

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting Circuit Court Judge

RECEIVED
Oct 15 2025
SC Court of Appeals

Civil Action No. 2023-CP-40-01759

Appellate Case No. 2025-

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.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, 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,

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.; Anglo 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

Of which Mohed Altrad and Altrad Investment Authority SAS are the,

Appellants.

**MOTION TO DISMISS INTERLOCUTORY APPEAL
AND FOR EXPEDITED REVIEW**

Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, Respondent Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas (“the Receiver”), respectfully moves for this Court to dismiss the October 14, 2025 Notices of Appeal filed by Appellants Mohed Altrad and Altrad

Investment Authority SAS (“the Altrad Appellants”) and Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. (“the Charter Appellants” and, collectively with the Altrad Appellants “Appellants”) on an expedited basis. The Receiver also respectfully requests that while the Court considers this Motion to Dismiss, it holds in abeyance all other briefing and submission deadlines.

BACKGROUND

These notices of appeal are the twenty-first and twenty-second interlocutory notices of appeal filed in the *Tibbs* case involving the Cape receivership.¹ The other appeals were dismissed by this Court as interlocutory. Appellants and the other third-party defendants petitioned for writs of certiorari from those dismissals with the Supreme Court. Recently, the Supreme Court granted certiorari in its original jurisdiction over two of the appeals (Appellate Case Nos. 2024-001423 and 2024-001499), denied certiorari in give five of the appeals (Appellate Case Nos. 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052), dispensed with further briefing, and remanded the case back to the circuit court “for all purposes” and reserved for its consideration the Receiver’s Motion for Sanctions, stating it would “rule at a later time on any currently pending motion for sanctions.” *See* Order, Appellate Case No. 2024-001499 (filed June 26, 2025). Following a series of additional criminal and civil threats by the Altrad Appellants against the Receiver if he did not cease the civil litigation, the Supreme Court granted Receiver’s first Motion to Supplement the Sanctions Motion on September 24, 2025. The Supreme Court then clarified on September 25, 2025, that “nothing in the June 26, 2025 order prevents trial court proceedings

¹ Appellants have attempted to appeal every order issued by the circuit court and refused to participate in the case. During the time Appellants have successfully delayed trial in the case, they have sought favorable rulings in foreign jurisdictions and threaten the Receiver with the seizure of assets, fines, and imprisonment for fulfilling his court-appointed duties. *See, e.g.*, Motion for Sanctions, Appellate Case No. 2024-001499 (filed June 3, 2025).

from continuing in the normal course. . . , including the filing of and decisions on motions to approve settlement agreements.” Order, Appellate Case No. 2024-001499 (filed Sept. 25, 2025). However, following an announcement of a Rule 43(k) settlement in open court on October 6, 2025, by the Receiver and Third-Party Defendants Anglo American/De Beers and affiliates, the Altrad Appellants issued an October 7 letter to the settling defendant threatening criminal prosecution if it proceeded with settlement and continued participating in the South Carolina’s litigation. The Altrad Appellants’ continued pursuit of interlocutory appeals and foreign litigation to intimidate parties properly before South Carolina courts is improperly interfering with and delaying the South Carolina Receiver’s ability to litigate the merits of its claims against Appellants and its ability to settle claims with willing South Carolina litigants—a settlement which will result in the establishment of a Qualified Settlement Fund to benefit injured South Carolinians.

The circuit court has held numerous hearings in the case and rescheduled the trial for October 20, 2025, that had previously been continued numerous times due, in part, to Appellants’ interlocutory appeals and refusal to participate in the case.² Now, six days before trial is set to begin and less than a month after the Supreme Court reaffirmed that the circuit court could proceed with the case, Appellants once again appeal an interlocutory order of the circuit court in order to delay and frustrate the obligations of the South Carolina court and court-appointed receiver.

Appellants have attempted to manufacture appealability once again by renaming the order on appeal as an “order granting appointment of a putative receiver.”³ The Charter Appellants do

² Trial was previously scheduled in this case on April 15, 2024, December 9, 2025, and February 3, 2025.

