

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Dec 16 2024

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC, Third-Party Defendants,

of which

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

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

WOMBLE BOND DICKINSON (US) LLP

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

*Attorneys for Appellants Mohed Altrad and Altrad
Investment Authority SAS*

December 16, 2024

TABLE OF CONTENTS

QUESTIONS PRESENTED..... 2

INTRODUCTION 2

STATEMENT OF THE CASE..... 4

ARGUMENT 8

 I. The Court of Appeals ignored the Altrad Defendants’ right to a first-party jury trial.10

 II. The Court of Appeals ignored the fact the Receiver’s claims sound in law and equity,
 which the Receiver himself conceded in filings to the circuit court..... 13

 III. The Court of Appeals ruled on the merits without merits briefing..... 15

CONCLUSION..... 17

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in holding that an order denying the Altrad 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 Altrad Defendants' fourth petition for a writ of certiorari in this same matter. The first involved an appeal of an order that appointed, modified, and continued a receivership over active, solvent 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 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.) 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 third—filed today, concurrently with this one—involved an order striking the Altrad 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 Altrad 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 Altrad 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 as a matter of South Carolina law. Yet, as with the other orders, the Court of Appeals dismissed this appeal without explanation.

Respectfully, this pattern of ignoring settled South Carolina law in deference to allowing an unlawful receivership to continue unabated at the trial level must come to an end at once.

The entire foundation of the Receiver's litigation strategy here—a “reckoning,” as he calls it—is based on allegations that have been deemed false by an English court following a 34-day long trial and a 17-day long appellate process in 1990. See *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA) (a seminal opinion—the product of an extensive trial and a subsequent extensive appeal in the English courts—finding that Cape Intermediate Holdings Ltd. (“CIHL,” *i.e.*, the English entity over which the Receiver now purports to act) is not the alter ego of NAAC; there was no basis to pierce CIHL's corporate veil or impose vicarious liability on it; and CIHL could not be held responsible in the United States for any alleged conduct of NAAC or the sale and distribution of asbestos as performed by others—all findings completely contrary to those now asserted by the Receiver in his “third-party” complaint). This entire litigation is, therefore, illusory.

And another English court—a court that actually has jurisdiction over CIHL, the English company purportedly in receivership—has now deemed the Receiver to be an “impostor” and enjoined him from further pretending to speak on behalf of CIHL. *See Cape Intermediate Holdings Limited v. Protopapas* [2024] EWHC 2999 (reaffirming *Adams*; 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).

In the meantime, the Altrad Defendants are being forced to litigate this sham matter while having one appeal after another improperly discarded without explanation. South Carolina law—along with federal Constitutional law and international law—forbids exactly what is happening here. Accordingly, the Court should exercise its certiorari authority, grant this petition (and all others filed by the Altrad Defendants and their co-third-party defendants), and end this case.

STATEMENT OF THE CASE

The Court is well-familiar with the background of this case. To summarize: 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 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.

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 was sought and made—without a hearing and without taking evidence—in the face of defective service, lack of notice, no provision for the posting of a bond, no judgment, no creditors, and no basis in law for such a receivership.

Notwithstanding these obvious fatal defects, the *Park* Order appointing the Receiver was clear (notwithstanding its unlawful and fictitious nature): the Receiver was appointed *only* in *Park* and *only* as to Cape PLC; accordingly, the Receiver had *no authority* outside of *Park*; the Receiver had *no authority* as to CIHL or any other affiliated entity; and, in all respects, the Receiver was required to “take any and all steps necessary *to protect the interests of Cape* whatever they may be.”

Seeking to export his *Park*-only appointment, the Receiver then filed a putative “third-party complaint” in this case against Mr. Altrad (an individual French citizen with no connection to South Carolina), Altrad Investment Authority SAS (a French company with no connection to South Carolina), and dozens of additional “third-party defendants” that also have no connection to South Carolina. However, before filing this pleading, the Receiver and counsel for the *Tibbs* plaintiffs entered into a secret agreement whereby the first-party claims—from which the “third-party” claims supposedly derived—were agreed to be dismissed against Cape PLC / CIHL (the “Dismissal Agreement”). With the Dismissal Agreement hidden, the Receiver—who, based on the very nature of such purported appointment, was to be an “officer of the court” and a “representative of all” and was required to remain “entirely impartial”—filed his “third-party” claims seeking a purported “reckoning” relative to Cape PLC (but not CIHL) for, in the Receiver’s words, “billions of dollars of past, present, and calculable future damages.”

