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, Circuit Court Judge

Civil Action No. 2023-CP-40-01759
Appellate Case No. 2024-001423

Appellate Case No. 2024-001499

John A. Tibbs and Margaret B. Tibbs……**PLAINTIFFS**,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; Aiw-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable

LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company Wind Up, Ltd.; Yuba Heat Transfer LLC; 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., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers 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 (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) 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 S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC……...**THIRD-PARTY DEFENDANTS**,

Of which Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the...……..…. **PETITIONERS**.

PETITION FOR A WRIT OF PROHIBITION OR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases

Statutes

Rules

QUESTIONS PRESENTED

1. Must the circuit court strictly adhere to the directives set forth by the Court in the June 26, 2025, order remanding the case (*Tibbs v. 3M Co.*, Appellate Case No. 2024-001423 (S.C. June 26, 2025) ("June 26 Order"))?

2. Does the June 26 Order permit the circuit court to allow a pre-judgement receiver appointed pursuant to S.C. Code Ann. § 15-65-10, et seq, over Cape PLC (an active foreign company) in the *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727 ("*Park*") to bring a third-party complaint in an unrelated case (*Tibbs*) where no party to that case has made a motion to appoint a receiver?

3. Does the June 26 Order permit the circuit court to appoint a pre-judgement receiver and grant him retroactive authority to validate previous ultra vires activity?

4. Can a circuit court make retroactive/*nunc pro tunc* findings of fact to a previously entered receiver appointment order or, if the circuit court determines that there were no factual findings in a receiver appointment order to satisfy the June 26 Order requirements, must the circuit court declare the appointment order to be void *ab initio*?

5. May a pre-judgement receiver appointed pursuant to S.C. Code Ann. § 15-65-10, et seq, over a foreign active entity in one asbestos case act in another unrelated case, including by accepting service, answering a complaint, filing third-party claims, seeking default judgments, and making a motion requesting the court appoint him as receiver over the entity in that case?

6. To act as a pre-judgment receiver for Cape PLC in the *Tibbs* case, must the Tibbs Plaintiff (or some other party in the case) first make a motion to appoint a receiver in *Tibbs*?

7. May a pre-judgment receiver be appointed in this case (*Tibbs*) over a foreign corporation who is not a party in *Tibbs* (i.e., Cape Intermediate Holdings Ltd. ("CIHL")) and who was not served with the operative summons and complaint?

8. Must the circuit court have personal jurisdiction over a party prior to appointing a pre-judgment receiver over its assets?

9. May counsel purportedly acting on behalf of a former administrator of an estate in an asbestos case make a motion to appoint a prejudgment receiver on behalf the plaintiff estate after the plaintiff estate is closed by the probate court?

10. As there is no receiver appointment order (in *Park*, *Tibbs* or otherwise) over Cape PLC or CIHL that contains the mandatory clause "fixing the value of the property for which the bond may be given" in accordance with the requirements of S.C. Code Ann. § 15-65-60, are any purported receivership appointment orders over Cape PLC or CIHL void *ab initio*? *See 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.").

I. INTRODUCTION

Petitioners Charter Consolidated Ltd. ("Charter"), ESAB Corporation ("ESAB"), and Central Mining and Investment Corporation Ltd. ("Central Mining" and, collectively, "Charter Petitioners"), by and through their undersigned counsel, respectfully 1) request that this Court grant a writ of prohibition with respect to the circuit court's failure to abide by the directives in this Court's order in *Tibbs v. 3M Co.*, Appellate Case No. 2024-001423 (S.C. June 26, 2025) (the "June 26 Order") and/or 2) request that this Court grant a writ of certiorari under its common law supervisory authority to review the below referenced three (3) orders demonstrating that the circuit court exceeded its jurisdiction and issued orders that violated the law.[1] On June 26, 2025, this Court granted the Charter Petitioners' Writ of Certiorari and remanded the case to the circuit court with specific directions on how to proceed in this case, and in dozens of other asbestos cases where the circuit court appointed Mr. Protopapas receiver. *See generally* June 26 Order. Since the Court issued the June 26 Order, the circuit court has entered three (3) orders demonstrating its fundamental disagreement with the directives in the June 26 Order: 1) an Order on October 13, 2025, granting Mr. Protopapas' request to appoint himself as Receiver for Cape in *Tibbs* ("October 13 Confirmation Order");[2] 2) an Order on October 13, 2025, granting Mr. Protopapas' motion to amend the third-party complaint to add allegations and a new cause of action (including against Charter Petitioners) ("October 13 Amended Complaint Order"); and 3) an Order on October 16,

[1] By filing this request/petition, the Charter Petitioners do not waive, but instead specifically preserve, all objections to personal jurisdiction and subject matter jurisdiction in South Carolina.

[2] Charter Petitioners filed a notice of appeal on October 14, 2025, regarding the order entitled 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.

2025, ordering Charter Petitioners (and others) to a stand-alone bench trial of the Amended Third-Party Complaint on October 20, 2025.

The effect of the October 13 Confirmation Order in the *Tibbs* case was to 1) appoint Mr. Protopapas as a prejudgment receiver pursuant to Title 15 over Cape Intermediate Holdings Ltd ("CIHL") to act in *Tibbs* and 2) retroactively approve all his past actions and filings in the *Tibbs* case. This order was entered even though it is *undisputed* that: 1) no party in the *Tibbs* case (including the *Tibbs* Plaintiffs) ever made a motion to appoint a receiver over any Cape entity; 2) CIHL is not a named defendant (or otherwise a party) in *Tibbs*; 3) neither CIHL nor any other Cape entity was ever served with any operative summons and complaint in *Tibbs*; 4) Mr. Protopapas moved for his own appointment in *Tibbs*; 5) prior to October 13, 2025, the only appointment order purportedly appointing Mr. Protopapas as Receiver over any Cape entity was issued in *Park v. Armstrong*, C/A No. 2021-CP-40-02727 ("*Park*"); 6) at the time *Park* counsel filed the motion to appoint a receiver over Cape, and at the time the *Park* court granted the motion to appoint a receiver, and for more than two years after the date of the receiver appointment order in *Park*, there existed no plaintiff in *Park* because the Park Personal Representative had move for and obtained an order from the probate court closing the Park estate; 7) Mr. Protopapas asserted that the Cape Receivership Order from *Park* gave him the authority to bring the third-party complaint against Charter Petitioners in *Tibbs*, a claim that is derivative of the Tibbs' injuries (not Ms. Park's injuries); 8) the Cape Receivership Order from *Park* contains absolutely no findings of fact to support the appointment of a receiver; 9) Plaintiffs' counsel (representing both *Park* and *Tibbs*) entered into a tolling agreement with Mr. Protopapas (regarding Cape) prior to Mr. Protopapas filing the third-party complaint purportedly as Receiver for Cape; 10) there is no active claim between either the *Park* or *Tibbs* plaintiffs and any Cape entity; 11) Cape PLC (the only Cape

