THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Sep 30 2024

S.C. SUPREME COURT

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

Civil Action No. 2023-CP-40-01759
Appellate Case No. 2024-001497

John A. Tibbs and Margaret B. Tibbs……**PLAINTIFFS**,

v.

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

Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC……**DEFENDANTS**,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, Third-Party Plaintiff……. **RESPONDENT**,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) LLC, Charter Consolidated Ltd., ESAB Corporation, Central Mining & Investment Corporation Ltd., Cape Holdco Ltd., The Law Debenture Corporation PLC, Cape Industrial Services Group Ltd., Mohed Altrad, Altrad UK Ltd., Cape UK Holdings Newco Ltd., Altrad Services, Ltd., f/k/a Cape Industrial Services Ltd., Altrad Investment Authority S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC……...**THIRD-PARTY DEFENDANTS**,

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

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION[1]

As with many of the Receiver's other filings in this case, the Receiver's Return expends its first four pages noting actions taken in other cases, on other matters, and after both the Receiver and circuit court have acted on and compounded the numerous errors in the December 6 Order.[2] The Receiver's refusal to address the specific issues in *this case* is entirely understandable, as application of the actual law to the facts of what occurred below—as is required in an analysis of appealability—renders only one undeniable conclusion, which the Receiver fervently seeks to avoid: the December 6 Order was, and remains, immediately appealable.[3]

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[1] By continuing to prosecute this appeal, Petitioners do not intend to waive, and expressly preserve, all defenses to the underlying action, including the defense of lack of personal jurisdiction and impropriety of the purported receiverships over CIHL and Cape PLC. As to the impropriety of the purported receiverships, Petitioners adopt and incorporate the factual background, authorities and appendix materials, and argument of Petitioners Mohed Altrad and Altrad Investment Authority, SAS regarding: CIHL and Cape PLC's disclaimer of any authority by the Receiver to bring suit on their behalf (as each are solvent, foreign entities and neither has given the Receiver authority to act on their behalf in pursuing claims with no connection to any assets in South Carolina or that were ever in South Carolina, as is required of any state-court-appointed receiver under the United States Constitution); the pendency of proceedings before the High Court of Justice of England and Wales—brought by Winston & Strawn London LLP on behalf of its clients—pertaining to such matters; and the resulting response of the Receiver to sue Winston & Strawn LLP.

[2] This is a continuation of the Receiver's strategy of distracting from the host of errors below by simply listing orders in other cases relative to insurance matters, other receiverships, removals by other parties, and opinions in matters wholly unrelated to this case. The repeated reference to the extraneous "Packet of Orders" serves zero purpose in determining the key issue—why the December 6 Order is appealable and why the court of appeals refused to address that issue.

[3] Repeatedly calling orders and appeals "interlocutory" in an attempt to argue that alone renders orders not immediately appealable is incorrect. *See* Return at iii, 1–3, 7–14 (each page listed uses the word "interlocutory"). Of course, interlocutory is merely a descriptive word with no actual import as to appealability. *Compare* BLACK'S LAW DICTIONARY (12th ed. 2024) (defining "interlocutory" to mean "interim or temporary; not constituting a final resolution of the whole controversy) *with* S.C. Code Ann. § 14-3-330 (listing items that are appealable, some of which are necessarily interlocutory, including subsection (4) which concerns specific "interlocutory order(s) or decree(s)" fully applicable here). Thus, the fact a decision is interlocutory is not alone determinative as to whether it is immediately appealable under the applicable statutory rule.

The Sparrows Petitioners are entitled to immediately appeal the December 6 Order under the explicit language of S.C. Code Ann. § 14-3-330(4). Contrary to the Receiver's depictions, there is no "bravado," and simply calling arguments a "non-starter" with zero support does not warrant this Court's denial of a meritorious Petition for Certiorari. Similarly, thinly veiled threats that a party is availing itself of appeal "at their own peril" do not compel denial of the Petition. The Receiver's attempts to distract from the basic, uncontroverted facts of what actually occurred should be ignored, along with the inflammatory rhetoric. The December 6 Order was appealable, and the court of appeals was wrong to rule otherwise. This Court should correct that ruling and allow this appeal to continue.

This Reply serves to briefly rebut the limited legal arguments in the Return and provide the Court with citations to the actual record such that the correct facts can be relied upon to conduct a proper analysis of appealability.

