THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

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

Civil Action No. 2023-CP-40-01759

Appellate Case Nos. 2025-002120 and 2025-002121

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs / Respondents

v.

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

Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC,

Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff / Respondent

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC,

Third-Party Defendants,

of which

Of which Mohed Altrad, Altrad Investment Authority SAS, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the

Petitioners.

RETURN TO PETITIONS FOR A WRIT OF PROHIBITION AND A WRIT OF CERTIORARI

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

CASES

STATUTES

RULES

OTHER

INTRODUCTION

Undeterred by this Court's warning against "inappropriate [interlocutory] behavior" and clearly stated intent "to reach and address the merits of issues properly before" it, Petitioners[1] once again seek extraordinary relief from this Court from an interlocutory order of the circuit court amid an ongoing trial—a trial that was successfully delayed for over a year and a half due to Petitioners' appellate conduct and refusal to participate in the case.[2] Petitioners, and other third-party defendants, have filed twenty-two interlocutory notices of appeal in this case, and Petitioners have sought certiorari from this Court following each dismissal by the Court of Appeals. On June 26, 2025 ("the June Remand Order"), this Court characterized many of the interlocutory appeals arising out of the asbestos docket by Petitioners and others as "border[ing] on frivolous" and warned summary dismissals and sanctions could be appropriate if the improper appellate activity continued.

In the June Remand Order, the Court granted certiorari in its original jurisdiction over two of the appeals (Appellate Case Nos. 2024-001423 and 2024-001499), denied certiorari in five of the appeals (Appellate Case Nos. 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052), dispensed with further briefing, remanded the case back to the circuit court "for all purposes," and reserved for its consideration the Receiver's Motion for Sanctions, stating it would "rule at a later time on any currently pending motion for sanctions." *See* Order, Appellate Case

[1] Petitioners in Appellate Case Number 2025-002120 are Mohed Altrad and Altrad Investment Authority SAS ("the Altrad Petitioners"). Petitioners in Appellate Case Number 2025-002121 are Charter Consolidated Ltd., ESAB Corporation and Central Mining and Investment Ltd ("the Charter Petitioners"). Because the petitions overlap and for the sake of judicial economy, the Receiver files a joint return to the petitions.

[2] Trial was previously scheduled in this case on April 15, 2024, December 9, 2025, and February 3, 2025, but was continued, in part, due to Petitioners' improper appeals and non-participation. Trial started on October 20, 2025 and went for three days before the circuit court ordered a recess. The trial is scheduled to resume on December 4, 2025.

No. 2024-001499 (filed June 26, 2025). In accordance with this Court's instructions in the June Remand Order, the circuit court has held numerous status conferences and hearings, issued orders on pending motions, rescheduled and commenced the trial to finally decide the case on the merits so it may be presented to this Court with a full appellate record, and provided the required reports to this Court on the status of its compliance with the directives in the June Remand Order. Despite the remand to the circuit court "for all purposes," Petitioners have continued to refuse to participate in discovery and refused to participate in the trial of the case, which proceeded on October 20, 2025, as noted by the circuit court in her reports to this Court.

Instead of deterring the attempts for interlocutory appellate review, the June Remand Order has reinvigorated it. Since the June Remand Order, Petitioners have filed two notices of appeal of an interlocutory order, two petitions for rehearing with improper attachments, two petitions for extraordinary relief with this Court, an addendum to their petitions with additional attachments, two returns to an already-granted motion with additional attachments, and the Altrad Petitioners have sought to supplement the record in the remanded appeals to re-argue issues before the Court and request dismissal of the case once again. *See* Appellate Case Nos. 2025-002104, 2024-001423, 2024-001499, 2025-002120, and 2025-002121.

As the serial appellate filings pour into our courts following the June Remand Order, the Altrad Petitioners, in foreign proceedings, have (1) initiated a new action in Belgium and obtained an ex parte order refusing to recognize the receivership order from South Carolina and recognizing the November 22, 2024 order from the United Kingdom; (2) sought damages against the Receiver personally in France for "pursuing proceedings against [the Altrad Petitioners] in South Carolina" in the amount of €28,612,062.32 in damages, an unidentified amount in costs to the Altrad Appellants' French attorney, €50,000 in costs to Mohed Altrad, and €50,000 in costs to Altrad

Investment Authority (over $34 million); (3) served the Receiver personally with a summons from the French court requiring him to appear on December 1, 2025, for a hearing on the Altrad Petitioners' request for damages and to engage an attorney in France; (4) attempted to interfere with a settlement in South Carolina by obtaining, through its subsidiary, an ex parte injunction barring other third-party defendants in this South Carolina case from executing settlement documents; (5) appeared, through its subsidiary, before the U.K. court to present arguments as to why allowing the South Carolina settlement to proceed would harm the Altrad Petitioners' appellate strategy in South Carolina; (6) obtained an order in the U.K. directing the Receiver to dismiss the third-party claims in South Carolina with a penal notice threatening him with criminal liability; and (7) obtained an order of costs against the Receiver, personally, from the court in the U.K. in the amount of £300,000 to the Altrad Petitioners and £150,000 to the Altrad Petitioners' subsidiary.[3] Rec. App'x pp. 875–1000.

This Court has recognized that "[a]ny attempt by a foreign court to intervene in and threaten the participants in matters properly pending in the courts of South Carolina would be shocking and indefensible." Order, *Tibbs v. Cape plc.*, Appellate Case No. 2024-000916 at 5 (S.C. Jan. 16, 2025). The Altrad Petitioners have embraced the Court's words, not as a warning, but as an invitation to continue to engage foreign courts to intervene and threaten participants in matters

[3] This is in addition to the Altrad Petitioners and its subsidiary's foreign activity preceding the June Remand Order, including (1) obtaining a worldwide injunction against the Receiver in his personal capacity in the U.K.; (2) initiating supplemental proceedings to pursue the more than £ 3.7 million (approximately $5 million) in costs and legal fees arising from their U.K. litigation against Mr. Protopapas personally, (3) obtaining an order from a court in Montpellier, France domesticating the U.K. November 2024 order in France and ordering Mr. Protopapas personally to pay all costs associated with that action, and (4) threatening the Receiver that, "It follows that any attempt by you to take any steps in the PCT Claim would not only be a breach of the Order but would constitute a clear and deliberate contempt of the Order of the English Court." *See, e.g.*, Motion for Sanctions, Appellate Case No. 2024-001499 (filed June 3, 2025).

properly pending before the courts of South Carolina. Despite the repeated warnings and orders instructing Petitioners to cease these tactics, it is clear such warnings have fallen on deaf ears. The escalating pursuit of these foreign proceedings (filed after this action was commenced) along with the serial and improper appeals and refusals to abide by court orders have successfully accomplished the intended result of delay and obstruction of the South Carolina litigation. There are no extraordinary reasons to depart from the traditional appellate process here. The trial on the merits of this case has commenced, and the case can be presented to this Court with a full record at the appropriate time. The circuit court is acting within its jurisdiction, and any alleged errors in its rulings provide no basis for an extraordinary writ of prohibition or writ of certiorari. The only extraordinary characteristic of this appeal is Petitioners' sustained abuse of the appellate process. This Court should deny the Petitions.

PROCEDURAL BACKGROUND

This action, and the appointment of the Receiver, stem from an underlying asbestos lawsuit in which Cape was named but refused to participate. On June 4, 2021, Isabella Park filed a lawsuit asserting personal injury claims arising from asbestos exposure against (among others) an English entity, Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd. Order on 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. *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl., Richland Cnty. Oct. 14, 2025), in Altrad 4th Supp. App'x at 145 ("Oct. 13 Order"). Ms. Park sought relief after being "diagnosed with mesothelioma caused by exposure to asbestos dust and fibers" unintentionally

"brought home" for years "as a result of her husband's work with and around asbestos-containing products." *Id.* at ¶ 4.

On June 9, 2021, less than five months from her diagnosis, and only five days after filing her lawsuit, Ms. Park passed away. On November 17, 2021, Ms. Park's son, Keith, amended the complaint, appearing individually and as personal representative to Ms. Park's estate (the "*Park* Plaintiffs"), to assert a wrongful death action. Oct. 13 Order at Altrad 4th Supp. App'x 146. The amended complaint also identified Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) (together with all predecessors in interest, "Cape") which, together with Cape PLC, refer to the same English company originally named Cape Asbestos Co. Ltd. *Id.* at 147. The *Park* Plaintiffs served the named Cape entities, which (as has been their practice for decades) never answered, moved, or otherwise responded. *See id.*

On March 6, 2023, Plaintiffs in the *Park* Action moved for an Order Appointing a Receiver over Cape. *See id.* at 148. The Park Appointment Motion was made under S.C. Code Ann. Sec. 15-65-10(4) and (5). *Id*. The Park Appointment Motion described Cape's longstanding litigation-avoidance strategy—starting nearly half a century earlier, in the late 1970s—by which Cape (with its subsidiaries, affiliates, successors, and assigns) "decided to simply accept default judgments in asbestos lawsuits and ultimately flee the [United States], knowing that nearly all [its] assets were in jurisdictions . . . where judgments in those lawsuits could not be enforced." *Id*. The Park Appointment Motion included over 30 exhibits from Cape, its subsidiary NAAC, and their legal counsel that address the factual allegations relating to Cape's premeditated liability avoidance scheme, including (1) its domination of the U.S. market for amosite asbestos fiber, (2) its strategy to accept default judgments and then abscond to England, (3) its knowledge of, but rejection of,

U.S. laws involving liability for sale of defective products, and (4) its scheme to continue to profit from the U.S. market for asbestos via a fake foreign entity formed in Lichtenstein. *Id.*

Plaintiffs' counsel described Cape's moral fraud in detail in the Park Appointment Motion. The Park Appointment Motion was based on publicly available documents from litigation against Cape in the 1970s and against Cape-associated entities. *Id.* These documents outline the moral fraud allegations against Cape:

1. Cape established in 1953 a "one-man" subsidiary in the United States—"North American Asbestos Corporation" (NAAC)—to coordinate deliveries of Cape asbestos to US purchasers.
2. Cape dominated NAAC's decision making in all respects such that NAAC had no independent personality and was a mere division of Cape.
3. NAAC and Cape coordinated efforts to rebut publicly emerging information about the health dangers of asbestos exposure.
4. Cape, and later NAAC, refused to participate in litigation involving US asbestos plaintiffs because, according to Cape executives, Cape had no "moral responsibility" to US workers.
5. Cape's litigation avoidance strategy was based in part on legal advice from UK counsel and US counsel (Lord Bissell and Brooke, a Chicago firm, now called Trout Pepperman Locke).
6. Cape's strategy was to sell asbestos to US customers, despite its private knowledge of the dangers of asbestos exposure and then retreat to England where US default judgments would not be enforced.

