THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Court of Appeals Case Nos. 2024-001446
Circuit Court Case No. 2023-CP-40-01759

John A. Tibbs and Margaret B. Tibbs,... Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; 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; AltradUK Ltd.; Cape UK Holdings Newco Ltd.; AltradServices Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC, ... Third-Party Defendants,

of which

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

PETITION FOR A WRIT OF CERTIORARI (MODE OF TRIAL APPEAL)

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December 16, 2024

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QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in holding that an order denying the Charter Defendants' right to a trial by jury was not immediately appealable?

2. Whether it was proper for the Court of Appeals to conduct a merits analysis on an appealability inquiry *sua sponte* without briefing on the issues?

INTRODUCTION

This is the Charter Defendants' third petition (out of four) for a writ of certiorari in this same matter.[1] All of the petitions ultimately relate to the improper appointment(s) of a pre-judgment receiver. This case is the latest in a string of improper appointments of the same receiver (Mr. Protopapas) at the request of the same plaintiffs' counsel over active foreign (UK and

[1] By continuing to prosecute this appeal, Charter Defendants do not 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/or Cape PLC. As to the impropriety of the purported receiverships, Charter Defendants 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); and the Judgement of the High Court of Justice of England and Wales pertaining to such matters. See Cape Intermediate Holdings Limited v. Protopapas [2024] EWHC 2999 (declaring that this purported Receiver has no authority to act and has committed the tort of "impostor"; and enjoining this purported Receiver—on a worldwide basis, including in South Carolina—from continuing to act, including in this specific Tibbs case and in any other legal proceedings here or elsewhere).

Pursuant to Rules 208(b)(6) and 240, SCACR, the Charter Defendants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by all similarly-situated parties. Further, pursuant to Rule 208(b)(7), SCACR, Charter Defendants adopt by reference the arguments of the Petitions and any Replies filed by Petitioners Mohed Altrad and Altrad Investment Authority SAS in Appellate Case Nos. 2024-001499 and 2024-001466.

Canadian) entities that have no ties or assets or ties to South Carolina.[2] Charter Defendants' first petition involved an appeal of the order that allowed Mr. Protopapas to expand an appointment order issued in Park (where he was appointed over Cape PLC) to this case (Tibbs) where he was appointed over Cape Intermediate Holdings Ltd. The order granted, modified, and/or continued a receivership over solvent, active European companies with no assets in or connection to South Carolina. (Appellate Case No. 2024-001499.) That order is immediately appealable pursuant to South Carolina Code § 14-3-330(4), yet it was dismissed without explanation by the Court of Appeals.

The second petition involved an order refusing to enjoin the receivership during the pendency of an appeal of the order appointing/modifying/continuing the receivership despite "exclusive jurisdiction" over matters involving the receivership being with the appellate courts pursuant to Rule 205, SCACR, rather than in the circuit court. (Appellate Case No. 2024-000916.)

[2] There are presently two other appeals pending before this Court involving active foreign companies where (like the present matter) (1) the foreign company was named as a defendant in a South Carolina asbestos matter, (2) the foreign company has no contacts with, assets in or creditors in South Carolina, (3) the asbestos plaintiff (all represented by the same law firm) made a pre-judgment motion to appoint a pre-judgment receiver over the active foreign entity (entities' assets), (4) the circuit court issued almost identical orders appointing Peter Protopapas as Receiver, (5) the appointment orders appointed the receiver pursuant to Section 15-65-10(4) and Section 15-65-10(5), (6) the appointment orders do not contain the mandatory bond provision under S.C. Code Ann. § 15-65-60 (and are thus void), (7) the appointment orders state that the receiver is appointed "in this case" only; and (8) notwithstanding appeals of the orders granting the appointment of a receiver, the purported receiver is actively pursuing actions brought in matters other than the one in which he was appointed (unrelated to the party who made the motion to appoint a receiver). This Court has recently certified each of the above referenced appeals pursuant to Rule 204(b), SCACR, and then consolidated them. These appeals include Appellate Case No. 2023-001461 (originating from the same lower court as the present Petition — Tibbs v. 3M) and Appellate Case No. 2023-001096. The Respondent for all three appeals is the same — Peter Protopapas. All three appeals involve the defective grant of the appointment of a receiver over an active foreign entity. The Court recognized the significance of the issues involved in appointing a receiver over an active foreign entity by certifying the above reference appeals, further supporting the grant of the present motion to certify.

