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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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. 2025-002104

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...…….…. **APPELLANTS**.

PETITION FOR REHEARING
BY APPELLANTS CHARTER CONSOLIDATED LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD. [1]

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[1] By making this filing, the Charter Appellants do not waive, but instead specifically preserve, all defenses asserted and objections previously made regarding these proceedings through its written motions, oral arguments, memoranda and briefs, responsive pleadings, served responses, and appellate filings, including, inter alia, that: the Court lacks personal jurisdiction over each of the Charter Appellants; the Court lacks subject matter jurisdiction; the Receiver was improperly appointed; the Cape PLC receivership was improperly continued and modified and an entirely new receivership was granted over the separate entity named Cape Intermediate Holdings Limited ("CIHL"); the Receiver lacks standing; the Receiver's claims improperly pled, should be severed, and/or fail under Rules 12(b) and 14, SCRCP; and these proceedings and the claims asserted and relief sought against the Charter Appellants violate their fundamental procedural and substantive constitutional rights and protections.

Appellants Charter Consolidated Ltd. ("Charter"), ESAB Corporation ("ESAB"), and Central Mining and Investment Corporation Ltd. ("Central Mining" and, collectively with Charter and ESAB, "Charter Appellants") hereby respectfully submit this Petition for Rehearing of the Court's Order of October 20, 2025, dismissing the appeal (the "Dismissal Order"). The Dismissal Order granted the Motion to Dismiss Interlocutory Appeal and for Expedited Review (the "Motion to Dismiss") filed by Peter D. Protopapas, in his purported capacity as the court-appointed receiver for Cape[2] ("Receiver")—without allowing the Charter Appellants the opportunity to respond.

The Court, in issuing the Dismissal Order, appears to have overlooked and/or misapprehended the following:

1. The circuit court's October 13, 2025, Order ("October 13 Order") is immediately appealable pursuant to S.C. Code Ann. § 14-3-330(4) because it constituted a new appointment of a receiver when it authorized Mr. Protopapas to act as a receiver for Cape to marshal assets to satisfy a judgment on behalf of the Tibbs plaintiffs (not just the Park plaintiffs) and is the only order filed in *Tibbs* purporting to do so.

2. The October 13 Order is also immediately appealable pursuant to S.C. Code Ann. § 14-3-330(4) because it substantively modified the *Park* Appointment Order (see Attachment A) by withdrawing certain powers granted to the receiver and adding new powers to the receiver that previously did not exist—items that even the Receiver acknowledged during oral arguments were modifications.

3. The purported appointment order in *Park* is limited to the *Park* case and not portable to the *Tibbs* case. Even if it could be portable to *Tibbs*, it did not satisfy the Supreme Court's requirements in *Welch*[3] or the June 26 Order[4] for the appointment of a receiver and was void because (a) no Park plaintiff was a legal entity at the time of the motion to appoint and the *Park* case had been fully resolved;

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[2] The Receiver and the circuit court have applied a shifting definition "Cape" during this litigation, including enlarging it to encompass not only Cape PLC (the Cape entity purportedly placed into receivership) but also Cape Intermediate Holdings Limited ("CIHL"), a separate Cape entity. When citing to or referring to a filing or submission by either the Receiver or the circuit court, Charter Appellants have attempted to use the term "Cape" as used by the Receiver or the circuit court therein.

[3] *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (S.C. Sup. Ct. May 21, 2025) ("*Welch*").

[4] *Tibbs v. 3M Company*, *et al.* Order (S.C. Sup. Ct. filed June 26, 2025) ("June 26 Order").

(b) the order failed to comply with the condition precedent set forth in S.C. Code Ann. § 15-65-60, i.e., to fix the value of the property subject to the order; and (c) the order failed to include the amount of a bond required to vacate the receiver appointment as required under S.C. Code Ann. § 15-65-60.

INTRODUCTION

The Charter Appellants respectfully submit that the Court should hear the appeal of the October 13 Order because the Dismissal Order overlooked critical aspects of the appeal, each of which constitutes independent grounds for an immediate appeal of the October 13 Order.

Indeed, the Motion to Dismiss should have been denied because Charter Appellants' October 14, 2025 Notice of Appeal of Order Granting Appointment of a Receiver ("October 2025 Appeal") was proper under S.C. Code Ann. § 14-3-330(4). The October 13 Order finds that the Receiver is authorized to act in *Tibbs*.[5] Because there was no prior order in *Tibbs* appointing the Receiver, the issuance of the October 13 Order allowing the Receiver to act in this case constitutes an order granting the appointment of a receiver (albeit an order that does not comply with the requirements set by the South Carolina Supreme Court in the June 26 Order). The October 13 Order is therefore immediately appealable pursuant to S.C. Code Ann. § 14-3-330(4), which creates a right to immediately appeal "[a]n interlocutory order or decree in a court of common pleas . . . granting, continuing, modifying, or refusing the appointment of a receiver."[6]

Moreover, although the Motion to Dismiss argues that the October 13 Order simply "confirmed that the previously-appointed receiver was authorized to conduct his work in the *Tibbs* case" and thus "did not appoint a receiver,"[7] even if this were correct (which it is not), the order would be immediately appealable under this scenario as well because the October 13 Order

[5] *See* October 13 Order, at p. 43.

[6] *See* S.C. Code Ann. § 14-3-330(4).

[7] *See* Motion to Dismiss, at p. 5.

modified the *Park* appointment order. Indeed, at the Receiver's request to modify the Park Appointment Order, the October 13 Order expressly added and subtracted powers and duties from the scope of the Receiver's authority and changed the entity in receivership, among other things.

Finally, although the Motion to Dismiss appears to suggest that the timing of the Charter Appellants' commencement of the October 2025 Appeal was an improper trial delay tactic, this accusation is without merit. The circuit court elected to wait to issue the October 13 Order until one week before trial, and Charter Appellants promptly filed their Notice of Appeal a day later. Nothing nefarious occurred here; the timing of the October 2025 Appeal was simply a function of the timing of the October 13 Order.

