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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE 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

Case Nos.: 2025-002120 and 2025-002121

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 Corandp.; 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., Arran Co 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.

RESPONDENTS JOHN AND MARGARET TIBBS' OPPOSITION TO PETITIONS FOR WRITS OF PROHIBITION OR WRITS OF CERTIORARI

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I. INTRODUCTION

Petitioners Charter Consolidated Ltd., ESAB Corporation, and Central Mining and Investment Corporation Ltd. (collectively, "Charter Petitioners") and Petitioners Mohed Altrad and Altrad Investment Authority SAS ("Altrad Petitioners") (all collectively, "Petitioners") continue their pattern of improper interlocutory requests[1] from rulings made by Justice Toal in the consolidated asbestos docket.[2] Because the Charter Petitioners' and Altrad Petitioners' petitions are substantially similar, Respondents John and Margaret Tibbs consolidate their responses to both in this brief.

Petitioners' petitions misinterpret this Court's past orders, mischaracterize Justice Toal's decisions as "resistance" to this Court's instructions, and misrepresent the law. They are procedurally improper, failing to show any emergency or that Petitioners lack an adequate remedy at law absent the issuance of a writ. Under this Court's precedent, writs seeking to limit a trial court's jurisdiction to appoint receivers should be dismissed because they offer no justification for departing from the orderly processes of the law.

Petitioners also misconstrue this Court's June 26, 2025 Order ("June 26 Order"), suggesting it required a receiver be *appointed* in every case in which he acts. But that is not what

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[1] In addition to filing their respective Petitions, both the Altrad Petitioners and Charter Petitioners, under the guise of "responding to" Respondents' request for an extension of time, filed "supplemental" briefing. This supplemental briefing took no position as to Respondents' requested extension, but instead raised a host of new substantive issues. In addition to filing such briefing without requesting leave of the Court, Petitioners apparently seek relief from issues which have yet to be ruled upon by the trial court. Further, the basis of their supplemental briefs are the *ex parte* orders of a United Kingdom court. This Court directly referenced the foreign court's efforts to interfere with South Carolina receiverships in *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 665-66, 916 S.E.2d 32 (2025) declaring them to be "[s]hocking to American eyes . . .," and stating such attempts to enjoin the receivership in this case amounted to "a *brutum fulmen* (an empty noise)." Petitioners' "supplemental" briefing is thus inappropriate, premature, and unsupported by any rulings which carry authority in South Carolina.

[2] In the same June 26, 2025 Order upon which the Petitioners heavily rely, this Court chastised asbestos defendants for the number of interlocutory appeals filed in asbestos cases, noting "many of the appeals from those orders have bordered on frivolous." The instant writs ask for the some of the same relief as the appeals to which this Court was referring. Other asbestos defendants are now employing similar tactics. *See*, *e.g. Gerkin v. Avon Products, Inc. et al.,* appellate case No. 2025-002133, in which various Johnson & Johnson entities filed a Petition for a Writ of Certiorari seeking interlocutory review of venue and motions in limine rulings.

this Court instructed. Instead, the June 26 Order states a receiver may conduct work if there is "an order filed in the specific case as to which the work is to take place." (emphasis added).[3] In the instant matter, the *Park* order appointing Peter Protopapas Receiver was filed in *Tibbs* . . . appearing more than 20 times in the record. For this additional reason, Petitioners' requests are without merit.

Petitioners also misconstrue the June 26 Order as stating the trial court only had one option when reviewing existing receivership orders that it found did not comply with *Welch v. Advance Auto Parts, Inc.*, 916 S.E.2d 32 (S.C. 2025) . . . to void the order. Yet nothing in the June 26 Order so states, and the trial court in *Park* acted within its authority in modifying the *Park* receivership instead of voiding it. Indeed, that is exactly what this Court did in *Welch* after finding the original receivership order in that case to be overly broad. Petitioners' argument would require either a) the entire receivership process re-commence, or b) this Court to be the only body capable of modifying receivership orders. Either suggestion would merely lead to judicial inefficiency, and neither finds support in the June 26 Order.

