion to appoint nor the order appointing the Receiver in Park made any reference whatsoever to CIHL, and never used the n/k/a acronym that the Receiver misleadingly used throughout his opposition to the motion to dissolve. (App. 586.)

4. The Park Plaintiffs represented to the Court in June 2022 that the case was "fully resolved," nine months before the Court purported to appoint a receiver over Cape PLC. (App. 570.)

5. Neither Cape PLC nor CIHL ever defaulted, nor was any default judgment entered against either company: not in Park, and not in any other case in South Carolina. (App. 584.)

6. Cape PLC "lacks assets" in South Carolina. (*Id.*)

Despite these concessions, the circuit court denied the Altrad Defendants' motion. In so doing, the circuit court announced a new receivership that now includes CIHL despite the absence of any notice to that foreign company of the Receiver's arguments or the potential appointment of a receiver over its assets. (App. 611–621.)

Standing alone, this should result in dismissal of the entire Third-Party Complaint, as Mr. Tibbs has not brought any claims against CIHL, meaning that a receiver over CIHL has no possible liability to impute to third-party defendants. Rule 14, SCRCP. Additionally, the circuit court held that it had personal jurisdiction over the Altrad Defendants (and all of the other third-party

defendants) at the Receiver's request despite the absence of any material allegations against either Mr. Altrad or AIA in the Receiver's pleadings; despite the fact that neither of the Altrad Defendants have any connection whatsoever to South Carolina; and despite the fact that neither of the Altrad Defendants had anything to do with Cape PLC or CIHL until 2017, long after anything happened that could possibly give rise to any liability to any asbestos plaintiff in South Carolina or anywhere else. (App. 634–643.)

The only basis for the circuit court's personal jurisdiction ruling were alleged connections between Mr. Altrad and AIA, on the one hand, and Cape PLC or CIHL, on the other, which were grounded in nothing other than a "self-piercing" claim alleged by the Receiver himself. Such a baseless ruling simply cannot pass any type of appellate scrutiny.

III. This appeal followed, but it was dismissed without explanation after the Altrad Defendants filed their opening brief.

The circuit court entered the order on appeal on December 6, 2023. This appeal timely followed on December 18, 2023, and the order should be vacated in full as it runs directly contrary to long-established South Carolina and constitutional law.

The Altrad Defendants filed their initial brief and designation of matter on February 22, 2024. After getting an extension to file his respondent's brief, the Receiver moved to dismiss this appeal on April 16, 2024, in a two-page filing that did not provide any analysis at all, but instead nakedly stated that this appeal should be dismissed because other, unrelated appeals involving other parties under other circumstances had been dismissed. (App. 816–817.)

In a single-judge order, the Court of Appeals dismissed this appeal on May 9, 2024. (App. 862.) That order provides no explanation or analysis, and the Altrad Defendants and others timely moved for rehearing. (App. 866.) The rehearing petition was denied on July 1, 2024 (App. 916)—the same day that other parties to the underlying *Tibbs* case removed it to federal court, which

suspended the state-level filing deadlines during the time the matter was before the federal court. *Limehouse v. Hulsey*, 404 S.C. 93, 112–13, 744 S.E.2d 566, 577 (2013). The case was remanded on August 13, 2024, rendering this Petition timely.

IV. The Receiver has engaged in scorched-earth litigation, both in this case and in other cases where he has sued international law firms in order to disrupt attorney-client relationships.

Meanwhile, several other actions have occurred that inform this appeal and make clear that this situation warrants the immediate attention of this Court.

In *Park*—the case in which the original appointment order was entered—the Receiver has sued the Locke Lord law firm in an attempt to (1) seize Locke Lord's client files, (2) force Locke Lord to provide an accounting for all of the fees it has ever received in the firm's history regarding any entity related to Cape PLC, and (3) require Locke Lord to pay the Receiver's attorneys' fees and costs associated with his attempt to invade an attorney–client relationship. (App. 708.) Locke Lord, which has no offices or presence in South Carolina, moved to dismiss and dissolve the Cape PLC receivership on September 15, 2023. (App. 717.) One year later, the Receiver has never responded to that motion, nor has the circuit court ruled on it or even held a hearing. That prolonged silence appears to be a tacit acknowledgement of the impropriety of this entire situation.