ARGUMENT

I. The Receiver's Reliance on His Oft-Cited "Packet of Orders" Is Incompatible with the Appealability Standard.

The Sparrows Petitioners—and it appears, others—have one simple request in this matter—that the law be applied. In opposing this simple request, the Receiver cites orders—not opinions—issued in *other cases* (*Childers*, *Welch*, *Mitchell*, *Link*).[4] While misstating the issues in *other cases* as "identical to this appeal," the Receiver urges this Court to reject the Petition. Just as the Receiver urged the court of appeals to ignore the clear precedent regarding the manner in

[4] *See* Rule 220(a), SCACR (The appellate court shall make its decisions in writing by published opinions or memorandum opinions, with any concurring or dissenting opinions attached."); Rule 220(a) ("[M]emorandum opinions shall not be published in the official reports and shall be of no precedential value."); Rule 268(d)(2), SCACR ("Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.").

which an appealability inquiry must be carried out, he now urges this Court to ignore the plain reality of the December 6 Order. The facts and grounds for dismissal in the above-cited orders are unquestionably distinct from the facts and legal issues present in the December 6 Order on appeal. This case does not involve defunct or insolvent entities (as *Welch* does), does not involve dissolved entities (as *Childers* does), and does not involve insurance coverage issues (as all four cases do, and as the receivership docket typically does). Unlike here, no case involved a *nunc pro tunc* granting, modification, *and* continuation of a receivership at the Receiver's own request. But, by calling arguments "nonstarters" (without any support, citation, or basis) and arguing parties are "intentionally ignoring" these non-binding orders, the Receiver does not address that case-by-case review of substance is *required*. *See, e.g.*, *Spalt v. S.C. DMV*, 423 S.C. 576, 584, 816 S.E.2d 579, 583 (2018) (holding labels and nomenclature in orders do not control); *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 540, 773 S.E.2d 144, 147 (2015) (appellate courts must "evaluate the trial court's order as what it is—not merely what it appears to be"); *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013) (appealability is a function of "substance rather than nomenclature").

There is no "foundational law" underlying the orders to which the Receiver refers.[5] The underlying law is section 14-3-330 and the case law requiring South Carolina appellate courts to actually determine appealability based on the substance of the appealed order. *Id*. Despite being outlined in detail in the Petition, the Receiver makes no attempt to address the fundamental appealability issue.

[5] The Return includes no citations for the contention there is "foundational law." *See* Return at 7.

As is evident from the Sparrows Petitioners' Petition, the effect of this appealed December 6 Order was to both continue and modify the Cape PLC receivership *and* grant the CIHL receivership. Any other conclusion is entirely inescapable. And, because the December 6 Order continues, modifies, and grants the appointment of a receiver, the order is immediately appealable under section 14-3-330(4).

II. The Petition Accurately Describes the Substance and Effect of the December 6 Order; There Are No "Semantic Games" or "Gotcha Games."

Continuing to avoid the valid legal issues that are immediately appealable under S.C. Code Ann. § 14-3-330(4), the Receiver next argues the December 6 Order neither grants, modifies, nor continues a receivership. *Compare* Return at 8–12 *with* **(App. 182)** (creating receivership over Cape PLC only); **(App. 359–72)** (granting new receivership over CIHL); **(App. 367)** (modifying part of prior basis for granting in *Park*) *and* **(App. 344–416)** (generally granting, modifying, and continuing). Issues relative to the granting, modification, and continuation of receiverships as occurred in this case—over solvent, active, foreign entities—implicate the Due Process,[6] Equal

[6] "At bottom, procedural due process requires fair notice of impending state action and an opportunity to be heard." *Snider Int'l Corp. v. Town of Forest Heights, Md.*, 739 F.3d 140, 146 (4th Cir. 2014).

Protection,[7] Takings,[8] and Excessive Fines Clauses[9] of the U.S. Constitution. With these important principles and protections at stake, reliance on the Receiver's conclusory statements and orders in

[7] "[T]he Equal Protection Clause forbids a State to discriminate in favor of its own residents solely by burdening 'the residents of other state members of our federation,'" and the same principle applies to gross discrimination against "foreign corporations." *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 878–79 (1985). The substantive due process analysis is virtually the same as the equal protection analysis: whether the challenged law is rationally related to a legitimate state purpose. *Id.* at 875; *see also Williamson v. Lee Optical of Okla.*, 348 U.S. 483, 487–88 (1955). Contorting South Carolina's receivership statute to seize a foreign company's assets on a pre-judgment basis, strip away its ability to defend itself, and then redistribute those assets in this state violates South Carolina and federal law.

