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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

CONCERNING A PETITION FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case Nos. 2024-001423, 2024-001499, 2025-002120, and 2025-002121

John A. Tibbs and Margaret B. Tibbs,..... Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; 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,

of which

Asbestos Corporation Limited is the..... Appellant,

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

Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd; Mohed Altrad; and Altrad Investment Authority SAS, are, in their respective cases, the.....

Petitioners.

REPLY IN SUPPORT OF THE CHARTER PETITIONERS' PETITION FOR EXTRAORDINARY WRITS

Respectfully submitted,

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ATTORNEYS FOR PETITIONERS CHARTER CONSOLIDATED LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD. ("CHARTER PETITIONERS")

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I. INTRODUCTION[1]

Respondents' Returns[2] do not meaningfully defend the circuit court's October 13 Confirmation Order or reconcile it with this Court's directives in *Tibbs v. 3M Co.*, Appellate Case No. 2024-001423 (S.C. June 26, 2025) (the "June 26 Order"). Instead, Respondents rely on rhetoric—accusing Petitioners Charter Consolidated Ltd. ("Charter"), ESAB Corporation ("ESAB"), and Central Mining and Investment Corporation Ltd. ("Central Mining" and, collectively, "Charter Petitioners") of obstruction, delay, and bad faith (much of it outright misstatements of the record and references to conduct that has nothing to do with the Charter Petitioners)—in an effort to distract this Court from the undeniable record and obscure the circuit court's crystal clear jurisdictional overreach. Indeed, the Receiver does not even begin to address the true, critical issues relating to this Petition until after spending over 30 pages misstating the record with over-the-top rhetoric. Respondents' rhetoric, however, cannot conceal what they must ultimately concede: every action the Receiver has taken in *Tibbs* was done under color of an appointment order entered in another case, *Park*, and without any order appointing a pre-judgment receiver in *Tibbs* itself. That admission alone confirms that the circuit court exceeded its jurisdiction and that the Receiver's conduct in *Tibbs* was improper from the outset.

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[1] The Charter Petitioners do not waive, but instead specifically preserve, all objections to personal jurisdiction and subject matter jurisdiction.

[2] *See* Return to Petitions for a Writ of Prohibition and a Writ of Certiorari, dated November 7, 2025 (the "Receiver's Return"), filed by Respondent Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd. by and through its duly appointed Receiver Peter D. Protopapas (the "Receiver"); Respondents John And Margaret Tibbs' Opposition To Petitions For Writs Of Prohibition Or Writs Of Certiorari, dated November 7, 2025 (the "Tibbs' Return," and, together with the Receiver's Return, the "Respondents' Returns"), filed by John and Margaret Tibbs (the "Tibbs Respondents," and, together with the Receiver, the "Respondents").

Indeed, Respondents' Returns boil down to their argument that this Court did not mean what it said in *Welch*[3] and *Tibbs*. Respondents' interpretation, however, simply makes no sense. Respondents' position that the "perfunctory" act of merely "filing" a pre-judgment receivership appointment order obtained by a different plaintiff in a different case in an unlimited number of other cases is all that is needed to authorize action in those unlimited number of separate cases is completely contrary to the language of the receivership statute, and this Court's rulings in *Welch* and *Tibbs*. If that was all that needed to be done, there would have been no need to issue the June 26 Order. In other words, that interpretation would render the entire June 26 Order meaningless. It is also contrary to what this Court repeated over and over again in *Welch* and in the June 26 Order—that the appointment of a "pre-judgment" receiver is only to be approved in the most extraordinary and rarest of circumstances and after a judicial determination of the factors set forth in *Welch* (and only to secure assets sufficient to satisfy a potential judgement of the plaintiff who requested appointment of the pre-judgment receiver). Respondents' interpretation would make pre-judgment receiver appointments commonplace and render null this Court's decisions in *Welch* and the June 26 Order.

Respondents also misstate this Court's own history with these matters. This Court has already granted certiorari once—culminating in the June 26 Order—expressly rejecting the notion that the Charter Petitioners' prior appeal of the circuit court's December 6, 2023 Order denying the Charter Petitioners' motions to dissolve the pre-judgment receivership was frivolous and, instead, exercising its supervisory authority to enforce statutory and procedural limits on pre-judgment receiverships following and expanding its opinion in *Welch*. Respondents' suggestion that the Charter Petitioners are abusing the writ process is inconsistent with this Court's own

[3] *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d.32 (2025).

actions and with the language of its prior order. The June 26 Order established controlling principles, not invitations for the circuit court to provide its own interpretation of the law or to disregard what this Court ruled. Critically, this Court mandated that a pre-judgment receiver must be appointed by a specific order in each case, that such appointments must comply with *Welch*, and that no pre-judgment receiver has authority to act in a case without such appointment.