entity that is a named defendant in *Tibbs*) has no connection to asbestos activity or to Charter Petitioners; and 12) both CIHL and Cape PLC are active foreign companies that have no assets in South Carolina or the United States.[3] The October 13 Confirmation Order disregards the mandatory directives from the Court's June 26 Order, including, but not limited to, the directive: "The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed." June 26 Order, at p. 4.

Charter Petitioners recognize the extraordinary nature of seeking direct relief with the Supreme Court. Although the Charter Petitioners have already properly filed an appeal, as of right under South Carolina Code Ann. § 14-3-330(4), this Court is already receiving reports from the circuit court every 30 days regarding this matter and recently clarified the June 26 Order in its order in *Tibbs v. 3M Co.*, Appellate Case No. 2024-001423 (S.C. September 25, 2025) ("September 25 Clarification Order"). Moreover, Charter Petitioners' request is urgent. Not only are they continuing to be pursued by a Receiver that has at all times been a nullity, but they are also being ordered to trial while the circuit court lacks jurisdiction pursuant to Rule 205, SCACR, and less than a week after 1) being served with the amended third-party complaint, and 2) receiving the circuit court's order appointing Mr. Protopapas as Receiver over CIHL in *Tibbs*. Moreover, the June 26 Order directs the circuit court to apply the same directives to <u>all</u> cases where Mr. Protopapas has been appointed and/or is acting as Receiver in asbestos cases. Should the circuit

[3] Each of these points and multiple other independent bases as to why the receivership is a nullity are set forth in Mohed Altrad And Altrad Investment Authority S.A.S.'s Motion To Supplement The Record filed on October 2, 2025,and Mohed Altrad And Altrad Investment Authority S.A.S.'s Reply In Support Of Motion To Supplement The Record filed on October 13, 2025, both filed in Appellate Case Nos. 2024-001423 and 2024-001499. Charter Petitioners, per Rule 208(b)(6), SCACR, incorporate herein, to the extent applicable, all arguments raised and authorities cited in these two filings and all other filings by Charter Petitioners and similarly situated Appellants Mohed Altrad, and Altrad Investment Authority S.A.S in Appellate Case Nos. 2024-001423 and 2024-001499, including any filed or soon to be filed Petitions for Cert.

court's flawed implementation of the Court's June 26 Order be allowed to stand, then it will surely be applied in dozens of other cases where 1) a receiver was appointed, and 2) where a receiver is acting/conducting work without an appointment order in that case. This Court has the opportunity, either through a writ of prohibition or a writ of certiorari, to resolve this important issue (affecting multiple cases outside of the *Tibbs* matter) in a more efficient manner.

II. STATEMENT OF THE CASE

A. The Supreme Court Grants The Charter Petitioners Initial Cert Petition.

The circuit court in the *Park* case granted the motion to appoint a receiver pursuant to subsections 15-65-10(4) and (5) of the South Carolina Code (2005). Thereafter, in this underlying asbestos case (*Tibbs*), wholly unrelated to the circuit court action in which the Receiver was appointed, the Receiver made an appearance and filed a "general denial" "on behalf of" Cape PLC.[4] The following day, the Receiver filed a Third-Party Complaint against Charter Petitioners, alleging that Charter Petitioners were parties in possession of funds belonging to Cape PLC and seeking to place those funds in the hands of the Receiver.[5] The Receiver filed the Third-Party Complaint without leave of the circuit court and even though he was not a defendant in *Tibbs* and had not been appointed as a receiver in *Tibbs*.

The Third-Party Complaint also sought funds allegedly belonging to CIHL, even though 1) CIHL was/is not a defendant in the *Tibbs* case, 2) CIHL is not the entity referenced or covered by the *Park* Receivership Order, and 3) Mr. Protopapas had not been appointed receiver over CIHL by any other order.

[4] *See* "Answer of Cape PLC," filed June 29, 2023.

[5] *See* Receiver's Third-Party Complaint, filed on June 30, 2023.

In response to Mr. Protopapas' Third-Party Complaint, Charter Petitioners filed a motion to dismiss for lack of personal jurisdiction, lack of subject matter jurisdiction, and for failure to state a claim. They also filed a motion to dissolve the purported Receivership over Cape PLC – making numerous arguments about how the Receiver was improperly appointed in *Park* and was not authorized to act in *Tibbs*. The circuit court issued a very long order on December 3, 2023, denying the motion to dissolve and motion to dismiss for lack of personal jurisdiction. Charter Petitioners filed a notice of appeal on December 18, 2023, and asserted that the order was immediately appealable because the effect of the order was either the grant of a new receiver appointment or a modification of the existing *Park* receivership order. Mr. Protopapas moved to strike the appeal arguing that the order was not immediately appealable, and after briefing the Court of Appeals granted the motion to strike. The Court of Appeals then denied Petitioners timely Petition for Rehearing. Thereafter, Charter Petitioners filed Petitions for Writ of Certiorari ("Cert Petitions") with this Court. The petitions challenged the propriety of the Cape Receivership appointment order entered in *Park* and argued that the South Carolina receivership statutes (S.C. Code Ann. § 15-65-10 *et. seq.*) limit a pre-judgment receiver to acting in the case in which he is appointed. The petitions specifically argued that South Carolina law does not allow a receiver appointed in one case (*Park*) to act in another case (*Tibbs*).