Petitioners also attempt to play "gotcha" with a miscommunication between the Tibbs' and Park's trial counsel (the undersigned) and Park's probate counsel, which resulted in the Park Estate being temporarily closed. Petitioners suggest all actions in the *Park* case, including the appointment of the Receiver are void. However, Petitioners' arguments are based upon inapplicable case law, and fail to address S.C. Code §62-3-701. This statute explicitly permits a

[3] This only makes sense. A receiver takes control of certain property as established by the original receivership order. There is no need for additional appointments in other cases, as the receiver already has control of the assets. Further, if a separate receiver was appointed in each case, each receiver after the first would come into possession of nothing as the first appointed receiver would hold all the assets placed into receivership. *Porter v. Sabin*, 149 U.S. 473, 480 (1893). The purpose of this Court's requirements that a receivership order be filed in other cases is to verify and provide a record that the receiver's already-existing authority encompasses property or matters at issue in the subsequent case(s).

personal representative to ratify past acts of others. In the instant mater, it permitted the Personal Representative to ratify the request that Mr. Protopapas be appointed Receiver for Cape.

Petitioners also claim there is insufficient evidence of "moral fraud" to support the appointment of a Receiver, when Cape's misconduct not only meets the misconduct set forth in *Welch*, it far exceeds it. The trial court made extensive findings of fact in determining Cape committed and continues to commit moral fraud.

Finally, Petitioners challenge South Carolina's jurisdiction over Cape and the Altrad Petitioners.[4] Once again, the evidence shows both Cape and Petitioners conducted business in South Carolina, and the trial court's order is supported by extensive findings of fact and analysis of law.

Justice Toal's orders in this matter comply with *Welch*, the June 26 Order, and South Carolina and U.S. Supreme Court law.[5] Petitioners' requests for writs misinterpret and misrepresent both the law and facts relevant to the *Park* and *Tibbs* matters. For these reasons, as more fully set forth below, Respondents John and Margeret Tibbs respectfully request this Court

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[4] Although Charter Petitioners "reserve the right" to challenge personal jurisdiction over themselves, their Petition does not raise such a challenge. *See*, Charter Petitioners' Petition, p. 1, FN1.

[5] Charter Petitioners also argue that *Whittaker Clark & Daniels v. Protopapas*, App. 152 F.4th 432 (3d Cir. Sept. 10, 2025) is "controlling federal appellate authority." This statement is untrue . . . South Carolina State courts are not "controlled" by the 3rd Circuit. Further, Charter Petitioner's claim is also supported only by the 3rd Circuit's "doubt" (contrary to Petitioner's representation, the 3rd Circuit did not include the "significant" qualifier) that a South Carolina court could give a Receiver control over a foreign corporation's board and prevent it from declaring bankruptcy. The fact that the 3rd Circuit would find such an act, *without the parties actually litigating the issue* (*see, Id.* at 447), of "(doubtful) constitutionally" is not persuasive, let alone "controlling." Finally, the 3rd Circuit case deals with the internal affairs of a corporation, specifically its ability to file bankruptcy after a receiver is appointed. But Petitioners' arguments on this issue do not involve "internal affairs." Rather, they claim Cape's board maintained the exclusive ability to release claims against Petitioners. This is not a matter of "internal affairs," and as the U.S. Supreme Court has recognized, the powers of a receiver may include exercising control over "all [the debtor's] rights of action." *Porter,* 149 U.S. at 480. As such, it was clearly within the trial court's powers to appoint a receiver with authority to determine whether to pursue or release potential rights of action. Cape's "release" after the appointment of a Receiver was merely a sham attempt to violate the Receiver's authority, and as set forth below, is evidence of Cape's "moral fraud" in attempting to escape responsibility for its deadly asbestos in the United States. It involved separate entities, and attempted to bind other parties (such as Park and the Tibbs) which were not parties to the release. In short, *Whittaker Clark & Daniels* is inapplicable.

deny the Charter Petitioners' and Altrad Petitioners' Petitions for a Writ of Prohibition or a Writ of Certification and grant the Tibbs Respondents any other relief the Court believes appropriate.

II. ARGUMENT

A. Writs are not Substitutes for Appeals and Petitioners Lack of Standing to Argue on Behalf of Cape

It is established South Carolina law that a "writ may not be invoked to perform the office of an appeal." *State Bd. Of Bank Control v. Sease*, 188 S.C. 133, 198 S.E. 602, 603 (1938). In that case, the South Carolina Supreme Court denied writs seeking an order that "the courts of the state are without jurisdiction to appoint receivers [for banks]." Just as in this case, the petitioners in that matter argued the trial court had no jurisdiction to issue orders appointing receivers, and that the trial courts orders doing so should be "declared to be of no effect." *Id.* at 603.