[8] As to the takings clause, the circuit court is attempting to allow a transfer of property from CIHL and Cape PLC (private entities) to other private parties (the Receiver). The circuit court may not transfer private property from one party (Cape PLC and/or CIHL) for the sole purpose of benefitting another private party (the Receiver). *See Kelo v. City of New London*, 545 U.S. 469, 477 (2005); *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 241 (1984). This receivership violates the Takings Clause because the Receiver (an arm of the state) is purporting to seize control of Cape PLC (or CIHL)—and taking possession of its foreign assets—for the purported purpose of distributing those assets to South Carolina residents. There is no just (or any) compensation for this taking, and the exercise is designed to redistribute assets for the benefit of private persons, not the public at large. *See, e.g.*, *Branch ex. rel. Me. Nat'l Bank v. United States*, 69 F.3d 1571, 1576 (Fed. Cir. 1995) (holding that the legal predicate for creating a receivership "might be challenged on Takings Clause or other constitutional grounds").

[9] This pre-judgment receivership also violates the Excessive Fines Clause and the Substantive Due Process Clause. "The Excessive Fines Clause of the Eighth Amendment prohibits the government from imposing excessive fines as punishment." *Korangy v. FDA*, 498 F.3d 272, 277 (4th Cir. 2007). Where "a civil sanction 'can only be explained as serving in part to punish,' then the fine is subject to the Eighth Amendment." *United States ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 387 (4th Cir. 2015). In such a case, the fine "will be found constitutionally excessive only if it is 'grossly disproportional to the gravity of [the] offense.'" *Id*. A civil forfeiture is considered to be a punishment and, thus, constitutes a fine for purposes of an Eighth Amendment proportionality analysis. *United States v. 79,650.00 Seized from Bank of Am. Account Ending in 8247*, 650 F.3d 381, 386 n.8 (4th Cir. 2011). Relatedly, the Due Process Clause imposes limits on "grossly excessive" monetary penalties that go beyond what is necessary to vindicate the Government's "legitimate interests in punishment and deterrence." *Id*. The purported prejudgment seizure of a foreign company and all its foreign assets by a South Carolina court can only be described as an extreme civil sanction and forfeiture. It is clearly disproportionate to the gravity of the offense because it was based upon Cape PLC's (or CIHL's) alleged non-appearance in the *Park* lawsuit, without even an entry of default or a default judgment.

other non-related and factually and legally distinct cases is not a proper basis to determine the December 6 Order is valid prior to a merits analysis and decision. Because the December 6 Order created a new receivership and continued and modified an existing receivership, that "interlocutory order or decree" is rendered immediately appealable.

a. The Receiver's Arguments as to Creation and Modification Are Incorrect.

The first argument the Receiver poses[10] is that the circuit court rejected the Sparrows Petitioners' arguments in its December 6 Order and that the court of appeals later agreed. Return at 8. Taking the second point first, the very purpose of the Petition is to assert the court of appeals erred. The fact the court of appeals took action does not preclude review—that is why the Writ of Certiorari exists. Turning to the assertion that the circuit court order is somehow dispositive of questions of appealability, let alone the merits, that cannot be the case. The December 6 Order is riddled with demonstrable errors, fallacies, and generally incorrect statements taken from the Receiver's pleadings. *See generally* **(App. 344–416)**. If flawed orders justified the denial of appeals, no error would ever have a chance for review. Of course, that cannot be the case, and should not be so here. The fact a circuit court ruled does not later justify its correctness—that is for an appellate court to determine.

Second, the Receiver contends this Petition is part of a three-step "strategy" which he asserts is part of a "dishonest game." Return at 9. This contention is patently offensive and merely demonstrates the Receiver's mischaracterization of what has occurred below. He states the first

[10] Nowhere in the Return does the Receiver challenge that this Petition involves: (1) "substantial constitutional issues"; (2) involves issues where the court of appeals ruled in conflict with prior decision of the Supreme Court; and (3) the underlying merits involves constitutional issues. *See* Rule 242 (b), SCACR. While not determinative, the fact these factors are satisfied should result in a granting of certiorari.

step involves "inject[ing]" some confusion as to entities named in the case. *See* Return at 8. Cape PLC and CIHL are two different entities,[11] and as clearly set forth in the various filings and attachments, the entity which the *Park* Plaintiffs apparently meant to seek a receiver over was CIHL. But, they erroneously sought—and received—one over Cape PLC and only in the silo of the *Park case*. That is the only confusion—strike one.