7. Cape set up a phantom company in Liechtenstein designed to camouflage its connection to Cape, but was in fact Cape, to continue to sell asbestos in the US after Cape closed NAAC and retreated to England.

See generally id.

On March 17, 2023, the circuit court granted the Park Plaintiffs' motion and appointed a receiver for Cape PLC as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd. pursuant to S.C. Code § 15-65-10(5) and § 15-65-10(4). *See id.* at Altrad 4th Supp. App'x 149; Order Appointing Receiver, *Park et al. v. Armstrong Int'l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) ("Appointment Order"). The Park Appointment Order set forth, in detail, the Receiver's powers and rights in this role. *Id.* Unlike in *Welch*, where the company in receivership—Atlas—was the party attacking the appointment of a receiver tasked with identifying and collecting certain of Atlas's assets, Cape has not appeared to contest or set aside the appointment of the Receiver or any orders relating to the appointment of the Receiver in the case or any other South Carolina case involving the Receiver.

On June 30, 2023, in the fulfillment of his duties under the Park Appointment Order, the Receiver filed a third-party complaint in the *Tibbs* action against various entities and individuals believed to be responsible for or intertwined with Cape's asbestos liabilities. *See* Altrad App'x for Pet. For Writ of Cert. Vol. I (Sept. 10, 2024) at 1; Third-Party Complaint, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl., Richland Cnty. June 30, 2023). The Receiver incorporated the receivership appointment order by reference in the third-party complaint. *Id.* at ¶ 1. The Third-Party Complaint asserted claims against Petitioners for (i) unjust enrichment (first cause of action), (ii) constructive trust (second cause of action), (iii) alter ego and veil-piercing liability (third cause of action), and (iv) accounting (fourth cause of action). *See* Altrad App'x for Pet. For Writ of Cert.

(Sept. 10, 2024) at 1, Third-Party Compl., *Tibbs v. 3M Company, et al.*, No. 2023-CP-40-01759 (June 30, 2023). Each of the Third-Party Defendants named in the Third-Party Complaint were alleged to have facilitated, caused, or directed Cape's U.S.-based asbestos sales and liability-avoidance scheme, or otherwise acted as successors in interest to or beneficiaries of entities involved in that scheme, and are therefore responsible for the bodily injury underlying the claims against Cape, including specifically those claims asserted by South Carolinians.

Petitioners filed motions to dissolve the Cape receivership and motions to dismiss the third-party complaint. On December 6, 2023, the circuit court issued an order denying the motions to dissolve the receivership and the motions to dismiss for lack of personal jurisdiction. Petitioners filed notices of appeal of the December 6, 2023 order denying the motions to dissolve the receivership and motions to dismiss based on lack of personal jurisdiction ("Dissolution Appeals"). *See* Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, 2023-002011. The Court of Appeals dismissed the Dissolution Appeals and denied the subsequent petitions for rehearing. Petitioners petitioned this Court for review of the Court of Appeals' dismissal of those appeals. This Court granted a common law writ of certiorari over those appeals in the June Remand Order, dispensed with briefing, and remanded the case back to the circuit court "for all purposes" and included certain directives and reporting obligations. *See* Appellate Case Nos. 2024-001423, 2024-001499.

Petitioners refused to participate in any discovery in the case, pointing to the pendency of the Dissolution Appeals as an excuse to avoid their discovery obligations. Petitioners failed to provide substantive responses to discovery, instead serving objections based on Rule 205, SCACR, and refused to produce witnesses for scheduled depositions. On January 12, 2024, the Receiver filed motions to compel Petitioners' participation in discovery. Petitioners opposed the motion

and included a "cross-motion to enjoin" in their opposition briefing. On March 12, 2024, the Circuit Court issued an Order Granting the Receiver's Motions to Compel Discovery Responses of Third-Party Defendants and 30(b)(6) Depositions of Arranco US, LLC and Central Mining & Investment Corporation Ltd, directing all Third-Party Defendants "(i) to provide responsive, substantive, and complete answers to the Receiver's Discovery Requests with 14 days of entry of this Order and (ii) to begin producing documents in response to the Receiver's Requests for Production the same day," and (iii) as to Arranco and Central Mining, "to designate witnesses for . . . Rule 30(b)(6) depositions" by March 19 and "produce those witnesses" by April 2. Rec. App'x. pp. 1–14, Order Granting the Receiver's Motions to Compel, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl., Richland Cnty. Mar. 12, 2024).

On March 19, 2024, Petitioners filed notices of appeal from the March 12 Discovery Order ("the Discovery appeal") and unilaterally renamed the March 12 Order as an order denying an injunction instead of a discovery order to attempt to manufacture immediate appealability. The Court of Appeals dismissed those appeals as interlocutory. *See* April 17, 2024 Order, Appellate Case No. 2024-00524. Petitioners requested certiorari from this Court, which was denied in the June Remand Order. *See* Appellate Case No. 2024-000916.

Pursuant to the March 12 Order, Petitioners were required, *inter alia*, to provide responsive, substantive, and complete answers to the Receiver's Discovery Requests within 14 days and to begin producing documents in response to the Receiver's Requests for Production the same day. They did not. Motions practice ensued in light of Petitioners' refusal to participate in discovery. On April 3, 2024, the Receiver filed a Motion to Pre-Admit Exhibits. Additionally, on April 5, 2024, and April 12, 2024, the Receiver filed a Motion for Adverse Inference and a Motion for Sanctions, respectively, against Petitioners.

On May 23, 2024, the circuit court issued two orders addressing these motions (the "May 23 Orders"). Petitioners appealed the May 23, 2024 Orders, and the Court of Appeals dismissed the appeals as interlocutory. *See* September 18, 2024 Order, Appellate Case No. 2024-001063; September 18, 2024 Order, Appellate Case No. 2024-001065. Petitioners filed petitions seeking writs of certiorari from this Court, and this Court denied the petitions in the June Remand Order. *See* Appellate Case Nos. 2024-002116, 2024-002117.

On June 20, 2024, the circuit court issued a scheduling order, which Petitioners appealed. The Court of Appeals dismissed the appeal. *See* Appellate Case No. 2024-001446. Petitioners filed petitions seeking a writ of certiorari from this Court, and this Court denied the petitions in the June Remand Order. *See* Appellate Case No. 2024-002114.

On October 2, 2024, the Circuit Court issued another scheduling order, which Petitioners appealed. The Court of Appeals dismissed the appeals. *See* Appellate Case No. 2024-001862. Petitioners filed petitions for a writ of certiorari, and the Court denied the petitions in the June Remand Order. *See* Appellate Case No. 2025-000052.

On November 1, 2024, the Receiver moved to clarify the Park Appointment Order, seeking confirmation that the Receiver's litigation activity to date, including in the *Tibbs* Action, had been conducted within the scope of this Court's Park Appointment Order. *See* Altrad Supp. App'x to Altrad Defs. Pets. for Writ of Cert. Vol. I p. 86. By Order dated November 5, 2024 (the "Clarification Order"), the Court granted the Receiver's Motion, clarifying that the Park Appointment Order "extend[ed] to the right and obligation to administer any claims related to the actions or failure to act of any entity related to or responsible for Cape," and further confirming "that the Receiver's litigation activity to date has been conducted within the scope of this Court's

[Park] Appointment Order." *See* Altrad Supp. App'x to Altrad Defs. Pets. for Writ of Cert. Vol. I p. 92 ("Clarification Order").

During the pendency of the numerous interlocutory appeals, proceedings continued in the circuit court with the Anglo-American and De Beers Third-Party Defendants participating in the case.[4] Petitioners, however, continued to refuse to participate or comply with the orders of the Circuit Court.

On June 26, 2025, this Court issued the June Remand Order, remanding the case to the circuit court "for all purposes," including directives that the circuit court to (1) "[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," and (2) "[e]nsure 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*," or (3) "make specific findings of fact and conclusions of law" to justify any work or scope not discussed in *Welch*.[5] Against the backdrop of the "dozens of interlocutory appeals in asbestos cases" over "the last few years," many of which "have bordered on frivolous," the Court unequivocally stated its "intention . . . to reach and address the merits of issues properly before" the Court. *Id.*

[4] These defendants initially appealed the order denying their motion to dismiss and dissolve the receivership. However, when that appeal was dismissed and remitted, these defendants began participating in the case instead of proceeding with additional interlocutory appellate activity. *See* Appellate Case No. 2023-002008. These defendants have since entered into a voluntary settlement with the Receiver, and the circuit court approved the settlement and establishment of the South Carolina Asbestos Victims Compensation QSF on October 30, 2025. Rec. Appx. p. 28, Order Granting Motion to Approve Confidential Settlement Agreement Between and Among the Receiver for Cape PLC, South Carolina Asbestos Victims Compensation QSF LLC, and Anglo American US Holdings Inc. for Itself and Its Affiliates (Oct. 30, 2025).