PROCEDURAL HISTORY

The October 2025 Appeal is predicated on the circuit court's purported appointment of a receiver over Cape in *Tibbs* in the October 13 Order. Although the Receiver has claimed to act for Cape in *Tibbs* since June 2023,[8] he has done so without the issuance of an appointment order in that case. Prior to the October 13 Order, the Receiver's only "appointment"—which itself was invalid for a multitude of reasons and does not meet the requirements of the South Carolina Supreme Court's May 21, 2025 Opinion No. 28284 in *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (2025)—was in another asbestos personal injury action, *Park v. Armstrong Int'l, Inc., et al.* ("*Park*"), in March 2023.

Accordingly, in response to the third-party complaint in *Tibbs*, Charter Appellants and other third-party defendants have challenged the Receiver's actions in *Tibbs* on the grounds that, *inter alia*, S.C. Code Ann. § 15-65-10 *et seq.* does not allow a receiver purportedly appointed in one case to conduct his work in another case. Put another way, the Title 15 pre-judgment remedy

[8] *See* October 13 Order, at p. 6.

of placing a defendant's assets in the hands of receiver upon the motion of a plaintiff in one case does not authorize that receiver to act in other cases.

On June 26, 2025, the South Carolina Supreme Court granted the Charter Appellants' and other third-party defendants' petitions for writs of certiorari involving this and other issues in the June 26 Order.[9] In granting the petitions, the South Carolina Supreme Court issued the June 26 Order citing to its analysis in *Welch* of a circuit court's jurisdiction to appoint a receiver, the factual basis on which such a receivership appointment order must be based, and the limitations of a receiver's scope of authority.[10] It also reminded the circuit court that "[w]e…made it clear [in *Welch*] that appointing a receiver before judgment is permissible only in the 'rarest' and 'most extraordinary' cases."[11]

To make certain that the activities in *Tibbs* complied with *Welch's* strict requirements, the June 26 Order directed 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.
>
> 2) Ensure that such an order is 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*.
>
> 3) To the extent the circuit court intends 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.[12]

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[9] *Tibbs v. 3M Company*, *et al.* Order (S.C. Sup. Ct. filed June 26, 2025).

[10] *See* June 26 Order, at ¶ (A).

[11] *See id.*

[12] *See id*.

As discussed above, as of the June 26 Order, no Cape receiver appointment order had been filed in *Tibbs*. In apparent recognition of this significant deficiency, on July 11, 2025, the Receiver filed an application asking the circuit court to bless his *Tibbs* activities retroactively as well as going forward. Although his application was styled as a "Motion to Confirm Appointment" and requested that the circuit court "Confirm [sic] his appointment in the *Tibbs* action,"[13] as discussed above, no underlying appointment had ever been made in *Tibbs*. To be clear, the *Tibbs* plaintiffs have never made a motion to appoint a receiver over any Cape entity pursuant to S.C. Code Ann. § 15-65-10 et seq. Rather, the Appointment Motion asked the circuit court to find that the Receiver's *Tibbs* activities were "conducted within the scope of this Court's March 17, 2023 Appointment Order in *Park*… as was clarified and confirmed by this Court in its November 5, 2024 Order [in *Park*]."[14]

The circuit court conducted several hearings (on July 22, August 12, and October 6) and filed multiple "Reports to the Supreme Court" between July and September 2025. At the July 22, 2025 hearing, the circuit court indicated that it understood that the June 26 Order required the circuit court to issue an order *appointing* a receiver in any case where such order granting the appointment of a receiver was not already present—like in *Tibbs*.[15]

On October 13, 2025, nearly four months after the June 26 Order, only one week before the scheduled trial, and over the objections of Charter Appellants and other third-party defendants,

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[13] *See* July 11, 2025 Notice of and Motion to Confirm Appointment of Receiver ("Appointment Motion"), at p. 40.

[14] *See* Appointment Motion, at pp. 2-3.

[15] *See* Attachment B, July 22, 2025 Hr'g Tr., at 23:1-7 ("So what [the South Carolina Supreme Court] 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….") (remarks of Judge Toal).

the circuit court issued the October 13 Order in purported compliance with the June 26 Order. The October 13 Order, which was substantively identical to the proposed orders submitted by the Receiver (save for the removal of references to certain defendants), did not identify any prior receivership appointment order entered in *Tibbs*.

Instead, the October 13 Order acknowledged the Receiver accepted service of the *Tibbs* complaint and then filed a third-party complaint on behalf of Cape against Charter Appellants and others under the auspices of his "authority" purportedly granted in *Park* – not pursuant to any appointment order issued in *Tibbs*.[16] Indeed, rather than identify a prior receivership appointment in *Tibbs* (which it could not, because no such appointment occurred in that case), the October 13 Order simply found that the Receiver "referenced" the *Park* appointment order "multiple times in *Tibbs*" and that the *Park* appointment order was an exhibit to various *Tibbs* filings, most of which were motions challenging the Receiver's authority to act filed months after the Receiver filed the third-party complaint, sought discovery, and sought default judgments.[17]

Moreover, the October 13 Order significantly modified the *Park* appointment order. Although the October 13 Order claims it simply "clarified" the *Park* appointment order "to better reflect the facts of the Cape receivership,"[18] the so-called clarifications in truth expressly and materially alter the receivership, including revising the scope of authority granted under the prior receivership appointment order to the "administ[ration of] the assets of Cape responsive [sic] asbestos personal injury claims properly brought in South Carolina," granting the Receiver

[16] *See* October 13 Order at pp. 3-5 (describing the Receiver's "appointment" in *Park*); p. 6 (indicating that the Receiver accepted service of the *Tibbs* complaint and commenced a third-party action in *Tibbs* "[f]ollowing his appointment in *Park*").

[17] *See id.*, at p. 43 and p. 43 fn. 143.

[18] *See id.*, at p. 46.

