THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

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

Civil Action No. 2023-CP-40-01759

Appellate Case Nos. 2024-001423, 2024-001497, 2024-001499

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs,

v.

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

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

Defendants,

and

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

Third-Party Plaintiff / Respondent

v.

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

Third-Party Defendants,

of which

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

Petitioners.

RETURN TO PETITIONS FOR WRIT OF CERTIORARI

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES iv

COUNTER-STATEMENT OF THE QUESTION PRESENTED 1

COUNTER-STATEMENT OF THE CASE 1

ARGUMENT 7

1. The Law Is Clear: The Circuit Court's Order Denying the Motions To Dissolve The Cape Receivership Cannot Be Immediately Appealed. 7

2. The December 6 Interlocutory Order Refused To Dissolve The Cape Receivership Created In The *Park* Case; It Did Not Grant, Modify, Or Continue It. 8

3. Petitioners' Sky-Is-Falling Arguments—Which Would Apply With Equal Force To This Court's *Childers* Order—Are Misguided And Do Not Warrant Review. 11

4. Petitioners Cannot Dispute The Personal Jurisdiction Holdings Included In The December 6 Interlocutory Order Are Not Alone Immediately Appealable. 14

CONCLUSION 14

TABLE OF AUTHORITIES

PAGE

CASES

Hagood v. Sommerville,
362 S.C. 191, 607 S.E.2d 707 (2005) 9, 11

Mid-State Distrib., Inc. v. Century Imp., Inc.,
310 S.C. 330, 426 S.E.2d 777 (1993) 12

Singer v. Goff,
54 N.W.2d 290 (Mich. Sup. Ct. 1952) 8

Skydive Myrtle Beach, Inc. v. Horry Cnty.,
No. 2021-000217, 2024 WL 3291602 (S.C. Ct. App. July 3, 2024) 11

Stair v. Meissel,
192 N.E. 453 (Ind. Sup. Ct. 1934) 8

Stone v. Thompson,
426 S.C. 291, 826 S.E.2d 868 (2019) 9, 11

Wilmington Trust Nat'l Assoc. v. Piedmont Center Owner, LLC et al.,
2019 S.C. C.P. LEXIS 513 (S.C. Ct. Comm. Pl., Greenville Cnty., Mar. 8, 2019) 9

STATUTES & RULES

S.C. Code Ann. § 14-3-330 .... 5, 8, 9, 10

OTHER

75 C.J.S. Receivers § 79 8

COUNTER-STATEMENT OF THE QUESTION PRESENTED

1. Whether the Court of Appeals properly concluded the order denying the motions to dismiss and dissolve the receivership was an interlocutory order that is not immediately appealable?

INTRODUCTION

Peter D. Protopapas, in his capacity as the court-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd. (the "Receiver") respectfully requests this Court deny the Petitions for Writ of Certiorari filed on September 3 and September 10, 2024 (the "September 2024 Petitions") by Appellants in the above-captioned cases.[1]

There have been fourteen (14) interlocutory notices of appeal filed by these appellants in this case, *John A. Tibbs v. Asbestos Corporation Limited, et al.,* 2023-CP-40-01759. The latest three Petitions mark the continuation of these improper appeals. All of the interlocutory appeals that the appellate courts have considered have been dismissed. Those not yet considered, until recently, have been held in abeyance due to attempts to improperly remove this case.[2] The

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[1] Appellants and their corresponding case numbers are as follows:

- Mohed Altrad and Altrad Investment Authority S.A.S. (Appellate Case Nos. 2003-002006 and 2024-001499);
- Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (Appellate Case Nos. 2003-002007 and 2024-001497);
- ESAB Corporation (Appellate Case Nos. 2003-002009 and 2024-001423);
- Charter Consolidated Ltd. (Appellate Case Nos. 2003-002010 and 2024-001423); and
- Central Mining & Investment Corporation Ltd. (Appellate Case No. 2003-002011 and 2024-001423).