In particular, the petitions argued that the appointment of a receiver is limited to a single case or cause, and is supported by the plain language of the receivership statutes. *See* S.C. Code Ann. § 15-65-10 *et seq.* S.C. 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).

The petitions further argued that 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. *See* 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**.") (emphasis added). Furthermore, 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. *See* 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 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….") (emphasis added). Finally, S.C. Code Ann. § 15-65-90, which holds a party moving for a receiver responsible for their motion to appoint and for an improper appointment of a receiver, further supports that the action of the receiver is intended to be limited to the case in which the receiver was appointed. *See* S.C. Code Ann. § 15-65-90 (1976 as amended) (where receiver "improperly appointed, the costs, charges and expenses of such receivership shall [be charged upon] the party procuring the appointment.").

On June 26, 2025, the Court granted the Cert Petitions in *Tibbs*, finding that a Title 15 receiver appointment is limited to the case in which he is appointed, and remanding to the circuit court to implement the Court's directives.

B. The Circuit Court's Resistance To The June 26 Order.

In granting the cert petition, the Court specifically reiterated "that appointing a receiver before judgment is permissible only in the rarest and most extraordinary cases" and "direct[ed] the circuit court to: 1) Ensure the receiver has been authorized to conduct its work by an order filed in the specific case as to which the work is to take place. The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed." June 26 Order, at p. 4. This directive is mandatory and absolute. The Supreme Court used imperative language—"is not to be authorized"—that forbids, rather than permits, judicial discretion. The circuit court did not have jurisdiction to "reconsider" the Supreme Court's directive.

The June 26 Order went on to direct the circuit court to ensure that, if there was an appointment order, it was "based on findings of fact sufficient under *Welch* to justify the order, and that the receiver's scope of authority is limited as set forth in *Welch*." The Supreme Court further directed that, going forward, if the circuit court wants to authorize the work of "a receiver based on facts not found sufficient in *Welch*, or to authorize a scope of work not approved in *Welch*, the circuit court should make specific findings of fact and conclusions of law the circuit court finds justify its action."

Following the remand, the circuit court conducted several hearings (on July 22, August 12, and October 6). Yet, rather than following the Supreme Court's mandate, the circuit court charted a course that contradicted it. At the July 22, 2025 hearing, the circuit court suggested that the Supreme Court, in *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (2025) and the June 26 Order, may not be "completely aware of how receiverships are used in South Carolina." *See* Exhibit 1, July 22, 2025 Hr'g Tr., at 17:21–25 ("I also think that it [*Welch*] and the *Tibbs* case and its third-party receivership is the subject of all this illustrates that the [Supreme] Court is not completely aware of how receiverships are used in South Carolina.") (remarks of Judge Toal).

Those statements marked the beginning of a sustained departure from the Supreme Court's instructions. Justice Toal further explained:

> So what they simply say is a very narrow understanding they have of receiverships but emphasize if there's not an order in place appointing a receiver in every specific case, look at signing such an order on findings sufficient under Welch to justify that receivership; and two, to the extent the --three, to the extent the circuit court intends to authorize the work of the receiver based on facts not found sufficient in Welch or to authorize scope of work not approved in Welch, the circuit court should make specific findings of fact. In other words, I understand that to leave it to me to explore more broadly this receivership issue and what the law is in regard to the appointment of a receiver and whether a receiver must -- can act on matters other than the claim in the case in which the receiver was first appointed.

See Ex. 1, July 22, 2025 Hr'g Tr., at 23:1–20.

The circuit court also filed multiple "Reports to the Supreme Court" between July and September 2025 that represented that *Park* remained "open" on the Public Index and that the Park estate had been "reopened." The circuit court, however, failed to provide critical information about whether the *Park* litigation was truly ongoing (as opposed to merely showing "open" on the Public Index). In reality, the Park litigation was fully resolved and ceased to exist as litigation in 2022, even if it shows as "open" on the public index. Indeed, a quick summary of the events is helpful:[6]

- In August 2021, Mr. Park was appointed as personal representative of the Park estate;
- In November 2021, Mr. Park filed a claim, as personal representative of Ms. Park's estate, against Cape;
- On June 3, 2022, Park's counsel notified the circuit court and all counsel of record that "the *Park* and *Garren* cases have both fully resolved" without any type of qualification.[7]

[6] Exhibit 2 contains a full copy of the Probate Court's file for this estate, as of July 25, 2025.

[7] *See* Ex. 3 (McVey Email, dated June 3, 2022), at p. 4.

- The next business day, on June 6, 2022, in a sworn declaration Mr. Park represented to the probate court that he had collected and distributed all assets of the estate, and requested that the probate court close the estate and fully terminate him as personal representative. This filing included "receipts and releases" from all of the estate's beneficiaries, each of whom acknowledged that he or she had received "[a]ll of the property to which I am entitled" through the estate and that he or she "releases and forever discharges the estate and the Personal Representative from any and all rights and claims which the undesigned may have relating to the estate."[8]

- On August 26, 2022, relying on Mr. Park's representations, which would fully encompass the estate's purported claims against Cape, the probate court closed the Park estate and terminated Mr. Park as personal representative of the estate.[9]

- Over six months later, on March 6, 2023, the *Park* receivership motion was made even though the *Park* estate was closed.

- On March 17, 2023, the circuit court grants the motion to appoint a receiver without a hearing.

