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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Court of Appeals Case No. 2024-001862
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 (SECOND MODE OF TRIAL APPEAL)

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January 9, 2025

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INTRODUCTION

The Court is well familiar with this case and the reasons why certiorari review is essential here. This marks the fifth discrete appealable issue—and the second mode-of-trial appeal—arising from the circuit court proceedings, and it gives the Court yet another reason to accept this case and vacate the entirety of what has happened and is happening below. There is not now and never has been a lawful basis for a South Carolina circuit court to appoint a receiver over an active, solvent English company that has no connection at all to South Carolina. An English court has recently, forcefully declared the receivership to be void, and this Court should join that ruling (which is fully consistent with South Carolina law) and bring this case to an end.[1]

QUESTIONS PRESENTED

1. Did the Court of Appeals err by ignoring the circuit court's continued violation of the "exclusive jurisdiction" Rule 205, SCACR, vests in appellate courts over matters on appeal?

2. Did the Court of Appeals err when it held, for the second time, that the denial of the Altrad Defendants' right to a trial by jury was not immediately appealable?

3. Did the Court of Appeals err when it *sua sponte* mischaracterized this mode-of-trial appeal as a "discovery" appeal when the Altrad Defendants' notice of appeal specifically explained the actual basis for the appeal was a violation of their jury-trial rights?

4. Did the Court of Appeals err when it failed to consider the Altrad Defendants' contemporaneous motion to consolidate this appeal with the Altrad Defendants' prior mode-of-trial appeal?

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[1] As with all of their filings, the Altrad Defendants file this petition without waiving, but instead specifically preserving, all objections to personal jurisdiction and other defects below. And to reduce paperwork for the Court, references to the "Receiver's App." are to the Appendix filed on September 5, 2024, in Court of Appeals Case No. 2024-001446, and references to the "Supp. App." are to the Supplemental Appendix in Appellate Case Nos. 2024-000916 and 2024-001499.

BACKGROUND

This is the Altrad Defendants' fifth 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 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. (Appellate Case No. 2024-001063.) 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 immediately appealable). That appeal was also dismissed without explanation by the Court of Appeals.

Like this fifth petition, the fourth petition involved an order refusing the Altrad Defendants' invocation of their right to a jury trial. (Appellate Case No. 2024-001446.) Both are immediately appealable pursuant to Section 14-3-330(2). In fact, as a matter of hornbook South Carolina law, the circuit court's October 2, 2024 order—which modified its June 20 order at issue in the Altrad

Defendants' fourth petition—***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, as with the Altrad Defendants' earlier mode-of-trial appeal, this appeal was likewise 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 and without appropriately considering the accompany motion to consolidate, which sought to consolidate the Altrad Defendants' mode-of-trial appeals because they concern the same violations of jury-trial rights.

Respectfully, the refusal to enforce 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," 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). (Supp. App. 104–483.) This entire litigation is, therefore, illusory, and has been from the start.

What's more, 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). (Supp. App. 1–85.)

In the meantime, the Altrad Defendants are being forced to litigate this sham matter while having one justiciable 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 illusory case brought by an impostor Receiver.

STATEMENT OF THE CASE

The Court knows the lengthy background of this case. To summarize (mirroring nearly verbatim the statement of the case in Appellate Case No. 2024-001446, given the overlapping mode-of-trial issues):

Nine months after the *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727, asbestos personal injury case was "fully resolved" according to the Park family's own lawyers, those plaintiffs moved for the circuit court to appoint Mr. 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 a judgment nor an active claim.

The circuit court granted that motion without a hearing even though the case had been over for nine months, 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 demonstrable 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 and individually fatal defects, the *Park* Order appointing the Receiver was clear (notwithstanding its unlawful and fictious 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 (and, apparently, CIHL, even though CIHL was not a defendant to the *Tibbs* complaint) (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 an attempted cash-grab of, in the purported 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, 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 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 the *Tibbs* 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, SCRCP, the Altrad Defendants (1) appealed the order that created the new CIHL receivership and modified and continued the prior receivership order to allow the Receiver to function outside of

the *Park* case, precisely as directed by South Carolina Code § 14-3-330(4); and (2) 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.)

And there's no doubt that there are issues for a jury to resolve, even in the third-party pleading. 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).)

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, Mr. Smith, 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 its June 20 order that first changed the mode of trial from the jury trial demanded by Mr. and Mrs. Tibbs, the Altrad Defendants, and all other third-party defendants. That June 20th order 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.) As noted above, that June 20 order is the subject of the Altrad Defendants' fourth petition for certiorari pending before this Court. (Appellate Case No. 2024-001446.)

A bench trial is 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 June 20th 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 any appellate review of his actions below. After the Court of Appeals erroneously granted that motion to dismiss and subsequently denied the requested rehearing, the Altrad Defendants timely brought that mode-of-trial and deprivation-of-a-substantial-right issue before this Court.