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 changing the entity in receivership.[19]

Additionally, in Paragraph 7 alone, the October 13 Order changed the scope of the Receiver's purported authority twice, struck a paragraph from the *Park* appointment order, and added new language:

> 7. The Court clarifies that although the eleven enumerated activities in which the Court permitted the Cape Receiver to engage on page 2 of the Appointment Order are activities in which South Carolina receivers ordinarily may engage, these activities do not reflect *the scope of the Cape Receiver's charge, with the exception of point 10, the power to "hire any person or company necessary to accomplish any right or power under this Order."* Additionally, *point 8*, relating to financial records belonging to the Defendant, is relevant, but should be and *is clarified to reflect that the scope of the Receiver's charge includes the right to obtain from any third party copies of any records belonging or pertaining to the assets of Cape responsive to asbestos personal injury claims properly brought in South Carolina*, including prior legal representation of Cape. *The Court therefore strikes this paragraph from the appointment order, and replaces it with the following language:* "In addition to the powers of the Receiver set forth herein, the Receiver shall have the right to (1) hire any person or company necessary to accomplish any right or power under this Order and (2) obtain from any third party copies of any records belonging or pertaining to the assets of Cape responsive to asbestos personal injury claims properly brought in South Carolina, including prior legal representation of Cape."[20]

In short, even if the *Park* appointment could be expanded to *Tibbs*—which pursuant to the June 26 Order, it cannot—the October 13 Order modified that prior appointment.

Within a day of the circuit court issuing the October 13 Order, Charter Appellants promptly filed a Notice of Appeal of the Order pursuant to S.C. Code Ann. § 14-3-330(4) (2017), which creates a right to immediately appeal "[a]n interlocutory order or decree in a court of common pleas . . . granting, continuing, modifying, or refusing the appointment of a receiver."[21]

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[19] *See id.*, at pp. 46-47, ¶¶ 1-2, 5-6.

[20] *See* October 13 Order, at pp. 47-48 (emphasis added).

[21] *See* Notice of Appeal of Order Granting Appointment of a Receiver, dated October 14, 2025.

Even though no prior receivership appointment order was issued in *Tibbs* and the October 13 Order modified the *Park* appointment order, the Receiver moved to dismiss, arguing that this Court should find that the October 13 Order "is not immediately appealable" because "[t]he circuit court did not appoint a receiver" but rather simply confirmed "that the previously-appointed receiver was authorized to conduct his work in the *Tibbs* case."[22] As demonstrated herein, the Dismissal Order overlooked and/or misapprehends the appealability of the October 13 Confirmation Order as the Receiver's position in his Motion to Dismiss has no factual or legal support. The Court should therefore rehear the Motion to Dismiss, reverse the Dismissal Order, and consider the October 2025 Appeal on the merits.

ARGUMENT

The Dismissal Order overlooks and/or misapprehends that the October 13 Order is immediately appealable under S.C. Code § 14-3-330(4) because the Order grants or modifies the appointment of a receiver.[23] The critical inquiry on a motion to dismiss an appeal from an interlocutory order is whether the order is immediately appealable, which arises from and is controlled by statute.[24] A party may appeal from an interlocutory order that falls within S.C. Code § 14-3-330(4), which states, among other things, that a party may appeal from an interlocutory

[22] *See* Motion to Dismiss, at pp. 5, 6.

[23] *See id.* Whether the interlocutory order falls within one of the enumerated categories is determined on a case-by-case basis. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015). The ultimate question is the effect of the interlocutory order on the proceedings below. *See Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011); *see also Dorn v. Cohen*, 418 S.C. 126, 138, 791 S.E.2d 313, 319 (Ct. App. 2016), *aff'd as modified*, 421 S.C. 517, 809 S.E.2d 53 (2017). Accordingly, the appellate court is "free to evaluate the trial court's order as what it is – not merely what it appears to be – and hold that it is one which is immediately appealable." *See Morrow*, 412 S.C. at 540, S.E.2d at 147.

[24] *See Hagood v. Sommerville*, 363 S.C. 191, 194, 607 S.E.2d 707, 708 (2005).

order granting, continuing, modifying, or refusing the appointment of a receiver. Here, the October 13 Order falls squarely within this requirement because it (a) grants an appointment of a receiver to act in *Tibbs* and to marshal assets on behalf of the Tibbs Plaintiffs; and/or (b) modifies the previous *Park* Appointment Order to grant new authority not previously allowed, remove other grants of authority, and modify the entity under receivership.

A. The Dismissal Order Overlooks And/Or Misapprehends That The October 13 Order Is Immediately Appealable Because It Appoints A Receiver.

This Court should re-examine the Dismissal Order as it appears to have overlooked and/or misapprehended that the October 13 Order constitutes an order granting a receivership in *Tibbs* and is therefore immediately appealable under S.C. Code Ann. § 14-3-330(4). The Motion to Dismiss rests on the false premise that the October 13 Order merely "confirmed" an existing receivership in *Tibbs*. In substance and effect, however, the October 13 Order *appointed a receiver* for the first time in *Tibbs*. South Carolina appellate courts have long recognized that appealability turns not on labels, but on the *operative effect* of an order, and they have rejected attempts to disguise the substantive effect of orders through captioning or characterization.[25] Here, the October 13 Order satisfies every functional and legal criterion of an "appointment" that could exist under S.C. Code Ann. § 14-3-330(4) and is therefore immediately appealable.

To fully understand why the October 13 Order must have, as a matter of law, granted a new receivership in *Tibbs*, it is important to analyze the Supreme Court's recent reinforcement of the receivership law in South Carolina in *Welch*. When the circuit court originally granted a

[25] *See Spalt v. S.C. Dep't of Motor Vehicles*, 423 S.C. 576, 584, 816 S.E.2d 579, 583 (2018) ("The label given to the order is not determinative of its immediate appealability."); *Thornton*, 391 S.C. at 304, 705 S.E.2d at 479 ("[A]n appellate court should look to the effect of an interlocutory order to determine its appealability . . . ."); *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013) (explaining that whether an order is immediately appealable is a function of "substance rather than nomenclature").

receiver over Atlas Turner in *Welch*, it did not limit the receiver to only marshalling assets to cover Mr. Welch's injuries.[26] However, on appeal, the Supreme Court found that the authority granted the receiver exceeded what was allowed under South Carolina law and "shr[u]nk the scope of the Receivership order" such that it only allowed the receiver to marshal assets to cover the injuries of the specific plaintiff that sought the receiver's appointment (i.e., Mr. Welch).[27] *See Welch*, 445 S.C. at 667 ("We find equity only allows insurance policies that *have the potential to cover Mr. Welch's injuries* to be included in this definition") (emphasis added).