In *Tibbs*, the Receiver and the circuit court have pressed forward despite the pendency of this appeal in direct contradiction of Rule 205, SCACR's vesting of "exclusive jurisdiction" in the appellate courts over all matters that are or can be affected by an appeal. The Receiver's sustained efforts to litigate in the absence of jurisdiction at the circuit court, and the Altrad Defendants' faithful adherence to South Carolina law when preserving its objections and defenses, has resulted in the circuit court issuing a series of additional orders while this appeal has been pending: one refused to enter an injunction enforcing Rule 205 during the pendency of this appeal (Appellate

Case Nos. 2023-002006, 2023-002007, 2024-000524, presently with a Petition for a Writ of Certiorari pending with this Court); one held the Altrad Defendants and others in contempt for standing by their numerous objections to the circuit court exercising jurisdiction when it has none (Appellate Case Nos. 2023-002006 and 2024-001063); and one set the case for a bench trial when the Altrad Defendants and others have demanded a jury trial (Appellate Case No. 2024-001446).

The Receiver has lodged *ad hominem* attacks against the Altrad Defendants, as well as their co-appellants and their counsel, for appealing these orders. (*E.g.*, Letter from Smith Robinson (July 2, 2024), in Case No. 2024-000916.) But the undeniable fact is that each of these orders has been properly appealed under settled South Carolina law. The Receiver's frustration at the prospect of proper appellate review does not justify *ad hominem* attacks on parties or lawyers, and it is certainly no basis to dismiss a valid appeal.

And now, Cape PLC and CIHL—the entities allegedly in receivership—have instructed the Receiver to cease purporting to act on their behalf and informed him that they would file suit in England for declaratory and injunctive relief regarding his misconduct. (App. 698.) In response, the Receiver sued yet another international law firm—Winston & Strawn, which also has no offices or presence in South Carolina—in Richland County in retaliation for opposing the receivership, apparently with the goal of denying access to remedies and justice for Cape PLC and CIHL, the entities he purports to represent. (App. 671.)

ARGUMENT

I. South Carolina Code § 14-3-330(4) is squarely on point, and the Court has a duty to consider this appeal that is within the statute's plain language.

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. An order generally must fall into one of several categories set forth in section 14-3-330 to be immediately appealable." Jean Hoefer Toal *et al.*, *Appellate Practice in South Carolina* 140 (3d ed. 2016).

"Interlocutory orders are interim or temporary orders. Although finality is a general requirement of appealability, there are certain interlocutory orders that are immediately appealable. Absent some specialized statute, the immediate appealability of an interlocutory order depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in section 14-3-330." *Id.* at 143.

The order dismissing this appeal does not even mention the controlling statute. But that statute controls the analysis, and it unquestionably authorizes this appeal. The General Assembly has vested litigants with the right to appeal any order—including an "interlocutory order"—that does practically anything at all to a receivership appointment:

> 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).

This constant judicial oversight is essential because of how dangerous an improper receivership appointment can be. *See generally Richland Cty. v. S.C. DOR*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (warning that a receivership "is a drastic remedy, and should be granted

only with reluctance and caution"); *Midlands Util., Inc. v. S.C. DHEC*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989) ("The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.").

After all, a receiver exists strictly to take the property of another, a concept that is generally at odds with notions of property ownership, representative democracy, and the Rule of Law. That's why receivers are to be rarely appointed. *See Richland County*, 422 S.C. at 313, 811 S.E.2d at 769 ("As a rule, a receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined." (quoting *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887))) (cleaned up).