While the June 20th order was on appeal—and contrary to the requirements of Rule 205, SCACR—the circuit court pressed forward and entered an order on October 2, 2024, that operates as an extension of the earlier June 20th order, and which continues to deprive the Altrad Defendants of the mode-of-trial to which they (and all other third-party defendants) are constitutionally entitled. That October 2nd continuation order is the subject of the instant petition, and it was the basis for the Altrad Defendants' motion to consolidate appeals, as the underlying jury-trial rights for this petition and the Altrad Defendants' earlier mode-of-trial appeal are the same.

The Court of Appeals dismissed this appeal, stating that it considered this mode-of-trial appeal to challenging "timelines for the completion of discovery in anticipation of trial." (Court of Appeals Dismissal Order (Nov. 5, 2024).) The Altrad Defendants then filed a rehearing petition explaining that this appeal has nothing to do with "timelines for the completion of discovery," but

instead is a standard mode-of-trial issue that has long been recognized as a point that must be immediately appealed. The Court of Appeals denied rehearing without substantive explanation.

As additional background for the Court to assess whether there are "special and important reasons" to exercise its certiorari authority, a few recent events are relevant and make the need for this Court's intervention inescapable:

1. In November 2024, 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 his actions as that of an "impostor") 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* 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—filed a new lawsuit, along with more than one hundred other plaintiffs, 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, in response to that mass action, the Receiver 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)).) That mass action was subsequently dismissed following CAFA removal to federal court by one of the named defendants.

3. Further exemplifying why certiorari review is essential on each of the Altrad Defendants' pending petitions before this Court, the Receiver filed a December 13, 2024 "Emergency Motion for Supersedeas to Protect and Enforce Jurisdiction and for Temporary Restraining Order." (Appellate Case No. 2024-001499.) In that motion, the Receiver seeks relief against the Altrad Defendants and their counsel for actions taken by separate legal entities, represented by separate legal counsel, in a separate jurisdiction and venue to enforce an English order that exposed in great detail why this receivership is illusory and why the Receiver has no authority to act on behalf of CIHL. That motion is fully briefed and should be denied.

ARGUMENT

Because the Court of Appeals erroneously dismissed the appeal of the June 20, 2024 order, and because the order involved in this appeal operates as a continuation of the June 20, 2024 deprivation of a mode of trial to which the Altrad Defendants are entitled, the arguments raised herein should be familiar. The relatedness of the arguments was the reason for the Altrad Defendants' motion to consolidate, which the Court of Appeals disregarded as part of its *sua sponte* dismissal. Fundamentally, this latest order should never have occurred; Rule 205, SCACR—which has been ignored by both the circuit court and the Court of Appeals—should have prevented this entire situation from proceeding to this point, and if the exclusivity of appellate jurisdiction created by that rule had been honored, this receivership would have been stopped from the outset.

Certiorari review is warranted here for the same reasons that have animated the Altrad Defendants' prior filings. *First*, the Court of Appeals never addressed the long-settled, controlling point of South Carolina law 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—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 be an "impostor" of the English companies 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 the 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. Here again, 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).

Here again, 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* Rule 242(b)(4), SCACR (listing "[w]here substantial constitutional issues are directly involved" as reason why certiorari may be granted).

Finally, here again, in light of the recent English Order and Judgment declaring the Receiver to be without authority and enjoining him from acting, 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* Rule 242(b)(1), SCACR (listing "[w]here there are novel questions of law" as reason why certiorari may be granted).

I. The Court of Appeals erred in continuing to allow Rule 205, SCACR, to be ignored below.

The appealed October 2nd order was entered in contravention of Rule 205, SCACR. There currently exist at least three pending appeals relevant to this appealed order. Appellate Case No. 2024-001499 addresses the fundamental issues regarding the impropriety of the receivership, the Receiver's complete lack of authority to prosecute this action, and the absence of personal jurisdiction over the Altrad Defendants are pending before this Court.[2] Appellate Case No. 2024-000916 raises the same Rule 205 analysis presented here—namely, that the circuit court lacks jurisdiction to do anything that would affect a matter on appeal. And Appellate Case No. 2024-001446 addresses the circuit court's first deprivation of the Altrad Defendants' right to a jury trial.