Based on longstanding receivership law, as laid out again in *Welch*, even if the *Park* Appointment Order was valid, it must be limited, as a matter of law, to marshalling assets that have the potential to cover Ms. Park's injuries. By the Receiver initiating a third-party action in *Tibbs*, the Receiver, by necessity, must be bringing a claim that is derivative of the Tibbs' alleged injuries (not Ms. Park's).[28] For the Receiver to be legally able to marshal assets to "have the potential to cover" the Tibbs' injuries, there must actually be an appointment order that grants the Receiver that authority. And as the Supreme Court outlined in *Welch*, that cannot be the *Park* appointment order, which could only cover Ms. Park's injuries. Therefore, if the Receiver is now

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[26] *See generally* Attachment D, Order on Plaintiffs' Motion to Appoint a Receiver, signed June 20, 2023, in *Welch v. 3M Company, et al*, C/A No. 2022-CP-40-03834.

[27] Indeed, 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."

[28] By its plain terms, Rule 14(a), SCRCP, makes clear that a defendant may implead and assert claims against a third party ***only if*** it "is or may be liable to [defendant] for all or part of the plaintiff's claim"; it "does not allow the defendant to assert a separate and independent claim." Rule 14(a), SCRCP; *CNH Industrial Capital America LLC v. Able Contracting, Inc.*, CA No. 9:16-cv-2520- RMG, 2017 WL 512453, at *1 (D.S.C. 2017); *Laughlin v. Dell Financial Services, L.P.*, 465 F.Supp.2d 563, 566 (D.S.C. 2006). "The third party claim must be derivative of the plaintiff's claim" such that "the third-party defendant's liability arises only if the defendant/third-party plaintiff is first held liable to plaintiff." *Id.* at *2; *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) ("The outcome of the principal claim must impact the third-party defendant's liability[.]").

contending that the October 13 Order allows him to marshal assets that have the potential to cover the Tibbs' injuries, the October 13 Order must have constituted an order "granting" a new receivership. When the circuit court entered its October 13 Order, the order explicitly held that the Receiver "was authorized" to file the third-party complaint in the *Tibbs* case, which under Rule 14(A), SCRCP, meant that the third-party defendants "may be liable to [the Receiver] for all or part of the [*Tibbs*] plaintiff's claim against him."[29] Authorization to file a third-party complaint, derivative of a claim brought by a completely new plaintiff of which the receiver previously had not authority to marshal assets on behalf of, is the language of a fresh appointment, not a mere administrative confirmation.

Moreover, if the Receiver's interpretation were accepted, a trial court could repeatedly "confirm" or "authorize" receiverships over new entities and in new proceedings without ever permitting appellate review. Such a result would contradict the legislature's express directive and eviscerate the protections afforded by S. C. Code § 14-3-330(4). The statute was designed precisely to prevent that outcome by allowing prompt appellate scrutiny of any order that grants or continues the extraordinary powers of a receiver.

Here, the only appointment of a receiver over a Cape entity occurred in the unrelated *Park* matter, and that appointment was explicitly for a receiver over "Cape PLC." The *Park* order neither referenced the *Tibbs* litigation nor authorized any receiver to appear, plead, or litigate in the *Tibbs* case—nor could it, as the *Park* order was entered before the *Tibbs* action was filed. The *Park* receivership therefore could not extend automatically into a separate, later-filed civil action involving different parties, claims, and procedural postures.

[29] *See* Rule 14(A), SCRCP.

Tellingly, after the Charter Appellants brought this very issue to the South Carolina Supreme Court, the South Carolina Supreme Court granted certiorari and issued a mandate to the circuit court that a "receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed."[30]

Before October 13, 2025, no such order existed in *Tibbs*; the Receiver was simply a litigant purporting to act without any order authorizing him to do so. By granting him the authority to represent Cape PLC (and purportedly its affiliates) within *Tibbs,* the October 13 Order created the legal relationship between the court, the estate, and the receiver that defines a receivership. That act constitutes the *appointment* of a receiver as a matter of law. The Receiver himself implicitly acknowledges as much by relying on the October 13 Order to justify his ongoing conduct in *Tibbs*. If the order merely "confirmed" an existing appointment, it would have been superfluous; yet the Receiver sought, obtained, and now defends it precisely because it conferred new authority he did not previously possess.

By vesting the Receiver with the authority to marshal assets to cover the injuries of the *Tibbs* plaintiffs (a necessity for a receivership order), including pursuing litigation under the supervision of the court, the October 13 Order accomplished everything that an appointment order accomplishes. Its legal effect is the creation of a receivership within the *Tibbs* action, making it immediately appealable.

Furthermore, the October 13 Order must also constitute an initial appointment of a receiver in *Tibbs* because the only other Cape receivership order allegedly in existence, the Park Appointment Order, was void since its inception because, at the time the motion to appoint was made and at the time the *Park* Appointment Order was entered, the *Park* Plaintiff's counsel

[30] *See* June 26 Order, at §(A).

represented to the circuit court that the *Park* case had been "fully resolved,"[31] the Park Estate (plaintiff) had closed and was no longer a juridical entity,[32] Park Plaintiffs had not served any Cape entity with an operative complaint, and there existed no judgment against any "Cape" entity.[33] Furthermore, the *Park* Appointment Order failed to comply with the condition precedent set forth in S.C. Code Ann. § 15-65-60 (1976 as amended)[34] and failed to properly provide for a bond such that the receivership appointment could be vacated pursuant to S.C. Code Ann. § 15-65-60.[35] If no valid appointment order over Cape existed prior to the October 13 Order, then the Order must have constituted an initial receivership appointment order that is subject to an immediate appeal under S.C. Code Ann. § 14-3-330(4).

B. Alternatively, The Dismissal Order Overlooks And/Or Misapprehends That The October 13 Order Is Immediately Appealable Because It Modified The *Park* Appointment Order.

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[31] *See* Attachment B, July 22, 2025 Hr'g Tr., at 150-154.

[32] *See id.*, at 154:1-5 ("What I didn't know until Friday is that apparently the probate court has closed the [Park estate and terminated the] personal representative [in 2022].") (remarks of *Park* Plaintiff's counsel); *see also 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).