That's why the General Assembly prohibits receivers from being appointed without first giving notice to the entity whose property the receiver is tasked with taking, ***<u>which never happened here</u>***. S.C. Code Ann. §§ 15-65-20 to -30.

That's why the General Assembly prohibits receiverships before judgment unless a bond is also established so that the property supposedly in dispute can be secured without the "drastic remedy" of a receivership, ***<u>which also never happened here</u>***. *Id.* §§ 15-65-50 to -80; *see 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).

That's why the General Assembly (and the United States Constitution) prohibit receivers from reaching outside of South Carolina, which is a core component of this appeal. S.C. Code Ann. § 15-65-10(4); *see generally Pollock v. B. & L. Assn.*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896) ("The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.").

That's why the General Assembly holds parties who wrongfully "procure[] such receiver" financially responsible for all "costs," "charges," "expenses," and "actual damages" incurred by "any party" that has "opposed such receivership." S.C. Code Ann. § 15-65-90. Here, that's the *Park* Plaintiffs, who were responsible for the initial receivership appointment over Cape PLC, and the Receiver, as he alone convinced the circuit court to rewrite the Cape PLC appointment order to now appoint him as a receiver for CIHL.

And that's why the General Assembly counts on the appellate courts to keep receiverships from exceeding their narrow boundaries, as a receiver operating unlawfully can wreak untold havoc on an individual, a company, or an entire industry or marketplace if not constantly checked by the Judiciary.[1]

Accordingly, if the order below "granted," "continued," or "modified" the receivership appointment in any way, it is subject to immediate appellate review under Section 14-3-330(4)'s plain language and obvious legislative intent. Here, the order below did all three—the Receiver has never argued otherwise, nor did the dismissal order address this dispositive point in any way—making the order indisputably subject to an immediate appeal.

The words "granting," "continuing," and "modifying" are not abstract or obscure. They are common terms and have been given a consistent construction:

"Granting" means to approve of a request. *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, the Court of Appeals has

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[1] To be sure, some private parties have recently warned the Court of Appeals precisely of these concerns. *See generally* Amicus Curiae Br. of Underwriters at Lloyd's, London at 20–27 (filed Apr. 26, 2024, in Appellate Case No. 2023-001461) (explaining that if left uncorrected by the Court of Appeals, "the receivership order [involving an active Canadian company] will destabilize insurance markets, harm South Carolina insureds, and damage South Carolina's economy").

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 Section 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).

Here, in response to myriad arguments that the initial appointment order creating a receivership over Cape PLC was defective as a matter of constitutional, statutory, and procedural law, the Receiver argued that the receivership appointment should now include CIHL. This was a stunning argument; in fact, this Court has specifically rejected the Receiver's "misnomer" argument as a matter of law. *See Porter v. Brown*, 149 S.C. 151, 157–59, 146 S.E. 810, 812–13 (1929) (vacating a receivership appointment despite a "misnomer" argument identical to the Receiver's here). Nevertheless, the circuit court accepted that legally incorrect argument and granted the Receiver's request to create a brand-new receivership appointment over CIHL—even though that company had no notice of the appointment request and is not even a party to the *Tibbs* case in which the Receiver's request was granted. That "granting" of a new receivership appointment renders the order below immediately appealable as a matter of right.

<u>"Continuing"</u> means that something is proceeding forward or carrying on. *See, 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 squarely within the definition of a tenant at will.").

Here, the circuit court order permitted the Receiver to press on unabated over the objections of the Altrad Defendants and others regarding the unconstitutional and unlawful nature of the appointment and the Receiver's subsequent conduct. Accordingly, the circuit court order "continued" the receivership appointment and is immediately appealable for a second, independent reason.