[2] *See, e.g.*, Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, and 2023-002011 (Orders, June 18, 2024 and July 1, 2024) (denying petition for rehearing from dismissal of initial appeals of order denying motion to dismiss and dissolve receivership); Appellate Case No. 2024-000524 (Order, May 3, 2024) (denying petition for rehearing from dismissal of second set of appeals of order granting the Receiver's motion to compel discovery responses); Appellate Case Nos. 2024-001063, 2024-001064, 2024-001065 (third set of notices of

improper removal was swiftly rejected by the federal court, and the case was remanded promptly after briefing. *See* Remand Order in *Tibbs v. 3M Co.*, No. 3:24-cv-3771-MGL, ECF No. 75 (D.S.C. Aug. 13, 2024). Immediately following the delay caused by the improper removal, Appellants Mohed Altrad and Altrad Investment Authority S.A.S. (together, "Altrad Owners Third-Party Defendants"); Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (together, "Altrad Sparrows Third-Party Defendants"); and Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation (together, "Charter Third-Party Defendants") (collectively, "Third-Party Defendants" or "Appellants") filed Notices of Appeal of a scheduling order (Appellate Case No. 2024-001446) and, now, these Petitions for Certiorari, despite this Court's recent rejection of the very same arguments by some of the very same counsel in *Childers v. Davis Mechanical Contractors*, et al. No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024) (dismissing, in an order signed by all five justices, as not immediately appealable an order denying motions to dismiss and dissolve a receivership). The trial in this case is scheduled for December 9, 2024. It is clear Appellants' purpose in consenting to the improper removal and their pursuit of successive improper appeals (including the latest round of appeals) is to delay and avoid trial.[3]

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appeal of the circuit court's interlocutory orders awarding discovery sanctions). All appeals arising out of the *Tibbs* case were held in abeyance for over two months due to an improper removal of the *Tibbs* action to which Appellants consented. The United States District Court for the District of South Carolina remanded the case to the circuit court on August 13, 2024. *Tibbs v. 3M Co.*, No. 3:24-cv-3771-MGL, ECF No. 75 (D.S.C. Aug. 13, 2024). The level of coordination amongst the Third-Party Defendants cannot be overstated. *See also* September 3, 2024, Letter of Jonathan M. Robinson, Appellate Case No. 2024-001423 (in response to Appellants' unsuccessful attempt to delay their Petition for Writ of Certiorari).

[3] In addition to filing waves of meritless appeals and petitions for certiorari, Petitioners have stated in no uncertain terms that they will not participate in the underlying case in any way, shape, or form, in a transparent attempt to avoid trial. *See* Exhibit B (9/4/2024 letters from Vic Rawl and Todd Carroll). Not content with refusing to participate in the underlying case, the current owners of Cape (*i.e.*, Mohed Altrad and Altrad Investment Authority S.A.S.) threatened to seek an

The September 2024 Petitions seek this Court's certiorari review of the Court of Appeals' well-justified decision to dismiss the appeals as interlocutory because the underlying interlocutory decision is not immediately appealable. The Petitioners all sought below—and continue to seek with their September 2024 Petitions—premature, interlocutory review of a circuit court order entered on December 6, 2023, titled "Order Denying Certain Third-Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction," which rejected Petitioners' personal jurisdiction arguments for dismissal and their requests to dissolve the Cape Receivership (the "December 6 Interlocutory Order"). The Charter Petition[4] lists ***fifteen*** additional questions presented concerning the validity and merits of the circuit court's appointment of a receiver and his actions that were not resolved by the Court of Appeals because it dismissed Petitioners' appeals as premature, interlocutory appeals and are not appropriate for review here.

South Carolina law is clear—and has been for many years—that orders like the December 6 Interlocutory Order are not immediately appealable. Indeed, both this Court and the Court of Appeals have repeatedly and decisively dismissed as premature similarly-situated appeals which also sought immediate review of orders rejecting personal jurisdiction arguments and orders

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injunction against the Receiver in the United Kingdom. *See* Exhibit C (8/30/24 Winston letter). Subsequently, on September 9, 2024, Cape Intermediate Holdings Limited and Cape plc instituted an action in the High Court of Justice Business and Property Courts of England and Wales seeking to enjoin Peter D. Protopapas from fulfilling his court-appointed duties and obligations charged by the Asbestos Docket Chief Judge, South Carolina Chief Justice Jean Hoefer Toal (Active Ret.) on March 16, 2023. These proceedings violate the Receivership Court's Order of Appointment, and the *Barton* doctrine, which was just recently reaffirmed by the Fourth Circuit in another case involving this very Receiver in another receivership as well as some of the same counsel representing the Altrad Appellants in this appeal. *See Protopapas v. Travelers Cas. & Sur.* Co., 94 F.4th 351, 360 (4th Cir. 2024).