This Court denied the petition on procedural grounds, setting forth the principles governing the granting writs as set forth in *Johnson v. Jones*, 160 S.C. 63, 158 S.E. 134 (1931). *Id.* Among the principles recognized in *Sease* were:

> The Writ of Prohibition "should be used with forebearance [sic] and caution, and only in cases of necessity." Its principal use is to prevent the assumption and exercise of jurisdiction by a lower tribunal in cases where wrong, damage and injustice are liable to follow such action.
>
> It will be granted only "to prevent an encroachment, excess, usurpation, or improper assumption of jurisdiction on the part of an inferior court or tribunal, or to prevent some great outrage upon the settled principles of law and procedure; but, if the inferior court or tribunal has jurisdiction of the person and subject-matter of the controversy, the writ will not lie to correct errors and irregularities in procedure, or to prevent an erroneous decision or an enforcement of an erroneous judgment, or even in cases of encroachment, usurpation, and abuse of judicial power or the improper assumption of jurisdiction, where an adequate and applicable remedy by appeal, writ of error, certiorari, or other prescribed methods of review are available."
>
> *And of course the writ may not be invoked to perform the office of an appeal*.

Id., (citation omitted, emphasis added).

In denying the *Sease* petition, this Court recognized, "we are not dealing with any emergency in the economic field, nor even with an extraordinary emergency relating to the particular financial institutions in question; and the legislation whose constitutionality, application and construction are involved here is permanent legislation, with no emergency characteristics of any kind." *Id.* at 603. Finding "[t]he petitioners were and are not without an adequate remedy at law," and "[w]e can find no justification under the facts presented by the petition herein for departing from the orderly processes of the law," the Supreme Court dismissed the petition. *Id*. at 603-04. This Court explicitly distinguished this type of matter from *Zimmerman v. Bigges*, 171 S.C. 209, 172 S.E. 130 (1933), relied upon by Altrad Petitioners in the instant matter.[6] *Id.* at 603. Noting that the appointment of receivers was nothing like the emergency in *Zimmerman*, in which "economic chaos threatened the nation," requiring the passage of both State and Federal emergency legislation, this Court found "it cannot be said that there is any such emergency as was presented in the case of [*Zimmerman*] to warrant this Court in departing from the application of the foregoing principles." *Id.* As such, Altrad Petitioners' claim that *Zimmerman* is "particularly on point,"[7] has already been rejected by this Court in the context of receiverships.

Just as in *Sease*, Petitioners in this matter have presented this Court with no emergency invoked by the trial court's receivership orders, nor have they shown they are without an adequate remedy of law. In fact, Petitioners admit they have also filed appeals with the Court of Appeals, including appeals which the Court of Appeals struck as being premature and not immediately appealable.[8]

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[6] *See*, Altrad Petitioners' Petition, p. 7.
[7] *Id.*
[8] *See*, Charter Petitioners' Petition, p. 1, Altrad Petitioners Petion, p. 1,5.

Additionally, Petitioners have no standing to argue about matters such as service upon or personal jurisdiction over Cape, nor about Cape's "moral fraud." Cape, not Petitioners, had the right to appear in *Park* and contest service or jurisdiction. Cape, not Petitioners, had the right, in *Park*, to contest the receivership or that it committed moral fraud. Petitioners simply have no standing to argue such matters on behalf of another entity, *especially* when such entity is the opposing parties in this litigation. For these initial reasons, Petitioners' requests for writs are improper and should be dismissed.

B. Neither This Court Nor South Carolina Law Require Receivers to be Appointed in Every Case in Which They Act.

Petitioners also argue that a receiver must be appointed in every case in which he or she acts, citing the June 26, 2025 Order. But that Order contains no such requirement. Instead, this Court ordered the trial court to, "[e]nsure 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." (emphasis added. The plain language of this directive does not require a receiver to be *appointed* in every case in which he or she acts. Instead, it merely requires a receivership order be *filed*. And that is exactly what happened in *Tibbs*. The *Park* order appointing Mr. Protopapas Receiver for Cape has been filed in *Tibbs*, and in fact appears in the record at least 23 times.[9]

Petitioners' suggestion that Mr. Protopapas needs to be appointed Receiver in every case in which he acts conflicts with the United States Supreme Court's holding in *Porter v. Sabin*, 149 U.S. 473, 480 (1893). In that case, the Supreme Court held, "[t]he whole property of the

[9] *See*, 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 ("Trial Court 10/13/25 Order"), p. 43, FN 143 (listing every time *Park* Receivership Order filed in *Tibbs*).

