THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No.: 2024-001065
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; 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; 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

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

PETITION FOR REHEARING *EN BANC*
BY APPELLANTS CHARTER CONSOLIDATED LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD. [1]

Appellants Charter Consolidated Ltd. ("Charter"), ESAB Corporation ("ESAB"), and Central Mining and Investment Corporation Ltd. ("Central Mining," and collectively, the "Charter Appellants") hereby respectfully submit this Petition for Rehearing En Banc of the Court's Order of September 18, 2024 dismissing the appeal (the "Sept. 18 Order").[2] The Sept. 18 Order granted the Motion to Dismiss Appeals filed by Peter D. Protopapas, in his purported capacity as the court-appointed receiver for Cape PLC ("Mr. Protopapas" or "Receiver").

The Court, in issuing the Sept. 18 Order, overlooked and/or misapprehended the following:

1. The May 23 Orders were the equivalent of a finding of contempt that went well beyond a mere "attorneys' fee" award and, therefore, was immediately appealable.

2. The adverse inferences had the effect of striking a portion of the Charter Appellants' pleadings, essentially determining the matter on the Receiver's pleadings.

[1] By making this filing, the Charter Appellants do not waive, but instead specifically preserve, all defenses asserted and objections previously made regarding these proceedings through its written motions, oral arguments, memoranda and briefs, responsive pleadings, served responses, and appellate filings, including, inter alia, that: the Court lacks personal jurisdiction over each of the Charter Appellants; the Court lacks subject matter jurisdiction; the Receiver was improperly appointed; the Cape PLC receivership was improperly continued and modified and an entirely new receivership was granted over the separate entity named Cape Intermediate Holdings Limited ("CIHL"); the Receiver lacks standing; the Receiver's claims are improperly pled, should be severed, and/or fail under Rules 12(b) and 14, SCRCP; and these proceedings and the claims asserted and relief sought against the Charter Appellants violate their fundamental procedural and substantive constitutional rights and protections.

[2] The Charter Appellants incorporate herein the Suggestion of Rehearing *En Banc* as stated in THE ALTRAD DEFENDANTS' PETITION FOR REHEARING AND REHEARING EN BANC REGARDING THEIR APPEAL OF CONTEMPT ORDERS THAT STRIKE A PART OF THEIR ANSWER AND THAT REFUSE AN INJUNCTION REQUIRED BY LAW.

3. The circuit court's refusal to address the request for a stay and injunction—thereby denying the injunctive relief that would effectuate the stay provisions of the South Carolina Appellate Court Rules and clearly established precedent—is immediately appealable.

I. INTRODUCTION

The Court should rehear the Charter Appellants' appeal of the May 23 Orders because the Sept. 18 Order overlooked critical aspects of the appeal, all of which are independent grounds for an immediate appeal of the May 23 Orders. First, the Sept. 18 Order fails to address the argument that the May 23 Orders constituted a finding of contempt. Under any definition or analysis of civil contempt under South Carolina law, the appealed May 23 Orders constitute contempt. Although the circuit court and Respondent attempt to characterize the orders in such a way that insulates the lower court proceedings from appellate review, it is the *effect of an order*, not its title nor included language attempting to dictate appealability that controls the analysis to be applied by this Court. The circuit court issued findings that are contempt, an immediately appealable issue.

Second, at the same time, and as part thereof, the circuit court struck portions of the pleadings through adoption of "adverse inferences" and erroneous preadmission of exhibits, essentially determining the matter on the Receiver's pleadings.

Finally, the Court misapprehended the Charter Appellants' argument that the refusal to address the request for a stay and injunction constituted a de facto denial of the requested injunctive relief, which is therefore immediately appealable. Instead, the Sept. 18 Order relied on a single, inapplicable case that stands for the unremarkable proposition that a prohibition on continuing to violate the discovery rules does not equate to an immediately appealable injunction. That is simply not what happened here. To the contrary, the Charter Appellants requested an injunction which, by definition, would have precluded the circuit court's issuance of the May 23 Orders. Therefore, when the circuit court ignored the request for injunctive relief (and has still ignored it through

today) and entered the May 23 Orders, the injunctive relief was wholly negated and it constituted a refusal of a request for injunctive relief, which is immediately appealable.

