THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Court of Appeals Case Nos. 2024-001862
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

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

This appeal involves the fifth discrete appealable issue—and the second mode-of-trial appeal—arising from the circuit court proceedings. As set forth in the other petitions for certiorari that are presently pending before this Court, there is no lawful basis for a South Carolina circuit court to appoint a receiver over an active, solvent English company that has no assets in and no connection with 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 end this case.[1]

QUESTIONS PRESENTED

1. Did the Court of Appeals err by ignoring the circuit court's continued violation of the "exclusive jurisdiction" that 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 Charter Defendants' right to a trial by jury was not immediately appealable?

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[1] As with all of their filings, the Charter 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.

Pursuant to Rules 208(b)(6) and 240, SCACR, the Charter Defendants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by all similarly-situated parties. Further, pursuant to Rule 208(b)(7), SCACR, Charter Defendants adopt by reference the arguments of the Petitions and any Replies filed by Petitioners Mohed Altrad and Altrad Investment Authority SAS in Court of Appeals Case Nos. 2024-001862 and 2024-001446 and their following petitions for certiorari.

3. Did the Court of Appeals err when it *sua sponte* mischaracterized this mode-of-trial appeal as a "discovery" appeal when the Charter 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 Charter Defendants' contemporaneous motion to consolidate this appeal with the Charter Defendants' prior mode-of-trial appeal?

BACKGROUND

This is the Charter 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. 2024-001423.) 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 Charter Defendants' first defense (their general denial of the factual allegations), effectively holding them in contempt, and again refusing to enjoin the receivership due to the pending appeal. (Appellate Case No. 2024-002117.) 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 Charter Defendants' invocation of their right to a jury trial. (Appellate Case No. 2024-002114.) 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 Charter Defendants' fourth petition—***must*** be immediately appealed, or the Charter Defendants waive their jury trial rights. *See* Jean H. Toal, et al., *Appellate Practice in South Carolina* 156 (3d ed. 2016) ("[T]he failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue."); *id*. at 157 (reiterating that "these orders must be appealed immediately").

Accordingly, as with the Charter 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 Charter 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. 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 Charter 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 Charter Defendants and their co-third-party defendants), and end this illusory case brought by an impostor Receiver.

STATEMENT OF THE CASE

Nine months after the *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727, personal injury case was "fully resolved," those plaintiffs moved for the circuit court to appoint (specifically) Peter Protopapas as a receiver over Cape PLC, an active company in the Bailiwick of Jersey that has no connection at all to the State of South Carolina and against which the *Park* plaintiffs had neither an active judgment nor an active claim. As there was no actual controversy between Cape and Park, the circuit court was without authority to appoint a receiver and thus the appointment is void. [2]

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

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

service, lack of notice, no judgment, no creditors, and no basis in law for such a receivership over a foreign corporation.[3]

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

Notwithstanding these obvious fatal defects, the *Park* Order appointing the Receiver was clear (notwithstanding its unlawful and fictious nature): the Receiver was appointed *only* in *Park.* The *Park* Order clearly stated: "the Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law..." Additionally, S.C. Code Ann. § 15-65-10 et seq. only allows appointment of a receiver in a single "cause." [4]

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

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

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

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

In response to the arguments regarding lack of a proper receivership appointment, Mr. Protopapas requested—and the circuit court agreed—to grant a receivership in the *Tibbs* case over CIHL (even though Plaintiff Tibbs did not request a receivership.) Accordingly, the circuit court

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may be given, as prescribed in Section 15-65-50. And upon the due execution and filing of such bond thereafter before final judgment in the cause the court or judge shall vacate the appointment of such receiver...."

granted a new receivership appointment in *Tibbs* – to allow Mr. Protopapas to seek assets from third-party defendants.

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

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

> fixed--the penalty must be double the value of the property *as fixed in the order appointing the* ***receiver***. The provision for inserting a clause fixing the value of the property in the order appointing a ***receiver*** is mandatory, and without such clause the order is void.

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

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

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

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

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

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

On June 10, 2024, 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 Charter 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 Charter Defendants' fourth petition for certiorari pending before this Court. (Appellate Case No. 2024-001446.)