That order is also immediately appealable pursuant to Section 14-3-330(4), yet that appeal was also dismissed without explanation by the Court of Appeals. The remittitur has still not been returned in the first appeal.

The third—filed today, concurrently with this one—involved an order striking the Charter Defendants' first defense (their general denial of the factual allegations), effectively holding them in contempt, and again refusing to enjoin the receivership due to the pending appeal. That order is immediately appealable pursuant to Sections 14-3-330(2)(c) (striking part of an answer) and 14-3-330(4) (refusing to issue an injunction), as well as *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) (contempt is appealable). That appeal was also dismissed without explanation by the Court of Appeals.

This fourth petition involves an order refusing the Charter Defendants' invocation of their right to a jury trial. It, too, is immediately appealable pursuant to Section 14-3-330(2). In fact, as a matter of hornbook South Carolina law, this order ***must*** be immediately appealed, or the Charter Defendants waive their jury trial rights. *See* Jean H. Toal, et al., *Appellate Practice in South Carolina* 156 (3d ed. 2016) ("[T]he failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue."); *id*. at 157 (reiterating that "these orders must be appealed immediately"). Accordingly, this appeal was not only proper, it was compulsory a matter of South Carolina law. Yet, as with the other orders, the Court of Appeals dismissed this appeal without explanation.

In the meantime, the Charter Defendants are being forced to litigate a sham matter brought by a Receiver who – not withstanding knowledge that his appointment(s) over Cape PLC and CIHL are based on inaccurate statements, in a case that had already been resolved, and that is void on its face - has taken every possible step to grasp power over Cape and to avoid appellate scrutiny.

Accordingly, the Court should exercise its certiorari authority, grant this petition (and all others filed by the Charter Defendants and their co-third-party defendants), and end this case.

STATEMENT OF THE CASE

Nine months after the *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727, personal injury case was "fully resolved," those plaintiffs moved for the circuit court to appoint (specifically) Peter Protopapas as a receiver over Cape PLC, an active company in the Bailiwick of Jersey that has no connection at all to the State of South Carolina and against which the *Park* plaintiffs had neither an active judgment nor an active claim. As there was no actual controversy between Cape and Park, the circuit court was without authority to appoint a receiver and thus the appointment is void. [3]

The circuit court granted that motion without a hearing even though the operative pleadings were never duly served, proper notice or service of a motion seeking a receiver was not given (even though it was statutorily required), and the purported foundations on which a receiver was sought were fraught with inaccuracies and misrepresentations. Rather than attempt to comply with South Carolina law and constitutional due process, the "drastic remedy" of a receiver appointment

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[3] It is a well established rule that in order to authorize the appointment of a receiver it is essential that there be at the time of the appointment a suit pending in which relief other than the mere appointment of a receiver is sought. Porter v. Brown, 149 S.C. 151, 146 S.E. 810 (1929)("A receiver may only be appointed in a pending case. A suit does not lie for the sole purpose of appointing a receiver, but the Court must have jurisdiction of the suit on some other ground before it can make the appointment. There is, of course, no such thing as an action brought distinctively for the mere appointment of a receiver. Such an appointment, when made, is ancillary to or in aid of the action brought. Its purpose is to preserve the property pending the litigation so that relief awarded by the judgment, if any, may be effective. The authority conferred upon the Court to make the appointment necessarily presupposes that an action is pending before it, instituted by someone authorized by law to commence it….If the Court is without jurisdiction to appoint a receiver the order is void and may be attacked or disregarded whenever it comes collaterally in question. If it appears upon the face of the proceedings that a Court's order appointing a receiver was without authority of law, and, therefore, void, the order may be assailed collaterally and with impunity by anybody.") (internal quotations and cites omitted).

was sought and made—without a hearing and without taking evidence—in the face of defective service, lack of notice, no judgment, no creditors, and no basis in law for such a receivership over a foreign corporation.[4]

Moreover, the *Park* Order appointing the Receiver was defective on its face and is void for failure to comply with the condition precedent set forth in S.C. Code Ann. § 15-65-60 (1976 as amended). *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343, 348 (1928) (interpreting the provision under the previous receivership statute containing substantively identical language to Section 15-65-60 and holding that "[t]he provision for inserting a clause fixing the value of the property in the order appointing a receiver is mandatory, and without such clause the order is void.")

