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

Appellate Case No. 2025-000052

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.

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI
(SECOND MODE OF TRIAL APPEAL)

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February 20, 2025

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INTRODUCTION

This case involves a South Carolina receiver purportedly appointed prejudgment over a solvent, active English company—Cape Intermediate Holdings Limited, which does not conduct business in South Carolina, is not a party to this case, and has no insurance assets in South Carolina. Yet, the Receiver claims he has been appointed with the authority to represent CIHL—authority the Receiver is using to try to destroy CIHL's primary defenses to claims in the United States, seemingly to the benefit of the personal-injury plaintiffs who routinely initiate receivership proceedings in the Asbestos Docket. The Receiver's conduct is patently unlawful.

In this appeal specifically, the Receiver attempts to quash the Altrad Defendants' jury-trial rights to avoid any risk a jury will put an end to the receivership scheme. Accordingly, this appeal—like all others arising out of the CIHL receivership—has constitutional and international dimensions requiring the Court's immediate intervention. *See* Rule 242(b), SCACR (providing that certiorari is appropriate when there are "special and important reasons"). And the Altrad Defendants have a statutory right to appeal any order that deprives them of a mode of trial to which they are entitled—here, a jury trial to defend against both (1) the first-party claims from which their alleged "derivative" liability could arise, and (2) the Receiver's third-party claims for alleged money damages. S.C. Code Ann. § 14-3-330(2). Certiorari review is essential.

ARGUMENT

I. The fact that the Altrad Defendants have a right to a jury trial on the issue of first-party liability exposes both the propriety of this appeal and the sham that is this receivership.

The Receiver has no answer to the fact that the Altrad Defendants (and every other third-party defendant) have a jury-trial right to defend against the first-party claims from which their alleged derivative liability could arise. This right is built straight into Rule 14. *See* Rule 14(a),

SCRCP ("The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim."). There can be no "derivative" liability that flows through to the Altrad Defendants unless and until a jury decides there must be some first-party liability attributable to CIHL. *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.").

The *Tibbs* plaintiffs have demanded a jury trial, making any circuit court order that denies the right to a jury trial immediately appealable. *See, e.g.*, *Hagood v. Sommerville*, 362 S.C. 191, 196–97, 607 S.E.2d 707, 709 (2005) (reiterating that mode of trial is a "well-established exception to the general rule" that nonfinal orders are nonappealable).

But there is no chance of any such first-party liability here ***because CIHL isn't even a first-party defendant to the Tibbs plaintiffs***. CIHL's absence from the Tibbs family's case makes it impossible for CIHL to be a third-party plaintiff; makes it impossible for the Altrad Defendants to be third-party defendants to claims from CIHL's alleged Receiver; and makes it impossible for the December 6, 2023 appointment order to comport with due process or South Carolina Code § 15-65-20's notice provision, as CIHL wasn't involved in the proceedings that resulted in the Receiver's alleged appointment over CIHL.

Despite having multiple opportunities to respond to this argument, the Receiver never has. He remained silent on this point in still-pending Appellate Case No. 2024-002114, and he remained silent on the point again in this appeal. That silence is now deafening. CIHL's absence from the Tibbs family's case exposes this proceeding to be a sham—no liability could ever flow through to a third-party defendant from an entity that is not a first-party defendant—and the Receiver's sustained refusal to even respond to this issue confirms the Altrad Defendants' position.

II. Labels cannot change the substance of the Receiver's claims or the circuit court's order.

The Altrad Defendants also have a right to a jury trial on the Receiver's alleged "third-party" claims because they seek money damages. And not just "damages" but "billions of dollars," as the Receiver put it in his own pleading. When a party seeks recovery of money damages, the defendant is entitled to a jury trial. Rule 38(a), SCRCP. The fact this is a case for money damages is not in dispute; the Receiver conceded 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).)

Accordingly, the Altrad Defendants (and all other third-party defendants) are entitled to a jury trial. *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.").