- On July 22, 2025, Park's counsel represented to the circuit court that the June 3, 2022 email stating the *Park* matter was "fully resolved" actually meant that *Park* was fully resolved but the *Park* plaintiff "had a [tolling] [sic] agreement with the receiver and that Cape was up for trial. . . . we had resolved with everybody but Cape. . . . The receiver had not finished doing his work so we didn't want to go get any kind of judgment that couldn't be collected," even though there was no receiver in existence at that time and Park's counsel did not even make the motion to appoint a receiver until almost nine months after they made the representation that the case was "fully resolved."[10]

Despite being ordered to prevent a receiver from acting in *Tibbs* without a valid appointment order in this case, the circuit court allowed the Receiver to transport the purported appointment order from an entirely different case (*Park*), which itself was void for lack of jurisdiction. That October 13 Confirmation Order did not identify any factual findings meeting the *Welch* standard, nor did it even acknowledge this Court's instruction that a receiver "is not to be authorized to conduct work" in the absence of a case-specific appointment order. Instead, the

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[8] *See* Ex. 2, at p. 60.

[9] *Id.*, at p. 68.

[10] *See* Ex. 1, July 22, 2025 Hr'g Tr., at 150:6-151:12.

circuit court held that "nothing in *Welch* or the Supreme Court's June 26, 2025 Order" prevented the Receiver's confirmation—an interpretation that directly contradicts the Supreme Court's explicit language.

Thus, what the October 13 Confirmation Order did—in defiance of this Court's mandate in the June 26 Order—was to allow a receiver to act in the *Tibbs* case without Plaintiff making a motion to appoint a receiver in *Tibbs*. The Receiver moved instead to appoint himself.

III. ARGUMENT

A. Circuit Court Exceeded Its Jurisdiction On Remand.

The June 26 Order is a direct limitation on the circuit court's authority and jurisdiction. The circuit court may take no action beyond or contrary to the Supreme Court's mandate in the June 26 Order. *See S.C. Dep't of Soc. Servs. v. Basnight,* 346 S.C. 241, 551 S.E.2d 274 (Ct. App. 2001) ("[A] trial court has no authority to exceed the mandate of the appellate court on remand."). The circuit court has a duty to follow the Supreme Court's directions on remand. *See Milton P. Demetre Family Ltd. Partnership v. Beckmann*, 413 S.C. 38 (2014). Further, "[t]he mandate of the appellate court is jurisdictional. The trial court has a duty to follow the appellate court's directions." *Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011) ("When we remand a case, the trial court has only the jurisdiction and authority mandated by this court."). This limitation ensures that the lower court's actions adhere strictly to the appellate court's directions. Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated by the trial court as the appellate court's decision is final regarding all questions decided. *Ackerman v. McMillan*, 324 S.C. 440 (1996).

The Court's mandate in *Tibbs* is clear—the circuit court only has the authority to allow the Receiver to "conduct its work" in a case if there is "an order filed in the specific case as to which the work is to take place." And moreover, the Supreme Court's mandate does not provide the circuit

court with authority to allow the Receiver to act in "a case in which no receiver appointment order has been filed." The circuit court does not have jurisdiction to "reconsider" the Supreme Court's directive.

Accordingly, in *Tibbs* ,where no motion to appoint a receiver over any Cape entity had been filed or granted, the circuit court did not have authority or jurisdiction to allow Mr. Protopapas (as purported Receiver for Cape PLC) to act or conduct work in the *Tibbs* case (including, but not limited to pursuing his own motion to confirm his Receivership appointment). Instead, once the circuit court determined that no such receiver appointment order existed in *Tibbs*, its jurisdiction was limited to stopping the purported Receiver from acting and declaring his prior actions void.

As to the *Park* case, where the circuit court had (improperly) granted a motion to appoint a receiver (in that specific case), the Court also provided specific directions in the June 26 Order. In *Park* (and other asbestos cases where "an order [has been] filed in the specific case as to which the work is to take place"), the Court directed the circuit court to review each order appointing a receiver to ensure that it complies with the Supreme Court's rulings in *Welch*. Accordingly, in *Park*, with regard to the Receiver appointment, the circuit court's jurisdiction was limited to a review of the face of the appointment order to determine whether it complies with *Welch*. If the circuit court determined that the order does comply with *Welch*, then it may so state. If the circuit court determined that the appointment order did not comply with *Welch* requirements for appointment, then the circuit court's authority was limited to voiding the order. This Court did not give the circuit court discretion or authority to modify *nunc pro tunc* existing appointment orders that violate *Welch*. The Court also allows authority for the circuit court to consider new motions to appoint a receiver by a party to that case with regard to evidence required to appoint. Accordingly, in *Park*, where it is undisputed that the Receiver appointment order on its face fails to comply with

Welch, the circuit court's jurisdiction was limited to declaring the order void, and if filed by a plaintiff in that case, to consider a new motion to appoint a receiver.

South Carolina law leaves no ambiguity: when the Supreme Court issues a mandate, compliance by the lower courts is not optional. Yet the circuit court expressly declined to follow the June 26 Order's directive and the holdings outlined in *Welch*. Indeed, rather than ensuring compliance with this Court's mandates, the lower court declared that *Welch*'s limitations simply do not apply to receiverships in South Carolina generally. *See* October 13 Confirmation Order, at p. 46 ("Nothing in *Welch* order requires application of this holding to South Carolina receiverships generally."). Without this Court's direct action, the June 26 Order will stand effectively unenforced and be rendered wholly meaningless. This Court's supervisory power exists precisely for moments such as this—when a lower tribunal exceeds its authority on remand and is likely to continue to do so (in this and other receiver cases). A writ of prohibition (or grant of writ of certiorari) is appropriate to preserve the rule of law and this Court's own authority over its mandates.

B. The Circuit Court Disregarded The Directive In The June 26 Order That A Valid Appointment Order Must Exist In The Specific Case.

The June 26, 2025 Order was clear and unequivocal: the Receiver "**is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed**." That directive left no room for discretion. Its purpose was to ensure that the extraordinary powers of a pre-judgment receiver are exercised only where a court has first entered a valid, case-specific appointment order, as requested by a party to that case and supported by competent evidence under *Welch*.