Notwithstanding these obvious fatal defects, the *Park* Order appointing the Receiver was clear (notwithstanding its unlawful and fictious nature): the Receiver was appointed *only* in *Park.* The *Park* Order clearly stated: "the Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law..." Additionally, S.C. Code Ann. § 15-65-10 et seq. only allows appointment of a receiver in a single "cause." [5]

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[4] The only provision of South Carolina law that authorizes appointment of a receiver to manage the affairs of a corporation (corporate receiver) is found in Title 33 (Corporations), and the statute explicitly excludes any "foreign corporation" from its scope. S.C. Code Ann. §§ 33-14-320(a) & 33-1-400(4) (2005).

[5] SC. Code Ann. §§ 15-65-50 and 15-65-60 demonstrate the clear intent for a receiver appointed pursuant to Title 15 to be limited to the cause in which he was appointed. The statutes repeatedly limit the appointment of a receiver to "the cause" (singular) and refer to "before final judgment" (again referring to a single case). First, the receivership statute that allows a party to avoid a pre-judgment appointment of a receiver by providing a bond sufficient to satisfy a judgment clearly demonstrates that an appointment is limited to a single cause. S.C. Code Ann. § 15-65-50 ("No receiver of the property of any ...corporation shall be appointed before final judgment in the cause if the party claiming the property so sought to be placed in the hands of a receiver ...shall offer a bond...to meet and satisfy any decree or judgment or order that may be made in the cause.") It is undisputed that the receivership(s) at issue are pre-judgment. Second, the receivership statute that allows a party to vacate a pre-judgment appointment of a receiver by providing a bond also demonstrates that an appointment is limited to a single case. S.C. Code Ann. § 15-65-60

Not only was Mr. Protopapas' appointment under the *Park* Order limited to the *Park* case, the Order only limited Mr. Protopapas to act as receiver over only Cape PLC. Therefore, in order to bring a third-party complaint in *Tibbs*, Mr. Protopapas had to obtain a new order (in *Tibbs*) appointing him as receiver over CIHL – which he did. Even though CIHL is **not** a defendant in *Tibbs*. Even though Mr. Protopapas is not a defendant in *Tibbs*. And while *Tibbs* plaintiffs never served Cape PLC (or CIHL), and neither Cape PLC nor CIHL have answered or otherwise made an appearance in the *Tibbs* case. And, importantly, there was no request for a receivership by the *Tibbs* plaintiffs, there was no order in the *Tibbs* case appointing a receiver, and there was no order otherwise allowing Mr. Protopapas leave to file the third-party complaint. Notwithstanding the above, Mr. Protopapas claimed to be the Receiver and filed a putative "third-party complaint" in this case against dozens of "third-party defendants" that also have no connection to South Carolina.

In response, the Charter Defendants and others pointed out that Mr. Protopapas was not a receiver in the Tibbs case. They also moved to dismiss and to dissolve any alleged receivership on numerous grounds, as it was plainly invalid for a host of reasons. In addition to the circuit court's lack of personal jurisdiction, the Charter Defendants and other third-party defendants also moved to dismiss the third-party complaint on grounds that it was not supported by Rule 14, *SCRCP*. The third-party defendants argued the Receiver was not attempting to impute any "derivative liability" to them, which is the only instance where Rule 14 allows third-party practice.

In response to the arguments regarding lack of a proper receivership appointment, Mr. Protopapas requested—and the circuit court agreed—to grant a receivership in the *Tibbs* case over

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("Whenever the court ... shall appoint a receiver before final judgment in the cause there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-50. And upon the due execution and filing of such bond thereafter before final judgment in the cause the court or judge shall vacate the appointment of such receiver....")

CIHL (even though Plaintiff Tibbs did not request a receivership.) Accordingly, the circuit court granted a new receivership appointment in *Tibbs* – to allow Mr. Protopapas to seek assets from third-party defendants.