Unable to avoid the void nature of the *Park* Appointment Order, overcome the lack of pre-judgment receivership appointment in *Tibbs*, or to justify the circuit court's disregard of this Court's directives in *Welch* and *Tibbs*, Respondents focus instead on painting the Charter Petitioners in a negative light and implying that Respondents' version of equity should excuse the procedural and substantive violations below. But such partisan rhetoric cannot create jurisdiction, and misstatements about the Charter Petitioners' motives (completely unsupported by the record) do nothing to excuse the circuit court's refusal to follow this Court's mandate. Respondents' Returns offer no explanation—much less a lawful one—for how the circuit court could "confirm" or "amend" the *Park* Appointment Order that was void ab initio, authorize a pre-judgment receiver to act in a case where no motion for appointment or appointment order complying with *Welch* was ever filed, or dispense with a statutory requirement for a bond altogether on the ground that it was too difficult for the circuit court to come up with an appropriate value.

Contrary to Respondents' assertions, the Charter Petitioners clearly identified in its Petition how the circuit court both encroached on this Court's supervisory authority and exceeded its own jurisdiction. By ignoring the June 26 Order's restrictions, attempting to confirm or modify a pre-judgment receivership order that was void from the start, and retroactively approving ultra vires conduct by the Receiver, the circuit court exceeded its jurisdiction and authority. This Court should also reject Respondents' claim that the circuit court could lawfully "modify" its way out of a

jurisdictional defect by retroactively validating an order that was void from the start. Although a court may retain discretion to modify the terms of a *valid* pre-judgment receivership, it cannot retroactively legitimize a receivership that was void from inception. Once the underlying basis for the appointment proves invalid, the pre-judgment receiver's actions are ultra vires, and any attempt to "amend" the order would exceed the circuit court's authority. The proper remedy is to declare the pre-judgment receivership void—not to rewrite history.

Ultimately, Respondents' Returns confirm that the circuit court did exactly what South Carolina receivership statutes, *Welch*, and the June 26 Order forbade—revived a void pre-judgment receivership through "confirmation" and allowed a pre-judgment receiver appointed in one case to act in another. The record demonstrates that the circuit court exceeded its authority and the issue now is not one of discretion, but of adherence to binding authority that necessitates the granting of the Charter Petitioners' Petition.

II. ARGUMENT

A. The Circuit Court's Defiance Of The June 26 Order And Actions Without Jurisdiction Warrant The Extraordinary Remedy Of A Writ.

The circuit court's usurpation of power from this Court and improper exercise of jurisdiction are precisely the types of extreme judicial activities that writs of prohibition are designed to address. South Carolina courts have long recognized that the remedy of a writ, while extraordinary, can and should be used to restrain the usurpation of inferior tribunals and prevent the improper assumption of jurisdiction.[4] Although the Returns endeavor to paint the circumstances giving rise to the Petition as pedestrian "irregularities" that should be slow-tracked

[4] *See Cooper v. Stocker*, 43 S.C.L. 292, 293 (S.C. App. L. 1856) ("The true office of a writ of prohibition is…to restrain the usurpations of inferior tribunals, and to compel them to observe the limits of their jurisdiction."); *Ex parte Wingate*, 166 S.C. 440, 165 S.E. 176, 177 (1932) ("the writ [of prohibition] is permissible to prevent the improper assumption of jurisdiction").

through normal appellate channels, an objective review of what has transpired and what continues to transpire in the circuit court below demonstrates clear violations of this Court's directives and jurisdictional principles, warranting this Court's immediate intervention via writ of prohibition or writ of certiorari.[5]

Here, the circuit court disregarded this Court's explicit instructions in the June 26 Order as well as its pronouncements in *Welch*. The June 26 Order mandated in relevant part that the circuit court could not authorize a pre-judgment receiver to act in a case unless and until the circuit court issued a receivership appointment order in that specific case in accordance with *Welch*:

> We…made it clear [in *Welch*] that appointing a receiver before judgment is permissible only in the "rarest" and "most extraordinary" cases. We now direct the circuit court to:
>
> 1) Ensure the receiver has been authorized to conduct its work by an order filed in the specific case as to which the work is to take place. The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.
>
> 2) Ensure that such an order is based on findings of fact sufficient under *Welch* to justify the order, and that the receiver's scope of authority is limited as set forth in *Welch.*[6]

For this, the *Tibbs* case, complying with this Court's directives should have been very straightforward. As it is undisputed that no party in the *Tibbs* case ever made a motion to appoint a pre-judgment receiver over Cape and, accordingly, there was no order filed in the *Tibbs* case appointing Mr. Protopapas as a pre-judgment receiver over Cape in the *Tibbs* case, the trial court should have simply issued an order setting forth this fact and declaring all prior actions taken by Mr. Protopapas in *Tibbs* void ab initio.