[5] In *Welch v. Advance Auto Parts, Inc.*, this Court addressed (1) the propriety of appointing a pre-judgment receiver over non-defunct companies under S.C. Code § 15-65-10(5); (2) the required factual basis for an appointment order in those circumstances; and (3) limitations on the scope of the receiver's authority based on the specific language in the appointment order at issue.

The circuit court held a status conference on July 22, 2025, to discuss how to proceed in the case in light of the June Remand Order. Rec. App'x. pp. 558–751. The circuit court provided this Court with its first status report outlining that status conference on July 27, 2025. *See* First Report to the Supreme Court of South Carolina Pursuant to its Order of Remand Dated June 26, 2025, Appellate Case No. 2024-001423 (July 27, 2025).

Following the June Remand Order, the Anglo-American and De Beers third-party defendants, who had been participating in the case, filed a renewed Motion to Dissolve the Cape Receivership and Dismiss the Third-Party Complaint. Rec. App'x. pp. 45–67. The Receiver opposed this motion. Rec. App'x. pp. 68–96. The Receiver subsequently filed a Motion to Confirm Appointment of Receiver. Rec. App'x. pp. 97–138. The Tibbs Plaintiffs joined the Receiver's Motion to Confirm the Appointment. Rec. App'x. pp. 139–40. The Charter Petitioners and the Anglo-American and De Beers third-party defendants filed memoranda in opposition to the motion to confirm appointment. Rec. App'x. pp. 141–161. The Altrad Petitioners filed a 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. Rec. App'x. pp. 162–203.

The circuit court heard extensive arguments on the pending motions on August 12, 2025. Rec. App'x. pp. 289–557. On August 13, 2025, the circuit court sent a letter to the parties outlining its ruling, stating, in part: "I intend to repeat my ruling confirming the ongoing validity of the Park Estate as well as the ongoing validity of the appointment of the Receiver for Cape and its authority to bring the third-party action in Tibbs." *See* Attachment to Second Report to the Supreme Court of South Carolina Pursuant to its Order of Remand Dated June 26, 2025, Appellate Case No. 2024-001423 (Aug. 25, 2025). The circuit court requested the Receiver and the Tibbs Plaintiffs prepare

a proposed order for the court's consideration, allowing Petitioners and others to provide objections and/or propose counter orders. *Id.* The circuit court provided its second status report with this Court following the hearing with a copy of its ruling. *See* Second Report to the Supreme Court of South Carolina Pursuant to its Order of Remand Dated June 26, 2025, Appellate Case No. 2024-001423 (Aug. 25, 2025).

On September 24, 2025, the circuit court provided its third status report to this Court. *See* Third Report to the Supreme Court of South Carolina Pursuant to its Order of Remand Dated June 26, 2025, Appellate Case No. 2024-001423 (Sept. 24, 2025). In the report, the circuit court noted it had the proposed order and numerous objections under consideration. *Id.* The circuit court also noted a pre-trial hearing was scheduled for October 6, 2025, and trial was scheduled for October 20, 2025. *Id.* The circuit court attached a copy of the notice of hearing. *Id.*

On September 25, 2025, this Court issued an order clarifying the June Remand Order, stating:

> As we await the trial court ruling on the matters referenced in this Court's order dated June 26, 2025, we issue this order to clarify that nothing in the June 26, 2025 order prevents the trial court proceedings from continuing in the normal course in the asbestos litigation, including the filing of and decisions on motions to approve settlement agreements.

Order, Appellate Case No. 2024-001423 (Sept. 25, 2025).

On October 6, 2025, the circuit court held a pre-trial hearing. Rec. App'x. pp. 204–06. At the pre-trial hearing, the Receiver and the Anglo American and De Beers third-party defendants announced a settlement of the case, and the Court acknowledged the settlement on the record under Rule 43(k), SCRCP. The Anglo American and De Beers third-party defendants were the only defendants participating in the case because Petitioners have at all times refused to participate.

Following the pre-trial hearing, on October 7, 2025, Altrad group counsel Signature Litigation LLP sent a letter to Herbert Smith Freehills Kramer LLP (U.K. and U.S. offices)

instructing the Anglo American and De Beers third-party defendants not to enter into a settlement agreement with the Receiver in South Carolina, warning a settlement would constitute contempt of court in the U.K., and threatening to file an injunction against these third-party defendants in the U.K. Rec. App'x. pp. 207–16. Litigation in the U.K. ensued. The Altrad Petitioners, by and through its subsidiary CIHL, obtained an ex parte injunction against the Anglo American and De Beers third-party defendants preventing these defendants from executing the settlement agreement. Rec. App'x. pp. 217–18. The Anglo American and De Beers third-party defendants filed a petition with the U.K. court requesting relief from the November 2024 Mann injunction, and CIHL opposed the request and requested its own injunction. Rec. App'x. pp. 219–36. The U.K. court held a hearing on October 17, 2025, to determine whether it would allow the Anglo American and De Beers third-party defendants to consummate the settlement agreement in a South Carolina case without fear of sanctions in the U.K. The U.K. court issued an order on October 20, 2025, finding these defendants could consummate the settlement agreement in South Carolina without fear of contempt penalties. *Id.* As noted in the U.K. order, the settlement recognizes the Receiver's authority is limited to claims asserted in South Carlina and the resulting Qualified Settlement Fund is limited to compensating asbestos claims brought in South Carolina. *Id.* at ¶ 16.

On October 14, 2025, the circuit court issued an Order on Altrad Defendants' Notice of Recent Supreme Court Authority Voiding Third Party Litigation, Renewed Motion to Dismiss and Motion to Strike All Filings and Orders in the Third-Party Case and the Receiver's and Tibbs Plaintiffs' Motions to Confirm the Appointment of the Receiver. The court carefully considered this Court's rulings in *Welch v. Advance Auto Parts* and directives in the June Remand Order. The circuit court confirmed the Receiver was authorized to conduct work in the *Tibbs* case and that his authority is limited to managing Cape's assets insofar as necessary to satisfy asbestos claims

properly brought in South Carolina, and not to interfere with general corporate governance beyond that scope. *See* Oct. 13 Order at Altrad 4th Supp. App'x pp. 178–80.

Petitioners filed notices of appeal from this order. *See* Appellate Case No. 2025-002104. The Receiver filed a motion to dismiss the appeals because the order was interlocutory and not immediately appealable. *Id.* On October 20, 2025, the Court of Appeals dismissed the appeals. *Id.* The Court of Appeals noted "the order on appeal does not reach the merits of this matter," citing to this Court's June Remand Order stating its intent to "reach and address the merits of issues." *Id.* The Court of Appeals also cited to the *Welch* case, noting defendants are not free to act "as if a ruling against them granted it license to ignore its responsibilities." *Id.* (quoting *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 668, 916 S.E.2d 320, 335 (2025)). Petitioners have filed petitions for rehearing from this dismissal with the Court of Appeals and improperly attached exhibits to the rehearing requests. *See* Appellate Case No. 2025-002104.

The trial on the merits of the case proceeded on October 20, 2025. Petitioners refused to participate in the trial and did not cross-examine the Receiver's witnesses. Instead, Petitioners made a general objection to the proceeding due to their already-rejected arguments that the circuit court did not have jurisdiction, the receivership appointment is improper, and South Carolina does not have personal jurisdiction over Petitioners. *See, e.g.*, Rec. App'x pp. 1051–59, Trial Tr. 24:3–24:8 Vol. I (Oct. 20, 2025). The circuit court found it had jurisdiction to proceed. Rec. App'x pp. 1051–59, Trial Tr. 30:15-30:25 Vol. I (Oct. 20, 2025) (citing *S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 340 S.E.2d 535 (1986) (an improper interlocutory appeal does not divest the trial court of jurisdiction and the case should proceed)). Following the presentation of the Receiver's

witnesses and prior to any dispositive motions, the circuit court recessed the trial for thirty days. The circuit court has reconvened the trial for December 4, 2025.[6] Rec. App'x pp. 286–88.

Petitioners nonetheless filed the instant Petitions for Writ of Prohibition and Writ of Certiorari on Sunday, October 19, 2025, the eve before trial, seeking to obstruct the proceedings entirely. The Receiver now submits this Return in Opposition, demonstrating that Petitioners' request is, once again, unfounded and improper.

ARGUMENT

I. There are no exceptional circumstances presented to justify the issuance of an extraordinary writ of prohibition or a common law writ of certiorari

Petitioners bear the heavy burden of showing that a writ of prohibition or common law writ of certiorari should be issued. *See* S.C. Const. art. V, § 5; S.C. Code Ann. 14-3-310; Rule 245(b), SCACR; *State v. Isaac*, 405 S.C. 177, 185, 747 S.E.2d 677, 681 (2013) ("[W]e caution the Bench and the Bar that such writs are aptly named, as they are intended only for the most *extraordinary* and exceptional situations."); 72A C.J.S. *Prohibition* § 17 ("A writ of prohibition will issue only in cases of necessity, urgency, or in cases of a clear and obvious or special emergency."). That burden has not been met—nor can it be—given the circumstances here.