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

> The appellant urges that these subdivisions are applicable in all cases where a ***receiver*** is appointed before final judgment in the cause, that they are intended to assure to the person claiming or in possession of the property sought to be placed in the hands of a ***receiver*** the right to retain or to replevy the same, and that the provision in Subdivision 9 for the insertion in the order appointing the ***receiver*** of a clause fixing the value of the property is mandatory. The respondent contends that it was a condition precedent to the insertion in the order of a clause fixing the value of the property that the person in possession should "offer" the bond before the order appointing the ***receiver*** was granted, and that, as the appellant did not "offer" the bond at the hearing on the application for appointment of a ***receiver***, he cannot now complain of the omission of the clause fixing the value of the property.
>
> We do not agree with the respondent's position. The appointment of a ***receiver***, as we have said, is a drastic measure, and the Legislature has made provision for protecting the interests of the person claiming or in possession of the property for which a ***receiver*** is sought....
>
> Nor do we agree with the respondent that the order of the Judge directing the ***receiver*** to make an inventory of the assets of the company was equivalent to a clause fixing the value of the property. All other considerations aside, the law does not provide for vacating the appointment of the ***receiver*** upon the filing of a bond

> with penalty fixed according to the *inventory value* of the property, and the appointment of the ***receiver*** would not be vacated upon a bond with penalty so fixed--the penalty must be double the value of the property *as fixed in the order appointing the* ***receiver***. The provision for inserting a clause fixing the value of the property in the order appointing a ***receiver*** is mandatory, and without such clause the order is void.

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

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

The Charter Defendants (and all other third-party defendants) appealed the order granting a new receivership over CIHL and modifying and continuing the prior receivership from *Park* to allow it to proceed in this case. (Appellate Case No. 2024-001423.) They also held firm not only to their personal jurisdiction objection, but also to Rule 205's vesting of "exclusive jurisdiction" in the appellate courts over all matters covered by the order on appeal—which includes a challenge to the Receiver's purported authority. The Charter Defendants sought to enjoin the Receiver from attempting to function while an order challenging his authority was on appeal, but the circuit court refused to enter such an order. (Appellate Case No. 2024-000916.)

The Charter Defendants' reliance on Rule 205's plain language and the unambiguous directive of cases interpreting it—namely, that the circuit court loses jurisdiction over all matters affected by an appeal—required them to resist moving forward with any litigation below. That objection included resisting the Receiver's suffocating, oppressive, and without-authority discovery attempts. Any other litigation choice would have exposed the Charter Defendants to accusations of having waived their Rule 205 objections—and, even worse, their ironclad personal jurisdiction objections.

In response to their reliance on unambiguous law, the Charter Defendants have been punished for objecting to the Receiver's misconduct while an appeal challenging his authority is pending. Included in the punishment is the refusal of Charter Defendants' right to a jury trial.

The Charter Defendants included their jury trial demand in their Answers. On September 6, 2023, the circuit court issued an "Asbestos Trial Docketing Order as of September 6, 2023." (Receiver's App. at 49.) That order indicated the *Tibbs* case would be tried on April 15, 2024. The order contained no mention of a "bench trial" or a "nonjury trial."

On June 10, 2024, counsel for the Receiver wrote a letter to the circuit court: "As the Court is aware, I serve as the Speaker of the South Carolina House of Representatives. Due to my unavailability once Session starts in January, the Receiver requests the Court schedule trial before the end of the year." (*See* Ex. A to Altrad Defendants' Mem. in Opp'n to Mot. to Dismiss & Expedite, Correspondence from Smith Regarding Legislator Protection (June 10, 2024).) That letter did not mention anything about a "bench trial" or a "nonjury trial," either.

A week and a half later, the circuit court entered the order on appeal. It states: "The matter is now scheduled for a bench trial on the week of December 9, 2024 at the Richland County Judicial Center, Courtroom 3B, beginning at 9:30 AM." (Receiver's App. 648.)

That is not what the Charter Defendants demanded in their responsive pleading. They rightly demanded a jury trial, as provided by the South Carolina Constitution. *See* S.C. Const. art. I, § 14 ("The right of trial by jury shall be preserved inviolate."). Because the circuit court's order setting this case for a bench trial eliminated that right, the Charter Defendants immediately appealed that order. The Receiver then filed a motion to dismiss seeking to avoid—as he has with every appeal—any appellate review of his actions below. This petition follows the court of appeals' granting, in error, of that motion to dismiss.