The circuit court ignored that directive. It ordered that a receiver may move for his own appointment if he has an appointment order from any other case. The circuit court adopts an interpretation of the October 13 Confirmation Order that renders it meaningless—that this Court

does not require that the receiver be appointed by a party in the specific case, but rather that an order to appoint the receiver in one case is portable to all other cases so long as the receiver files that appointment order in the new case. Here, the circuit court fulfills this interpretation by invoking a void appointment order from a separate proceeding (*Park*) that was a nullity because of the closing of the Park Estate months prior to the filing of any motion for a receiver. The circuit court then improperly held that a mere **reference** to the *Park* appointment order in the Third-Party Complaint—the *Park* appointment order was only filed by a party challenging the authority of the Receiver months later—authorized the Receiver to accept service of the *Tibbs'* Complaint and to file the Third-Party Complaint, conduct discovery, and seek default judgments (all prior to the *Park* appointment order even being filed in *Tibbs*). By purporting to import a void order into *Tibbs* and by retroactively validating the Receiver's ultra vires conduct, the circuit court exceeded its jurisdiction and directly contravened the Supreme Court's command.

Indeed, as this Court explicitly stated in the June 26 Order and held in *Welch*, a receivership is an "extraordinary remedy" that displaces the rights of corporate entities and must be narrowly tailored, justified by competent factual findings, and strictly supervised by the appointing court. The Court's October 13 Confirmation Order flouts this requirement.

1. No receivership order was ever entered in *Tibbs*.

It is undisputed that no party in *Tibbs* ever filed a motion to appoint a receiver. The Receiver readily admits this fact, acknowledging that his actions were undertaken solely pursuant to an appointment order obtained and filed in *Park*. That omission was precisely what prompted this Court's June 26 directive—that the circuit court "[e]nsure the receiver has been authorized to conduct its work by an order filed in the specific case s to which the work is to take place" and that no receiver is authorized to "conduct work as to a case in which no receiver appointment order has been filed." This language was neither permissive nor conditional. It imposed a categorical

limitation on the Receiver's authority—one that applies with full force in this case. Instead of enforcing the Supreme Court's mandate, the circuit court did the opposite. It declared that the absence of a *Tibbs* appointment order was of no consequence and proceeded to appoint a receiver and grant retroactive authority to validate the Receiver's prior *ultra vires* conduct as though a valid appointment had existed all along. Appointing a receiver without a motion to appoint from a party in the case and then granting retroactive authority to validate all prior activity in the case where the receiver was not appointed effectively nullifies the Supreme Court's mandate and ignores the specific statutory language and intent of appointing a pre-judgement receiver as a remedy as set forth in Title 15.

Indeed, receiverships are not self-executing. They cannot be created by filing an order from another proceeding in the docket of a different case. The June 26 Order, and longstanding South Carolina law, requires that a receivership be expressly appointed by the court in the case at issue, upon a motion properly before the court, supported by evidence, and memorialized in an order. None of those prerequisites occurred in *Tibbs*. Instead, the circuit court bootstrapped the Receiver's purported authority to act in *Tibbs* by pointing to an order from the *Park* case, which indisputably involved different parties, different facts, and different procedural posture (and, as discussed further herein, was in and of itself completely invalid). The June 26 Order made clear to the circuit court that this approach is impermissible.

Critically, the October 13 Confirmation Order does not even attempt to point to any specific language in the *Tibbs* record that would constitute a valid appointment order. Instead, the October 13 Confirmation Order asserts that the *Park* appointment order was "referenced" multiple times in *Tibbs* by the Receiver, including in the Receiver's Third-Party Complaint. *See* October 13 Confirmation Order, at p. 43. Then, only after several months of litigating (including seeking

default judgments), the "parties filed the Cape Receiver Appointment Order" in *Tibbs*—when the parties contested the Receiver's authority to act in *Tibbs*. *Id*.

Pursuant to the June 26 Order, neither referencing an order from another case nor submitting a copy of the order while challenging a receiver's authority to act constitutes an "appointment order" sufficient to authorize the Receiver to have committed its prior actions in *Tibbs*. The Supreme Court's remand made clear that authority for a prejudgment receivership must be established on a case-by-case basis, with evidence and findings that apply to the particular litigation at hand. This makes sense, of course, given the Supreme Court's emphasis in *Welch* that a prejudgment receiver can only marshal assets to cover the injuries of the specific plaintiff that sought the receiver's appointment.[11] The limitations expressed in *Welch* are particularly critical here given the Receiver's own conduct—namely, initiating a third-party action that, as a matter of law, must be derivative of the Tibbs' alleged injuries. Yet, based on the clear holdings in *Welch*, the very order the Receiver relied on to justify his authority must be limited to marshaling assets solely to satisfy Ms. Park's injuries (not the Tibbs' injuries).

Thus, the Receiver's entire litigation activity in *Tibbs*—from accepting service to filing pleadings and motions—was conducted without jurisdiction. The circuit court had no discretion to retroactively validate such conduct. By confirming the Receiver's "appointment" in *Tibbs*, the circuit court retroactively created jurisdiction where none existed. But jurisdiction cannot be supplied by retroactive ratification. Either a receivership was appointed in *Tibbs*, or it was not.

[11] The Supreme Court repeated over and over again that the receiver over Atlas Turner only had power and control over the assets to "cover Mr. Welch's injuries." Under South Carolina law, a prejudgment receiver simply does not have the authority to pursue claims to marshal assets to generically "address the liabilities for injured South Carolinians," as the Receiver now requests in his Motion to Confirm Appointment. Such an appointment order runs afoul of the clear mandate from the Supreme Court in *Welch* that a receiver be appointed only to marshal assets sufficient to cover a particular plaintiff's injury.

Accordingly, by appointing Mr. Protopapas as Receiver in *Tibbs* in the October 13 Confirmation order, the circuit court exceeded its jurisdiction.

2. The *Park* appointment order relied on by the circuit court is void and cannot legally serve as the basis for any authority in *Tibbs*.