It is a bedrock principle of South Carolina law that "the ancient prerogative writ of prohibition" must "be used with forbearance and caution, and only in cases of necessity." *Ex parte Jones*, 160 S.C. 63, 66, 158 S.E. 134, 136 (1931). The writ's "principal modern use . . . is to prevent the assumption and exercise of jurisdiction by an inferior Court . . . in cases where wrong, damage, and injustice are likely to follow such action." *Id.* at 66. It is not, however, a device to police a lower court's rulings within its jurisdiction or to correct routine errors. *See id.* To the

[6] The circuit court initially scheduled the trial for November 12, 2025, but rescheduled it after counsel for the non-participating Altrad Petitioners objected due to scheduling conflicts.

contrary, this Court settled over a century ago that if a trial court has jurisdiction over the parties and subject matter, prohibition will not lie to "correct errors and irregularities in procedure, or to prevent an erroneous decision or an enforcement of an erroneous judgment." *Ex parte Jones*, 160 S.C. at 67; *accord Berry v. Lindsay*, 256 S.C. 282, 285–88, 182 S.E.2d 78, 80–82 (1971) (denying writ where petitioners alleged an abuse of discretion by an agency, but the agency had jurisdiction). In short, "[a]lleged trial errors are properly addressed by direct appeal, not by resort to an extraordinary writ." *New South Life Ins. Co. v. Lindsay*, 258 S.C. 198, 187 S.E.2d 794, 795–96 (1972). This fundamental limitation on prohibition reflects both separation-of-powers concerns and the orderly administration of justice: the writ is reserved for truly extraordinary cases of clear usurpation of power, not as a fast-track substitute for the normal appellate process—a fast-track substitute that Petitioners have been attempting since December 2023.

Moreover, even where a colorable jurisdictional issue exists, a writ of prohibition is inappropriate if the petitioner has another adequate remedy, such as an appeal. *See Ex parte Jones*, 160 S.C. at 67 (writ will not issue "where an adequate and applicable remedy by appeal, writ of error, certiorari, or other prescribed methods of review are available"). Sister courts have consistently echoed this rule. *See, e.g.*, 77 A.L.R. 247; 42 Am. Jur., Prohibition, § 8 (explaining original writs will not be issued when the usual and ordinary remedies provided by law, such as appeal, are available). The South Carolina Code likewise embodies the strong policy favoring review of trial court decisions through the normal appellate channels and only at the appropriate time. *See* S.C. Code Ann. § 14-3-330 (defining appealable judgments and orders; generally requiring final judgment before appeal, with limited exceptions). In fact, just four months ago in

this very case, this Court reaffirmed its intent to address the merits of issues properly before it, not in an interlocutory and piecemeal fashion.[7]

This Court has previously considered a petition for writ of prohibition from an order instituting a receivership[8]—and the Court denied the petition in part based on reasons that apply equally here. In *State Board of Bank Control v. Sease*, 188 S.C. 133, 198 S.E. 602, 602 (1938), the State Board of Bank Control sought a writ of prohibition from this Court after the circuit court appointed a receiver over the Mechanics Building and Loan Association of Spartanburg in one proceeding, and in another proceeding issued a rule to show cause as to why a receiver should not be appointed over the Home Building and Loan Association of Spartanburg. The petitioner in *Sease* argued the circuit court was "without the power to make the receivership orders in question." *Id.* at 603. This Court dismissed the petition without reaching the "broad questions" it raised. *Id.* The Court found "no justification . . . for departing from the orderly process of law," which—"especially in a case involving matters of constitutional law"—properly entails

> the proper presentation of the issues before the Circuit Court; the full argument of the issues before such Court; the disposition of such issues by that Court; and the submission of the final issues to the Supreme Court in the light of the considered

[7] The piecemeal nature of these proceedings is illustrated by the Altrad Petitioners' reliance on six previously-filed appendices spanning numerous appellate cases and a new seventh Appendix attached to the current Petition, instead of one full and final record following a decision on the merits of the case. The entire purpose of reserving our appellate courts' limited resources for review of only final orders and judgments except in the direst circumstances is to prevent overburdening our court system. *See Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017) (explaining appellate rules related to interlocutory orders are "construed narrowly" with the goal of avoiding "circuitous litigation and needless appeals"); *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005) ("Piecemeal appeals should be avoided[.]");*Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) ("The provisions of section 14-3-330 are narrowly construed and serve the underlying policy of favoring judicial economy by avoiding 'piecemeal appeals.'" (quoting *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709).

[8] Here, Petitioners are not appealing an order instituting a receivership. They are appealing the circuit court's order confirming, in accordance with this Court's directives in the June Remand Order, that the Receiver is acting validly in the *Tibbs* case.

> judgment of the Circuit Court, and of arguments of counsel weighted with the experience obtained in the contest in the Circuit Court.

Id. at 603–04. The Court also found a writ of prohibition inappropriate given the other adequate remedies at law available to the petitioners, who could have raised the very same issues by intervening in one appeal before the circuit court (and appealing an adverse decision there if necessary) and by appealing from another circuit court decision in a case to which the petitioners were already parties. *Id.* at 604. The Court also found inappropriate the petitioners' attempt to "consolidate two wholly independent and unrelated matters into a single cause" by "asking … for an order" that "would apply equally to the liquidation of two" distinct "associations that ha[d] no connection with each other." *Id.* The Court dismissed the petition in *Sease* for these reasons.

Here, Petitioners ask this Court to do exactly what this State's law forbids: intervene mid-trial to re-litigate a host of issues that already have been raised and rejected in the ordinary course. They have not identified any encroachment on this Court's authority or any action by the Circuit Court that exceeds its lawful jurisdiction. This Court remanded the matter to the circuit court "for all purposes" with certain directives and reporting obligations in June and clarified in September that the June Remand Order did not prevent the circuit court from proceeding. In fact, the trial on the merits of the case is occurring, and the case will be able to be presented to the appellate courts with a final order and full record on appeal shortly. In fact, the circuit court has reconvened the trial for December 4, 2025. At most, Petitioners quarrel with the Circuit Court's interlocutory decisions on motions—matters that are reviewable on appeal after final judgment. Such complaints fall far short of the most extraordinary and "exceptional" situations that might justify an extraordinary writ. *In re Breast Implant Prod. Liab. Litig.*, 331 S.C. 540, 543 n.2, 503 S.E.2d 445, 447 n.2 (1998). Accordingly, the Petitions should be denied.

II. Jurisdiction properly lies with the circuit court following the June Remand Order.

Petitioners recycle arguments previously raised to this Court that Rule 205, SCACR, prevent the circuit court from proceeding in this matter. (Charter Pet. at p. 3.) This is not accurate. An improper interlocutory appeal does not transfer jurisdiction to the appellate courts. *See S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 536 (1986) (rejecting an appellant's argument that "the lower court was without jurisdiction to try the case prior to this Court's issuance of remittitur, since the filing of the notice of intent to appeal vested this Court with exclusive jurisdiction"). *See also Dibble v. Schade*, 308 S.C. 88, 93, 417 S.E.2d 104, 107 (Ct. App. 1992) ("When an order is interlocutory and not immediately appealable, the service and filing of a notice of intent to appeal does not transfer jurisdiction to the Supreme Court and does not stay the proceedings in the trial court."); *Brown v. Greenwood Sch. Dist. 50 Bd. Of Trustees*, 344 S.C. 522, 524–25, 544 S.E.2d 642, 643 (Ct. App. 2001) ("Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to the [appellate] [c]ourt ..." (quoting *Arnold*, 287 S.C. at 586, 340 S.E.2d at 536)); *Fibkins v. Fibkins*, 303 S.C. 112, 116–17, 399 S.E.2d 158, 161 (Ct. App. 1990) (finding order interlocutory and did not stay proceedings in the lower court). Further, as the Court of Appeals has held, an appeal involving a receivership is not stayed during the pendency of the appeal. *See* Order, *Childers*, Appellate Case No. 2023-000727 (filed Sept. 8) (finding order denying motion to dismiss and dissolve receivership and receivership not stayed during the pendency of appeal).

Every appeal arising out of this case has been interlocutory and has been properly found to be so by the Court of Appeals and this Court. The first time the appellate courts had jurisdiction over the *Tibbs* matter was when this Court granted *original jurisdiction* certiorari in two of the appeals on June 26, 2025. However, that jurisdiction was short lived because the Court—in the same order—remanded the case back to the circuit court "for all purposes." The newest appeal

filed in the Court of Appeals on October 14, 2025, is no different because the October 13, 2025 Order is interlocutory and not immediately appealable. In fact, like all the rest, the Court of Appeals has dismissed the appeal as interlocutory. *See* October 20, 2025 Order, Appellate Case No. 2025-002104. Similarly, these Petitions, which request extraordinary relief in this Court's original jurisdiction, do not automatically transfer jurisdiction to this Court. This Court has not yet accepted jurisdiction over the case. Therefore, jurisdiction properly lies in the circuit court, and the circuit court correctly found it had the power (and obligation) to proceed.

Further, contrary to the Charter Petitioners' assertions, the circuit court did not exceed the mandate on remand. This Court remanded the case on June 26 "to the circuit court *for all purposes, specifically including*" the directives outlined by the Court. *See* Order, Appellate Case No. 2024-001423 (June 26, 2025) (emphasis added). The Court's mandate was not limited to the directives. Instead, the remand was for all purposes. The Court asked the circuit court to make findings of fact and conclusions of law, and it did.[9] Petitioners disagree with that ruling, but that is a matter for appeal at the end of the case. Petitioners' disagreement does not negate the circuit court's jurisdiction. The circuit court clearly had the power, following the June Remand, to make findings of fact and conclusions of law. The Court used clear language in the remand that the remand was not limited in any way. The cases cited by the Charter Petitioners are inapplicable because those cases included limiting language in the remand. *See, e.g.*, *S.C. Dep't of Soc. Servs. v. Basnight*, 346 S.C. 241, 251, 551 S.E.2d 274, 279 (Ct. App. 2001) (explaining the appellate court "remanded the action for dismissal" in accordance with the opinion of the court). The circuit court has

[9] Contrary to Petitioners' arguments, the October 13 confirmation order does not run afoul of *Welch*. However, assuming arguendo the order authorizes work not discussed in *Welch*, this Court gave the circuit court the power to do that and directed the circuit court to "make specific findings of fact and conclusions of law [to] justify its action." June Remand Order at 2.

complied with this Court's directives and kept the Court regularly apprised of the status in accordance with the June Remand Order.[10]

III. This Court should not address alleged errors in the circuit court's rulings until it has a final, appealable order and a full record properly before it.