[4] The term "Charter Petition" refers to the Petition filed on September 3, 2024, by Appellants Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. Appellate Case No. 2024-001423.

declining to dissolve a receivership. *See* Packet of Orders attached hereto as Exhibit A, issued in *Childers v. Davis Mechanical Contractors*, et al. No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024) (dismissing, in an order signed by all five justices, as not immediately appealable an order denying motions to dismiss and dissolve a receivership); *Welch v. Advance Auto Parts, et al.*, No. 2024-000337 (Ct. App. Order dated April 12, 2024) (dismissing as not immediately appealable an order denying appellants' motions to dissolve a receivership and to dismiss, including on personal jurisdiction grounds, and an order denying appellants' motions for protection from discovery); *Mitchell v. 3M Company, ABB Inc., et al.*, No. 2024-000341 (Ct. App. Order dated April 12, 2024) (same); *Link v. 3M Company, 4520 Corp., Inc., et al.*, No. 2024-000342 (Ct. App. Order dated April 12, 2024) (rejecting appellants' contention that the circuit court's order permitting the receiver to continue his duties during the pendency of the appeal is immediately appealable and dismissing the appeal). All these appeals—including this Court's unanimous decision in *Childers*—held that an order denying a request to dissolve a receivership, and finding personal jurisdiction over defendants, "is not immediately appealable." *See id.*

The outcome should be no different in this case, and Petitioners should not be permitted to continue to clog our courts with meritless appeals like this one. Denial of the September 2024 Petitions is warranted.

COUNTER-STATEMENT OF THE CASE

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

sought relief after being "diagnosed with mesothelioma caused by exposure to asbestos dust and fibers" unintentionally "brought home" for years "as a result of her husband's work with and around asbestos-containing products." *Id.* at ¶ 4.

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

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

authority and powers with respect to" Cape's property, including to "obtain from any . . . third party, any financial records belonging to or pertaining to" Cape. *Id.* at 2.

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

The Sparrows Petitioners and the Altrad Petitioners filed motions to dissolve the Cape receivership and motions to dismiss the third-party complaint on August 21, 2023, and September 1, 2023. The Charter Petitioners filed motions to dismiss the third-party complaint and dissolve the receivership.

On December 6, 2023, the circuit court issued an order denying the motions to dissolve the receivership and the motions to dismiss for lack of personal jurisdiction. Petitioners filed notices of appeal of the December 6, 2023 order denying the motions to dissolve the receivership and motions to dismiss based on lack of personal jurisdiction ("Dissolution Appeals"). *See* Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, 2023-002011. The Court of Appeals dismissed the Dissolution Appeals and denied the subsequent petitions for rehearing. Petitioners have now petitioned this Court for review of the Court of Appeals' dismissal of these appeals.

ARGUMENT

1. The Law Is Clear: The Circuit Court's Order Denying the Motions To Dissolve The Cape Receivership Cannot Be Immediately Appealed.

The issues involved in the attached Supreme Court and Court of Appeals dismissals in *Childers*, *Welch*, *Mitchell*, and *Link* are identical to this appeal—not only with respect to the underlying motions filed in the circuit court and type of order on appeal (refusing to grant motions to dissolve a receivership), but also as to the statutory provision invoked by appellants in an attempt to futilely cloak an interlocutory order with immediate-appealability urgency. *See* Ex. A. The appellants in those four cases, just like all the Petitioners in the September 2024 Petitions, invoked S.C. Code § 14-3-330 as authority for their premature appeals. This is an argument this Court and the Court of Appeals have consistently and decisively rejected in this exact scenario—including in this appeal.

Petitioners argue that this weight of case law represents "non-binding unpublished orders in different cases," Charter Petition at 19, but that argument is a nonstarter. Setting aside for a moment the bravado that underlies the decision by an interlocutory appellant to intentionally ignore this Court's recent application of appealability rules simply because this Court encapsulated those rules in an order but not a written opinion, Petitioners miss the point.[5] The vehicle chosen by the Supreme Court or the Court of Appeals to announce its dismissal of a premature, interlocutory appeal does not change the law that required the dismissal in the first instance. Indeed, Petitioners may choose (at their own peril) to ignore the orders entered in *Childers*, *Welch*, *Mitchell*, and *Link*, but they cannot ignore the foundational law underlying those orders. The law is—and has been for some time—that an order refusing to dismiss a case and dissolve a

[5] In fact, counsel for the Altrad Appellants represented a party in the *Childers* appeal. *See* Appellate Case No. 2023-00727.

receivership cannot be immediately appealed under the scope for interlocutory appeals defined by S.C. Code § 14-3-330 and extensive case law.