As a result of these appeals, both individually and collectively, Rule 205 operates to prevent all action by the lower court as to matters affected by those appeals—including rescheduling a bench trial on the merits of the Receiver's alleged claims that was first set in the June 20 order, appealed as a mode-of-trial violation. *See* S.C. Code Ann. § 14-3-330(2). That point of South Carolina law should be undisputed, and includes opinions authored by then Chief Justice Toal. *See, e.g.*, Rule 205, SCACR (providing that "[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal" (emphasis added)); *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) (explaining that "Rule 205 divests the lower court or administrative tribunal of jurisdiction over 'matters affected by the appeal'" (emphasis supplied by the Supreme Court) (quoting *Tillman v. Oakes*, 398

[2] The English court with competent jurisdiction over CIHL (the entity purportedly in receivership) has found this receivership to be entirely improper and the putative "Receiver" to have no authority and to have committed the tort of "impostor." The Altrad Defendants believe that these findings are binding and/or should be otherwise enforced by this Court—the result thereof being the end of this illusory case and improper attempted "reckoning" seeking "billions" of dollars.

S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012))); *Grosshuesch v. Cramer*, 377 S.C. 12, 31 n.7, 659 S.E.2d 112, 122 n.7 (2008) ("We take this opportunity to reiterate that while an appeal is pending, a lower court cannot act on matters affecting the issue on appeal."); *Arnal v. Fraser*, 371 S.C. 512, 641 S.E.2d 419 (2007) ("Rule 205, SCACR, provides the appellate court with exclusive jurisdiction over matters on appeal. The lower court may only proceed with matters not affected by the appeal."); *Morris v. Morris*, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) ("This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal."); *Tillman*, 398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (reiterating that "[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal," and explaining that this rule "deprives the lower court of the power to address a particular issue, or 'matter,' during the pendency of the appeal"); *Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App. 2002) ("Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter.").

Relatedly, as the *Tibbs* plaintiffs repeatedly represented to the circuit court, the sole remaining first-party defendant is another solvent, 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 solvent, foreign company purportedly in receivership here. *See* Appellate Case Nos. 2023-001461 & 2023-001096. Of course, while those appeals are pending, nothing can proceed in the lower court vis-à-vis the Tibbs plaintiffs by virtue of Rule 205, SCACR. Until remittiturs are issued in those appeals, and in the prior appeals by the Altrad Defendants, and in the prior appeals by the Charter Defendants, no first-party or third-party trials can occur below, and the circuit court cannot take action on matters affected by those appeals.

The circuit court's refusal to honor Rule 205's exclusivity provision, and the Court of Appeals' refusal to enforce that same exclusivity provision, requires this Court's immediate attention and intervention. This problem is particularly acute here, where the lower courts' failure to enforce this well-established standard of South Carolina law forced CIHL's management to seek refuge in the courts of its home jurisdiction to have the Receiver restrained from further interference with CIHL's affairs when basic South Carolina law demands the same outcome. Accordingly, certiorari review is essential.

II. The Court of Appeals ignored the continued deprivation of a substantial and constitutional right.

The circuit court has continued to set this case for a bench trial over the objections of parties—even in the face of pending appeals (including on the very issue of mode of trial)—at the request of a party already adjudicated to be an "impostor." This constitutes a deprivation of constitutional rights, and thus, is immediately appealable pursuant to S.C. Code Ann. § 14-3-330(2). That statute allows for immediate appellate review of 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 . . . ."

The Altrad Defendants (and others) demanded a jury trial, and are thus entitled to one. Based on there being direct and derivative claims involved, South Carolina guarantees this jury-trial right as to both: (1) the *Tibbs* plaintiffs' direct claims against Cape PLC (which do not exist by virtue of the Dismissal Agreement), in which the Altrad Defendants (and the other third-party defendants) would have the right to "step-into the shoes" of Cape PLC in defense of those claims (if they were active and non-dismissed in the first place); and (2) the Receiver's so-called

derivative claims (which, in reality, are derivative to nothing) that cannot be considered as a matter of law unless and until any liability is first held against Cape PLC on the direct claims.

There is no question—it is black-letter law—that orders impacting the 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 nonappealable); *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). The circuit court and the Court of Appeals ignored this right, constituting reversible error. This Court should now correct it.

Of equal importance, if this order was not appealed, it is a certainty that the Receiver would have argued, and the lower courts would no doubt have concluded, that the Altrad Defendants had waived their jury-trial rights, as South Carolina law requires this immediate appeal. *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"). The circuit court judge below authored a section of a treatise on this precise matter. *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"). 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)).

The Court of Appeals ignored this basic point of South Carolina law when it dismissed this appeal. As with the earlier mode-of-trial order on appeal in Appellate Case No. 2024-001446, the order presented here deprives the Altrad Defendants of their substantial jury-trial rights. And as a matter of long-settled South Carolina law, this order must be appealed at this juncture. The Court of Appeals erred when it dismissed this appeal, and this petition gives this Court another avenue for correcting the numerous dispositive errors below and ending this illusory case at once.