Petitioners are once again asking this Court, in an extraordinary interlocutory fashion, for the same relief they requested from the Court in the remanded appeals—to grant unusual appellate review over perceived errors of the circuit court, dismiss the case outright, and prevent a trial on the merits of the Receiver's claims. However, litigants contesting jurisdiction must do so at the end of a case because jurisdictional rulings are not immediately appealable. Despite this clear and longstanding law, Petitioners have continued to rely on their rejected jurisdictional arguments to unilaterally excuse themselves from participating in South Carolina courts. The circuit court has rejected Petitioners' jurisdictional arguments repeatedly, starting in December 2023. Since that time, Petitioners have refused to participate in discovery, even jurisdictional discovery. Jurisdiction lies in the circuit court, not the appellate courts. This Court should require a final order on the merits of the case and a full record before taking up this appeal.

Petitioners largely recycle arguments made in the previous interlocutory petitions, which were remanded to the circuit court in June, to manufacture another "emergency" in hopes of enticing the Court to grant extraordinary review of perceived errors. Considering all arguments raised by Petitioners in, collectively, the ten petitions for a writ of certiorari, two supplements to

[10] Despite being told by the circuit court numerous times that it has jurisdiction over the case and any arguments Petitioners have with the circuit court's status reports need to be raised with the circuit court, Petitioners have continuously filed arguments with this Court disagreeing with the circuit court's reports and "updates" to the Court with contemporaneous filings at the circuit court. This is in direct contravention of the June Remand Order and illustrates the improper piecemeal nature of the appellate activity in this case. *See Tillman*, 420 S.C. at 249, 801 S.E.2d at 759 (explaining appellate rules related to interlocutory orders are "construed narrowly" with the goal of avoiding "circuitous litigation and needless appeals"); *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709 ("Piecemeal appeals should be avoided[.]").

the petitions for a writ of certiorari, and countless motions and other briefing—including, *inter alia*, South Carolina's jurisdiction over Cape,[11] South Carolina's jurisdiction over Altrad,[12] alleged defective service,[13] the purported lack of a bond,[14] an appointment order that was entered in *Park*,[15] the tolling agreement,[16] actions by various foreign courts,[17] the *Adams* decision from England,[18] the purported resolution of *Park*[19]—the Court remanded this case to the circuit court, signaling that all determinations were best made by the circuit court so the case could eventually be presented to this Court for its due consideration upon a full record. Now, Petitioners reassert arguments about the purported lack of jurisdiction over CIHL, lack of jurisdiction over Petitioners, defects of the *Park* matter, resolution of claims in England, and lack of South Carolina property. The landscape has not changed since Petitioners raised these arguments to the Court previously, and the trial court is still the best setting to test these fact-based arguments so that a final order may be

[11] *See, e.g.*, Altrad Petition for a Writ of Certiorari at p. 2, 6, 14, Appellate Case No. 2024-002114; Altrad Petition for a Writ of Certiorari at p. 2, Appellate Case No. 2024-000916; Altrad Petition for a Writ of Certiorari at p. 1, 4, 6, Appellate Case No. 2025-000052.
[12] *See, e.g.*, Altrad Petition for a Writ of Certiorari at p. 7, Appellate Case No. 2024-001499; Altrad Petition for a Writ of Certiorari at p. 5–6, Appellate Case No. 2024-002114; Altrad Petition for a Writ of Certiorari at p. 5, Appellate Case No. 2025-000052.
[13] *See, e.g.*, Altrad Petition for a Writ of Certiorari at p. 4–5, Appellate Case No. 2024-002114; Altrad Petition for a Writ of Certiorari at p. 5, Appellate Case No. 2024-001499; Altrad Petition for a Writ of Certiorari at p. 4–5, Appellate Case No. 2025-000052.
[14] *See, e.g.*, Altrad Petition for a Writ of Certiorari at p. 5, Appellate Case No. 2024-002114.
[15] *See, e.g.*, Altrad Petition for a Writ of Certiorari at p. 5, Appellate Case No. 2024-002114; Altrad Petition for a Writ of Certiorari at p. 4, Appellate Case No. 2024-000916; Altrad Petition for a Writ of Certiorari at p. 5, Appellate Case No. 2025-000052.
[16] *See, e.g.*, Altrad Petition for a Writ of Certiorari at p. 4–5, Appellate Case No. 2024-002114; Altrad Petition for a Writ of Certiorari at p. 3, 6, Appellate Case No. 2024-001499; Altrad Petition for a Writ of Certiorari at p. 5, Appellate Case No. 2025-000052.
[17] *See, e.g.*, Supplement to the Altrad Defendants' Petitions for a Writ of Certiorari at p. 3–6, Appellate Case Nos. 2024-000916, 2024-001499; Altrad Petition for a Writ of Certiorari at p. 4, 7–8, Appellate Case No. 2024-002114; Altrad Petition for a Writ of Certiorari at p. 1, 4, 9–10, Appellate Case No. 2025-000052.
[18] *See, e.g.*, Altrad Petition for a Writ of Certiorari at p. 3, Appellate Case No. 2024-002114; Altrad Petition for a Writ of Certiorari at p. 3, Appellate Case No. 2025-000052.
[19] *See, e.g.*, Altrad Petition for a Writ of Certiorari at p. 4, Appellate Case No. 2025-000052.

issued. Instead, as with every interlocutory order issued by the circuit court, Petitioners have identified another opportunity to place the issues before the Court on a piecemeal, interlocutory basis to once again attempt to delay the trial of the case. The circuit court is complying with this Court's directives and proceeding with the case to make a final determination with the benefit of a full record on the merits. The Court should deny the Petitions and let the circuit court make the requisite factual findings on the merits of the case in a final order, as happens in every other case.

However, the Receiver addresses the merits of Petitioners' arguments below:

A. The Receiver's appointment in Park has always been, and remains, valid.

Petitioners argue that the appointment of the Receiver in *Park*, and therefore the Receiver's third-party action in *Tibbs*, were void *ab initio* because of alleged defects in the *Park* case. This is not true. The circuit court has considered Petitioners' arguments and properly rejected them.

As to the *Park* estate, counsel for the *Park* plaintiffs corrected any issue once they were made aware of it in the *Tibbs* case. Oct. 13 Or. at Altrad 4th Supp. App'x 147; Rec. App'x pp. 868–72, Bench Brief to the Court on the Status of the Park Case at p. 3 fn2 (Aug. 4, 2025). The *Park* estate was duly re-opened with the approval of the probate court. *See* Altrad 4th Supp. App'x 146–47; Rec. App'x pp. 868–72, Bench Brief to the Court on the Status of the Park Case (Aug. 4, 2025); Rec. App'x pp. 873–74, Notice of Filing Supplemental Exhibit (Aug. 6, 2025). Section 62-3-701 of the South Carolina Code states: "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." Thus, when the personal representative's appointment lapsed, South Carolina law provides the appointment relates back to any acts done in the interim as long as those acts are beneficial to the estate.

Petitioners' reliance on *McCullar* is misplaced. In *McCullar v. Estate of Campbell*, 381 S.C. 205, 207, 672 S.E.2d 784, 785 (2009), a plaintiff brought an action directly against an estate

that had been closed, specifically naming "The Estate of Dr. William Cox Campbell" as the defendant. Thus, because there was no estate at the time the action was commenced, the action was not properly commenced. *Id.* In *Park*, the case was commenced by Isabella Park on June 4, 2021. Altrad 4th Supp. App'x pp. 146–47. After her death, Keith Park was appointed as the personal representative and amended the complaint to bring the action in the name of Keith Park, individually and as the personal representative of the Estate of Isabella Park. *Id.* Thus, unlike *McCullar*, the *Park* action was validly commenced by Isabella Park and, after her death, validly brought in the name of Keith Park, both individually and as the duly-appointed personal representative of the estate of Isabella Park. Even though the estate was later closed in August 2022, the action, which was properly commenced, remained valid. However, pursuant to South Carolina law, the estate was later reopened and all actions taken by Mr. Park in the interim that were beneficial to the estate are valid, as the appointment relates back. Further, the *Park* action was brought in Mr. Park's individual capacity as well as his capacity as personal representative, so the *Park* case, initiated in Mr. Park's individual capacity too, would not have been affected by Petitioners' arguments as to the closure of the estate.

As to the claimed closure of the entire *Park* case, as the circuit court found, the *Park* case remains open on the court's docket. First Report to the Supreme Court of South Carolina Pursuant to its Order Dated June 26, 2025, Appellate Case No. 2024-001499 (July 27, 2025). Petitioners cite to an email communication from counsel for the *Park* plaintiffs to the circuit court that the *Park* case was "fully resolved" to argue that, despite the court's records and management of its own docket, the *Park* case was closed before the appointment of the Receiver in *Park*. Altrad 3rd Supp. App'x. p. 200. Both the circuit court and counsel for the *Park* plaintiffs have explained the context behind the communication—counsel was informing the circuit court that she had reached

a resolution with the participating defendants in the case so the trial that was imminently scheduled did not need to proceed at that time. Rec. App'x pp. 334, Aug. 12, 2025 Hr'g Tr. at 46:1–46:8.