2. The December 6 Interlocutory Order Refused To Dissolve The Cape Receivership Created In The *Park* Case; It Did Not Grant, Modify, Or Continue It.

Petitioners cannot avoid the defined and limited scope of immediately-appealable orders by pretending—as they have throughout this case—that the December 6 Interlocutory Order is something that it is not. They claim the circuit court not only denied their motion to dissolve the Cape Receivership created in the *Park* case, but also created a new receivership or otherwise modified it in a way that allows them to immediately appeal that decision. *See* Altrad Petition[6] at 10–16; ArranCo Petition[7] at 7–15. These are the same semantic games played by Petitioners in the circuit court—all of which the circuit court resoundingly rejected in the December 6 Interlocutory Order and the Court of Appeals rejected in dismissing the appeal.

This Court should also reject the Petitioners' "gotcha" game, which consists of the following strategy:

a. File a motion to dissolve the Cape Receivership created in *Park* but inject some name confusion in that motion by introducing—for the first time in this litigation—an entirely new entity that shares the "Cape PLC" name but did not sell asbestos (rather, this new "Cape PLC" entity is a "Singapore and Jersey tax resident" created in the Bailiwick of Jersey in April 2011 to act as a "holding company of the Cape Group" for tax purposes);

b. Accuse the circuit court of creating, in the *Park* case, a receivership over this entirely new Bailiwick of Jersey entity rather than a receivership over the original Cape PLC, which has existed for approximately 130 years in the United Kingdom in various iterations and is alleged to have sold most of the blue (crocidolite) and brown (amosite)

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[6] The term "Altrad Petition" refers to the Petition filed on September 10, 2024, by Appellants Mohed Altrad and Altrad Investment Authority S.A.S. Appellate Case No. 2024-001499.

[7] The term "ArranCo Petition" refers to the Petition filed on September 10, 2024, by Appellants ArranCo US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC. Appellate Case No. 2024-001497.

asbestos in the United States and in South Carolina, including asbestos that injured the plaintiffs in the *Park* case; and

c. When the circuit court denies the motion to dissolve and addresses this straw man Bailiwick of Jersey entity, immediately appeal that order and accuse the circuit court of "modifying" the real Cape Receivership or granting an entirely new receivership over the Bailiwick of Jersey entity.

Petitioners have already lost this dishonest game—both before the circuit court and the Court of Appeals.

The December 6 Interlocutory Order sets forth an extensive analysis of what occurred in the *Park* case when the Cape Receivership was created, and it does so only in the context of the circuit court's rejection of the requests to dissolve that receivership before it:

> Other than the common name, there is no evidence the Park Plaintiffs meant to sue the new Bailiwick of Jersey entity as a defendant in their asbestos exposure lawsuit. The new entity was not organized in the United Kingdom; the new entity has existed for less than 20 years; and there is no indication in the record the new entity was the same entity that historically sold asbestos in the United States (nor could there be given its relative infancy).
>
> . . .
>
> [And although service was apparently accomplished with] a copy of the complaint and summons addressed to Cape PLC and Cape Intermediate Holdings Ltd. . . . "Cape PLC" was the name of the company between August 1, 1989 and June 27, 2011, while "Cape Intermediate Holdings Ltd." was the company's current name at the time of service . . . . This evidence reveals the Park Plaintiffs intended to serve the older Cape PLC entity using (perhaps out of an abundance of caution) both formerly known-as and currently-known-as nomenclature. . . . 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.

December 6 Interlocutory Order, at 17–19. It was clear all along that the Cape Receivership at issue was related to the Cape PLC, n/k/a Cape Intermediate Holdings Ltd. entity, not the other

Bailiwick of Jersey Cape PLC entity injected by Petitioners that had no connection to the sale of the asbestos that led to the *Park* case.[8]

The circuit court's clarification in the December 6 Interlocutory Order of what transpired when it created the Cape Receivership was necessitated only by the feigned ignorance of Petitioners about the involved entity—which they alone injected into this case—not by any substantive change to the Cape Receivership itself. There simply is no immediately appealable issue in the order they challenge.