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." If a receiver's powers were limited to a single case, as Petitioners suggest, it could hardly be said that "the whole property of the corporation . . . including all its rights of action" would be in the receiver's possession.

The purpose of this Court's requirement that a receivership order be filed in a case before a receiver can act is not to grant the receiver power over any certain property. Such power has already been established. Instead, it is to provide notice of the scope of the receiver's powers as set by the appointing court. To hold otherwise would be contrary to the U.S. Supreme Court's holding in *Porter*, South Carolina law, and common sense, and would serve as an unneeded and inappropriate limitation on a receiver's right to exercise control over a debtor's property.

The Receiver's actions in *Tibbs* comply with the specific language of the June 26, 2025 Order, and Petitioners' suggestion that Mr. Protopapas had to be appointed as Receiver again in *Tibbs* is without merit.

C. The Trial Court Can Amend its Receivership Order

Petitioners further argue that if the trial court found any of its prior receivership orders did not comply with *Welch*, its only option was to void such orders. But nothing in the June 26 Order places any such restriction on the trial court's options. To the contrary, this Court explicitly ordered the trial court to "[e]nsure ... the receiver's scope of authority is limited as set forth in *Welch*." The clear directive of this statement is that if the trial court found a receivership exceeded the scope of authority set forth in *Welch*, it should bring the order into conformity with *Welch*. Petitioners'

suggestion that the only option is to "void" the receivership and start again from scratch[10] finds no support in the June 26 Order nor in common sense.

The Receiver in *Park* was appointed pursuant to SC Code 15-65-10(4) and (5). These provisions address receiverships for dissolved or insolvent companies as well as other cases provided by law or which are in accordance with existing practice. SC Code 33-14-320(c) (addressing receiverships in dissolution) indicates "[t]he court shall describe the powers and duties of the receiver or custodian in its appointing order, *which may be amended*." (emphasis added). Thus, "existing practice" is that trial courts may modify receivership orders.

Further, this Court has previously held, "[t]he general doctrine is that a court of equity, by taking jurisdiction over a matter and appointing a receiver, draws to it the right to hear and determine all claims against its receiver *and to completely adjudicate the receivership*." *Stoney v. Mincey*, 180 S.C. 317, 185 S.E. 619, 622 (1936) (emphasis added). "A receiver represents the Court appointing him; he is an officer of the Court and is the agency through which the Court acts. As he has no power other than that given him by the Order of appointment, his authority is derived solely from the Court. *He is subject only to the Court's direction*." *Kirven v. Lawrence*, 244 S.C. 572, 580 (1964) (emphasis added). The only reasonable interpretation of these holdings is that an appointing trial court has authority to modify its own receivership orders.

Similarly, in *National Cash Register Co. v. Burns*, 217 S.C. 310, 316, 60 S.E.2d 615, 618 (1950), this Court determined "a court which creates a receivership usually draws to itself jurisdiction *over all controversies concerning the assets and liabilities of the debtor in receivership* and is ordinarily the *exclusive* forum for the adjudication of them*."* (emphasis added). This case

[10] Petitioners recognize that even if the receivership were to be voided, the Tibbs would have the right to make their own request for appointment. *See, e.g.*, Altrad Petitioners' Petition, p. 20, claiming Receiver's actions in *Tibbs* "[w]ithout a plaintiff seeking an appointment" are a "nullity."

not only suggests a trial court has the power to set or modify the bounds of a receiver's authority over the debtor's assets and liabilities, it ordinarily has exclusive jurisdiction to do so. Nothing in the June 26, 2025 Order indicates this Court intended to reverse this decades-old case law or strip trial courts of their ordinary authority over the receiverships which they established.

D. The *Park* Receivership is not Void

Petitioners also claim the *Park* order appointing Mr. Protopapas Receiver is "void," because the Park Estate was closed prior to the appointment, and only reopened after the appointment. In doing so, they fail to address, or even reference, South Carolina Code §62-3-701.