In the Addendum, Petitioners make much of the fact that the circuit court vacated the October 13 order in *Park*. This occurred because the only entity—not even a party to the case—in *Park* contesting the receivership appointment was a non-party insurance company who had been served a subpoena in the *Park* case by the Receiver. In its objections to the Receiver's motion to compel a response to the subpoena, the non-party argued the Receiver did not have any authority to issue a subpoena because the receivership appointment was invalid. However, the subpoena was later withdrawn by agreement between the parties as the information sought involved one of the settling *Tibbs* third-party defendants rendering the subpoena moot as to that entity. The non-party's arguments were also withdrawn as the non-party "no longer ha[d] a connection with [the *Park*] litigation." Oct. 30 *Park* Order at 2, attached as Attachment A to Petitioners' Addendum (Oct. 31, 2025).

Further, contrary to Petitioners' arguments in the Addendum[20], the Receiver has not conceded that the March 2023 *Park* appointment order does not satisfy *Welch*. Quite the opposite, the Receiver has at all times maintained that the *Park* appointment was proper and moved to confirm such in the *Tibbs* case. Petitioners cite a sentence out of context from the July 22, 2025 hearing transcript. A review of the context shows that the Receiver stated the circuit court made the factual findings necessary to appoint the Receiver based on the *Park* plaintiffs' motion to appoint the receiver and exhibits but did not include a fulsome discussion of the factual findings

[20] There is no mechanism under the Appellate Court Rules for Petitioners to file an addendum to their pending Petitions and, as such, the Court should strike them as improper. As discussed, the constant filing of updates with this Court illustrates the improper piecemeal nature of this case and the reason to deny the Petitions and eventually decide the matter on a final merits-based order and full record, if a party ever properly appeals one to the Court.

in the appointment order. Rec. App'x pp. 611–12, Hr'g Tr at 54:18–25, 55:1–7 (July 22, 2025). In the October 13, 2025 Order, the circuit court discussed the evidence before it at the time it appointed the Receiver. Altrad 4th Supp. App'x pp. 148, 153–59.

It is important to note that no party in the *Park* case has objected to the receivership in *Park* or raised any arguments to the circuit court in *Park* that the appointment order does not satisfy South Carolina law. Further, none of Petitioners' arguments were raised at the time the circuit court appointed the Receiver in *Park* or have been raised by a party in *Park*. Cape did not appear to oppose the motion for receivership and has not appeared in South Carolina to ask to set the receivership aside or make any objections to the receivership.[21] Instead, Petitioners are collaterally attacking the *Park* appointment order, the *Park* Spartanburg probate estate, and the entire *Park* action in the *Tibbs* case, all while maintaining they have no obligation to participate in the *Tibbs* action but are entitled to relief from this Court.

B. The Court has personal jurisdiction over Cape.

Again, there has been no participation in this case by Petitioners. They have refused to participate in discovery or the trial of this matter, despite orders otherwise. Petitioners claim Cape does not have any contacts with South Carolina nor any property in South Carolina. However, Petitioners' unsupported arguments are not evidence. *See S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("Arguments made by counsel are not evidence."). Petitioners have refused to provide discovery to the Receiver, and Cape has not appeared in this case to raise objections as to the circuit court's jurisdiction to proceed.

[21] Petitioners' position is nothing like that of the petitioner in *Welch*: there, the company in receivership—Atlas—was the party attacking the appointment of a receiver tasked with identifying and collecting certain of Atlas's assets.

The circuit court has done a detailed analysis of South Carolina's jurisdiction over Cape. *See* Oct. 13 Order; Dec. 6, 2023 Order at pp. 15–22 (service on Cape), 35–36 (personal jurisdiction over Cape). In the December 6, 2023 Order, the circuit court found:

> [T]he Third-Party Complaint alleges in meticulous detail Cape's contacts and conduct—including its efforts to market massive quantities of asbestos throughout to the lucrative U.S. market over a period of decades, despite its knowledge that those efforts would injure and kill thousands of people, including in South Carolina—and easily satisfies the requirements of South Carolina's long-arm statute. *See, e.g.*, Third-Party Compl. ¶¶ 72–76 (noting nationwide distribution of certain asbestos, over which Cape had a monopoly, and prior rejection of an objection to the exercise of personal jurisdiction in South Carolina with respect to a Cape entity and alleging that "Cape deliberately and purposefully availed itself of the entirety of the United States market for asbestos fiber, including the South Carolina market.").
>
> Specifically, this Court finds it has jurisdiction over Cape as "a person who act[ed] directly or by an agent as to a cause of action arising from" Cape's and NAAC's (i) "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," and/or (ii) "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).
>
> In addition, and as the South Carolina Court of Common Pleas for the County of Barnwell ruled more than 40 years ago, the exercise of personal jurisdiction in South Carolina over Cape's American subsidiary, NAAC, is proper. *See* Ex. 38 (*In re Asbestosis Cases*, Apr. 7, 1980 Order) at 3 ("I find that a conscious pattern of product distribution nationally which results in the product being incorporated in another product which was used in this state such as occurred here is a sufficient constitutional basis upon which to attach in personam jurisdiction."). Accordingly, independent of Cape's own connection with this State (including facilitating the sale and distribution of Cape asbestos from South African mines to locations in South Carolina), the allegations regarding Cape's effective domination of NAAC, including pursuant to alter ego, veilpiercing, and/or business-enterprise doctrines, as well as the allegation that NAAC acted as Cape's agent, separately provide a proper basis to exercise personal jurisdiction over Cape.

Id. at 35–36. In the October 13, 2025 Order, the circuit court conducted a detailed analysis into the moral fraud of Cape that supported the appointment of the Receiver, including Cape's contacts with South Carolina. Additionally, the circuit court properly rejected Petitioners' claims that Cape

was not properly served. In the October 13, 2025 Order, the circuit court found the *Park* plaintiffs properly served Cape with the first amended summons and complaint. The Court addressed service in the December 6, 2023 order as well. Dec. 6, 2023 Or. at 16–22.

Importantly, aside from engaging in serial appeals of interlocutory orders, Petitioners have not participated in this case since December 6, 2023. They have refused to participate in discovery and the trial of this case entirely. Thus, Petitioners have not submitted any evidence to the circuit court to support any of their arguments that the circuit court's December 6, 2023 rulings should be reversed. Instead, they have simply recycled their rejected arguments at every opportunity. The circuit court's rulings as to South Carolina's personal jurisdiction over Cape are sound, and there is no colorable argument that the circuit court erred in finding the third-party complaint and evidence presented a prima facie showing of jurisdiction over Cape. *See 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.").[22]

The trial of the matter began on October 20, 2025, and additional evidence was presented by the Receiver regarding Cape's contacts with South Carolina. Petitioners did not make any evidentiary objections at trial, other than object to the proceeding as a whole based on jurisdiction.

Further, objections such as insufficiency of service and lack of personal jurisdiction are personal defenses that belong to the party allegedly not properly brought before the court; they are waivable and may not be asserted vicariously by a co-defendant. *See* Rule 12(b)(2), (5), SCRCP; Rule 12(h)(1), SCRCP (defenses of lack of personal jurisdiction and insufficiency of service are

[22] Because Petitioners have entirely refused to participate in the case following the pre-trial personal jurisdiction rulings and are attempting to appeal an interlocutory order, the circuit court's rulings must be upheld as long as there is a prima facie case of jurisdiction.

waived if omitted from the first responsive motion/pleading); *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703–05 (1982) (due-process limits underlying personal jurisdiction are personal and waivable); *Warth v. Seldin*, 422 U.S. 490, 499 (1975) (a litigant may not rest a claim to relief on the legal rights of third parties); *Kowalski v. Tesmer*, 543 U.S. 125, 129–30 (2004) (third-party standing requires a hindrance to the right-holder's ability to sue—neither present here). Any purported defects in Cape's service belong to Cape to raise, not to Petitioners, who cannot invoke another litigant's personal defenses.

C. The Court has personal jurisdiction over Petitioners.

Petitioners continue to argue South Carolina courts do not have personal jurisdiction over them, and despite having received a ruling on this issue from the circuit court, Petitioners have misused their personal jurisdiction arguments to absolve themselves from participating in South Carolina courts, except where they deem participation beneficial to themselves (like these appeals or requesting the circuit court dissolve the receivership). Petitioners have repeatedly *said* that they have no obligation to, and therefore will not, participate in this litigation because they do not agree with the court's jurisdictional rulings. However, their refusal to participate in jurisdictional discovery along with their intermittent objections at the trial and appellate court level on issues, including these Petitions, illustrate they have been actively, albeit selectively, participating. They cannot have it both ways.

The circuit court conducted a detailed analysis of South Carolina's jurisdiction over Petitioners in the December 6, 2023 Order. *See* Dec. 6, 2023 Order at pp. 6–15, 37–47, 65–73. The circuit court considered the arguments raised by Petitioners in the motions to dismiss and the supporting affidavits and rejected them. Dec. 6, 2023 Or. at p. 3. The circuit court held that it has personal jurisdiction over the Third-Party Defendants under theories of veil-piercing and amalgamation under well-settled South Carolina law. Further, Petitioners have direct connections

to South Carolina, including (1) the Altrad Petitioners' own website that lists a location at 301 Webb Road Williamston, South Carolina at www.rmdkwikform.com/us/contact-us/ and South Carolina contact information at rmdksouthcarolinarentaladmins@altrad.com (*See* Exhibit D, attached to Return to Petition for Writ of Certiorari, Appellate Case Nos. 2024-001423, 2024-001499) and (2) ESAB maintaining its principal place of business in Florence, South Carolina through at least 2012 (*See* Rec. App'x pp. 752–85, May 23, 2024 Order Granting the Receiver's Motion for Sanctions and Motion for Adverse Inference at pp. 21–22. The circuit court correctly found there was a prima facie showing of jurisdiction over Petitioners. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 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.")

Since the December 6, 2023 order, despite rulings from the Court of Appeals and this Court that the order denying their personal jurisdiction arguments is not immediately appealable, Petitioners have refused to participate in the case. Petitioners continue to rely on jurisdictional defenses but refuse to engage in any discovery, even discovery related to their jurisdictional defenses, which led to the circuit court's entry of adverse inferences against Petitioners. Further, at trial, Petitioners have refused to participate and have not made any objections to the evidence presented by the Receiver besides a general objection to the circuit court's jurisdiction to proceed with the trial as a whole.