To avoid this inevitable outcome, the Receiver again tries to excuse the circuit court's decision to set this matter for a bench trial by pointing to the labels he affixed to his "equitable" claims (Opp. at 11) and the label the circuit court affixed to the "scheduling order" (*id.* at 12).

This superficial argument fails as a matter of law. In South Carolina, labels don't matter; a filing's substance controls. This principle applies with respect to a party's filing. *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))).[1]

[1] The Altrad Defendants have never waived their entitlement to a jury trial. Simply acknowledging to the circuit court that the Receiver has tried to engineer a "bench trial" obviously

It also applies with respect to a court order. *See, e.g.*, *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 147 (2015) (finding that an order was immediately appealable despite its "bifurcation" label and reiterating that "[o]ur review of trial court orders is not constrained by how the order is styled").

That's why South Carolina's appellate courts have reviewed procedural orders that also impact a jury-trial right. *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 v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997) ("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 fact that the order on appeal unambiguously deprives the Altrad Defendants of a jury trial on the Receiver's claims for "billions of dollars" in money damages renders it immediately appealable—artful labeling cannot alter this legal outcome. The Court of Appeals should not have dismissed this appeal, and this Court should grant certiorari as a result.

III. The Court should seize this opportunity to reinforce Rule 205's jurisdictional boundaries.

The Altrad Defendants' lead argument in their certiorari petition is that Rule 205 should have preempted the circuit court from moving forward with any of the litigation that has spawned this and numerous other appeals in this matter. In response, the Receiver argues as follows: "Because the orders Petitioners have attempted to appeal are not immediately appealable, jurisdiction has not transferred to the appellate courts." (Opp. at 14.)

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does not mean the Altrad Defendants have waived their own jury-trial rights, and no legal authority supports such a contention.

But the orders that the Altrad Defendants have appealed are undoubtedly immediately appealable. As discussed in this reply and virtually every other filing the Altrad Defendants, the Charter Defendants, and even the now-dismissed Sparrows Defendants have presented to the appellate courts, the initial appeal in this situation involves the circuit court's December 6, 2023 order, which is expressly appealable under South Carolina Code § 14-3-330(4). To summarize:

The original appointment order involved a receivership over Cape PLC, an active Jersey company that also has nothing to do with South Carolina. That order was entered in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727, approximately nine months after *Park* was reported to be "fully resolved" without any finding or judgment whatsoever against Cape PLC. (App. 432 (report of Park's counsel that case was "fully resolved"), 437 (order appointing Cape PLC receiver), in Appellate Case No. 2024-001499.)

That sweeping prejudgment (or no-judgment) appointment order had nothing to do with "insurance assets," and instead purported to give the Receiver authority to *inter alia* "collect all accounts receivable" owed to Cape PLC, to "endorse and cash all checks and negotiable instrument payable" to Cape PLC, to hire brokers to sell "any real property or mineral interests" held by Cape PLC, to obtain "any financial records belonging to or pertaining to" Cape PLC, and a host of other powers that are entirely improper and invasive. (App. 438 in Appellate Case No. 2024-001499.)

At the Receiver's request, the circuit court modified the *Park* appointment order to create a new receivership over CIHL in this case. That order—issued on December 6, 2023—is the basis of Appellate Case No. 2024-001499, and it is the fountainhead from which all subsequent appeals in this matter flow.

South Carolina Code § 14-3-330(4) gives litigants the right to immediately appeal any "interlocutory order or decree . . . granting, continuing, modifying, or refusing the appointment of

a receiver." The December 6th Order did three of these four: it granted a new receivership over CIHL, it continued the prior receivership order despite every third-party defendant in this case pointing out myriad legal defects that render the order a nullity, and it modified the *Park* receivership order to apply to CIHL in *Tibbs*.

Each of these acts was contrary to settled law—including basic federal constitutional law that forbids a state-appointed receiver from attempting to operate beyond that state's borders (much less the nation's borders)—and the Altrad Defendants and others rightly appealed the December 6th order. They even filed and served their notice of appeal on December 18, 2023—rather than waiting the thirty days permitted by law—to spare the circuit court and the Receiver of any wasted efforts and resources.