<u>"Modifying"</u> means that something has changed or altered. *See, e.g.*, *Jackson v. Sanford*, 398 S.C. 580, 587, 731 S.E.2d 722, 725–26 (2011) (rejecting a gubernatorial veto because it did not eliminate all funding for a particular item, but instead only changed the amount of funding available, rendering the veto "an improper modification of legislation"); *see also In re Joint Application of Duke Energy Carolinas*, Unpub. Op. No. 2016-UP-054, 2016 S.C. App. Unpub. LEXIS 65, at *8 (Ct. App. Feb. 10, 2016) ("'Modification' is defined as a 'small alteration, adjustment, or limitation.'" (quoting Webster's II New College Dictionary (1999 ed.))).

Here, the circuit court order fundamentally altered the Receiver's appointment from being over the Jersey-based Cape PLC to now include the UK-based CIHL, a completely separate company that has nothing at all to do with South Carolina and that isn't even a party to these proceedings. And it "modified" the earlier *Park* appointment order to try and fix the numerous errors that rendered the initial appointment void. These "modifications" render the circuit court's order immediately appealable for a third, independent reason.

* * * * *

The conclusion that the order is immediately appealable as one that "grants," "continues," and "modifies" a receivership appointment is inescapable when tested against every norm of statutory interpretation, and there can be no serious argument to the contrary. Yet, the Court of Appeals' order dismissing this appeal never engaged in this controlling analysis.

To the contrary, the Court of Appeals appears to have overlooked or ignored the express language of South Carolina Code § 14-3-330(4). It has never been the policy of the South Carolina Judiciary not to enforce a statute exactly as it is written; in fact, basic separation-of-powers doctrine requires the opposite. *See, e.g.*, *Rainey v. Haley*, 404 S.C. 320, 323, 745 S.E.2d 81, 83 (2013) (holding that when the words in a statute are "clear and definite," the Judiciary "has no right to impose another meaning" (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000))); *see Hamilton v. Fulgham (In re Nov. 4, 2008 Bluffton Town Council Election)*, 385 S.C. 632, 639, 686 S.E.2d 683, 687 (2009) ("If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning.").

What's more, identifying whether the order below "grants," "continues," or "modifies" a receivership appointment requires this Court to assess the effect of the circuit court's order. That analysis is required by South Carolina case law regarding the scope of appellate jurisdiction. *See, e.g.*, *Spalt v. S.C. DMV*, 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."); *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 540, 773 S.E.2d 144, 147 (2015) (holding that appellate courts must "evaluate the trial court's order as what it is—not merely what it appears to be—and hold that it is one which is immediately appealable"); *Cape Romain Contrs., 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").

But the Court of Appeals' dismissal order here did not contain any of the "effect of the order" analysis that is required by South Carolina law, nor did it even consider the plain language of South Carolina Code § 14-3-330(4) when dismissing this appeal. Because the dismissal order

is flatly contrary to South Carolina law, the Court should grant this Petition, vacate that order, and reinstate this appeal for consideration on its merits.

II. Dismissal renders South Carolina Code § 14-3-330(4) void and without effect.

Not only does the circuit court order fall squarely within the parameters of South Carolina Code § 14-3-330(4), it is precisely the type of interlocutory order that the Legislature had in mind when it vested the Court with appellate jurisdiction over the receivership process. It is a bedrock principle of law and separation of powers that the Court has a duty to enforce statutes as they are written. As this Court has repeatedly explained: "The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly." *Beaufort County v. S.C. State Election Comm'n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011).

When discerning legislative intent, "[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002). Put differently, "[t]his Court will not construe a statute in a way which leads to an absurd result or ***renders it meaningless***." *Tempel v. S.C. State Election Comm'n*, 400 S.C. 374, 378, 735 S.E.2d 453, 455 (2012) (emphasis added).

Here, the statute's history makes the General Assembly's intent unmistakable. When the Legislature reconstituted the South Carolina Supreme Court following passage of the 1895 Constitution, it gave the Supreme Court appellate jurisdiction in only three circumstances, none of which approximate current Section 14-3-330(4):

Section 16. The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: In law cases.

1. Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the Court of Common Pleas and General Sessions, brought there by original process, or removed there from any inferior Court or jurisdiction, and final judgments in such actions: Provided, If no appeal be taken until final judgment is entered, the Court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.

A. D. 1896.

2. An order affecting a substantial right made in an action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken, or discontinues the action, and when such order grants or refuses a new trial; or when such order strikes out an answer or any part thereof, or any pleading in any action; upon any appeal from an order granting a new trial on a case made, or on exceptions taken, if the Supreme Court shall determine that no error was committed in granting the new trial, it shall render judgment absolute upon the right of the appellant; and after the proceedings are remitted to the Court from which the appeal was taken, an assessment of damages, or other proceedings to render the judgment effectual, may be then and there had in cases where such subsequent proceedings are requisite.

3. A final order order affecting a substantial right made in any special proceeding, or upon a summary application in any action after judgment, and upon such appeal to review any intermediate order involving the merits and necessarily affecting the order appealed from.

1896 S.C. Acts No. 3, § 16.

The blind spot in this Court's appellate jurisdiction for certain interlocutory orders involving civil remedies of injunctions and receiverships became apparent. The Court rejected appeals in a series of cases based on the lack of appellate jurisdiction over such orders. *See, e.g.*, *Alston v. Limehouse*, 60 S.C. 559, 569, 39 S.E. 188, 191 (1901) ("Ordinarily, an order granting a temporary injunction is not appealable, and under the foregoing construction of said orders, we

see no reason why this case should not fall within the general rule."); *S.C. & Ga. R.R. Co. v. E. Shore Terminal Co.*, 48 S.C. 315, 316, 26 S.E. 613, 613 (1897) (holding that an order denying a request for an injunction was not immediately appealable); *Garlington v. Copeland*, 25 S.C. 41, 43–44 (1886) (dismissing an appeal of an order continuing an injunction due to lack of appellate jurisdiction under the predecessor statute that contained the same limitations on appellate jurisdiction as did the 1896 statute).

But receiverships and injunction are "drastic" remedies that involve seizing private property or restricting private conduct without the benefit of a complete record. Even in that era, this Court recognized "the injury thereby caused [by the wrongful appointment of a receiver could] be far great than the injury sought to be averted." *Miller v. S. Land & Lumber Co.*, 53 S.C. 364, 367, 31 S.E. 281, 282 (1898).

Because these procedural devices are ripe for potential irreversible abuse, the General Assembly patched this hole in this Court's appellate jurisdiction in 1901 and added a new category of immediately-reviewable orders. It gave the Court jurisdiction to review "[a]n interlocutory order or decree in the Court of Common Pleas, granting or continuing or modifying or refusing an injunction, or else granting or continuing or modifying or refusing the appointment of a Receiver hereafter granted in any action," and it accompanied this authority with other procedural points to govern such appeals. 1901 S.C. Acts No. 358.

The Court exercised this new appellate jurisdiction almost immediately. *See, e.g.*, *Holladay v. Hodge*, 84 S.C. 109, 111, 65 S.E. 1019, 1020 (1909) (reviewing on direct appeal an order granting the appointment of a receiver); *Williams v. Jones*, 62 S.C. 472, 481, 40 S.E. 881, 884 (1902) (vacating a temporary injunction and acknowledging that the order was appealable under "the act of 1901"). And when, as here, an order fell within the scope of new Section (4)'s broad

terms, the Supreme Court recognized it had a "clear[] duty . . . to pass upon the questions raised." *See Lyles v. Williams*, 96 S.C. 290, 293, 80 S.E. 470, 471 (1913) (declining to dismiss an appeal of an interlocutory order refusing a receivership).

This aspect of the Court's appellate jurisdiction remained unchanged until 1991, when the General Assembly amended Section (4) to its current form and deleted the procedures shortening the appellate timeline for interlocutory orders involving injunctions and receiverships that were included with the 1901 law. *See* 1991 S.C. Acts No. 115, § 2 ("Section 14-3-330(4) of the 1976 Code is amended to read: '(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.'").