He states the second step involves "accus[ing]" the circuit court of creating the receivership over the wrong entity. This is correct, because it is what happened.[12] The circuit court in *Tibbs* did create a CIHL receivership in its December 6 Order to remedy to confusion on the part of both Plaintiffs and the circuit court from *Park*. *Compare* **(App. 448)** (requesting the court amend the Appointment Order to identify CIHL) *with* **(App. 359–72)** (fulfilling Receiver's request in December 6 Order). To be clear, it was the Receiver who specifically requested that the circuit court remedy the action taken in the *Park* case (creating a receivership over Cape PLC) and create a receivership instead over the separate CIHL entity—strike two.

The Receiver then states the third and final step is to appeal an order addressing "this straw man Bailiwick of Jersey entity." Again, there is no "straw man."[13] The circuit court relied on what was presented to it and thereafter created a receivership over the incorrect entity—strike three. *See* **(App. 142)** (Motion to Appoint Receiver seeking receivership over Cape PLC).

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[11] Cape PLC is an upstream parent entity to CIHL. Cape PLC and CIHL were separately named defendants in *Park*, while only Cape PLC was named in *Tibbs*.

[12] While the circuit court did create, modify, and continue a receivership in *Tibbs*, the creation of the Cape PLC receivership in *Park* was fatally defective for a number of reasons that will be addressed when the merits of this case are considered.

[13] *See* **(App. 453)** (December 6 Order noting creation in Bailiwick of Jersey); **(App. 322)** (public documents indicated Cape PLC is an entity registered in the Bailiwick of Jersey).

A South Carolina court—in two separate cases—appointed a receiver over two foreign entities, each of which is solvent and not dissolved. That same court has allowed the litigation to now encompass entities who have never been present in South Carolina and are being subjected to unconstitutional action and a fatally defective lawsuit with no basis in South Carolina law. This is not part of a "game," and the Sparrows Petitioners do not view it as such.

Specifically referencing the plethora of errors in the underlying record of this litigation cannot possibly be characterized as "dishonest." While the Receiver contends it was "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 contention fails to realize the only "injection" of Cape PLC was by the Plaintiffs in *Park* who *sought a receivership over Cape PLC*. **(App. 142–49)** (seeking receivership over Cape PLC and Cape PLC only). The argument that their error[14]—compounded by the circuit court—should be imputed to the Sparrows Petitioners defies logic and has nothing to do with appealability. The Receiver has no "foundational law" to support that narrative.

The Receiver also tries to characterize the *nunc pro tunc* modification of the receivership as "clarification" "necessitated only by the feigned ignorance of Petitioners." This is plainly untrue—as referenced above, the modification was made *at the request of the Receiver*. *See, e.g.*, Third-Party Plaintiff's Omnibus Opposition to Motions to Dissolve, filed October 18, 2023, at p.17, n.13 ("The Court can simply *amend the Appointment Order to clarify* . . . if the Court finds that appropriate." (emphasis added)); **(App. 445)**; *id.* at p.20, n.15 ("The Receiver would have no

[14] Of course, upon realizing the wrong entity was in a receivership, the relevant parties could have sought a new receivership under the proper process. But, that did not occur, and the Receiver now attempts to insulate that fatal strategic decision from review.

objection to the Court's *amendment of the Appointment Order to identify Cape Intermediate Holdings Ltd.*, if the Court finds that appropriate. *See, e.g.*, *Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 ("If it later appears that the true name of the corporation is different . . . , the misnomer is properly a subject of amendment."); S.C. Code § 33-14-320(c) (permitting amendment of appointment order)." (emphasis added)); **(App. 448)**.

b. The Receiver's Arguments as to Continuation Support a Finding the December 6 Order Is Immediately Appealable.

The Receiver next argues "continuation," as used in subsection 14-3-330(4) is a term of art, related to a prior practice appointing receiverships temporarily and sometimes "continuing" them beyond a stated term. Because of how succinctly the Receiver's argument is stated, it warrants repeating:

> 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.