Although the *Park* receivership motion was purportedly made by the "Park Estate," by the Park Estate's own request, the estate had been closed and its personal representative terminated long before the motion to appoint the Receiver was filed. Accordingly, no juridical entity known as the Park Estate existed at the time the receivership application was made. Thus, there could be no *Park* action (and indeed, the *Park* plaintiff's counsel had previously informed the circuit court that *Park* was fully resolved), no valid motion to appoint a receiver in such an action, and no valid receivership. The Receiver's appointment in *Park* was void *ab initio* and therefore cannot have any effect in *Park*, let alone extend to *Tibbs*. This would be true even without the June 26 Order's prohibition on omnibus, cross-action receivership appointments.

None of these fatal flaws can be cured retroactively by the circuit court. Petitioning the Probate Court for subsequent administration and obtaining a second Park Estate for "Potential Civil Litigation" three years after the original Park Estate was closed does not create a time machine in which a personal representative for the second Park Estate can travel back to 2023 to remedy the lack of plaintiff, standing, subject matter jurisdiction, and the requisite findings of fact.[12] Likewise, the October 13 Confirmation Order cannot now vest the Receiver with *ex post facto* authority for years of actions he has taken in Cape's name, over Cape's protest. The Receiver was not properly appointed and has never been authorized to act for Cape, which renders everything he has done in Cape's name to date null and void.

[12] *See* Ex. 2.

The October 13 Confirmation Order incorrectly finds that Mr. Park's reappointment as Personal Representative for the Park Estate retroactively validates all actions that were taken when there was no "Park Estate" in legal existence. This ignores the law in South Carolina that actions taken when an estate is closed—which is a fundamentally different posture than when a representative has not yet been appointed to represent an ongoing and active estate—are a nullity and void. *See McCullar v. Estate of Campbell*, 381 S.C. 205, 207, 672 S.E.2d 784, 785 (2009) (any alleged litigation by an estate after it is closed is a nullity because the estate ceases to be a legal entity). In other words, the lack of subject matter jurisdiction that stems from having no plaintiff in a case cannot be restored two years later *nunc pro tunc*.

The October 13 Confirmation Order spends just four paragraphs attempting to sweep under the rug the fundamental flaws in the process of obtaining the *Park* Appointment Order, without actually analyzing any of the legal issues in dispute. Indeed, in an attempt to get around controlling Supreme Court precedent, the October 13 Confirmation Order mischaracterizes the Probate Court's intentional closing of the Park Estate as a mere "lapse" of the Park Estate. But the Park Estate did not "lapse." Mr. Park represented to the probate court that he had collected and distributed all assets of the estate and requested that the probate court close the estate and fully terminate him as personal representative.[13] In reliance on those representations, the probate court did exactly that: it **closed** the Park Estate.[14]

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[13] *See* Ex. 2, at p. 60-67, for a copy of the notarized Application for Settlement in Probate Court Case No. 2021-ES-42-01296.

[14] Mr. Park should now be estopped from claiming that the *Park* case, including the estate's claims against Cape, was not fully resolved in June 2022. "Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) (Toal, A.C.J.). "When a party has formally asserted a certain version of the facts in litigation, he cannot latter change those facts when the initial version no longer suits him." *Id.* Here, Mr. Park made certain representations to the probate court that were relied on by the probate court to close the estate—a

Accordingly, at the moment the receivership motion was made in *Park*, there was no longer any estate in existence and no personal representative in existence. As a matter of law, no one had standing to bring any motion or claim against any party and the action was a complete nullity. *See McCullar*, 381 S.C. at 207; *Bargil Associates, LLC v. Crites*, 135 A.D.3d 676, 24 N.Y.S.3d 119 (2d Dep't 2016) (finding that "pursuant to applicable South Carolina law, the defendant lacked the authority to assert the subject counterclaims . . . . because, at the time the defendant successfully moved to amend her answer to assert the counterclaims, her appointment as the personal representative of the decedent's estate had been terminated and the estate had been closed."); *Glenn v. E. I. DuPont De Nemours & Co.*, 254 S.C. 128, 136 (1970) (finding that where estate was closed and administratrix of the estate had been discharged, a subsequent suit by the former administratix was a nullity and her subsequent reappointment, and therefore reopening of the estate, could not revitalize the suit).[15] Standing involves subject matter jurisdiction and cannot be retroactively corrected by the subsequent re-opening of the Park Estate.[16]

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situation that has significant legal ramifications to the estate's beneficiaries and creditors. Mr. Park and Park Counsel are estopped from now taking a contrary position.

[15] *See also Prickett v. Hot Spring Cnty. Med. Ctr.*, 2010 Ark. App. 282, 7, 373 S.W.3d 914, 919 (2010) (holding that an estate, through its representative, did not have standing to bring an action after the estate was closed); *Branch v. Cox*, No. 4:17CV00429 JLH, 2018 WL 468284, at *3–4 (E.D. Ark. Jan. 18, 2018), aff'd sub nom. *Branch v. Vural*, 742 F. App'x 158 (8th Cir. 2018) (holding that an order reopening an estate and reappointing the administrator did not retroactively confer standing that did not exist when the estate was closed and plaintiff had been discharged from being the administrator); *In re Est. of Martin*, 1979 WL 178108, at *2 (Del. Ch. Jan. 30, 1979) (finding that the former attorney for an estate had no standing to agree to certain relief on behalf of the estate since the estate was closed).