Some Petitioners make a somewhat related argument that the circuit court's decision "continued" a receivership, *see* Altrad Petition at 13–14; ArranCo Petition at 15–16, but that argument relies on more semantic games. If every time a court denied a motion to dissolve a receivership, that order "continued" the receivership, then a party could obtain appellate review at any moment in the case just by filing an unsuccessful motion to dissolve. Such a rule would make no sense—and it is contradicted by this Court's order in *Childers* holding that an order denying a motion to dissolve a receivership "is not immediately appealable." *See* Ex. A. Rather, "continuing" a receivership has a specialized meaning in the context of S.C. Code § 14-3-330: at the time of enactment, it was common practice to appoint *temporary* receiverships, and it was

[8] The Altrad appellants' pursuit of ends over means was also illustrated in its recent filings at the Court of Appeals where they averred that the "Receiver purports to be a receiver over a Jersey company that has no assets in South Carolina, no judgments against it in South Carolina, no active claims against it in South Carolina, and that was never served with a shred of paper about any lawsuit in South Carolina," and that the Altrad appellants "have no contact with South Carolina and are not subject to personal jurisdiction here." (Appellate Case No. 2024-001063, September 5, 2024 Return to Motion to Dismiss at 3, 4.) However, one needs to look no further than the Altrad Owners Third-Party Defendants' own website to find these assertions are simply not true. *See* South Carolina contact information at rmdksouthcarolinarentaladmins@altrad.com and "Other branches in USA" at 301 Webb Road Williamston, South Carolina, at www.rmdkwikform.com/us/contact-us/; *see also* "Our History" at https://www.altrad.com/en/our-history.html. *See* Exhibit D.

likewise common for them to be later extended or made permanent, or "continued."[9] The practice of "continuing" temporary receiverships still takes place today. *See, e.g.*, *Wilmington Trust Nat'l Assoc. v. Piedmont Center Owner, LLC et al.*, 2019 S.C. C.P. LEXIS 513, *1 (S.C. Ct. Comm. Pl., Greenville Cnty., Mar. 8, 2019). Allowing immediate appeal from such a continuation makes sense, because it is essentially the grant of a new receivership. For example, if the original order was set to expire after one year, extending or continuing the receivership beyond that year creates a receivership when one previously would not have existed. By contrast, merely denying a motion to dissolve an already-existing receivership has no such effect.

3. Petitioners' Sky-Is-Falling Arguments—Which Would Apply With Equal Force To This Court's *Childers* Order—Are Misguided And Do Not Warrant Review.

Without law on their side, Petitioners resort to misguided policy arguments.

The Altrad Petition claims that failing to consider this interlocutory appeal would leave S.C. Code § 14-3-330(4) "void and without effect." Altrad Petition at 16–20. That exaggeratory rhetoric has no substance to back it up. First, as the Altrad Petition itself recognizes—direct appeals are both available and taken from orders actually granting a receiver, or for any other reason listed in the statute. *Id.* at 18. It is not a "narrow[]" construction of the statute to limit interlocutory

[9] *See, e.g.*, 75 C.J.S. Receivers § 79 ("According to the showing made, the court may make, or refuse to make, an order continuing a temporary receiver previously appointed." (emphasis added)); *Stair v. Meissel*, 207 Ind. 280, 283, 192 N.E. 453, 454 (1934) ("It is, therefore, ordered by the court that the receivership herein be and the same is hereby continued and made permanent pending the determination of the main cause of action in this cause." (emphasis added)); *Singer v. Goff*, 334 Mich. 163, 167, 54 N.W.2d 290, 292 (1952) ("Equity courts have inherent power to appoint a receiver, and it is a matter of discretion whether a receivership shall be continued or discontinued. The record in the instant case shows that, after the expiration of the 1-year period, the court issued various orders which necessarily imply a continuance of the Singer receivership." (emphasis added) (citations omitted)).

review to the listed reasons—and to disallow interlocutory review where, as here with the denial of a motion to dissolve a receivership, there is no statutory justification for such review.[10]

Remarkably, the Altrad Petition goes on to claim: "To date, no court has construed Section (4) with respect to the myriad receiverships that have come from the Asbestos Docket at all." *Id.* at 19. But, of course, just this year, ***this Court*** held that appeals from orders just like this one—denying a motion to dissolve a receivership that the appellant argued was appealable under S.C. Code § 14-3-330(4)—***are not appealable***. Unsatisfied with this Court's, the Court of Appeals', and the circuit court's decisions finding that orders denying a motion to dismiss and dissolve a receivership are not immediately appealable pursuant to S.C. Code § 14-3-330(4), Petitioners continue to present these appeals based on *their* interpretation of the law and inexplicably presume this Court did not review and construe the statute at issue—the same one here—in reaching its decision in *Childers*. Simply stated, Petitioners do not accept this Court's interpretation of S.C. Code § 14-3-330(4) in dismissing the *Childers* appeal "because the underlying circuit court order at issue is not immediately appealable." Ex. A.