II. PROCEDURAL HISTORY

The details of the receivership appointment and issuance of the Order Granting the Receiver for Cape PLC's Motion to Pre-Admit Exhibits ("Pre-Admission Order") and the Order Granting the Receiver for Cape PLC's Motion for Sanctions and Motion for Adverse Inference as to the Altrad and Charter Third-Party Defendants ("Adverse Inference Order"), each filed May 23, 2024 (collectively, the "May 23 Orders") are chronicled in Appellants' Return to Motion to Dismiss Appeals of "Interlocutory Orders" and that Return is incorporated herein by reference.[3] An abbreviated procedural history is provided below.

In the orders on appeal, the circuit court issued sweeping rulings which—under the guise of "discovery sanctions" and in a case that is presently and improperly set for a *bench trial*, completely untethered from the first-party tort action from which the "third-party" complaint is supposed to be derivative—(i) admitted *over two thousand—2*,548, to be exact—exhibits as "genuine" against three sets of third-party defendants but somehow reserved them as not admitted nor genuine against another set of third-party defendants *and* (ii) took a number of "adverse inferences." These adverse inferences are, again, with respect to only a subset of third-party defendants and they effectively determine Respondent's underlying action. The Orders do this first by finding for the Receiver on the factual and legal issues in his pleading and second by striking various defenses in the Charter Appellants' responsive pleadings. To be clear, these adverse inferences against the Charter Appellants and others and pre-admitted exhibits were

[3] *Cf.* Rule 208(b)(6), SCACR.

ordered by a court which is also currently scheduled to be the sole decider of the outcome in the upcoming **bench trial** (although that issue is currently on appeal).

III. ARGUMENT

The Sept. 18 Order overlooks and/or misapprehends the Charter Appellants' primary arguments demonstrating that the May 23 Orders are immediately appealable: (1) that the May 23 Orders constitute contempt; (2) that the May 23 Orders "determine the action" and constitute the striking of part of the Charter Appellants' Answer; and (3) that the circuit court's continued and repeated refusal to affirmatively rule on the Charter Appellants' request for injunctive relief while simultaneously issuing rulings directly contradicting the requested injunctive relief constitutes an immediately appealable refusal to enter an injunction. Each of these arguments, standing alone, constitutes sufficient basis to rehear the Charter Appellants' appeal and reverse the Sept. 18 Order. *See* S.C. Code Ann. § 14-3-330(2) (2017) ("An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action").

A. The Sept. 18 Order Overlooks And/Or Misapprehends the True Nature of the May 23 Orders, Which Constitute Contempt.

This Court should re-examine the order dismissing the appeal of the May 23 Orders as the Sept. 18 Order appears to have overlooked that the Orders did more than merely award attorneys' fees—they constituted an appealable contempt order. Indeed, the combined effect of the two May 23 Orders—by their unequivocal terms—is to punish the Charter Appellants, ruling in Respondent's favor on the allegations forming the core of his pled claims and providing support for the "adverse inference" findings through "authenticated" evidence in a bench trial. This is contempt by another name. *Compare* Rule 37, SCRCP (outlining appropriate sanctions) *with*

Miller v. Miller, 375 S.C. 443, 457, 652 S.E.2d 754, 761 (Ct. App. 2007) (describing contempt in manner similar to the relief sought in the Proposed Orders); *see also Richardson v. Halcyon Real Est. Servs., LLP*, 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023) (drawing distinction between Rule 37 sanctions and final orders that "reserve no further questions or directions for future determination," which would be the effect of the May 23 Orders).