Nothing in the statute's plain language or its legislative history provides any reason for the Court to now construe the scope of Section (4) narrowly. The statute's history makes clear that the General Assembly intended for the Court to provide ongoing oversight to cases involving injunctions and receiverships—two "drastic" civil remedies, and this Court recognized that it has a "duty" to address such appeals almost immediately after the Legislature expanded appellate jurisdiction over such orders. *Lyles*, 96 S.C. at 293, 80 S.E. at 470.

To date, no court has construed Section (4) with respect to the myriad receiverships that have come from the Asbestos Docket. This Court's unpublished order in the *Childers* case makes no mention of this controlling statute at all. Respectfully, the Court has a "duty" to consider this appeal, which is unquestionably within the plain language of South Carolina Code § 14-3-330(4)'s broad scope for immediate review of interlocutory orders involving receiverships. Any other construction—including affirming the dismissal of this appeal without any analysis or acknowledgment of this controlling statute—voids Section 14-3-330(4) without explanation and

does considerable damage to the separation-of-powers and Rule-of-Law principles that are embodied by the Judiciary's faithful enforcement of statutes that the Legislature passes.

III. There are "special and important reasons" for granting certiorari, as the Court has already recognized by accepting Rule 204 certification of the Atlas Turner appeal.

Rule 242(b), SCACR, provides guidelines for when the Court may grant certiorari to review a decision of the Court of Appeals. It indicates that such review should occur "where there are special and important reasons," including when a case raises "novel questions of law," *id.* (b)(1), and when "substantial constitutional issues are directly involved," *id.* (b)(4).

The core issues in this case involve not only proper enforcement of the appealability statute, but also the lawfulness of a South Carolina state court appointing a receiver—without notice—over active international companies that have no property, no assets, no adverse judgments, and no active claims against them in the State. As a matter of (at least) Due Process and the Commerce Clause, it is unlawful for a state court to try and claim a receivership over foreign companies that have no assets in that state, but the circuit court has made receivership appointments a routine part of litigation in the Asbestos Docket, typically with no hearing.

To date, the Altrad Defendants are aware of over two-dozen receiverships that have been created by the South Carolina Asbestos Docket. They are summarized below in Table 1, and this case involves the two receiverships highlighted in yellow on that table.

These receiverships have morphed from appointments over defunct South Carolina entities (*e.g.*, Covil Corporation); to defunct out-of-state entities with zero assets in South Carolina (*e.g.* Payne & Keller Corporation); to active out-of-state entities (*e.g.*, Whittaker Clark & Daniel, Inc.); to active international companies with zero assets in South Carolina (*e.g.*, Atlas Turner Co. (Canada), Asbestos Company Limited (Canada), Cape PLC (Jersey), CIHL (U.K.)). This trajectory is summarized below in Table 2.

Table 1: Receivership Appointments from the Asbestos Docket

Company Put in Receivership	Moving Counsel	Who is Appointed	Case in Which Appointment is Made
Covil Corp.	Kassel McVey/Dean Omar Branham Shirley	Peter Protopapas	2018-CP-40-04940
Starr Davis Company, Inc.	Kassel McVey/DOBS	Peter Protopapas	2019-CP-40-00076
Starr Davis Company of S.C., Inc.	Kassel McVey/DOBS	Peter Protopapas	2019-CP-40-00076
Southern Insulation, Inc.	Kassel McVey/DOBS	Peter Protopapas	2019-CP-40-00076
Great Barrier Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-02692
J&L Insulation, Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-01952
Pipe & Boiler Insulation, Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-01952
Piedmont Insulation Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-004475
Presnell Insulation Co., Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-01364
Flame Refractories, Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
General Boiler Casing Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Payne & Keller Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
United Construction Co. of Rome	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Standard Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Stafford Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
J.R. Deans Co., Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
HEFCO, Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Davis Mechanical Contractors, Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Heat & Frost Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-06190
Whittaker Clark & Daniel, Inc.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-01265
Beaty Investments, Inc.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-01241
Cape PLC	**Kassel McVey/DOBS**	**Peter Protopapas**	**2021-CP-40-02727**
Atlas Turner Co., Ltd.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-03834
Asbestos Co., Ltd.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-03834
Cape Intermediate Holdings Limited	**Smith Robinson Morgan Lewis & Bockius Gallivan White & Boyd Rikard & Protopapas**	**Peter Protopapas**	**2023-CP-40-01759**