[33] *See* Attachment B, July 22, 2025 Hr'g Tr., at 148:8-19 ("So, Your Honor, we sued Cape in the Park case….And as part of that, they never filed an answer….We did not move for a default in Cape because what we didn't want to do is get some judgment and then not be able to do anything with it.") (remarks of *Park* Plaintiff's counsel).

[34] *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.").

[35] S.C. Code Ann. § 15-65-60 specifically requires a clause in an appointment order fixing the value of the property being sought to be placed in the hands of the receiver, such that the party in possession of the assets may submit a bond which vacates the receiver appointment. The South Carolina Supreme Court has interpreted this section as being a condition precedent to the appointment of a receiver: "[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." *Truesdell*, 142 S.E. at 348.

Even setting aside whether the October 13 Order constitutes a receivership appointment, it unquestionably modifies the *Park* receivership order to encompass other proceedings, grants new receiver powers, removes other receiver powers, and adds additional entities. Therefore, the October 13 Order is immediately appealable for this reason as well. In substance and effect, the October 13 Order expressly extended the receivership's reach to new matters not previously encompassed by the prior *Park* receivership order. This is a modification under S. C. Code § 14-3-330(4). Furthermore, even the Receiver implicitly acknowledge that such actions would constitute a modification when he repeatedly encouraged the circuit court to "modify" the Park receivership order.[36]

More specifically, despite the semantics of its title, the substance of the October 13 Order demonstrates it did not "confirm" an existing appointment—it conferred *new powers and jurisdiction* on the Receiver to act in the *Tibbs* litigation on behalf of an entity he was never lawfully appointed to represent. This does not constitute a simple "clarification," as the October 13 Order suggests. Changing the entity in receivership, revising the scope of authority granted under the prior receivership appointment order (including explicitly 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), striking language that outlined the powers of the receiver and replacing it with new language granting new powers, expanding the definition of the entity

[36] *See*, *e.g.*, Attachment C, Hr'g Tr. At 241:12-15 (August 12, 2025) ("So if you've got concerns about the breadth of the order in [Park], which has been pulled over into Tibbs, you can do something about it. ***You can modify it***.…") (emphasis added); *Id.*, at 251:13-17 ("***If you want to modify the order in Parks*** as it applies to Tibbs, there are things that you can do that deal with the claims that we --that Cape has that are related to what we're doing in this case.") (emphasis added); *Id*. at 251:21-23 ("Opening mail. I think it was opening mail was one of the acts. ***That's fine to modify that.***") (emphasis added); *Id*. at 252:8-11 ("***Modify the order***, if you need to, to say that specifically, but [the Supreme Court is] inviting you to modify it and make findings and this conclusions in this June 26 order.") (emphasis added).

placed in receivership: these are all modifications creating changed rights and responsibilities, not simple clarifications of the powers granted by an existing order. Such changes to a receivership are precisely what the legislature deemed immediately appealable. Indeed, if granting a receiver new powers it did not have previously does not constitute a "modification" of a receivership order, what would? Any contrary construction would allow a court to repeatedly expand a receivership without ever permitting appellate review. This too renders the October 13 Order immediately appealable.

CONCLUSION

For the reasons set forth herein, the Charter Appellants respectfully request this Court grants the Charter Appellants' petition for rehearing, deny the Motion to Dismiss, and set a briefing timeline to determine the merits of the appeal of the October 13 Order appointing a Cape receiver in the *Tibbs* case.[37]

November 4, 2025

GORDON REES SCULLY MANSUKHANI, LLP

BY: __/s/ A. Victor Rawl, Jr._____

A. Victor Rawl, Jr. (SC 09261)
vrawl@grsm.com
677 King Street, Suite 450
Charleston, SC 29403
843-714-2501
Counsel for Appellants Charter Consolidated Ltd, ESAB Corporation, and Central Mining & Investment Corporation Ltd.

[37]Per Rule 208(b)(6), SCACR, Appellants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by similarly situated Appellants Mohed Altrad and Altrad Investment Authority S.A.S. Additionally, for the Court's awareness, both sets of Appellants here have pending before the Supreme Court petitions for extraordinary writs in that Court's original jurisdiction (Appellate Case Nos. 2025-002120 and 2025-002121), and the Charter Appellants respectfully incorporate the arguments presented in those petitions as if restated fully here. Those Petitions reinforce that the order on appeal here is a purported "appointment" order that is immediately appealable as a matter of right under South Carolina Code § 14-3-330(4).

PROOF OF SERVICE

I, the undersigned of the law offices of Gordon Rees Scully Mansukhani, LLP, attorneys for petitioners Charter Consolidated Ltd., ESAB Corporation, and Central Mining And Investment Corporation Ltd.do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Petition For Rehearing by Appellants Charter Consolidated Ltd., ESAB Corporation, And Central Mining and Investment Corporation Ltd.

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Counsel for Asbestos Corporation Limited

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STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND

JOHN A. TIBBS AND
MARGARITE B. TIBBS,

Plaintiffs,

vs. C/A No.: 2023-CP-40-01759

3M COMPANY, ET AL.,

Defendants.

(Caption continued on the following page.)

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BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Tuesday, July 22, 2025

TIME START: 9:24 a.m.

TIME END: 1:38 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202

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THE COURT: I couldn't agree with that more.

MR. ROBINSON: May I proceed?

THE COURT: Let me guide you a little bit to begin with, Mr. Robinson, because we're here in a framework. We're not here just kind of generally to talk about everything that's been filed back and forth.

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So I think the Supreme Court is certainly aware there are multiple receiverships in this court. I think that every appointment order is created for the circumstances of that situation. This is not a one-size-fits-all situation. There are different statutes that relate to receiverships. There are rules and there are certainly orders.

And there are, as Virginia Chemical pointed out, and now Welch, factors that have to be firmly established in order for a case to move forward or receivership to be established over an ongoing entity. And one of those factors, of course, is the engagement of fraud. And this Court made that finding.

Well, I point this out, and I think Mr. Lay is going to mention this. The petition to appoint the receiver in Park alleged the fraud. The order that you issued in response to that petition, I'm not sure made factual findings regarding the fraud that had been alleged.