As additional background for the Court to assess whether there are "special and important reasons" to exercise its certiorari authority, two additional events are relevant:

1. The High Court of Justice of England and Wales—the court with jurisdiction over CIHL—has issued an Order and Judgment which included declarations that Mr. Protopapas has no authority to act (specifically referencing him as an "imposter") and injunctions enjoining and restraining him from so acting worldwide—including in South Carolina, inclusive of the underlying action. This must necessarily include any responsive filings to this petition for writ of certiorari and any other representations to this Court that he speaks on behalf of CIHL. *See* Supplement to Altrad Defendants' Petitions for a Writ of Certiorari and Supplemental Appendix (C-Track entries dated November 25, 2024 in Appellate Case Nos. 2024-000916 and 2024-001499).

2. In apparent realization that the Receiver has no authority to continue to prosecute this action, John and Margaret Tibbs—through their same counsel as in the underlying first-party action—are now named plaintiffs, along with more than one hundred other plaintiffs, in a separate lawsuit filed against both (i) Cape PLC and (ii) the majority of the third-party defendants in this

case, seeking recovery on the same claims and based on allegations almost entirely cut-and-pasted from the Receiver's third-party complaint. (Case No. 2024-CP-40-00639.)

ARGUMENT

The Court of Appeals committed various errors in dismissing the appeal. *First*, the dismissal never addressed the dispositive point that orders impacting a mode of trial are appealable under Section 14-3-330(2) of the South Carolina Code.

Second, the circuit court ruled this action was properly derivative under Rule 14. If this case is going to proceed, the Charter Defendants are entitled to a jury trial wherein they can stand in the shoes of Cape PLC and/or CIHL against the underlying first-party claims. The Court of Appeals ignored this dispositive point.

Third, if, somehow, any liability attaches as to Cape PLC, then the Charter Defendants are also entitled to a jury trial on the "third-party" claims seeking recovery of "billions of dollars" in legal damages. The Court of Appeals also ignored this dispositive point.

There is no question under South Carolina law that orders impacting mode of trial, including trial by jury, "affect substantial rights under S.C. Code Ann. § 14-3-330(2)" and are thus subject to immediate appeal. *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997); *see also Hagood v. Sommerville*, 362 S.C. 191, 196–97, 607 S.E.2d 707, 709 (2005) (mode of trial is a "well-established exception to the general rule" that nonfinal orders are non-appealable); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 78, 533 S.E.2d 575, 577 (2000) ("The majority of cases requiring immediate appeal involve review of denials of trial by jury and are based on the public policy consideration of advancing the constitutional mandate to preserve the right to trial by jury inviolate.") (collecting cases).

Not only is the issue immediately appealable, but it must be appealed immediately to avoid being precluded from raising the issue on later appeals. *See, e.g.*, *Lester*, 327 S.C. at 266, 491 S.E.2d at 241 (failure to immediately appeal "an order affecting the mode of trial effects a waiver of the right to appeal that issue"); Toal, *Appellate Practice in South Carolina* 156 ("[T]he failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue."); *id*. at 157 (reiterating that "these orders must be appealed immediately"). The requirement of immediate appeal is intended to "preserve" the constitutional jury trial right "which would otherwise be lost" if appeal is delayed until final judgment. *Hagood*, 362 S.C. at 197, 607 S.E.2d at 709 (citing *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004)).

This continued failure by the Court of Appeals provides this Court multiple reasons to grant certiorari. The Court of Appeals ignored this Court's precedent by dismissing a case on the merits without actual merits briefing. *See* Rule 242(b)(3), SCACR (listing "[w]here the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court" as reason why certiorari may be granted).

Moreover, the very issue on which this appeal rests is a protection afforded by both the United States and South Carolina constitutions—the right to a trial by jury. *See id.* Rule 242(b)(4), (listing "[w]here substantial constitutional issues are directly involved" as reason why certiorari may be granted).