Table 2: Foreign Companies Placed in Receivership in the Asbestos Docket

Company in Receivership	**Where Located**	**Active/Dissolved**
Starr Davis Company, Inc.	North Carolina	Dissolved
Great Barrier Insulation Co.	Florida	Dissolved
J&L Insulation, Inc.	North Carolina	Dissolved
Piedmont Insulation Inc.	North Carolina	Dissolved
Presnell Insulation Co., Inc.	North Carolina	Dissolved
Flame Refractories, Inc.	Florida	Dissolved
General Boiler Casing Co.	North Carolina	Dissolved
Payne & Keller Co.	Texas	Dissolved (an improper circuit court order attempts to undo this dissolution)
United Construction Co. of Rome	North Carolina	Dissolved/merged with Flame Refractories
Standard Insulation Co.	North Carolina	Dissolved
Heat & Frost Insulation Co.	North Carolina	Dissolved
Whittaker Clark & Daniel, Inc.	New Jersey	Active (bankruptcy pending)
Beaty Investments, Inc.	North Carolina	Dissolved
Cape PLC	International: Jersey	Active
Atlas Turner Co., Ltd.	International: Canada	Active
Asbestos Co., Ltd.	International: Canada	Active
Cape Intermediate Holdings Limited	International: United Kingdom	Active

Having this Court address the impropriety of these receiverships, at least as they relate to active international companies that have no assets in or connection to South Carolina, is of significant public interest, as the Court recognized when it granted "the court of appeals' request for certification pursuant to Rule 204(b), SCARC" in *Welch v. Advance Auto Parts, Inc.*, Appellate Case No. 2024-001180 (Aug. 20, 2024). That appeal involves the Atlas Turner receivership noted above and presents the following for appellate review: "Can a South Carolina circuit court establish a receivership over an active Canadian corporation that exists in the province of Quebec?" (Appellant's Opening Br. at 1 (Case No. 2024-001180).)

The standards for Rule 204 certification and Rule 242 certiorari are functionally the same, and they should lead to the same conclusion for this case as it did for the *Welch v. Advance Auto Parts (In re Atlas Turner Receivership)* appeal. These receiverships at issue in this case break with this Court's precedent in virtually every way, including at least the following cases:

- *Ex parte First Penn. Banking & Tr. Co.*, 247 S.C. 506, 508, 148 S.E.2d 373, 374 (1966) ("[T]he jurisdiction of a state is restricted to its own territorial limits.").

- *Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 185 S.E. 731, 737 (1936) (reversing the appointment of a receiver over a foreign corporation because, as here, "there [wa]s a total failure of any proof that it ha[d] property in this state").

- *Porter v. Brown*, 149 S.C. 151, 157, 146 S.E. 810, 812–13 (1929) (holding that a receiver who was appointed over one company cannot lawfully claim an appointment over a different company and that the initial appointment order should be vacated).

- *Va.-Carolina Chem. v. Hunter*, 84 S.C. 214, 224, 66 S.E. 177, 180 (1909) (vacating an appointment because the receiver "was one of the agents of the plaintiffs, actively pressing its claims against the defendant" and announcing "[t]he rule is, that the Court ought to appoint a receiver entirely impartial").

- *Pollock v. B&L Ass'n*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896) ("[C]ourts of equity cannot acquire extra territorial jurisdiction over property by appointing receivers. The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him." (quoting 20 Am. & Eng. Enc. Law 65–66, and Gluck & Becker on Receivers 3)).