In response, the Altrad Defendants and others moved to dismiss and to dissolve the 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—an objection they have staunchly stood by, and continue to do so—the Altrad Defendants and other third-party defendants also moved to dismiss the third-party complaint on grounds that it was not supported by Rule 14, SCRCPP. 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 dissolution arguments, the Receiver requested—and the circuit court agreed—to modify the initial Cape PLC receivership and create an entirely new receivership over an entirely different entity: CIHL, another solvent, active English company that also has no connection to South Carolina. The Receiver’s concession that he isn’t really a receiver for Cape PLC, but instead should be a receiver for CIHL, should have ended this entire charade. CIHL is not even a defendant in this case; how can it possibly assert third-party claims if it isn’t a party to this case in the first place? This obvious problem has been ignored by the Receiver and the circuit court, but it underscores the illusory nature of this entire case.

When the circuit court denied the separate motions to dismiss, including based on Rule 14, SCRCPP, the Altrad Defendants answered the third-party complaint. On the first page of their answer, the Altrad Defendants included the following in the caption of their pleading: “Jury Trial Demanded on All Issues so Triable.” (Receiver’s App. at 133.) On the last page of their answer, the Altrad Defendants included the following: “The Altrad Defendants demand a jury trial on all issues so triable.” (Receiver’s App. at 195.) 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’s not what the Altrad 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 wiped out that right, the Altrad 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, 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 only court with jurisdiction over CIHL—has issued an Order and Judgment which included declarations that this purported Receiver 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.)

Shockingly, the Receiver has publicly declared that he is now the “attorney for” Cape PLC in that case despite having been directly told by Cape PLC’s board of directors that he has no authority to speak on behalf of that company. (*Compare* Supp. App. 488 in Appellate Case Nos. 2024-00916 and 2024-001499 (“You therefore have no authority or mandate to act on behalf of CIHL, and the directors of CIHL require you to cease and desist from purporting to do so. The same applies in respect of Jersey law and Cape plc.” (Aug. 30, 2024)), *with* Supp. App. 760 in those same appellate cases (claiming to accept service of an Asbestos Docket case “as attorney for above-named Defendant CAPE PLC” (Nov. 12, 2024)).)

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. Surprisingly, the Court of Appeals did not discuss or even cite that well-established rule and appellate right.

Second, the circuit court ruled this action was properly derivative under Rule 14. If this case is going to proceed—notwithstanding the facts that the Receiver’s claims are derivative to nothing and the Receiver has now been enjoined on a worldwide basis from continuing to pursue his claims or otherwise act on behalf of the entity(ies) purportedly in receivership—the Altrad Defendants are entitled to a jury trial wherein they can stand in the shoes of Cape PLC 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 Altrad 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 English 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 Altrad 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 English 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 Altrad 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).¹

Rule 14(a), SCRCP, entitles the Altrad 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 Altrad 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 Altrad 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 Altrad Defendants to supposed “derivative” liability.

This necessary pre-requisite here is a factual impossibility. The case was tolled from the outset, dismissed pursuant to the secret Dismissal Agreement. While the Altrad 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

¹ 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 Altrad 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.

writing and orally in open court. *See* Rule 43(k), SCRCF (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 Altrad 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 Altrad 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, 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 Altrad Defendants’ jury trial right is enforced and protected.

II. The Court of Appeals ignored the fact the Receiver’s 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 Altrad 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), SCRCF. 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 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 Altrad 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 Altrad 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 Altrad Defendants’ filings, but improperly went beyond just deciding the appealability issue. The Court of Appeals dismissed this appeal, but without any merits briefing. That is a dangerous precedent to be set.

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 Altrad 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 Altrad 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’s precisely what the Court of Appeals’ dismissal order requires of the Altrad 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), SCRPC.

“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 Altrad Defendants’ filings in Appellate Case Nos. 2024-000916 and 2024-001499.

Pursuant to Rules 208(b)(6) and 240, SCACR, the Altrad Defendants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by all similarly-situated parties. Finally, by submitting this petition, the Altrad Defendants do not waive, but continue to specifically preserve their objection to personal jurisdiction.

Signature Page Attached

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

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

*Attorneys for Appellants Mohed Altrad and Altrad
Investment Authority SAS*

December 16, 2024