Pursuant to this statute, "the powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter." This includes that a Personal Representative "may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative." *Id.* Furthermore, as set forth in *Fisher v. Huckabee*, 422 S.C. 234, 239 (2018), when a personal representative seeks to cure issues regarding the real party in interest, a "circuit court would [be] required to allow time for ratification, joinder or substitution of the proper party."

In *Park*, although the Estate was technically closed at the time of the Receiver's appointment, once it was reopened the Personal Representative's powers related back, and he had authority to ratify the request for a Receiver because it was done for the benefit of the Estate.

Petitioners cite *Glenn v. E.I. DuPont de Nemours & Co*., 254 S.C. 128, 174 S.E. 155, (1970), *Porter v. Brown*, 149 S.C. 151 (1929), and *McCullar v. The Estate of Dr. William Cox Campbel*, 381 S.C. 205, 672 S.E.2d 784 (2018), claiming they support a finding the *Park*

receivership is void.[11] But these cases are easily distinguished from the instant matter. *Glenn* and *Porter* were decided prior to the enactment of South Carolina Code §62-3-701, and thus did not address it.[12] Furthermore, these cases addressed whether a Personal Representative could ratify the filing of a case or claim against the debtor before the representative was appointed. In *Park*, Isabella Park was alive at the time the original Complaint was filed, and her Estate was active at the times the Complaint was amended. Thus, unlike in *Glenn* and *Porter*, *Park* was initiated (and amended) while Ms. Park was still a living proper party or after Keith Park was appointed Personal Representative. In *Glenn* and *Porter*, there was no proper party to initiate the lawsuit, let alone take any action in it. In *Park*, there is no dispute a proper party existed at the time the lawsuit was initiated and when the Complaint was amended. As such, *Glenn* and *Porter* would be distinguishable from *Park* even without the passage of §62-3-701.

McCullar also failed to address §62-3-701, because that case did not involve a personal representative ratifying acts for the benefit of the estate. To the contrary, *McCullar* involved *opposing parties* attempting to bring an action *against* the estate. Thus, *McCullar* involved the exact opposite situation than is contemplated by §62-3-701 or is present in *Park.* Its holding is simply inapplicable to this matter.

On June 9, 2021, less than five months from her diagnosis, and only five days after filing her lawsuit, Ms. Park passed away. Ms. Park's son, Keith Park was appointed personal representative of her estate on August 4, 2021. On November 17, 2021, Keith amended the complaint, appearing individually and as personal representative to Ms. Park's estate, to assert a

[11] Petitioners also cite various cases from other jurisdictions. Not only are these cases factually distinguishable, they did not consider South Carolina Code §62-3-701 or other similar provisions allowing personal representatives to ratify actions taken by others which benefit the estate.

[12] The current version of this statute was made effective in 2014. It appears the earliest that any version may have been enacted was 1976.

wrongful death action. The amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) (together with all predecessors in interest, "Cape") as a defendant. Cape Intermediate Holdings Limited and Cape PLC were identified as successors in interest to Cape Asbestos Company Ltd. In December 2021, the Park Plaintiffs served the named Cape entities, which (as has been their practice for decades) never answered, moved, or otherwise responded.[13]

Altrad Petitioners argue that because the process server only referenced an "amended summons," but not an "amended complaint" in his proof of service, there is no evidence Cape was properly served. Even if Altrad has standing to argue about service upon Cape, this argument was fully addressed and rejected by Justice Toal in her December 6, 2023 Order Denying Certain Third Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction, p. 20. ("Trial Court 12/6/23 Order"):

> Regardless of what the process server titled the service paperwork, the other record evidence reveals both the summons and the complaint documents were served on Cape: An email from counsel for the Park Plaintiffs to the process server (made a Court exhibit at the hearing) indicates counsel provided the process server with a single PDF document containing both the summons and the complaint, and in the Park lawsuit, the "First Amended Summons" and "First Amended Complaint" refer to two parts of the same document filed on November 17, 2021 (the summons is found in the first 4 pages while the complaint comprises the remaining 66 pages). Although individuals involved in the service may have referred to the combined document as "the summons," it is clear from the contents that a combined document containing both the summons and the complaint was served on Cape. Moreover, as previously noted, the record indicates the process server emailed the same materials to an Altrad-affiliated official address designated for the receipt of asbestos-related claims against Cape (elclaimsaltraduk@altrad.com); no Altrad entity has provided a response or other indication that only the summons had been sent to that email address.