Petitioners' conduct in this case is identical to Atlas Turner's conduct in *Welch*. Like Petitioners here, Atlas Turner raised personal jurisdiction defenses, and, after the circuit court denied its personal jurisdiction arguments, Atlas refused to participate in discovery, even jurisdictional discovery, refused to produce witnesses for depositions, and refused to comply with

orders of the court. *See Welch*, 445 S.C. at 649–50, 916 S.E.2d at 325. This Court found that contemptuous conduct and "cavalier disdain of the elementary rules of civil procedure" justified the circuit court striking Atlas's answer. *Id.* This Court stated: "Fortune may favor the bold, but a party that persists in a bold refusal to comply with basic ordered discovery may soon realize it is the architect of its own misfortune." *Id.* at 650, 916 S.E.2d at 325. Like in *Welch*, boldly continuing to assert rejected personal jurisdiction defenses does not excuse a party from participating in an action and complying with court orders. The Court should not reward Petitioners for such cavalier disdain of our courts by granting premature appellate review with a piecemeal and incomplete record. Instead, the Court should deny the Petitions until the circuit court enters a final, appealable order, and that order is properly appealed.

D. The circuit court properly confirmed the appointment of the receiver in Tibbs.

The October 13 Order is not a new appointment order. It is a confirmation, in accordance with this Court's instructions contained in the June Remand Order, that the Receiver has been authorized to conduct his work in the *Tibbs* case. In fact, as the circuit court explained: "I intend to repeat my ruling confirming the ongoing validity of the Park Estate as well as the ongoing validity of the appointment of the Receiver for Cape and its authority to bring the third-party action in Tibbs." *See* Attachment to Second Report to the Supreme Court of South Carolina Pursuant to its Order of Remand Dated June 26, 2025, Appellate Case No. 2024-001423 (Aug. 25, 2025). In light of the repeated objections and international activity misconstruing the South Carolina receivership, the circuit court specifically confirmed in its October 13, 2025 order that the Receiver's authority is limited to administering Cape's assets relating to South Carolina asbestos claims. Both the Receiver and the *Tibbs* plaintiffs requested the circuit court make this confirmation in *Tibbs*.

As the circuit court confirmed, Cape meets the "moral fraud" standard set in *Welch*; it did when the circuit court appointed the Receiver in *Park* and it still meets that standard today. *See generally Park* Appointment Order; Oct. 13 Order at 4th Supp. Altrad App'x pp. 102–44; Rec. App'x pp. 828–67, Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order; Rec. App'x pp. 97–138, Motion to Confirm Appointment. The facts demonstrate Cape's morally fraudulent conduct was far more damaging and more morally culpable than Atlas Turner, and the circuit court outlined its specific factual findings and conclusions of law in a factually detailed, well-reasoned 48-page order. *See Park* appointment order; Oct. 13 Order at 4th Supp. Altrad App'x pp. 102–44.

Unlike Atlas Turner, Cape makes no pretense at following the rules—it refuses to show up—to defend its scheme of selling asbestos fiber into South Carolina and other states through a shell offshore company. In fact, Cape, the company in receivership, has not appeared in South Carolina to this day to contest the receivership appointment or attempt to set it aside. The evidence shows that Cape (1) knew very early that even small doses of asbestos could cause mesothelioma, and covered up that knowledge for decades; (2) affirmatively lied about the amosite asbestos fiber's propensity to cause mesothelioma (it knew that it did, but said publicly and to its customers it did not); (3) threatened to economically ruin a South African village doctor who was caring for ten mesothelioma patients who worked at Cape asbestos mines if he did not remain quiet about the dangers of asbestos exposure, and (4) when faced with liability for flooding the American market with its asbestos, closed its U.S. subsidiary and absconded back to England.[23] And then, in a truly

[23] *See, e.g.*, Rec. App'x pp. 828–67, Ex. 12 to the Receiver's Report Relating to the Factual Predicate Underlying the Cape Appointment Order, Memo from Gaze to Mendelle (July 24, 1964) (warning Cape personnel about asbestos hazards); Ex. 13 to the Receiver's Report Relating to the Factual Predicate Underlying the Cape Appointment Order, Letter from R. Cryor to R. Gaze (Nov. 20, 1969) (Cape controlling NAAC's customer relationships—showing Cape's domination of

remarkable act of defiance and fraud on U.S. workers and the U.S. judicial system itself, Cape—which supposedly exited the U.S. domestic market for asbestos when it closed its Chicago sales subsidiary—hatched a scheme to continue to sell asbestos to customers in the United States through what it described as a camouflaged shell entity formed in secrecy in Lichtenstein designed to disguise from "plaintiffs in future US asbestos litigation" (Cape's words) the fact that the company was still selling asbestos in this country, including into South Carolina.[24] *See* Oct. 13 Order at 9–29. Cape, like Atlas Turner, followed the same playbook to avoid participation in U.S. litigation, except Cape took it a step farther by not participating at all, betting that U.K. courts were unlikely to enforce American default judgments. *See* Oct. 13 Order at 4. This is moral fraud, far beyond what this Court found to be sufficient in *Welch*, to support the appointment of the receiver in *Park* and confirm his authority in *Tibbs*.

In addition to extensive facts supporting moral fraud under South Carolina Code Section 15-65-10(5), the circuit court also noted the appointment of the Receiver was also appropriate under section 15-65-10(4) because Cape is a non-operating shell company in a corporate structure subject to the full control of an ultimate parent that could eliminate, shift, or move the company at any time, making it unclear whether Cape holds any funds at all at any given moment—let alone sufficient funds to pay a judgment in the *Park* or *Tibbs* claims. Oct. 13 Order at Altrad 4th Supp. App'x pp. 182–83. Petitioners have not submitted any evidence to contradict this finding—and they cannot do so because they have refused to participate in discovery or this case.

NAAC); Ex. 14 to the Receiver's Report Relating to the Factual Predicate Underlying the Cape Appointment Order, Memo to NAAC File re Liquidation of NAAC (April 7, 1978) (detailing Cape's liability-avoidance scheme post-dissolution of NAAC).

[24] *See, e.g.*, Rec. App'x pp. 828–67, Ex. 15 to the Receiver's Report Relating to the Factual Predicate Underlying the Cape Appointment Order, Memo from A. Sarabia to Meyer (Jan. 23, 1978) (detailing Cape's liability-avoidance scheme post-dissolution of NAAC); Ex. 14 to the Receiver's Report Relating to the Factual Predicate Underlying the Cape Appointment Order.

This Court should further reject the Petitioners' attacks on the receivership based on the incorrect and unsupported assertion that Cape is an ongoing foreign corporation with no assets in South Carolina. Cape's status as a foreign corporation or as an ongoing concern is beside the point, and that status certainly does not empower Cape to defy South Carolina law. This Court has confirmed insurance assets are proper assets for a South Carolina receivership, and the Receiver is investigating whether there are any potentially responsive insurance assets.[25] *See Welch*, 445 S.C. at 666, 916 S.E.2d at 334. Additionally, causes of action, like the ones asserted in this case against the third-party defendants, are a form of property the Receiver can pursue. *See* S.C. Code Ann. § 15-1-40 ("Personal property includes 'things in action.'"); *Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 77–78, 856 S.E.2d 550, 555 (2021) ("A 'chose in action' is a type of property interest or a proprietary right to a claim or debt," and the parties "agree 'chose in action' generally means 'cause of action.'"). In fact, once a receiver is appointed, Rule 66(a) of the South Carolina Rules of Civil Procedure contemplates that receivers may be required to defend and/or *bring other actions* to fulfill their court-appointed duties. Rule 66(a), SCRCP (referencing actions "brought by or against a receiver"). Under long-standing South Carolina law, receivers maintain the power to (1) initiate litigation, (2) compromise and settle litigation, and (3) defend litigation on behalf of the entity or individual in receivership, barring an order of the receivership court otherwise.

[25] Petitioners' abject refusal to participate in discovery has hindered the Receiver's ability to investigate potentially responsive insurance assets. Further, Ran Oren, the sole director of CIHL, has written—on Altrad letterhead—to insurance companies who have received duly served South Carolina subpoenas from the Receiver directing those insurance companies not to respond to these subpoenas. Rec. App'x pp. 1060–64, Letter from R. Oren to Lloyd's (May 7, 2025); Rec. App'x pp. 1065–66, Letter from R. Oren to Continental Casualty Company (May 7, 2025).

As this Court found in *Welch*,

> The Receiver stands in the companies' shoes. He may do whatever the corporation could do in relation to its property, for it is in his possession subject to the control of the court. We doubt a company or individual would claim it had no right to funds it owned on deposit at a bank simply because the bank is located in another jurisdiction. No one would dispute a holder of an asset such as an insurance policy has the power and the right to invoke the policy's benefits, regardless of where the policy "resides." And nothing would prevent a state court that has personal jurisdiction over the company from compelling the company to do whatever was necessary to bring the benefits of the policy to litigation in this state. *See* Rule 66(b), SCRCP (stating a Receiver "shall ... have general power and authority to sue for and collect the debts, demands and rent belonging to the debtor ..."); Restatement (Second) of Conflict of Laws § 53 cmt. a (1971) ("A state which has judicial jurisdiction over a person is not limited to the issuance through its courts of a money judgment against him. The state may likewise order the person to do, or to refrain from doing, one or more acts. And the power of the state to make such an order is not affected by the fact that the acts called for are to be done in another state."). In one well-known case, a Receiver appointed by a New York court for a California defendant, over whom it had personal jurisdiction, was authorized to retrieve a thoroughbred racehorse from California and ship it to Kentucky. *Madden v. Rosseter*, 114 Misc. 416, 187 N.Y.S. 462, 462–63 (N.Y. 1921).