³ Appellants have previously renamed interlocutory orders when appealing to mislead this Court into believing the orders were immediately appealable under section 14-3-330. For example, Appellants appealed a discovery order of the circuit court and unilaterally renamed the order as an order denying an injunction. *See* Appellate Case No. 2024-00524. The Supreme Court denied certiorari in that appeal. *See* Appellate Case No. 2024-000916.

the same by referring to the order as an “order granting the appointment of a receiver.” It is not an order granting the appointment of a receiver.⁴ A review of the order caption shows it is an Order on Altrad Defendants’ Notice of Recent Supreme Court Authority Voiding Third-Party Litigation, Renewed Motion to Dismiss and Motion to Strike All Filings and Orders in the Third-Party Case and the Receiver’s and Tibbs Plaintiffs’ Motions to Confirm the Appointment of the Receiver. The Court has been here before and has previously dismissed an appeal as interlocutory from Appellants’ motion to dismiss the case and dissolve the receivership. *See, e.g.*, Appellate Case No. 2023-002006. Appellants simply refiled the previous motion under a new name as another attempt to halt this case. They sought dismissal *again* with the circuit court, arguing the receivership should not be recognized, and the circuit court denied that motion to dismiss and motion to strike. The circuit court further granted a motion to *confirm* the appointment of a receiver in accordance with instructions provided by the Supreme Court in the June remand order. The circuit court did not appoint a receiver. Instead, the circuit court confirmed that the previously-appointed receiver was authorized to conduct his work in the *Tibbs* case.

In the June Order, the Supreme Court admonished the “dozens on interlocutory appeals in asbestos cases such as this one”— many of which “have bordered on frivolous”—and warned that “any further frivolous appeals in these cases from interlocutory orders that are not immediately appealable will result in sanctions.” *See* Order, Appellate Case No. 2024-001499 (filed June 26, 2025). The Supreme Court stated: “Our intention is to reach and address the merits of issues properly before[.]” *Id.* Appellants remain undeterred by the Supreme Court’s warning and

⁴ Appellants refusal to abide by the authority and orders of the South Carolina courts is illustrated by their continued referral of the Receiver as “a putative receiver.” On one hand, Appellants argue the appealed order appoints a receiver and, on the other hand, they argue the receiver is putative and was never appointed.

instructions. Instead, they have again appealed an interlocutory order in order to delay the scheduled trial and prevent the circuit court from finally deciding the case so it can be presented to the appellate courts in the proper course on the merits of the case.

ARGUMENT

The Court should grant the Receiver's Motion to Dismiss because the October 13, 2025 order is not immediately appealable. The Order, titled "Order on Altrad Defendants' Notice of Recent Supreme Court Authority Voiding Third-Party Litigation, Renewed Motion to Dismiss and Motion to Strike All Filings and Orders in the Third-Party Case and the Receiver's and Tibbs Plaintiffs' Motions to Confirm the Appointment of the Receiver," rejected Appellants' refiled attempts to dismiss the case and dissolve the receivership. Appellants previously appealed their first attempt, and the Court dismissed it as interlocutory. This order is also interlocutory.

A party's right to appeal arises from and is governed by statute. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). Traditionally, an appeal may be pursued only after the entry of final judgment. *Id.* "A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution." *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017). "An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed." *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005).

"The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by [section 14-3-330 of the South Carolina Code]." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 6, 630 S.E.2d at 467. "Absent a specialized statute, an order must fall into one of several categories set forth in [s]ection 14-3-330 in order to be immediately

appealable.” *Id.* Section 14-3-330 is “construed narrowly” with the goal of avoiding “circuitous litigation and needless appeals.” *Tillman*, 420 S.C. at 250, 801 S.E.2d at 760. To be sure, “[p]iecemeal appeals” are disfavored in South Carolina. *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709. The Supreme Court just reaffirmed that piecemeal appeals in this case specifically should not be tolerated.

In addition to the dismissals *arising out of this case* already, both the South Carolina Supreme Court and this Court have recently *and decisively* dismissed as premature similarly-situated, interlocutory appeals which too sought immediate review of orders rejecting personal jurisdiction arguments and orders declining to dissolve a receivership. *See Childers v. Davis Mechanical Contractors, et al.*, Appellate Case No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024) (dismissing, in an order signed by all five justices, as not immediately appealable an order denying appellants’ request to dissolve a receivership); *Welch v. Advance Auto Parts, et al.*, Appellate Case No. 2024-000337 (Ct. App. Order dated April 12, 2024) (dismissing as not immediately appealable an order denying appellants’ motions to dissolve a receivership and to dismiss, including on personal jurisdiction grounds, and an order denying appellants’ motions for protection from discovery); *Mitchell v. 3M Company, ABB Inc., et al.*, Appellate Case No. 2024-000341 (Ct. App. Order dated April 12, 2024) (same); *Link v. 3M Company, 4520 Corp., Inc., et al.*, No. 2024-000342 (Ct. App. Order dated April 12, 2024)(rejecting appellants’ contention that the circuit court’s order permitting the receiver to continue his duties during the pendency of the appeal is immediately appealable and dismissing the appeal).