III. The Court of Appeals should have allowed this proper appeal.

The Altrad Defendants are entitled to a jury trial—there should be no question as to that. An order setting a bench trial must "affect substantial rights under S.C. Code Ann. § 14-3-330(2)" and thus is subject to immediate appeal. *Lester*, 327 S.C. at 266, 491 S.E.2d at 241; *see also Hagood*, 362 S.C. at 196–97, 607 S.E.2d at 709 (mode of trial is a "well-established exception to the general rule" that nonfinal orders are non-appealable); *Senter*, 341 S.C. 74, 78, 533 S.E.2d 575, 577 (2000) (collecting cases and explaining that "[t]he 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.").

In this case, no derivative liability can exist under the Receiver's claims unless and until a jury first determines that Cape PLC has any liability to the Tibbs plaintiffs. *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."); *see also 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) ("The 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." (quoting *Scott v. PPG Indus. Inc*., 920 F.2d 927 (4th Cir. 1990))).

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). And, as part of any such jury trial of those direct, first-party claims, the Altrad Defendants (and the other third-party defendants) would have the right to "step-into the shoes" of Cape PLC in defense.

If a jury ever assigns any liability to Cape PLC—which, as noted above, will never happen in this action because of the Dismissal Agreement between the Receiver and counsel for the *Tibbs* plaintiffs, as counsel for the Tibbs family confirmed repeatedly on the record that Asbestos Corporation Ltd. is the only remaining active defendant in their case—then the Altrad Defendants are also entitled to a jury trial regarding the Receiver's third-party claims.

No doubt, the Receiver has attached labels to his claims to suggest they are equitable and not for a jury's consideration. But, in South Carolina, labels do not and cannot matter; the

substance of a filing controls—as has been recently reiterated. *See, e.g., Brawley v. Richland County*, Op. No. 6090 (S.C. Ct. App. filed Sept. 25, 2024) (Howard Adv. Sh. No. 37 at 26) ("'The substance of the relief sought,' not the form, is typically what matters." (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 actual relief the Receiver seeks is money. As he puts it, the Receiver seeks "billions of dollars" from the third-party defendants as part of his crusade for a "reckoning." While he misleads by affixing equitable labels to his claims, his requested relief is limited to money. When a party seeks recovery of legal damages, a jury trial is available as a substantial and constitutional right, irrespective of how a litigant styles its claims. Rule 38(a), SCRCP.

Even if the Court of Appeals believed that 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."). The appropriate course of action here would have been for the Court of Appeals to take briefing and argument on the issue, which to-date, it has refused to do.

And this is not even disputed; the Receiver has even 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 as to the June 20th and October 2nd orders makes a jury trial unavoidable below. But, like the first-party jury trial issue discussed above, the Court of Appeals entirely ignored the substance of the Receiver's third-party claims and has now compounded that error by dismissing the Altrad Defendants' appeals of orders that deprive them of a jury trial.

As with the dismissal of the appeal of the June 20th order, the Court of Appeals never asked the parties to brief these fundamental reasons as to why the October 2nd order was immediately appealable. To be sure, the Altrad Defendants explained the grounds for immediate appealability in their notice of appeal and accompanying motion to consolidate. But the Court of Appeals appears to have ignored all of this, as it based its dismissal order on an assumption that the order on appeal involved "discovery." Discovery has nothing to do with this appeal, and the Court of Appeals' dismissal order reveals an apparent misunderstanding of the posture of the case and the legal basis for the Altrad Defendants' appeal.[3] Certiorari is therefore warranted and necessary.

[3] The fact that the mode-of-trial issue arises in the context of a scheduling order is irrelevant to the appealability analysis. 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., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 292, 247 S.E.2d 315, 317 (1978) (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 both "bench trial" orders, and ultimately dismiss this entire case due to the unlawfulness of the receivership appointment.

IV. The Court of Appeals should have considered and granted the motion to consolidate.

To help streamline these proceedings, the Altrad Defendants moved to consolidate this appeal with their prior mode-of-trial appeal, and that motion made clear that the notice of appeal was filed to provide the appellate courts with a full record as to the erroneously dismissed appeal of the June 20nd Order.

Rule 214, SCACR, provides that when multiple appeals involve "the same question," they may be consolidated. Because the October 2nd order compounds the same mode-of-trial and Rule 205 issues raised in earlier appeals, this appeal is ripe to be consolidated with others presented by the Altrad Defendants. The Court of Appeals' refusal to even consider that motion underscores its apparent misunderstanding of the posture of this whole situation and provides another reason why certiorari review is needed here.

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 and refusing to consider the Altrad Defendants' accompanying motion to consolidate. This Court should reverse the Court of Appeals' dismissal and reinstate this appeal; consolidate this appeal with Appellate Case No. 2024-001446; order briefing and resolve the merits of this mode-of-trial order; and, most importantly, vacate the illusory 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, as well as all other arguments and authorities cited in their own prior filings with this Court concerning this receivership and this case.

Respectfully submitted,

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