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THE COURT: Ms. McVey, how did the Park appointment of Cape's receiver come about? What's the scoop on that?

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And what they want to say is that means everything is done. You cannot do anything about that.

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But when I went and looked at the law of this, number one, we had authority to sue Cape because he was appointed the representative at the time. But number two, when you go and look at the statute about the ability of a personal representative, and the case law that's interpreting it, all we could do is reopen, which is already in process.

THE COURT: Okay. That's the status of the case. The case is still alive. Probate Court closed the estate, and be a lot of reasons why that might be done, is going to be reopening to make it clear that the PR is still able to

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And what they want to say is that means everything is done. You cannot do anything about that.

Now, number one, I had no idea that it happened. No one had told me. We weren't copied on it. Didn't do the probate. I didn't know.

But when I went and looked at the law of this, number one, we had authority to sue Cape because he was appointed the representative at the time. But number two, when you go and look at the statute about the ability of a personal representative, and the case law that's interpreting it, all we could do is reopen, which is already in process.

THE COURT: Okay. That's the status of the case. The case is still alive. Probate Court closed the estate, and be a lot of reasons why that might be done, is going to be reopening to make it clear that the PR is still able to

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND

ISABELLA PARK,

Plaintiff,

vs. C/A No.: 2021-CP-40-01759

ARMSTRONG INTERNATIONAL, ET AL.,

Defendants.

(Caption continued on the following page.)

H E A R I N G
BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Tuesday, August 12, 2025

TIME START: 9:24 a.m.

TIME END: 4:58 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: Sheri L. Byers, RPR
Magna Legal Services
866.624.6221
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and in that order it said insurance assets.
Now, it also -- there was an attack on whether or not you could even have prejudgment receivers. And there's no doubt that we can have prejudgment receivers. And it's a rare, moral fraud circumstance where it occurs. And this is one of those rare occasions.
With Atlas Turner case, you can at least give them some credit, though not much, but some credit for initially participating. Here there's a complete absence of participation and continued thumbing their nose at the U.S. courts and South Carolina courts about any of this. That's worse. And it is much worse on what they were doing.
Atlas Turner was a manufacturer. This is a supplier of asbestos. These group of companies supplied asbestos in the United States. The bad stuff that caused a lot of damage. This is a much more profound bad situation. The moral fraud absolutely exists.
And it did confirm that the receiver could institute actions beyond the case in which the receiver is appointed. And how did they do that? They did that by pointing to the fact

that we have out-of-state receivers that come into South Carolina and we recognize their right to sue. There's no appointment order ahead of time. They're appointed in another court.
And they come into South Carolina and the South Carolina Supreme Court says South Carolina recognizes out-of-state receivers bringing lawsuits.
They referenced a case in Welch where a horse was brought out of state back to New York. There's recognition in all of these cases that have gone on to the Supreme Court and to the Court of Appeals where there is litigation going on. Whether third-party complaints going on or independent stand alone.
The suggestion seems to be you can't do third-party litigation, but maybe you could do independent, stand-alone litigation. I don't understand any logical public policy reason why you would treat those two situations differently.
A receiver, and I struggle to understand how it's going to work, a receiver has to get appointed in every case on the front end to bring a piece of litigation? I was receiver in

the Murdaugh case. I'm not sure how that would work. Our ability to go out and try to get assets created at $2 million fund in that situation because we were able to either threaten or bring independent actions. And what we would do is exactly what we're asking you to do here, is confirm, confirm the authority.
The authority here has already been brought into the case. There is an order in the Park case that has been filed in the Tibbs case. It's been filed as an exhibit. An order exists.
The Welch case does not say -- and the Welch opinion does not say that you have to go through the receiver process, get a receiver appointed. It could be a different receiver. It could be the same receiver. But you have to go through a receiver process, and then you can do something in litigation. It just says that you need to have an order showing you've got the authority filed in the case. They use the word filed. Filed in the case. We got that.
They also gave a process for you to come up with another opinion. You can endorse what we're doing. You have to ensure what we're doing is right. You can endorse what we're

doing. You can add facts to what you're doing. You can modify the order, limit it. None of that is fatal to the receivership.
In fact, the Welch case recognized that there could be modification. Because guess what? They modified. That's what the order said.
We're changing it. They don't say we're changing it; therefore, everything that happened before this moment is void. It's a nullity. You can't even talk. That's not what it said. It modified it. So if you've got concerns about the breadth of the order in part, which has been pulled over into Tibbs, you can do something about it. You can modify it.
You can also confirm that we have the authority. That's what we're asking you to do. Confirm that we have got the authority to do the things that we're doing. You simply confirm it. It's not seeking self-appointment. What we're doing is what you always do in the receivership realm. We are the arm of the court.
Court, we think we need to do this to make sure that we're protecting or pursuing the claims. And Welch recognized that it could be

And so your contention is the combination of these things satisfies the requirements of Welch and as well as the June 26 order.

MR. LAY: And, third, if there's any debate, you have it within your purview to issue an order granting the authority to the receiver to make sure that we can move forward on this case and to make sure that any authority that we have and the scope of our authority complies with Welch. You can issue an order that confirms that.

There's nothing in the June 26 order that suggests that you can't. In fact, it suggests that you can.

Number three, to the extent that the Court intends to authorize the work of the receiver based on facts not found. You just make specific findings of facts and conclusions. There's nothing that suggests that it's over. That it's a nullity. That you don't exist, Receiver, if this is not in there. There's nothing that says that in this order.

So I think we have it in every way that you can have it, and it is an overread by the defendants in this case that has led us to this

dramatic, breathless briefing that we've seen in this case.

And I'm not trying to be pejorative, but that's what it's been. By reading words into the Welch opinion that do not exist, and by reading those into the June 26 order that do not exist, they put us into this situation where you've got to have this hearing. That's not what this litigation is about. But we've done what we're supposed to do, and there's no surprise here.

We had the authority. You can confirm that. If you want to modify the order in Parks as it applies to Tibbs, there are things that you can do that deal with the claims that we -- that Cape has that are related to what we're doing in this case. We're allowed to pursue those. We're allowed to pursue the insurance assets.