[16] *See*, *e.g.*, *Tyler House Apts., Ltd. v. United States*, 38 Fed. Cl. 1, 7 (1997); *see also, e.g.*, *Paradise Creations, Inc.*, 315 F.3d 1304, 1308–09 (Fed. Cir. 2003) (rejecting argument that state corporate revival statute, which provided that the revived corporation's "reinstatement related back to the date of dissolution," could "retroactively confer standing in federal court" at the time the then-dissolved corporation filed suit, which deprived the court of subject matter jurisdiction); *USS Clamagore SS-343 Restoration and Maintenance Ass'n, Inc. v. Patriots Point Development Authority*, No. 2019-CP-10-1950, 2020 WL 1038741, at *8 (S.C. Com. Pl. Mar. 02, 2020) ("It is

The October 13 Confirmation Order tries to go around the Supreme Court's binding decision in *McCullar* by arguing that the *McCullar* decision merely had to do with whether a "wrongful death lawsuit" could move forward "when a personal representative of an estate had not been appointed." But that ignores the very heart of the Supreme Court's decision in *McCullar*. In that case, Dr. Campbell died in December 2001 and his estate remained opened, with a personal representative appointed, for several years until January 2004. *See McCullar v. Est. of Campbell*, No. 2006-UP-332, 2006 WL 7286778, at *1 (S.C. Ct. App. Sept. 20, 2006), rev'd, 381 S.C. 205, 672 S.E.2d 784 (2009). Months after the estate was closed, the McCullars filed a suit against Dr. Campbell's estate. When the estate later moved to dismiss the action for lack of subject matter jurisdiction based on the earlier closure of the Campbell estate, the McCullars did exactly what Mr. Park did here—they petitioned the probate court, reopened the Campbell Estate, and got a new personal representative appointed, all before a motion to alter or amend the decision on the motion to dismiss was decided by the trial court. *Id*. The Court of Appeals relied on the fact that the estate was "reopened and the personal representative reappointed before the motion to dismiss was concluded in the circuit court" to reverse the circuit court's dismissal of the action. *McCullar*, 2006 WL 7286778, at *3. The South Carolina Supreme Court, however, did not care that the estate had been successfully reopened and explicitly declared that this was not merely an issue of who was the "real party in interest" or had the capacity to sue. *McCullar*, 381 S.C. at 207. To the contrary, the "fundamental" question at issue was "whether, at the time the suit was purportedly commenced, there existed a juridical entity known as 'Estate of Dr. William Cox Campbell.'" Because the answer was no—even if the estate was reopened before the motion to dismiss was ever decided by

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improper for a plaintiff to retroactively attempt to correct a standing defect by seeking substitution under Rule 17(a) of the Rules of Civil Procedure or by amending its pleading.").

the circuit court—the entire case was a "nullity" such that the was "no action before the Court" to even be dismissed. *Id*., at 208. Similarly, here, the fundamental question is at the time the receivership motion was made in *Park*, was there a "juridical entity" known as the "Estate of Isabella Park" in existence. The undisputed answer is no. Therefore, just like in *McCullar*, there could be "no action before the Court," no valid motion to appoint a receiver, and no valid receivership appointment order.[17] The moment the Park Estate was closed, the entire *Park* action became a nullity and ceased to exist before the Court.

Accordingly, when the Park estate was closed and Mr. Park's capacity as personal representative of the estate was terminated, all controversies (especially those that were already pending) involving the estate ceased to exist; no plaintiff existed to pursue any claims in *Park*; no live dispute supported further judicial action or jurisdiction; and the *Park* case became moot as a matter of law. Section 701 does not alter this result. Accordingly, the *Park* order appointing Mr. Protopapas as Receiver over Cape is a nullity and cannot form the basis for Mr. Protopapas to act for Cape in *Park*, *Tibbs* or any other matter.

3. The *Park* appointment does not pass muster under *Welch*.

Furthermore, even if a *Park* plaintiff could retroactively come into existence as a legal entity and save the *Park* appointment—it cannot—and if the *Park* appointment order could somehow extend to *Tibbs*—it cannot—the *Park* appointment itself exceeds the permissible scope of authority as set forth by this Court in *Welch*. Critically, the circuit court ignored and failed to address the second prong of Part A of the June 26 Order requiring the circuit court to determine

[17] The South Carolina Supreme Court has previously held that where "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." *Porter v. Brown*, 149 S.C. 151, 146 S.E. 810 (1929).

that the original appointment order that allegedly justified the Receiver's conduct in *Tibbs* was "based on findings of fact sufficient under *Welch* to justify the order." But the *Park* appointment order simply does not meet the standards outlined in *Welch*.

Further, the *Park* record demonstrates that no Cape entity was served with a complaint, made an appearance, or engaged in litigation. Indeed, the *Park* court did *not* make any findings that 1) Cape was properly served with service of process;[18] 2) Cape refused (or failed) to comply with any court orders; 3) Cape was in default; 4) Cape engaged in moral fraud; 5) Cape was fraudulently concealing or disposing of assets that might be responsive to a later judgment; 6) there was a danger that Cape's property would be materially injured before a judgment could be entered; 7) Cape was disobeying discovery orders; 8) Cape had made misrepresentations to the Court concerning the existence of assets that might cover the plaintiffs' alleged injuries; or 9) Cape was otherwise engaged in active wrongdoing.

The October 13 Confirmation Order disregards the facts, the law, and the Supreme Court's explicit mandate in the June 26 Order. The Supreme Court made clear that any appointment order authorizing a receiver to act in *Tibbs*—which necessarily means it must have been filed *before* the Receiver undertook his actions—had to be based on findings of facts meeting the strict requirements of *Welch*. The *Park* appointment order was not based on any such findings of fact and certainly did not "limit" the Receiver's authority "as set forth in *Welch*."

C. The Circuit Court Ignored Welch's Substantive Limitations On Receiverships.

Not only did the circuit court ignore this Court's mandate that it determine that the appointment order was based on "findings of fact sufficient under *Welch* to justify the order," the

[18] Such a finding would have been impossible considering that, prior to the *Park* appointment order, no certificate of service or other affidavit in support showing service on Cape was ever submitted to the Court for review.

circuit court also ignored that the mandate that the Receiver's "scope of authority is limited as set forth in *Welch*." Even as modified in the October 13 Confirmation Order, the Receiver's scope of work authorized under the October 13 Confirmation Order still exceeds the permissible scope of work as set forth in *Welch* and is not based on findings of fact sufficient under *Welch* to justify the order.