As the trial court also recognized in that same order (see p. 13, FN13), the process server's affidavit included pictures showing "an oversize envelope, with a large-letter stamp, indicating

[13] *See*, Trial Court 12/6/23 Order, p. 3-4.

sizeable contents, rather than just a couple of sheets of paper." Given that the Summons was only 4 pages, while the Complaint was 66 pages, the oversized envelope is further evidence that both the summons and complaint were served on Cape.

On August 26, 2022, due to a miscommunication between Mr. Park's probate and litigation counsel, the Estate of Isabella Park was closed unbeknownst to litigation counsel (the undersigned). Not realizing the Estate had been closed, on March 6, 2023, the Park litigation attorneys filed a motion on Park's behalf requesting a receiver be appointed over Cape PLC and its subsidiaries, affiliates, successors, and assigns."[14] This motion was granted on March 17, 2023, with Peter Protopapas being appointed Receiver for Cape.

Upon learning that the Estate had been closed, Park immediately moved for it to be reopened, which it was on July 30, 2025. Pursuant to South Carolina Code § 62-3-701, Mr. Park, in his renewed capacity as Personal Representative, was able to ratify the actions of his attorneys in seeking the appointment of a receiver. Petitioners' fail to mention or address this statute, and the case law which they cite is inapplicable to it. As such, Petitioner's arguments that the *Park* receivership is "void" are not supported by current South Carolina law.

E. Cape Engaged in Moral Fraud

Petitioners claim there is no evidence of Cape's moral fraud which meets the requirements of *Welch*. As set forth above, Petitioners have no standing to make such arguments. But even if they did, in making this claim Petitioners ignore the findings of fact made by the trial court which show Cape engaged in misconduct that far exceeds the misconduct of Atlas Turner in the *Welch*

[14] Petitioners attempt to make much out of a statement by Park's counsel that all claims had been "fully resolved." This imprecise statement was with respect to the active litigants in the case, not the Cape entities which had never appeared, and the *Park* matter was never closed nor requested to be closed.

case. As described by Justice Toal, "Cape's conduct, like Atlas Turner's, was the product of company policy. Cape, however, was far more ruthless and deliberate than Atlas Turner."[15]

Justice Toal's 10/13/25 Order devotes approximately ***twenty-four pages*** to makings findings of fact which show Cape's "moral fraud."[16] Such findings included that Cape established a subsidiary, the North American Asbestos Corporation ("NAAC"), for the purpose of marketing and distributing Cape's South African amosite asbestos into the United States, including South Carolina.[17] NAAC was "essentially a one-man operation" overseen by a board which resigned in 1975 as a "sensible precaution" in light of U.S. litigation.[18] Cape dominated NAAC's decision-making, as the latter could not "borrow one dollar without [Cape Asbestos's] approval, and was routinely required to withdraw cash from the United States to pay Cape dividends.[19]

The trial court further found that at the onset of asbestos litigation in the 1970s, Cape machinated to give the appearance of reduced NAAC oversight while continuing to dominate and control its subsidiary.[20] It also began refusing to accept process or appear in any proceedings in the United States, a practice it continued in *Park*.[21] Cape justified its avoidance strategy by claiming it "really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of [a] US product liability cult."[22] In 1978, Cape liquidated NAAC, and transferred assets to its parent company based upon legal advice that no British or South American court would enforce a judgment if no Cape entity appeared again in the United States.[23]

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[15] Trial Court 10/13/25 Order, p. 35.
[16] Justice's Toal's findings are supported by citations to exhibits filed by Park when requesting a receiver, and exhibits filed by the Receiver in *Tibbs* as part of his July 11, 2025 report to the trial court. Copies of these exhibits are available upon the Supreme Court's request.
[17] Trial Court 10/13/25 Order, p. 10-11.
[18] *Id.* at 11.
[19] *Id.* at 11-12.
[20] *Id.* at 12-13.
[21] *Id.* at 13.
[22] *Id.*
[23] *Id.* at 14.