While continuing to refuse to recognize the appointment of the Receiver and the authority of the receivership court, Appellants assert the circuit court’s order is immediately appealable pursuant to section 14-3-330(4) because it appointed “a putative receiver.” This is not true. The

circuit court's order confirmed that the previously-appointed Cape receiver's authority extended to the *Tibbs* case in light of the Supreme Court's instructions in the remand order and the continued objections by Appellants and other litigants to the Cape receivership. Appellants have already appealed the first order denying their motion to dismiss and dissolve the Cape receivership, and the Supreme Court granted certiorari over that appeal in its original jurisdiction and remanded to the circuit court. Appellants then reassert their arguments that the Cape receivership should be dissolved, and the circuit court again ruled and confirmed that the Cape receivership was proper. That order is interlocutory and cannot be immediately appealed. As noted in the June 26 Supreme Court order, Appellants should not be permitted to continue to clog our courts with meritless appeals like this one. Instead, the Court should dismiss the appeal, allowing the case to proceed to trial on October 20 so that a full record may be developed and the case can be presented to the appellate courts in the normal course as instructed by the Supreme Court in the remand order.

The circuit court confirmed that the October order attempting to be appealed is a repeat ruling in light of the continued objections raised by Appellants as to the validity of the Cape receivership. On August 25, 2025, the circuit court provided the second status report to the Supreme Court in accordance with the June remand order. In it, the circuit court attached correspondence to the parties ruling on the refiled motions, stating: "I intend to repeat my ruling confirming the . . . ongoing validity of the appointment of the Receiver for Cape and its authority to bring the third-party action in Tibbs." See Correspondence from J. Toal, Appellate Case No. 2024-001499 (filed Aug. 25, 2025). The circuit court solicited proposed orders from the parties and issued the October order Appellants have attempted to appeal. See Correspondence from J. Toal, Appellate Case No. 2024-001499 (filed Sept. 24, 2025). The day after the circuit court submitted the third status report, the Supreme Court issued the September 25, 2025 order clarifying

“nothing in the June 26, 2025 order prevents trial court proceedings from continuing in the normal course. . . , including the filing of and decisions on motions to approve settlement agreements.” Order, Appellate Case No. 2024-001499 (filed Sept. 25, 2025). The circuit court’s October confirmation of the appointment of the receiver is simply another refusal by the circuit court to dissolve the receivership, as Appellants argued it should. The issues were not appealable in December 2023 when Appellants first appealed them, and they’re not appealable now.

The Receiver filed the third-party complaint in this case on June 30, 2023, and Petitioners filed their first appeal on December 18, 2023. Out of the total number of days this case has been pending, it has spent nearly 70% of those days on appeal from an order denying a motion to dismiss the third-party complaint and dissolve the receivership—the very same type of order this Court has ruled is not immediately appealable after rejecting some of the very same arguments by some of the very same counsel in *Childers v. Davis Mechanical Contractors, et al.*, Appellate Case No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024) (dismissing, in an order signed by all five justices, as not immediately appealable an order denying motions to dismiss and dissolve a receivership). Again, this is the very same type of order Appellants attempt to appeal again. Without these improper interlocutory appeals spanning over a year, the case could have been tried and presented to this Court with a full record. This is exactly the reason our appellate court rules disfavor and prohibit piecemeal appeals. *See Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005) (“Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.”). Appellants’ strategy being utilized in this case of avoiding litigation by appealing interlocutory orders has been widespread across asbestos receiverships in recent years, wasting the limited resources of our appellate courts which have now had to issue over forty (40) dismissals of interlocutory appeals. All the while, Appellants attempted to improperly remove

the case to federal court and have initiated new actions against the Receiver in the United Kingdom, France, and Belgium. Respectfully, this Court should stop Appellants from continuing their legal strategy of appealing interlocutory orders while they forum shop and delay any trial on the merits in the United States. Otherwise, litigants will be back again and again before this Court on interlocutory orders tying up the time and resources of the appellate courts on issues properly before the circuit court.

CONCLUSION

The Receiver respectfully requests the Court dismiss these appeals. Because of the upcoming trial and the extensive interlocutory appellate activity in this case, the Receiver requests the Court consider this motion on an expedited basis.

By: /s/ Jonathan M. Robinson

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Ltd. by and through its duly appointed Receiver
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Columbia, South Carolina

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Third-Party Defendants,

of which

Of which Mohed Altrad and Altrad Investment Authority SAS are the,

Appellants.

PROOF OF SERVICE

I certify that a true copy of the Receiver for Cape PLC's Motion to Dismiss in this case has been served on the following, this 15th day of October, 2025, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to subsection (g)(3) of the South Carolina Supreme Court's March 20, 2020 Order, as amended May 29, 2020. Pursuant to subsection (g)(3) of the South Carolina Supreme Court's Order, service

on the attorneys admitted pro hac vice is accomplished by service on the associated South Carolina lawyer.

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October 15, 2025