Even assuming the facts outlined in the October 13 Confirmation Order are true and based on admissible evidence—they are not—the "facts" used to justify Cape's purported "moral fraud" and "insolvency" in the October 13 Confirmation Order are insufficient to warrant the appointment of a prejudgment receiver in *Tibbs*. Indeed, there has been no showing of "moral fraud" by Cape in the *Tibbs* case and no showing of "insolvency" that could support appointment of a receiver over any Cape entity in *Tibbs* because:

- Although the October 13 Confirmation Order finds that a receivership is warranted under S.C. Code § 15-65-10(4) because CIHL (not a party in *Tibbs*) is allegedly in danger of insolvency, the "evidence" of such danger cited in the October 13 Confirmation Order amounts to nothing more than conjecture based on CIHL's status as a non-operating shell company—a status shared by thousands of other companies (if not more) that does not qualify the companies for findings of immediate danger of becoming insolvent such that the drastic remedy of receivership should be implemented.

- The October 13 Confirmation Order does not identify any moral fraud committed by any Cape entity in the *Tibbs* case that could support the extraordinary remedy of appointing a prejudgment receivership over an active foreign entity.

Moreover, the October 13 Confirmation Order's conclusion that there is nothing in *Welch* that would require its receivership limitations be applied to any other South Carolina receivership (*see* October 13 Confirmation Order, at p. 46) is strictly belied by the June 26 Order wherein the Supreme Court mandated the circuit court "[e]nsure" that the Receiver's "scope of authority is limited as set forth in *Welch*." If this Court believed those limitations did not apply in *Tibbs*, it would have had no reason to impose that explicit mandate. The June 26 Order makes clear beyond

dispute that the restrictions announced in *Welch* govern here, and the October 13 Confirmation Order's contrary position cannot be reconciled with that directive.

The circuit court's October 13 Confirmation Order not only violates *Welch* but now stands in direct conflict with controlling federal appellate authority. In *Whittaker Clark & Daniels v. Protopapas*, App. No. 24-2210, 2025 WL 2611753 (3d Cir. Sept. 10, 2025)—a decision the Charter Petitioners promptly notified the circuit court of more than a month prior to the October 13 Confirmation Order being issued—the United States Court of Appeals for the Third Circuit held that a South Carolina-appointed receiver may not displace the board's authority over corporate affairs of a foreign corporation. The Third Circuit expressed significant doubt that a South Carolina court had the ability or authority to "issue an order purporting to place the control of Whittaker's corporate affairs in the hands of the South Carolina Receiver." *Id*., at *7. The Third Circuit explained that if the South Carolina receivership order had attempted to give the receiver control over the internal affairs of a foreign corporation, "it would be an unprecedented exertion of power over a foreign corporation whose internal affairs are governed by the laws of a sister state, and a radical intrusion into the province of a co-equal sovereign." *Id.*, at *8. The circuit court's October 13 Confirmation Order here does precisely that—asserting control over the governance of a United Kingdom corporation and depriving it of representation by its own directors and chosen counsel. The *Whittaker* holding squarely refutes the circuit court's conclusion that the Receiver here could act as Cape's corporate representative and make binding litigation or business decisions on Cape's behalf.

Additionally, under South Carolina law, a prejudgment receivership may only be imposed upon a clear, case-specific showing of necessity, supported by evidence and findings in the record, of one of two things (as applicable to this case): (1) proof that Cape is insolvent or imminently at

risk of insolvency (*see* S.C. Code § 15-65-10(4)), or (2) proof that Cape committed a "moral fraud" in connection with the *Tibbs* litigation (*see* S.C. Code § 15-65-10(5); *Welch*, 445 S.C. 640). Only upon such a showing may a court consider the extraordinary step of appointing a receiver. Implicitly acknowledging there were errors with the scope of authority given the Receiver in the *Park* appointment order, the October 13 Confirmation Order modified and expanded the scope of the Park appointment order.[19] *See* October 13 Confirmation Order, at p. 46-48. Even with these modifications, however, the findings of fact and conclusions of law are simply insufficient to justify exceeding South Carolina law as set forth in *Welch* and the June 26 Order. Importantly, the third prong of the June 26 Order required the circuit court to justify, by specific findings of fact and conclusions of law, any receivership appointment that is based on facts not found sufficient in *Welch*, or to authorize a scope of work not approved in *Welch*. The October 13 Confirmation Order makes no attempt to do so. Indeed, instead of complying with the Supreme Court's mandate, the October 13 Confirmation Order simply makes the bald (and incorrect) conclusion that *Welch* does not apply to any receivership beyond a receivership expressly limited to only insurance assets (even though the appointment order in *Welch* originally exceeded insurance assets).

[19] The modifications to the Park appointment order include (a) changing the entity in receivership; (b) revising the earlier (inaccurate) findings that CHIL was dissolved and forfeited its charter; (c) authorizing the receiver to "administer the assets of Cape responsive asbestos personal injury claims"; (d) granting the receiver authority to conduct work in any case by accepting service on behalf of Cape, even if no appointment order was filed in that case; and (e) giving the receiver the power to "obtain from any third party copies of any records belonging or pertaining to the assets of Cape . . . including prior legal representation of Cape." Prior to these modifications, the *Park* appointment order did not authorize the receiver to obtain "any records" from any third party that relate to any asset of Cape, including waiving Cape's attorney client privilege with its former counsel.

IV. CONCLUSION

This Court's June 26 Order was not an invitation for creative interpretation. It was a command rooted in the rule of law: that a receiver may act only where a valid, case-specific appointment order exists and only within the narrow confines *Welch* allows. The June 26 Order's mandate completely conforms to the statutory limitations of a pre-judgment receiver appointed pursuant to Title 15 (Civil Remedies)—that a receiver may not act in a case where he was not appointed by motion from a party in that case. By ignoring that command, the circuit court exceeded its jurisdiction and undermined the Supreme Court's own supervisory authority. The Charter Petitioners have properly appealed the October 13 Confirmation Order that, among other things, appoints a receiver and then grants him retroactive authority, to the Court of Appeals. However, Article V, Section 5 of the South Carolina Constitution vests this Court with authority to address issues out of their natural sequence when urgency requires. The Charter Petitioners respectfully request that the Court exercise that authority to bring an end to this dispute.

Respectfully submitted,

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