Finally, in light of the recent U.K. Order and Judgment declaring the Receiver to be without authority and enjoining him from acting on a worldwide basis, the nature and effect of the Dismissal Agreement, and the repeat litigation by the same *Tibbs* first-party plaintiffs, novel questions of law exist that require resolution before this Court. *See id.* Rule 242(b)(1) (listing "[w]here there are novel questions of law" as reason why certiorari may be granted).

I. The Court of Appeals ignored the Charter Defendants' right to a first-party jury trial.

This case involves multiple appeals, all of which stem from the fact the Receiver has no authority to litigate. Although that has been confirmed and reaffirmed by the U.K. court with competent jurisdiction over the entity(ies) purportedly in receivership here, it is apparent the Receiver and circuit court intend to forge ahead below. Insofar as this Court has not yet granted relief that disposes of this case, the direct action between the *Tibbs* plaintiffs and Cape PLC requires a jury trial, per the Tibbs' demand.

The Charter Defendants are parties to this case by virtue of the Receiver's "third-party" complaint. But as a matter of law, proceeding with and obtaining recovery in a third-party action first requires a finding by a jury that Cape PLC has liability to John and Margaret Tibbs. *See, e.g.*, *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) ("Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability."). As the federal court explains:

> "[A] third party claim must be 'derivative' of the plaintiff's claim because derivative liability is central to the operation of Rule 14. It is not sufficient that the third-party claim is a related claim; the claim must be derivatively based on the original plaintiff's claim." "Rule 14(a) does not allow the defendant to assert a separate and independent claim even though the claim arises out of the same general set of facts as the main claim." In other words, impleader "must involve an attempt to pass on to the third party all or part of the liability asserted against the defendant." . . . A third-party claim may be asserted under Rule 14(a)(1) "only when the third party's liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to the defending party.

CNH Indus. Cap. Am. LLC v. Able Contr., Case No. 9:16-cv-2520-RMG, 2017 U.S. Dist. LEXIS 16988, at *3–4 (D.S.C. Feb. 7, 2017) (quoting *Scott v. PPG Indus. Inc.*, 920 F.2d 927 (4th Cir. 1990), *United States v. Olavarrieta*, 812 F.2d 640 (11th Cir. 1987), Moore's Federal Practice §

14.04[3][a], and Wright, Miller, Kane & Marcus, 6 Federal Practice & Procedure Civil § 1446) (cleaned up).

The *Tibbs* plaintiffs asserted claims of negligence, strict liability, breach of warranties, and loss of consortium against Cape PLC and all other "products defendants" and demanded a jury trial. Each of their claims is a claim at law requiring a jury trial, as they demanded. Thus, as a matter of law, it will be up to a jury to assess how liability is to be apportioned among the several defendants. S.C. Code Ann. §§ 15-38-15(c)–(d).[6]

Rule 14(a), SCRCP, entitles the Charter Defendants to "assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim" at the required jury trial on the Tibbs' claims. The Receiver cannot simply allege endless unknown damages (beyond the fact he desires "billions of dollars") against the Charter Defendants through a sham third-party complaint untethered from the required finding of first-party liability. As a matter of law, the third-party defendants' only potential exposure is "derivative" of whatever a jury first determines to be Cape PLC's liability to the *Tibbs* plaintiffs. And, as a matter of law, the Charter Defendants have a right to appear at the first-party jury trial to defend against any potential liability against Cape PLC, where a "zero liability" outcome in the first-party trial would necessarily eliminate any potential exposure of the Charter Defendants to supposed "derivative" liability.

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[6] Relatedly, as has been represented by counsel for the *Tibbs* plaintiffs, the sole remaining first-party defendant is another foreign company, Asbestos Corporation Limited ("ACL"), which has appeals pending before this Court—the consideration of which was recently consolidated for oral argument (scheduled the week after the tentative trial start date in this matter) with appeals by Atlas Turner, yet another foreign company purportedly in receivership here. (Appellate Case Nos. 2023-001461, 2023-001096.) Of course, while those appeals are pending, nothing can proceed in the lower court by virtue of Rule 205, SCACR. Until remittiturs are issued in those appeals, and the prior appeals by the Charter Defendants and other third-party defendants who have appealed the circuit court's rulings, no trial can occur below. Thus, insofar as this Court believes the jury trial deprivation is not yet ripe, any remand or remittitur should be accompanied by instructions to the circuit court regarding the text and implications of Rule 205.