While seeking to avoid liability, Cape continued to profit from sales of asbestos to the United States. It formed Continental Products Corporation (using the same address as NAAC had utilized) to act as its commission agent in the United States.[24] Sales were funneled to a new subsidiary, with the "purpose of this corporate arrangement [being] to eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to lawsuits brought against it under theories of strict liability concerning products liability on the sale of asbestos in the United States."[25] Justice Toal found the purpose of these maneuvers was "to escape liability, but [continue] selling asbestos fibers to virtually the same contact list [in the United States]."[26]

Justice Toal made further findings of moral fraud based upon evidence gathered by the Receiver. Such evidence included that Cape concealed early knowledge of asbestos from U.S. customers and suppressed reports and research showing mesothelioma and asbestosis amongst workers in South American asbestos mines.[27]

Finally, Justice Toal recognized Cape's recent moral fraud in seeking to avoid liability in the United States. It noted that in *Park*, Cape continued its U.S. litigation strategy of failing to appear.[28] It further pointed to Cape's efforts to thwart its powers to appoint a receiver by instituting a proceeding against the Receiver in England and Wales.[29] As this Court itself recognized in its January 16, 2025 Order "[a]ny attempt by a foreign court to intervene in and threaten participants in matters properly pending in the courts of South Carolina would be shocking and indefensible." As Justice Toal noted, not only did Cape initiate such intervention, it did so based upon a "one-

[24] *Id.*
[25] *Id.* at 15, 26-29.
[26] *Id.* at 29.
[27] *Id.* at 15-26.
[28] *Id.*at 29.
[29] *Id.* at 30.

sided presentation include[ing] many incomplete statements as to the work of the receiver and this Court . . .."[30] Justice Toal concluded Cape provided the U.K. court with an "inaccurate portrait of this Court" in "direct violation of the Barton Doctrine."[31] Finally, Justice Toal found Cape's threatening of both the Receiver (including threats of criminal actions and personal money judgments) and insurance companies evidenced a "'conscious intent to defeat, delay, or hinder' creditors of Cape," and established Cape's "moral fraud."[32] Explicitly comparing Cape's actions to this Court's finding of moral fraud by Atlas Turner in *Welch*, Justice Toal found, "Cape's conduct, like Atlas Turner's, was the product of company policy. Cape, however, was far more ruthless and deliberate than Atlas Turner."[33] "All of these actions are undertaken to avoid enforcement of any judgment against Cape, without the risk of engaging in proceedings in a U.S. court."[34]

F. Cape's Danger of Insolvency Supports the Appointment of a Receiver

Justice Toal further found the appointment of a Receiver in *Park* to be appropriate based upon the danger of insolvency under S.C. Code §15-65-10(4). The publicly available information regarding Cape suggests that Cape Intermediate Holdings Limited ("CIHL") is in danger of insolvency for two reasons.[35] The court found Cape Intermediate Holdings Limited ("CIHL") is a non-operating shell company, and that the dividends it declares are merely the profits of another company funneled up the corporate chain to Altrad.[36] Its subsidiaries, Cape Insulation Ltd., Cape Industries Ltd., and Cape Building Products, Ltd, are legacy Cape companies that generate no

[30] *Id.* at 30-32.
[31] *Id*. at 32-33.
[32] *Id.* at 34-37.
[33] *Id.* at 35.
[34] *Id.* at 38.
[35] Trial Court 10/13/25 Order, p. 38.
[36] *Id.* at 38-39.

revenue.[37] The Court further found financial statements showed Cape has no money to pay asbestos claims other than for certain Cape U.K. employees – indicating there are no funds available for United States or South Carolina residents injured by Cape asbestos.[38] Finally, the trial court found the "settlement agreement" whereby Cape purported to release claims against Altrad to be evidence of an intent to deplete Cape's assets rending it insolvent and uncollectable.[39]

G. South Carolina has Personal Jurisdiction Over All Relevant Parties

In evaluating a motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure, the plaintiff has the burden of making a prima facie showing that jurisdiction is properly asserted. *Brown v. Inv. Mgmt. & Res., Inc*., 323 S.C. 395, 475 S.E.2d 754, 756 (1996); see also *Cockrell v. Hillerich & Bradsby Co*., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005) ("At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits."). A court may rely on the allegations in a complaint to find such a prima facia showing. *Brown*, 475 S.E.2d at 756.