And anything else that causes concern, you can take out. Opening mail. I think it was opening mail was one of the acts. That's fine to modify that. The receiver in this case has never tried to enter the boardroom in any way. We've been very specific. This deals with

South Carolina litigation, South Carolina plaintiffs. That's what we're trying to handle here.

That's what they haven't responded here. That's the reason the receiver was appointed here, to deal with South Carolina plaintiffs and South Carolina litigation.

Modify the order, if you need to, to say that specifically, but they're inviting you to modify it and make findings and this conclusions in this June 26 order.

THE COURT: All right, sir.

MR. LAY: I think Ms. McVey is going to handle the other issue.

THE COURT: All right. Ms. McVey.

MS. PEAKE: Good afternoon, Your Honor. Shanon Peake on behalf of the receiver along with Mr. Lay.

There are two recent matters that I wanted to keep the Court advised of. I believe that whenever you're looking at the Tibbs remand order and fulfilling the directives that the Supreme Court issued to you, it's important for the Court to have a full picture of the way that the Welch issues are being raised across

receiverships.

There are two things I wanted to hand up to Your Honor for your information. On August 6, 2025, Judge Brown in the federal court in the Burlington receivership, which is under Judge Nye's jurisdiction, issued a report and recommendation recommending that the court grant the receiver's motion to remand.

The parties in this case raised the Welch issue so we wanted to give this to Your Honor for your information.

The other issue is in the Starr Davis receivership, Travelers had filed a petition for writ of certiorari with the Supreme Court where they have raised in that petition the propriety of the Starr Davis receivership. And they have stated to Welch to do that.

National Union has filed a motion for leave to file an amicus brief due to their involvement in the Payne & Keller receivership. And their arguments that the Payne & Keller receivership is not proper due to Welch.

So they've requested that the Supreme Court grant them leave to file an amicus brief. The receiver has opposed that motion. And so in

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	**FOR THE FIFTH JUDICIAL CIRCUIT**

MELVIN G. WELCH and **DONNA B. WELCH** Plaintiffs, v. **3M COMPANY** f/k/a MINNESOTA MINING AND MANUFACTURING COMPANY, et al. Defendants.	)	**C/A NO. 2022-CP-40-03834**

ORDER ON PLAINTIFFS' MOTION TO APPOINT A RECEIVER

This order follows the Court's order finding Atlas Turner Inc. f/k/a Atlas Asbestos Company ("Atlas") in contempt of court and this Court's entry of an order striking Atlas' pleadings. Before the Court is Plaintiffs' Motion to Appoint a Receiver over Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd ("Atlas").

BACKGROUND

For the reasons set for below, the Court grants Plaintiffs motion to appoint a receiver over the Insurance Assets[1] of Atlas. Peter Protopapas is appointed as receiver over those Insurance Assets and the Court expects anyone or any entity having information or materials which are

[1] This term is defined below.

reasonably calculated to lead to the discovery of admissible evidence to cooperate with this Court's Receiver in locating and marshalling those assets.

PROCEEDURAL BACKGROUND

On May 11, 2023, this Court found Atlas to be in contempt of Court. The Court based its contempt order on Atlas' flat refusal to comply with this Court's orders to produce documents, a witness or otherwise participate in discovery. As part of this Court's order on contempt, the Court ordered Plaintiffs to brief the issue of the sanction requested.

On May 11, 2023, Plaintiffs filed their brief requesting that this Court strike Atlas' pleadings. Atlas' response was filed on May 15, 2023 and Plaintiffs' reply was filed on May 18, 2023. After considering the briefing of the parties, this Court determined that striking Atlas' answer was the appropriate sanction for contempt of this Court's orders.

Now, having struck Atlas' answer, Atlas is in default.[2]

LAW AND ANALYSIS

A. Appointment of a Receiver is Appropriate and Warranted

The South Carolina receivership statute provides in relevant part that a receiver may be appointed in cases in accordance with "existing practice." S.C. Code Ann. 15-65-10(5).[3]

[2] The process of actually entering default judgment is merely a ministerial process. In the absence of an answer, default is nothing more than that ministerial act. *Stark Truss Co., Inc. v. Superior Const. Corp.* 360 S.C. 503 (Ct. App. 2004)

[3] A receiver is also available to carry a judgment into effect, which is the practical result of the coming default following the unopposed striking of Atlas' answer. Atlas further argues that there is no evidence of its insolvency, yet it refuses to comply with this Court's orders to discovery that and many other issues. The Court does not believe it is appropriate for Atlas to use this refusal as a sword. Regardless, other elements of the receivership statute are satisfied and thus, this argument is unavailing.

Historically, receivers are appointed by courts sitting in equity in order to ensure a fair result. *First Carolinas Joint Stock Land Bank of Columbia v. Knotts*, 191 S.C. 384 (1939). Indeed, "[t]he right to have a receiver appointed is an ancient one . . . ." *Pelzer v. Hughes*, 27 S.C. 408 (1887) But where, as here, Atlas' has been struck, and thus only a ministerial action being left for Atlas to be in judgment, a receiver to take possession of and, to the extent necessary, litigate Atlas' insurance assets is exactly the type of historical circumstances, the Court's of this state have found appropriate. Specifically, where, as here, a debtor, solvent or otherwise,

> is trying to defeat his creditors by an act or course of conduct which indicates moral fraud-a conscious intent to defeat, delay or hinder creditors in the collection of debts-then a court will grant any relief within its jurisdiction appropriate and effective to protect creditors against the fraud without requiring the creditor to run the risk of losing his debt from the delay of obtaining judgment and return of nulla bona on the execution.

Virginia Carolina Chemical v. Hunter, 84 S.C. 214 (1909).

Here it is exactly the moral fraud of Atlas' personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and Atlas continued refusal to participate in this that warrants the appointment of a receiver.

Thus, where there is active wrongdoing and illegal refusal to comply with this Court's orders, the appointment of a receiver is appropriate.