The Sept. 18 Order fails to address in any way the actual nature of the May 23 Orders; instead, preferring form over substance by relying on the label given by the circuit court. However, as this Court is well aware, the circuit court's decision as to how an order is entitled does not control an inquiry into appealability. *Spalt v. S.C. Dep't of Motor Vehicles*, 423 S.C. 576, 584, 816 S.E.2d 579, 583 (2018) ("The label given to the order is not determinative of its immediate appealability."). Accordingly, appellate courts must look to the effect of an order to determine what that order does. *See, e.g.*, *id.* (noting appealability depends on "the substance of the order"); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011) ("[A]n appellate court should look to the effect of an interlocutory order to determine its appealability . . . ."); *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013) (explaining that whether an order is immediately appealable is a function of "substance rather than nomenclature").

Importantly, this Court must to go beyond the titles of the May 23 Orders to determine what the orders actually do. In making its appealability inquiry, appellate courts must "evaluate the trial court's order as what it is—not merely what it appears to be." *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 540, 773 S.E.2d 144, 147 (2015); *see also generally Towles v. United Healthcare Corp.*, 338 S.C. 29, 35, 524 S.E.2d 839, 842–43 (Ct. App. 1999) (holding that an order requiring discovery and permitting a defendant to re-seek to compel

a matter to arbitration after the close of discovery was immediately appealable because "[t]he circuit court's order favored litigation over arbitration").

In the May 23 Orders, the circuit court may not have expressly used the word "contempt," but the circuit court's findings equate to holding the Charter Appellants in contempt. Indeed, the Adverse Inference Order is predicated on the Charter Appellants' alleged "flagrant violations of the Court's March 12 Order" granting the Receiver's motions to compel discovery. *See* Adverse Inference Order at 10–11. The circuit court further found that the Third-Party Defendants' "continued discovery misconduct" amounted to "willful disobedience"—the exact standard for contempt. *See id.* at 15.

The circuit court's imposition of adverse inferences as a penalty for alleged willful violations of an order compelling discovery is the equivalent of an appealable contempt sanction. *Davis*, 409 S.C. at 280, 762 S.E.2d at 543 (Toal, C.J.) ("[T]o challenge the specific rulings of . . . discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding."). Reference to the fact that actions have been taken "despite repeated orders of this Court," Adverse Inference Order at 4, and findings that the circuit court was using its inherent power are direct reference to the first element of contempt—existence of a valid duty. Here, the circuit court clearly believed its orders on prior motions to compel were valid and justifiable such that they created an obligation on the part of the Charter Appellants. The circuit court likewise held that there was knowledge of such an obligation and violation of the same, which is exactly why it took the action that it did. If that alone is not sufficient to make evident that these Orders were contempt, which they are, the circuit court went well beyond that threshold by including conditions to its rulings that align the orders with what case law has established as contempt and contempt sanctions.

"The purpose of civil contempt is 'to coerce the defendant to do the thing required by the order for the benefit of the complainant.'" *Poston v. Poston*, 331 S.C. 106, 111, 502 S.E.2d 86, 88 (1998).[4] Exactly in line with that hallmark of contempt, the circuit court stated: "The Court notes that these rebuttable inferences are subject to evidentiary challenge by these parties in these proceedings should these recalcitrant Third-Party Defendants elect to participate in these proceedings, as they are required to do by our rules and the orders of this Court." *Compare* Adverse Inference Order at 16 (above-quoted) *with Miller*, 375 S.C. at 457, 652 S.E.2d at 761 ("The conditional nature of the punishment renders the relief civil in nature because the contemnor can end the sentence and discharge himself at any moment by doing what he had previously refused to do."). Similarly, in describing the authority by which it ruled, the circuit court even referenced "inherent authority," another feature of a contempt ruling. *Compare* Pre-Admission Order at 6, *with Miller*, 375 S.C. at 453, 652 S.E.2d at 759 ("The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice."). If the circuit court were ruling on the basis of a statute or court rule, it would not need to note an abstract—and inapplicable—inherent authority. However, in a contempt ruling, such a statement would be important, which is presumably why it was included here.