The Altrad Petition also claims (at 20–23) there are "special and important reasons" for granting certiorari in this case, citing an inapposite Rule 204 certification in a different case and listing supposedly important issues involving the ***merits*** of the receiver appointment in this case. Respondent emphatically disputes the Petition's plainly incorrect and unsupported arguments that the circuit court erred in denying the motion to dissolve the receiver, that the circuit court "has

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[10] This argument also ignores this Court's case law that "Section 14–3–330 . . . [is to be] narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed." *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005); *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) ("The provisions of section 14-3-330 are narrowly construed and serve the underlying policy favoring judicial economy by avoiding 'piecemeal appeals.'").

made receivership appointments a routine part of litigation . . . with no hearing," and that the Receiver is not "entirely impartial." *See id.* But even if these issues were important for this Court to resolve at some point (they are not, given that Altrad's arguments are baseless, and Chief Justice Toal has acted well within the circuit court's discretion in this and other cases cited in the Petition), Altrad's argument fails for another reason: those issues simply are not relevant to this Petition. The Court of Appeals has not addressed those arguments—because Petitioners cannot yet raise them on appeal (in this interlocutory posture) under settled South Carolina law. The question before this Court is whether to exercise certiorari over the decision to dismiss an appeal from an order denying a motion to dissolve a receivership and dismiss the case. Given this Court's decision in *Childers* and the otherwise settled state of the law holding that such orders are not immediately appealable, the answer to the relevant question is, no, this Court should not exercise its certiorari discretion.

Finally, the ArranCo Petition invokes (at 16–18) a supposed policy in South Carolina for courts to oversee receiverships, but ignores that: (i) the circuit court is providing "[j]udical oversight" in this case (and any implication otherwise is completely baseless), (ii) immediate appellate review is available under the statute only for certain enumerated (not all) receivership-related orders, and (iii) even in this case, appellate review will be available from final judgment—just not on a piecemeal, interlocutory basis. *See, e.g.*, *Hagood*, 362 S.C. at 196 ("The provisions of Section 14–3–330 . . . have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed. Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial."); *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, No. 2021-000217, 2024 WL 3291602, at *2 (Ct. App. July 3, 2024) (citing *Hagood*, 362 S.C. 191, and *Stone*, 426 S.C. 291, to emphasize that appeals typically should only be taken

from final judgments given “the underlying policy favoring judicial economy by avoiding ‘piecemeal appeals’”).

4. Petitioners Cannot Dispute The Personal Jurisdiction Holdings Included In The December 6 Interlocutory Order Are Not Alone Immediately Appealable.

As explained above, there is no immediately appealable issue in the December 6 Interlocutory Order, and there is no order in this case at all that created, granted, modified, or continued a receivership. Beyond that, Petitioners tacitly concede the personal jurisdiction holdings included within that same order are not immediately appealable alone (*see* ArranCo Petition at 18–19); appellate courts only consider those issues in an interlocutory appeal when there is a separate appealable order before the court. The Court of Appeals’ dismissal orders below rightly recognized this point—citing settled case law holding that “the denial of a motion to dismiss based on a lack of personal jurisdiction is not immediately appealable.” Ex. A (citing *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993)). There is no separate appealable order here, and this Court should hold the at-issue order is not appealable.

CONCLUSION

This premature, interlocutory appeal was properly dismissed by the Court of Appeals. Both this Court and the Court of Appeals have recently and decisively dismissed as premature similarly-situated, interlocutory appeals which too sought immediate review of orders rejecting personal jurisdiction arguments and orders declining to dissolve a receivership. The same outcome is required here. As such, this Court should deny the September 2024 Petitions. Petitioners’ serial interlocutory appeals—in the face of clear case law forbidding their appeals—should be soundly rejected and their continued efforts to delay trial through improper procedural maneuvering should be brought to a decisive end.

Respectfully Submitted,

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