That appeal is indisputably proper, and service of that notice of appeal relieved the lower court of jurisdiction. *See* Rule 205, SCACR (vesting "exclusive jurisdiction" in the appellate courts over matters on appeal). The Court has previously given Rule 205 an expansive construction, including invoking it *sua sponte* as the basis for overruling prior Supreme Court precedent, and reading it broadly to reach even "inchoate" issues that could be affected by the order on appeal. *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 539, 787 S.E.2d 485, 496 (2016) (Pleicones, C.J., concurring in result).[2]

[2] *Stokes-Craven* provides a sharp illustration of the breadth of Rule 205's jurisdictional reach. There, this Court relied on Rule 205 as the basis for vacating its decision in *Epstein v. Brown*, 363 S.C. 372, 610 S.E.2d 816 (2005). But during the appeal, the parties never mentioned Rule 205 as a basis for their competing arguments; the rule did not come up during the extensive oral argument before this Court; and this Court did not mention Rule 205 in its initial opinion—a 3-2 decision to vacate *Epstein*, with then-Chief Justice Toal and Justice Kittredge dissenting. The losing party then sought rehearing—through a filing that also didn't mention Rule 205—which prompted the Court to reconsider its entire ruling and resulted in the final opinion, which vacated *Epstein* based on the jurisdictional limitations that Rule 205 places on all matter affected by an appeal. The final *Stokes-Craven* opinion was a 4-1 decision whose reliance on Rule 205 convinced Chief Justice Toal and Justice Kittredge away from their initial dissent and into the majority to vacate *Epstein*.

Nor is this a novel argument; it is what South Carolina's courts have always held. *See, e.g.*, *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, 518, 641 S.E.2d 419, 422 (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 v. Oakes*, 398 S.C. 245, 255 & n.3, 728 S.E.2d 45, 51 & n.3 (Ct. App. 2012) (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.").

For their sustained and justified reliance on Rule 205 and the absence of jurisdiction below, the Altrad Defendants have been mocked and bullied by the Receiver, held in contempt by the circuit court, and had the Receiver oppose and the circuit court refuse their repeated attempts for an injunction based on Rule 205.

The Receiver's insistence on proceeding below without any jurisdiction to do so prompted CIHL itself (not the Altrad Defendants, as the Receiver continues to misrepresent) to seek the protection of its own country's courts—the sole courts that have jurisdiction over CIHL, and whose law governs CIHL's internal affairs—against these unlawful receivership proceedings. As the Court is aware, the English High Court enjoined the Receiver from further acting as an "impostor" of CIHL, a ruling which is fully consistent with South Carolina law.

The pitched nature of this case and all subsequent litigation activities that have occurred in South Carolina and elsewhere trace their origin to the repeated refusal by the Receiver and the lower courts to abide by Rule 205's unambiguous jurisdictional boundaries. The circuit court had no jurisdiction to issue any orders while its December 6, 2023 receivership order is on appeal, including the second "bench trial" order that is the subject of this appeal. The Court should exercise its certiorari authority to seize an opportunity to reinforce the key role Rule 205 plays in pausing the circuit court and litigants during an appeal so that issues remain crystalized for appellate review and the status quo can be maintained while the appellate bench does its work.

CONCLUSION

The Receiver attempts to discredit this appeal by suggesting that the sheer volume of appeals arising from receivership appointments in the Asbestos Docket makes this appeal somehow suspect or not credible. (Opp. at 2–4.) But rather than discrediting this appeal and others like it, the sheer volume of appeals arising from the Asbestos Docket regarding unlawful and unconstitutional receivership overreach reinforces the obvious conclusion that certiorari review is essential to restore the Rule of Law and put an end to such abuses.

The Altrad Defendants had a right to immediately appeal the circuit court's second order improperly setting this case for a bench trial. The Court of Appeals erred when it dismissed this appeal. What is happening below is plainly unconstitutional, and the Court should grant the Altrad Defendants' petition and all others that have been filed related to the CIHL receivership so that it can swiftly bring this entire situation to a close.[3]

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

Respectfully submitted,

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