Left unchecked, the misuse of receiverships below violates South Carolina law and undermines confidence in the Rule of Law. The Court should grant this Petition accordingly.

CONCLUSION

The appealability statute is clear, and the legal principles at play in this case are black-letter law. Yet, the Altrad Defendants—as well as all other third-party defendants to this case, along with the Bench and Bar—have been left to wonder why the Court of Appeals has dismissed an appeal of an order that not only continues an unlawful receivership in the face of myriad reasons why it must be dissolved at once, but that also modifies the initial receivership appointment to actually grant a brand new receivership appointment out of whole cloth.

This case is ***exactly*** what Section 14-3-330(4) is designed to channel into the appellate system so that an unlawful receivership can be immediately vacated and private parties—here, foreign companies and foreign citizens—relieved of the burdens of having their property interfered with or seized by a purported receiver that has no legitimate authority to act.

The Court should not indulge the Receiver's procedural gamesmanship and strip the Altrad Defendants and other third-party defendants of their appellate rights. The Receiver was appointed over a never-served-with-process active foreign company in the *Park* case, which—by that plaintiffs' own admission—was already "fully resolved," meaning that no one was even left in that long-resolved case to be aware of, much less appeal, the appointment. The Receiver now treats that invalid appointment as a roving license to bring claims in cases other than *Park*, including asking the circuit court to appoint him as receiver over a different un-served active foreign company that is not even a party to this case, and suing international law firms for daring to defend their clients' rights in the face of his unlawful conduct.

South Carolina Code § 14-3-330(4) unquestionably authorizes this appeal so that the Court can correct these clear errors of law now before further damage is done. If the order below is not immediately reviewable, the appellate statute would be rendered a dead letter.

Accordingly, the Altrad Defendants respectfully request that the Court grant this Petition, reinstate this appeal, and then keep the appeal while it proceeds on its merits.[2]

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[2] The Altrad Defendants file this Petition without waiving, and while specifically preserving, their objections to personal jurisdiction, and those objections to personal jurisdiction are rightly subject to this Court's review on appeal of the underlying order. Additionally, they respectfully join and adopt by reference the certiorari petitions filed by the Sparrows Defendants and the Charter Defendants in Appellate Case Nos. 2023-002007, 2023-002009, 2023-002010, and 2023-002011 (Ct. App.), and Appellate Case No. 2024-001423 (Sup. Ct.).

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
Kevin A. Hall
S.C. Bar No. 15063
kevin.hall@wbd-us.com
M. Elizabeth O'Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

Attorneys for Petitioners Mohed Altrad and Altrad Investment Authority SAS

September 10, 2024

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Altrad Investment Authority SAS and Mohed Altrad, 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): Altrad Defendants' Petition for a Writ of Certiorari and Accompanying Appendix (Volumes I and II)

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Counsel for Plaintiffs

James H. Elliott, Jr. (jelliott@richardsonplowden.com)
Cameron D. Berthelsen (cberthelsen@richardsonplowden.com)

Counsel for Co-Appellants AA/DB Non-US Third-Party Defendants

Steven J. Pugh (spugh@richardsonplowden.com)
Benjamin P. Carlton (bcarlton@richardsonplowden.com)
Carmen V. Ganjehsani (cganjehsani@richardsonplowden.com)
Ashwin R. Sanzgiri (asanzgiri@richardsonplowden.com)

Counsel for Co-Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

John Nichols (john@bluesteinattorneys.com)
A. Victor Rawl, Jr. (vrawl@grsm.com)

Counsel for Co-Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

Stephen L. Brown (sbrown@ycrlaw.com)
James D. Gandy, III (tgandy@ycrlaw.com)
Stephen A. Griffith (sgriffith@ycrlaw.com)

Counsel for Asbestos Corporation Limited

By: /s/ M. Todd Carroll

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