The trial court considered evidence that Cape Asbestos Company began advertising its asbestos for sale in the United States in 1920.[40] It advertised mainly in *Asbestos Magazine*, which was a monthly trade journal published in Philadelphia, Pennsylvania, and circulated nationally from 1919 to 1983. Cape advertised in virtually every issue until 1978—almost 600 issues.[41] It further sold asbestos directly to South Carolina customers.[42] This evidence alone is sufficient for a preliminary finding of personal jurisdiction over Cape. *See, Welch*, 445 S.C. 640 (recognizing

[37] *Id.* at 39.
[38] *Id.* at 40-42.
[39] *Id.* at 42.
[40] *Id.* at 17.
[41] *Id*. at 17.
[42] *Id.* at 37.

placing products into the stream of commerce with the knowledge or expectation that the products would be sold and used by consumers in South Carolina could support a finding of personal jurisdiction, *citing*, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98 (1980)).

The trial court also considered alter ego, piercing the corporate veil, and single business enterprise theories of personal jurisdiction,[43] finding "jurisdiction over Cape as a person who act[ed] directly or by an agent as to a cause of action arising from" Cape and NAAC "causing tortious injury or death in this State by an act or omission outside this State," and by "regularly . . . engag[ing] in [a] persistent course of conduct, or deriv[ing] substantial revenue from goods used or consumed or services rendered in this State." It also found the Cape entities engaged in "production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed." S.C. Code §§ 36-2-803(4),(8).[44]

Justice Toal also considered and rejected Altrad's personal jurisdiction arguments, finding the Receiver's Third-Party Complaint, affidavits, and publicly available materials sufficient to support personal jurisdiction under an alter ego, guiding light, and/or single business enterprise theory.[45]

Furthermore, just last week a bench trial was held in this matter.[46] During that trial, James Buxton testified as an expert in the fields of corporate form and corporate governance.[47] He testified that his research shows Altrad maintains a branch office in Williamston, South Carolina.[48] He further testified that Altrad maintains a shared website with RMD Kwikform North America.

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[43] Trial Court 12/6/23 Order, p. 28-35.
[44] *Id.*at 36.
[45] *Id.* at 38.
[46] The fact Petitioners filed their interlocutory Petitions days before trial is further evidence of the improper nature of their requests, and their disregard for this Court's mandate about excessive interlocutory filings.
[47] **Ex. 1**, 10/22/25 Trial Transcript, p. 446-47.
[48] *Id.* p. 487.

Inc., which is registered to do business in the South Carolina.[49] He opined, without objection,[50] that Altrad is holding itself out as doing business in South Carolina.[51]

Mr. Buxton further testified concerning the Charter Petitioners, again without objection. He explained that ESAB's website contains contracts with choice-of-law provisions showing they would be governed by South Carolina law.[52] He opined that there would be no reason to choose South Carolina in a contractual choice-of-law provision unless the party intended to be subject to jurisdiction in South Carolina.[53]

Taken together, this information is sufficient to make a *prima facia* showing that Petitioners' objections to personal jurisdiction over Cape and the Petitioners are without merit.

H. There is No Reason to Set a Bond Given that Cape Never Appeared nor Objected to the Appointment of a Receiver

Petitioners finally suggest the Receivership Order is void because the Court did not set a bond amount. But Cape never appeared in *Park*, nor has it ever raised an objection to the appointment of the Receiver in *Park*. Should Cape wish to "bond out" of the receivership, it can certainly appear and request a bond be set. But until it does so, there simply exists no reason to set such an amount for a company which refuses to participate in U.S. litigation.

III. CONCLUSION

Petitioners have inundated this Court and the Court of Appeals with interlocutory requests. These requests are not only procedurally improper, they are based upon misrepresentations of the law, evidence, and rulings of both Justice Toal and this Court. For the foregoing reasons,

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[49] *Id.* p. 488-89.
[50] Throughout the trial, Petitioners repeatedly took the position that the entire proceeding was "void," but did not specifically object to any of the referenced testimony. They further declined the opportunity to cross-examine the witness. *Id.*, p. 494-95.
[51] *Id*, p. 489.
[52] *Id.*, p. 489-91.
[53] *Id.*

Respondents John and Margaret Tibbs respectfully request this Court dismiss the Petitions filed by the Altrad Petitioners and Charter Petitioners.

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