This necessary pre-requisite here is a factual impossibility. The case was tolled from the outset, and dismissed pursuant to the secret Dismissal Agreement. While the Charter Defendants acknowledge there is no stipulation of dismissal entered in the Public Index, Cape PLC is no longer a defendant in the first-party case as has been stated repeatedly by the *Tibbs* plaintiffs in both writing and orally in open court. *See* Rule 43(k), SCRCP (confirming that agreements between the parties become binding when "made in open court and noted upon the record"). It is clear the circuit court believes these claims are derivative—after a different group of third-party defendants removed the case to federal court, Judge Toal wrote a letter to federal Judge Lewis regarding the case, in which Judge Toal described the claims against the Charter Defendants as "derivative" three times in a single page. (Letter from Judge Toal to Judge Lewis (July 9, 2024).)

The fact that the *Tibbs* plaintiffs have confirmed that they have no claim pending against Cape PLC should be all the Court needs to order dismissal of the third-party complaint outright, as the absence of any potential first-party liability necessarily erases the Charter Defendants' potential exposure to any derivative liability as a matter of law. If the Court believes that there may still be a chance of first-party liability against Cape PLC, that cannot be established before a jury trial. Inexplicably, the order on appeal eliminated that jury trial, which is guaranteed by the law.

Such a denial of a jury-trial right is immediately appealable as a matter of long-settled South Carolina law. But the order dismissing this appeal never acknowledges this dispositive, threshold issue, suggesting that this whole issue was overlooked or misapprehended at the Court of Appeals. Certiorari is therefore necessary to ensure the Charter Defendants' jury trial right is enforced and protected.

II. The Court of Appeals ignored the fact the Receiver' claims sound in law and equity, which the Receiver himself conceded in filings to the circuit court.

Because of the fact the Receiver agreed to dismiss claims with the Tibbs Plaintiffs, further evidenced by the fact John and Margaret Tibbs have brought a new action with the same exact claims, there can never be first-party liability between Cape PLC and the *Tibbs* plaintiffs. This purported third-party case should be over accordingly.

However, if any first-party liability were somehow to occur, the Charter Defendants are also entitled to a jury trial regarding the Receiver's claims because the main purpose of the Receiver's claims is the recovery of "billions of dollars" in legal damages. The Receiver dubiously attached equitable labels to his claims, but such labels don't matter; the substance of his pleading must control. *See Brawley v. Richland County*, Op. No. 6090 (S.C. Ct. App. filed Sept. 25, 2024) (Howard Adv. Sh. No. 37 at 26) (quoting *Standard Fed. Sav. & Loan Ass'n v. Mungo*, 306 S.C. 22, 26, 410 S.E.2d 18, 20 (Ct. App. 1991)).

Here, the only relief the Receiver seeks is cash, even though he was appointed a Receiver over a company with zero creditors (and zero property, and zero contacts in general) in South Carolina. As the Receiver puts it, he seeks "billions of dollars of past, present, and calculable future damages" from the third-party defendants as a "reckoning." (Third-Party Compl. at "Introductory Statement.") And while he affixes equitable labels to his claims, his requested relief is limited to money. (*See id.* ¶ 130 (requesting that the circuit court "require that each of the [third-party defendants] to return funds that have been wrongfully diverted from meeting obligations and responsibilities in the United States, in an amount to be proven at trial"); *id.* ¶ 136 (requesting that the circuit court "require each of the [third-party defendants] to return funds that have been wrongfully diverted from meeting Cape's obligations and responsibilities in the United States, in

an amount to be proven at trial"); *see generally*, *id.* (alleging "alter ego" and "accounting" claims to assist with determining how much money should allegedly be returned to Cape PLC).)