The May 23 Orders aim to exact "hydrogen bomb" punishments against the Charter Appellants and others. *See, e.g.*, *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152,

[4] The order here is no longer coercive as to some aspects and is, therefore, arguably an order of punishment, or criminal contempt. *Compare Poston*, 331 S.C. at 111, 502 S.E.2d at 88 (if an order is coercive in nature it is ""civil contempt"; "[t]he primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders."). Either way the order is immediately appealable.

154, 399 S.E.2d 439, 440 (Ct. App. 1990) ("The sanction should be aimed at the specific misconduct of the party sanctioned. In other words, the sanction should be a rifle-shot, not a shotgun blast. In the instant case, the sanction was a hydrogen bomb."). By dropping this "hydrogen bomb," the adverse inferences and pre-admitted exhibits unquestionably function as a coercive civil contempt ruling, and the accompanying attorneys' fees award sought is a civil compensatory fine. *See, e.g., Jarrell v. Petoseed Co.*, 331 S.C. 207, 209–10, 500 S.E.2d 793, 794 (Ct. App. 1998) ("Civil contempt sanctions serve two functions: to coerce future compliance and to remedy past noncompliance . . . . A civil compensatory fine is analogous to a tort judgment for damages caused by wrongful conduct." (internal citations omitted)).

Instead of addressing the actual nature of the May 23 Orders, the Sept. 18 Order merely relies on a single case that holds attorneys' fees sanctions are not immediately appealable. That misses the point. Where, as here, the effect of an order is to put a party in contempt, that order is immediately appealable. *See Ex parte Cannon*, 385 S.C. 643, 660, 685 S.E.2d 814, 823 (Ct. App. 2009) ("Additionally, the finding of contempt is immediately appealable."). Accordingly, this Court should find that the Sept. 18 Order overlooked or misapprehended controlling law, grant this Petition, and reverse the Sept. 18 Order.

B. The Sept. 18 Order Fails to Address That the May 23 Orders Essentially Strike Portions of the Charter Appellants' Answers, Which Is Unquestionably Immediately Appealable.

The Court should also grant the Petition and rehear the Charter Appellants' appeal because the Sept. 18 Order overlooked that the effect of the May 23 Orders was to strike portions of the Charter Appellants' Answers, which is akin to a judgment on the pleadings. Specifically, the adverse inferences against the Charter Appellants, in conjunction with the pre-admitted exhibits, "determines the action" such that nothing the Charter Appellants could ever do—despite the Orders having language to the contrary—would properly rebut the inference. *See Hagood v.*

Sommerville, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005) (describing order which effectively determines the action because it affects "the overall litigation and trial of the case" and "the right to a particular mode of trial, a well-established substantial right").

The "inferences" adopted are the elements for each of Respondent's pled causes of action against the Charter Appellants. The circuit court's issuance of the May 23 Orders in effect strikes the Charter Appellants' Answer—which denied the Receiver's various claims (including alter-ego, veil piercing, and unjust enrichment)—and renders any defense that could be asserted non-viable, thereby affecting a substantial right, as set forth in South Carolina case law, and has the effect of "remov[ing] a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial." *Thornton*, 391 S.C. at 304, 705 S.E.2d at 479; *see also, e.g.*, *Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005) ("Orders affecting a substantial right 'discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.'"); *Henderson v. Wyatt*, 8 S.C. 112, 112 (1877) ("An order to involve the merits must finally determine some substantial matter forming the whole or a part of some cause of action or defense in the case in which the order is entitled."); *Jefferson by Johnson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988) ("Subsection (2)(c) permits the direct appeal of orders which affect a substantial right by striking out an answer."); *McLaughlin v. Strickland*, 279 S.C. 513, 516, 309 S.E.2d 787, 789–90 (Ct. App. 1983) ("McLaughlin contends that the case is not properly before us because the order denying Strickland's motion was interlocutory and therefore not appealable. Since the order effectively forecloses Strickland from contesting the case on the merits, it affects a substantial right and is appealable.").