Return at 11 (emphasis added to portions that concede points as to appealability).

Of course, the "Cape PLC" (only) receivership was created in the *Park* case and stated to be "in this case.[15]" **(App. 231)** ("Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver *in this case* pursuant to the South Carolina Law . . . ." (emphasis added)). Just as the Receiver notes all receiverships are temporary—to date—clearly this one was

[15] Meaning *Park*.

too. If it was not, it would not have been limited to the *Park* case by the terms of the order. *Id*. And, by allowing it to *continue* into *Tibbs*, it continued in the same way the Receiver concedes appealability as quoted above. Apparently, there is no dispute that a continuation or effectively new granting is appealable. The only dispute is that this would apply in this case too.

III. There Are No "Sky-is-Falling" Arguments.

As to the third section of the Receiver's Return, the portion dedicated to these Petitioners' arguments includes a number of false statements. First, it argues the circuit court is providing judicial oversight in this case. Return at 12. Appellate courts exist to provide oversight as to errors below. The fact that the circuit court is overseeing the Cape PLC and CIHL receiverships it created and modified and continued has nothing to do with appealability of the December 6 Order that actually created the CIHL receivership and modified and continued the Cape PLC receivership. Second, while the Receiver contends review is not available for all receivership orders, that fact has no bearing where the December 6 Order plainly falls within the ambit of subsection 14-3-330(4). And third, the Receiver contends appellate review is available from final judgment. Such an argument is inapposite where the relevant statute allows for immediate appeal, and failing to pursue such an immediate appeal risks waiver under South Carolina jurisprudence. The fact the Receiver would prefer to continue attempting to litigate without subject matter or personal jurisdiction and without valid authority does not change the fact that subsection 14-3-330 allows for this appeal.

IV. Personal Jurisdiction Issues Are Properly Appealed with the Other Issues.

The Receiver is, again, incorrect. Because the receivership portion of the December 6 Order is appealable, South Carolina law allows for the personal jurisdiction issues to be resolved at the same time. *See, e.g.*, *QZO, Inc. v. Moyer*, 358 S.C. 246, 252, 594 S.E.2d 541, 545 (Ct. App.

2004) ("Although a pre-trial motion to dismiss based on lack of personal jurisdiction is not usually immediately appealable, it can be considered when other appealable issues are presented to an appellate court."); *Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001).

The Sparrows Petitioners are ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC. They were formed, in Delaware, in the twenty-first century: Sparrows Offshore in *2003*; ArranCo in *2008*; and Hawk Bidco in *2012*. The Sparrows Defendants do not now, nor have they ever, maintained their registered office or principal place of business in South Carolina. Instead, from its Texas principal place of business, Sparrows Offshore is in the crane business, while ArranCo and Hawk Bidco are Delaware holding companies. *None of them have ever had any affiliation with or contacts to South Carolina or any plausible connection to asbestos.* Regardless of this fact, and without making any of the proper findings required by both the United States and South Carolina Constitutions and other related substantive law, the circuit court found it could exercise personal jurisdiction. And, it did this on novel legal theories on which the Receiver did not meet his burden. Under these alarming facts, this Court should determine the personal jurisdiction issues are appealable along with the other issues and proceed on the merits.

CONCLUSION[16]

For the reasons set forth herein and in the related Petition for Writ of Certiorari, Petitioners ArranCo US, LLC, Hawk Bidco US Inc., and Sparrows Offshore, LLC respectfully request this Court grant its Petition and remand this case to the court of appeals for the required, and proper, consideration of the merits of this appeal.

Respectfully submitted,

/s Steven J. Pugh

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Date: September 30, 2024

[16] Per Rules 208(b)(6) and 240, SCACR, Sparrows Petitioners incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by all similarly-situated parties. Additionally, the materials cited herein are available with the court of appeals, via C-Track, in Appellate Case Nos. 2024-000524, 2023-002006, 2023-002007, 2024-001423, & 2024-001499 or are otherwise a matter of public record as part of the public index before the circuit court in Civil Action No. 2023-CP-40-01759. *See* S.C. Sup. Ct. Order 2024-04-30-02. To the extent the Court desires for these materials to be compiled and presented to this Court, Petitioners stand willing to do so.