When a party seeks to recover money, a jury trial is required, irrespective of how a litigant styles its claims. Rule 38(a), SCRCP. And even if the Court of Appeals believed there are some equitable remedies in the Receiver's third-party complaint that push his pleading outside of this rule, there is no doubt that he seeks relief at law—"billions of dollars" in alleged damages—such that the equitable issues cannot be determined until after a jury first resolves the legal issues. *See Floyd v. Floyd*, 306 S.C. 376, 379–80, 412 S.E.2d 397, 398–99 (1991) ("Even in a case in equity if, during the trial of such case, any question should arise which a party is entitled to have determined on the law side of the court, such determination should be had. Where legal and equitable issues and rights are asserted in the same complaint, legal issues are for determination by a jury and equitable issues for the judge sitting as chancellor."); *Bateman*, 358 S.C. at 673, 596 S.E.2d at 389 ("Where legal and equitable issues or rights are raised in the same complaint, the legal issues are for determination by a jury and the equitable issues are for determination by the court.").

Nor is this pure argument or speculation by the Charter Defendants. The Receiver specifically conceded in his filings to the circuit court that his claims "sound[] in equity and law." (Receiver's Motion to Preadmit Exhibits as a Discovery Sanction at 2 (Apr. 3, 2024).) That admission makes a jury trial unavoidable, yet the Court of Appeals appears to have ignored the Receiver's concession on the dispositive point of this appeal. Certiorari is therefore essential to preserve the Charter Defendants' right to a jury trial.

III. The Court of Appeals ruled on the merits without merits briefing.

The Court of Appeals not only appears to have ignored all of the arguments outlined in the Charter Defendants' filings, but improperly went beyond just deciding the appealability issue. The Court of Appeals dismissed this appeal, but without any merits briefing.

The Appellate Court Rules are designed to allow at least a three-judge panel of the Court of Appeals to consider the parties' respective arguments and to apply the law to the facts appearing in the record after full briefing and full preparation of the appellate record. As it stands, the Charter Defendants have had a constitutional right taken from them without the benefit of briefing or even preparation of an appellate record. And, they have had that right taken from them even though South Carolina law is settled that orders depriving a litigant of its right to a jury trial must be appealed at once. *See, e.g.*, *Lester*, 327 S.C. at 266, 491 S.E.2d at 241 (failure to immediately appeal "an order affecting the mode of trial effects a waiver of the right to appeal that issue"); Toal, *Appellate Practice in South Carolina* 156 ("[T]he failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue."); *id.* at 157 (reiterating that "these orders must be appealed immediately").

If the Charter Defendants cannot appeal the circuit court's first order setting this case for a bench trial—the very first order in the case that purports to dispatch their right to a jury trial—then when will they ever have a chance to protect that right? South Carolina courts have been clear that the requirement of immediate appeal is intended to "preserve" the constitutional jury trial right "which would otherwise be lost" if appeal is delayed until final judgment. *Hagood*, 362 S.C. at 197, 607 S.E.2d at 709 (citing *Bateman*, 358 S.C. at 675, 596 S.E.2d at 390). Yet, that is precisely what the Court of Appeals' dismissal order requires of the Charter Defendants—to wait until a final judgment before reviewing what is happening below, which will be too late.

South Carolina courts have reviewed orders like this "bench trial" order on appeal before. *See, e.g.*, *Floyd*, 306 S.C. at 379, 412 S.E.2d at 398 (reviewing on appeal an order transferring a case "to the non-jury calendar"); *Ins. Fin. Servs.*, 271 S.C. at 292, 247 S.E.2d at 317 (reviewing on appeal an order "that the action be transferred to the equity calendar"); *cf. Lester*, 327 S.C. at 266, 491 S.E.2d at 241 ("Here, Client's failure to immediately appeal the order designating this case as a non-jury matter bars his current appeal of that issue."). Accordingly, the Court should grant this petition, review the "bench trial" order, and ultimately dismiss this entire case due to the unlawfulness of the receivership appointment.

CONCLUSION

South Carolina law is unmistakable about the sacred right to a jury trial:

"The right of trial by jury shall be preserved inviolate." S.C. Const. art. I, § 14.

"The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate." Rule 38(a), SCRCP.

"Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived." *Id.*

For the reasons set forth herein, the Court of Appeals erred in dismissing this appeal. This Court should reverse the Court of Appeals' dismissal and reinstate this appeal; order briefing and resolve the merits of this mode-of-trial order; and further vacate the receivership and dismiss this matter, as explained in the Charter Defendants' filings in Appellate Case Nos. 2024-000916 and 2024-001499.

Signature Page Attached

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