In summary, the circuit court made findings constituting contempt against the Charter Appellants and imposed punishment in the form of orders which in effect determine the action against them. The May 23 Orders are, therefore, immediately appealable under § 14-3-330 as affecting a substantial right and the Court should agree to rehear the appeal and reverse the Sept. 18 Order.

C. The Sept. 18 Order Overlooks That an Order Directly Contradicting Requested Injunctive Relief Constitutes a Denial of an Injunction, an Issue Immediately Appealable.

The Sept. 18 Order fails to address the circuit court's effective denial of the Charter Appellants' request for an injunction and stay, which is irrefutablely an immediately appealable issue. *See* S.C. Code Ann. § 14-3-330(4). Importantly, the circuit court's refusal to address the Charter Appellants' request for an injunction and stay, as required by the South Carolina Appellate Court Rules here—especially in light of the May 23 Orders that constitute relief directly contrary to the requested inunction—constitutes the denial and refusal of an injunction. *See, e.g.*, *In re Fort Worth Chamber of Commerce*, 100 F.4d 528, 533 (5th Cir. 2024) (recognizing that "if a district court does not timely rule on a preliminary-injunction motion, it can effectively deny the motion" and render its decision immediately appealable); *see also Gray Line Motor Tours, Inc. v. New Orleans*, 498 F.2d 293, 296 (5th Cir. 1974) ("If, for example, an action has the effect of denying the requested relief without actually making a formal ruling, then the refusal of the district court to issue a specific order will be treated as equivalent to the denial of a preliminary injunction and will be appealable."); *see also Helton v. Clements*, 787 F.2d 1016, 1017 (5th Cir. 1986) (explaining why refusal to rule can be akin to denial); *D.C. v. Trump*, 959 F.3d 126, 130 (4th Cir. 2020) (same).

Instead of directly addressing the circuit court's actions, the Sept. 18 Order only cites to a case holding that an order requiring the parties to comply with the discovery rules is not "in the nature of an injunction." *See* Sept. 18 Order (citing *Richardson v. Halcyon Real Estate Servs.*, 439

S.C. 419, 426, 887 S.E.2d 153, 157 (Ct. App. 2023)). However, an order requiring compliance with discovery is very different than a court's blatant refusal to rule on an injunction request while simultaneously issuing orders that are directly contrary to the requested injunctive relief. Indeed, what is immediately appealable under South Carolina law is "refusing" an injunction, whether that be through an outright denial of the injunction or, as the circuit court has done in this case, the outright refusal to actually address the injunction for months. *See* S.C. Code Ann. § 14-3-330(4) (granting parties the right to an immediate appellate over "an interlocutory order or decree in a court of common pleas . . . refusing an injunction"). As the Sept. 18 Order failed to address this key issue, the Court should rehear this appeal, reverse the Sept. 18 Order, and reinstate the Charter Appellants' appeal.

CONCLUSION

For the reasons set forth herein, the Charter Appellants respectfully request this Court grant the Charter Appellants' petition for rehearing.[5]

Respectfully submitted,

Dated: October 10, 2024

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[5] Per Rule 208(b)(6), SCACR, Charter Appellants incorporate herein their opposition to Respondent's Motion to Dismiss Appeal and, to the extent applicable, all additional arguments raised and authorities cited by similarly situated Appellants Mohed Altrad, Altrad Investment Authority S.A.S., ArranCo US, LLC, Hawk Bido (US) Inc., and Sparrows Offshore, LLC.

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PROOF OF SERVICE

I, the undersigned of the law offices of Gordon Rees Sculls Mansukhani LLP, attorneys for Appellants Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd., do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Petition for Rehearing En Banc of Appellants Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd.

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