A bench trial is not what the Charter Defendants demanded in their responsive pleading. They rightly demanded a jury trial, as provided by the South Carolina Constitution. *See* S.C. Const. art. I, § 14 ("The right of trial by jury shall be preserved inviolate."). Because the circuit court's June 20th order setting this case for a bench trial wiped out that right, the Charter 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 Charter 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 Charter 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 Charter Defendants' motion to consolidate appeals, as the underlying jury-trial rights for this petition and the Charter 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 Charter 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 an immediately appealable issue. The court of appeals improperly denied the rehearing petition.

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

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

2. In apparent realization that the Receiver has no authority to continue to prosecute this action, John and Margaret Tibbs—through their same counsel as in the underlying first-party action—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 voluntarily 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 Charter 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 Charter Defendants are entitled, the arguments raised herein should be familiar. The relatedness of the arguments was the reason for the Charter 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 Charter 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 Charter 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 Charter Defendants are also entitled to a jury trial on the "third-party" claims seeking recovery of "billions of dollars" in legal damages. The Court of Appeals also ignored this dispositive point.

There is no question under South Carolina law that orders impacting 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 issues on which this appeal rests are 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 Charter Defendants are pending before this Court.[5] 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 Charter 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-*

[5] 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 Charter 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.

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 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

Charter 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, require 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 Charter 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 Charter 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 Charter 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 Charter 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. This Petition follows for the sake of completeness, to avoid waiver arguments, and to give 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.

For all of the reasons set forth above, the Charter Defendants are entitled to a jury trial—there should be no question as to that. An order like this must "affect substantial rights under S.C. Code Ann. § 14-3-330(2)" and thus be 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 Charter 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—then the Charter 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.

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 Charter Defendants' appeals of orders that deprive them of a jury trial.

What's more, 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 appealed. Instead, the Court of Appeals ignored the fact the very notice of appeal—and accompanying motion to consolidate—explained the unimpeachable legal basis for this immediate appeal. Surprisingly, the Court of Appeals based its dismissal order on an assumption that the order on appeal involved "discovery," but that discovery has nothing at all to do with this appeal. The Court of Appeals' dismissal order reveals an apparent misunderstanding of the posture of the case and the legal basis for the Charter Defendants' appeal.[6] Certiorari is therefore warranted and necessary.

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

To help streamline these proceedings, the Charter Defendants moved to consolidate this appeal with their prior mode-of-trial appeal, and that motion made clear that the notice of appeal

[6] 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 the "bench trial" order, and ultimately dismiss this entire case due to the unlawfulness of the receivership appointment.

was filed to provide the appellate courts with a full record as to the erroneously dismissed appeal of the June 20nd Order. As stated in the motion to consolidate:

> Rule 214 states: "Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated." Rule 214, SCACR. Here, the pending appeal in Appellate Case No. 2024-001446 involves the deprivation of the Charter Defendants' (among others') right to trial by jury. That same "question," within Rule 214, is implicated by the entry of the appealed Order here. Moreover, the October 2nd Order compounds the prior mode-of trial error case while also violating Rule 205's jurisdictional prohibitions on proceeding below. Thus, there are common issues implicated, and consolidation would serve the purpose of providing the Court with a full record in Appellate Case No. 2024-001446.
>
> As there is no other mechanism to properly put this Order before the Court and make it a part of the appellate record, this Motion to Consolidate should be granted. *See Limehouse v. Hulsey*, 404 S.C. 93, 96, 744 S.E.2d 566, 568 (2013) (applying Rule 214)[.]

If the Court of Appeals had reviewed the materials accompanying the Charter Defendants' filing, it would have been obvious the appeals are related and should have been consolidated. There is no other mechanism to put such an order before this Court for review, and this error 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 Charter 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 Charter Defendants' filings in Appellate Case Nos. 2024-000916 and 2024-001499.

Pursuant to Rules 208(b)(6) and 240, SCACR, the Charter Defendants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by all similarly-situated parties.

Respectfully submitted,

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