As Plaintiffs have requested, a receiver appointed here would have the authority to administer "any insurance assets" including "any claims related to the actions or failure to act of Atlas's insurance carriers." This Court's view of the scope of a receiver's authority is not unique. The United States Supreme Court recognized in *Porter v. Sabin*, 149 U.S. 473 (1893) that "[t]he whole property of the corporation [is] within the jurisdiction of the court which appointed the receiver, **including all its rights of action**, except so far as already lawfully disposed of under

orders of that court, [and] remains in its custody, to be administered and distributed by it." *Id*. at 480 (emphasis added).

That the South Carolina receivership references "property within this state" is not a limitation on the Receiver's authority in this case. Instead, the statutory reference is consistent with principles of comity, which deter a state court from reaching beyond a state's borders and asserting jurisdiction over such property located in another jurisdiction. These same principles of comity support a state court's authority to vest a statutory receiver to assert an insolvent corporation's rights of action. *See e.g.Hirson v. United Stores Corp.* 263 A.D. 646, 34 N.Y.S.2d 122 (App. Div. 1st Dep. 1942), *aff'd* 43 N.E.2d 712 (N.Y. App. Ct. 1942) (holding that title to choses in action held by a receiver appointed pursuant to Delaware law would be afforded "full faith and credit"). That is the authority given to be given the receiver here.

That authority includes the insurance assets of Atlas. Even assuming Atlas' interpretation of §15-65-10 is correct, to the extent they exist, Atlas' Insurance Assets[4] would be intended to protect the lives, interests and property within South Carolina. The result is that the insuring assets are subject to the laws of South Carolina, including the duly appointed Receiver.

S.C. Code Ann §38-61-10 states that

> [a]ll contracts of insurance on property, lives, or interests in this state are considered to be made in the State and all contracts of insurance the applications for which are taken within this State are considered to have been made within this State and are subject to the laws of this State.

[4] For purpose of clarity, this Court defines "Insurance Assets" as any insurance policy, proceeds of insurance policies, claims relating to such insurance policies, including but not limited to, claims relating to any breaches of duty relating to those policies, information relating to those insurance policies including, but not limited to mail, files of counsel, or other information which is reasonably calculated to lead to the discovery of admissible evidence about those insurance policies or any other assets which are related to, touch or are otherwise relevant to such insurance.

In interpreting §38-61-10, the South Carolina Supreme Court held that "[i]t is immaterial where the contract was entered into. Further there is no requirement that the policyholders or insurers be citizens of South Carolina. What is solely relevant is where the property, lives, or interests insured are located." *Sangamo Weston v. Nat'l Sur. Corp.*, 307 S.C. 143, 149, 414 S.E.2d 127, 130 (1992)(Toal, C.J). The result is that "South Carolina substantive law governs [the insuring assets of Atlas]" *Id.*[5] Thus the appointment of a receiver over those assets is appropriate.

B. Due Process has not and will not be violated

Atlas continues to ignore the jurisprudence of this state which directly addresses its due process argument. Atlas ignores, again, the teachings of the South Carolina Supreme Court in *Sangamo*.

Just as here, *Sangamo* argued that §38-61-10 was "unconstitutional." *Id.* at 131. The South Carolina Supreme Court there opined that

> insuring property, lives and interests in South Carolina constitutes a significant contact with this state. South Carolina has a substantial interest in who bears the liability for operations conducted in this state which result in injury to South Carolina property and citizens. Although the parties are not residents of this state, both parties availed themselves of the law of South Carolina when they respectively provided or received insurance on interests located in this state.

Id. Atlas sold its poison throughout the United States well knowing that it would end up in the workplaces of working men and women throughout the nation, including sales, specifically to South Carolina. Therefore, under the statutory scheme of this state and its interpreting precedent,

[5] As more fully set forth above, the funds at issue appear to be the proceeds from settlements involving insurance contracts designed to protect lives, interests and property within the state and thus would also be governed by substantive South Carolina law.

whatever insuring assets of Atlas exist and related claims are subject to the substantive law of South Carolina and nothing about that result is violative of due process.

POWERS OF THE RECEIVER

As set forth above, the powers afforded to the receiver here are all related to the insurance assets of Atlas. Therefore, this Court hereby orders that Peter Protopapas be and hereby is appointed Receiver in this case with the power and authority fully administer all insurance assets of Atlas Turner, Inc. and any subsidiaries, accept service on behalf of Atlas, engage counsel on behalf of Atlas and take any and all steps necessary to protect the interests of Atlas whatever they may be. This order includes the right and obligation to administer any insurance or indemnification assets of Atlas as well as any claims related to the actions or failure to act of Atlas insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of Atlas against which the Atlas may have claims.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, powers and authority, insofar as they are related to the discovery of and recovery of insurance assets, to: 1) open any mail which is reasonably believed to contain information relating to insurance assets addressed to the defendant and addressed to any business owned by the Atlas; redirect the delivery of any such mail addressed to the Atlas or any business of the Atlas, so that such mail may come directly to the receiver; 2) endorse and cash all checks and negotiable instruments payable to Atlas relating to insurance assets; 3) obtain from any financial institution, bank, credit union, savings and loan or title, credit bureau or any other third party, any financial records belonging to or pertaining to the insurance assets of Atlas; 4) hire any person necessary to accomplish any right or power under this Order; and 5) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property

of Atlas may be situated, and to review and obtain copies of all documents related to insurance assets of Atlas.

The Court expects the Receiver to investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to Atlas. The Receiver will provide potential insurers or indemnifiers with lists of work sites, contractors, and insurance brokers and agents to facilitate the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of Atlas or any entity for whom Atlas did work or supplied materials or licensed products or the use thereof as an "additional insured" under coverage written to another entity). The Court expects all insurers or indemnifiers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

This Court notes that under the *Barton* doctrine, suit against the Receiver outside of this Court is expressly prohibited.

CONCLUSION

For the foregoing reasons, the appointment of a receiver for Atlas to marshal all of the available insurance assets, including claims related thereto and any other property subject to this receivership of Atlas and its subsidiaries, successors, and assigns, is appropriate. Peter Protopapas is hereby appointed the receiver over Atlas consistent with this order.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]

Richland Common Pleas

Case Caption: Melvin G Welch , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2022CP4003834

Type: Order/Appointment of Receiver

So Ordered

Jean H. Toal