Welch, 445 S.C. at 663–64, 916 S.E.2d at 333.

The Receiver was appointed for the purpose of investigating and marshaling Cape's assets here in South Carolina, and he has <u>*successfully*</u> marshaled those assets and established a court-approved fund that will be available to satisfy any liabilities Cape may have in South Carolina related to asbestos bodily injuries, including in the *Park* and *Tibbs* matters. Rec. App'x pp. 1067–76, Oct. 30 Order.

Petitioners incorrectly argue the appointment of a receiver over Cape violates the internal affairs doctrine and interferes with the receivership entity's boardroom.[26] (Altrad Pet. pp. 4, 16; Charter Pet. p. 23.) The *Welch* case correctly notes that the Receivership order for the insurance

[26] Again, unlike Atlas in *Welch*, Petitioners are not in receivership and, instead, are making these arguments on behalf of the receivership entity.

assets of Atlas Turner "does not give the Receiver entry into the Atlas Turner boardroom or some vague right to 'take over' operation of the company." Nor does the receivership order in Cape. The Receiver has no such intention (as his course of conduct has reflected), nor is any boardroom "take over" necessary for the Receiver to fulfill his court-appointed obligations.[27] Foreign companies are not immune from suit in this State under the dormant Commerce Clause, comity principles, or otherwise—as this Court made clear in *Welch* by approving the receivership over a foreign corporation and explaining that jurisdiction includes power to order that corporation to bring property (like causes of action and other intangible property) within the state. *See Welch*.

E. The purported foreign release does not require dismissal or dissolution of the receivership.

The circuit court properly refused to accept the Altrad Petitioners' arguments that a release entered into between it and its subsidiaries in the UK did not require dismissal of the Receiver's third-party claims. Oct. 13 Order at Altrad 4th Supp. App'x p. 186. Specifically, the circuit court found:

> [S]ince 1978, Cape has avoided liability to U.S. litigants by refusing to appear in U.S. courts. As demonstrated above, Cape has gone to great lengths to protect itself against these liabilities, including creating a Liechtenstein offshore company. Faced with the possibility that U.S. litigants may now be able to access funds to pay future claims, and given that Cape is not a stand-alone company, but instead is a holding company within a large corporate structure, one should expect that Altrad will do anything to avoid its historical liabilities, including rendering the company fully insolvent. Indeed, Altrad already has informed the Receiver that it has entered into a "settlement agreement" with itself (between two Altrad entities) to release

[27] CIHL is the receivership entity. CIHL is a U.K.-registered holding company with no employees, no physical assets, no customer contracts, and no operational footprint. Ran Oren is the sole officer and director of CIHL, and the CEO of Altrad. The English High Court issued a worldwide injunction after the Altrad Petitioners' lawyers misled the court to believe that CIHL operates a live business in danger of being taken over by the receiver. Any CIHL revenue-generating operations, staff, and contractual obligations reside in different concerns and, since the Receiver's appointment have, and will continue to, function without disruption (or any action by the Receiver affecting their operations).

> Mohed Altrad from any liabilities not only in *Park* and *Tibbs* but also in every other future U.S. personal injury action against any Cape entity.

Id. The circuit court rejected this argument because the supposed "release" was part of a circular overseas arrangement that did not involve the South Carolina plaintiffs or the Receiver. Furthermore, the Agreement was not an arm's-length settlement with outside claimants; it was an intra-group release papered under English law and funneled to English courts, executed for Cape by Ran Oren—CIHL's sole director and, simultaneously, the CEO of Altrad Investment Authority S.A.S.—while other Altrad entities signed through Altrad executives.

The Agreement cannot be valid under U.S. law because the deal lacked consideration. The Agreement identifies no payment, assignment, or other tangible value flowing to CIHL; its "consideration" is only mutual promises and reciprocal releases—while the Cape Parties explicitly "acknowledge and declare" that the Altrad/Sparrows Parties "have, and at no material time have had, any liability" on the very claims purportedly released. In other words, the release trades away nothing for nothing. *See Ecclesiastes Prod. v. Smith*, 432 S.C. 123, 135, 850 S.E.2d 794, 801 (Ct. App. 2020) ("[A] release is a contract and contract principles of law should be used . . . ."). The document then weaponizes that internal release to seek dismissals—including "compromising any judgments in the *Tibbs* claim . . . whether such judgments were validly obtained or not"—again without any independent value conferred on CIHL.

Regardless, whether a claim is barred by a prior settlement or release is a substantive affirmative defense. The defendant bears the burden of pleading and proving it. Rule 8(c), SCRCP (requiring defendants to plead "release" as an affirmative defense). The circuit court is empowered to evaluate the validity and scope of the alleged release and its effect on the claims before the court. The Altrad Petitioners cannot bear this burden as they have refused to participate in this case. They have not participated in any discovery related to the release.

Further, the attempts by the Altrad Petitioners to request the circuit court dismiss the Receiver's third-party claims based on a release entered into in April 2025 further illustrate the selective participation of the Altrad Petitioners. While maintaining that South Carolina does not have jurisdiction over them (and they somehow do not have to participate in discovery or this litigation at all), the Altrad Petitioners have simultaneously attempted to obtain favorable rulings from the circuit court on matters that would require the court to exercise jurisdiction, including recognizing the release or dissolving the receivership. It is clear the Altrad Petitioners wish to participate when it suits them and excuse themselves from participating when it does not, all in hopes of avoiding a trial on the merits of this case.

F. The receivership order does not fail for lack of a bond.

Petitioners attempt to collaterally challenge the receivership order on the basis that the circuit court did not include "a clause fixing the value of the property" sought to be placed in the hands of a receiver, as purportedly required by section 15-65-60 of the South Carolina Code. No such requirement, which is related to posting bonds by a party claiming rights to property, applied to the Cape receivership order when the liabilities at issue and amount of assets that may be available could not be valued.

Petitioners rely on *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343 (1928). However, this case is not applicable here. The value of the property at the center of the *Truesdell* case—an action brought to liquidate the affairs of a partnership—was easily measurable by the court. There, the receiver took possession of the tangible property of the company, except its book and records. *Id*. at 192, 142 S.E. at 343. As such, the property received should have been inventoried and valued.

The statutory language *Truesdell* relies on requires the posting of a bond "in the penalty of double the value of the property." SC Code § 15-65-50 (2023). However, as this Court has reasoned, "[h]owever plain the ordinary meaning of the words used in a statute may be, the courts

will reject the meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intent." *Kirkiakides v. United Artists Comms., Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

When the language of Section 15-65-50 is applied to the current circumstances it leads to an absurd result that could not have been the legislature's intent. Here, the Receiver holds title to choses in action, as referenced in the Receivership order. *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"). It is impossible to ascertain the value of choses in action for purposes of posting a bond.

Petitioners do not have standing to raise arguments related to any alleged failures of the circuit court to set a bond involving a receivership over Cape and its assets. As stated in *Ex parte Rowley*,

> The earnest contention that the appointment of the receiver should be held invalid for failure of the order to contain a fixation of the value of the property involved, in accord with subdivision (10) of Section 584 of the Code of 1932, is untenable by the appellants . . . for the reason that the requirement is for the benefit of ***him or them who is or are in possession of the property and to enable him or them to replevy it***; but the appellants mentioned were not in possession of the property and they cannot make complaint. *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343. Section 99, Receivers, 53 C.J., 82, is in part as follows, with citations of supporting authorities: "***Also a person who is not affected by a particular ground of objection may not present it***."

200 S.C. 174, 20 S.E.2d 383, 387 (1942) (emphasis added). The receivership relates to Cape's property, not Petitioners' property. Petitioners cite *Welch*; however, in *Welch*, the entity in receivership (Atlas Turner) was the party appealing the receivership order. The Court noted that entity (Atlas Turner) had the ability to post a bond. *Welch*, 445 S.C. at 667, 916 S.E.2d at 335 ("Finally, we note Atlas Turner retains the right to post a bond to lift the Receiver appointment

order.").[28] Cape—whose property is in receivership—has not appeared to challenge the receivership order, has made no effort to post a bond for the return of property, and has not set forth any arguments that a bond was required.

CONCLUSION

The circuit court has jurisdiction over this case and has acted within the scope of its lawful authority following this Court's remand in June "for all purposes." Petitioners' goal in the newest interlocutory filings—as it has been since the beginning of the case—is to delay an ultimate decision on the merits of this case by disregarding South Carolina law and constructing a makeshift interlocutory appellate path at all costs. There is no extraordinary reason to grant these Petitions, which largely re-raise arguments already presented to this Court in connection with the numerous interlocutory appeals that led to the June Remand Order. The trial is ongoing, and the case can be presented to this Court on a full record with a final merits-based order soon in accordance with South Carolina law and this Court's instructions in the June Remand Order. Petitioners, like every other litigant, should follow the ordinary appellate process, as the law requires, and cannot declare orders of the courts of this state a "nullity" simply because they disagree with them.

Accordingly, the Receiver respectfully requests the Court deny the Petitions for Writ of Prohibition and Writ of Certiorari. The Receiver also requests the Court grant sanctions against Petitioners in accordance with Rule 269, SCACR, and the June Remand Order.

(Signature page follows)

[28] The *Welch* appointment order did not set a bond. *See Welch* ROA pp. 11–18, Appellate Case No. 2023-001096 (filed Dec. 28, 2023). This Court affirmed the appointment and found that Atlas had the right to post a bond to lift the receivership appointment if it wished. *Welch*, 445 S.C. at 667, 916 S.E.2d at 335. It has not done so.

Respectfully submitted,

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November 7, 2025