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[5] *See S.C. Dep't of Soc. Servs. v. Basnight*, 346 S.C. 241, 250, 551 S.E.2d 274, 279 (Ct. App. 2001) ("[A] trial court has no authority to exceed the mandate of the appellate court on remand."); *Milton P. Demetre Family Ltd. Partnership v. Beckmann*, 413 S.C. 38, 52, 773 S.E.2d 596, 604 (2014).

[6] *See* June 26 Order.

Rather than simply obeying this Court, however, the circuit court instead intimated that this Court did not know what it was talking about and that the circuit court knew better. For instance, at a July 22, 2025 hearing, the circuit court indicated that this Court's directives in *Welch* and *Tibbs* "illustrate[] that the [Supreme] Court is not completely aware of how receiverships are used in South Carolina."[7] At that same hearing, the circuit court shared that it interpreted the June 26 Order and *Welch* not as mandates, but rather as licenses to "leave it to [her] to explore more broadly this receivership issue and what the law is in regard to the appointment of a receiver and whether a receiver must – can act on matters other than the claim in the case in which the receiver was first appointed."[8]

But nothing in the June 26 Order empowers the circuit court to explore anything.[9] Its plain, unequivocal terms leave no room for interpretation: "[w]e *direct* the circuit court" to proceed pursuant to very specific instructions. Any failure to adhere to those instructions encroaches upon this Court's authority and is outside of the jurisdiction of the circuit court.

Nor does the September 25 Order, as the Receiver's Return insinuates, give the circuit court carte blanche to disregard the June 26 Order. The September 25 Order makes clear this Court's expectation that the circuit court abide by the June 26 Order, including by issuing a ruling in accordance with the June 26 Order's directives:

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[7] *See* July 22, 2025 Hr'g Tr., at 17:21-25, 3d Supp. App. 228 (remarks by Judge Toal).

[8] *See* July 22, 2025 Hr'g Tr., at 23:14-20, 3d Supp. App. 234 (remarks by Judge Toal).

[9] *See Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011) (The mandate of the appellate court is jurisdictional. The trial court has a duty to follow the appellate court's directions.") (citation omitted); *S.C. Dep't of Social Servs. v. Basnight*, 346 S.C. 241, 250–51, 551 S.E.2d 274, 279 (Ct. App. 2001) (noting "[o]nce a mandate is issued from an appellate court to a trial court, the trial court 'is vested with jurisdiction only to the extent conferred by the appellate court's opinion and mandate'") (quoting 5 Am.Jur.2d *Appellate Review* § 784, at 453 (1995)).

> *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 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.[10]

Despite the foregoing, the circuit court issued the October 13 Confirmation Order purporting to (a) "confirm" the Receiver as a prejudgment receiver over CIHL in *Tibbs* pursuant to Title 15 and (b) retroactively authorizing all of the Receiver's past actions and filings in *Tibbs* dating back to June 2023. In addition to multitudinous substantive and procedural defects leading up to the "confirmation," the October 13 Confirmation Order explicitly defied this Court's unambiguous directives requiring a case specific pre-judgment receiver appointment order in *Tibbs* supported by *Welch*-compliant findings of fact, instead holding that "nothing in *Welch*"[11] prevented the circuit court from purporting to authorize the Receiver to act in *Tibbs*, both retroactively and going forward, pursuant to a pre-judgment case specific appointment order issued in *Park* that made no findings of fact upon which to base the appointment.[12] By acting beyond the directives of the June 26 Order, the circuit court is acting without jurisdiction, violating this Court's mandates, and encroaching upon its authority. These extraordinary actions warrant the extraordinary relief of a writ of prohibition.

Moreover, the need for this Court's intervention is especially urgent given the circuit court's own statements that it plans not only to issue additional "confirmation" orders across

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[10] *See* September 25 Order (emphasis added).

[11] *See* October 13 Confirmation Order, at p. 45, 4th Supp. App. 189.

[12] Indeed, it is undisputed that no Cape entity ever made an appearance in *Park*, and thus could not have committed "moral fraud" in that case as described in *Welch*. And no affidavit of service or entry of default was entered against any Cape entity prior to the *Park* trial date or prior to the date the plaintiff (the Park Estate) was closed.

numerous asbestos actions,[13] but also to continue approving settlements negotiated by and between pre-judgment receivers who were never appointed in those cases.[14] The circuit court has indicated that it intends the October rulings to be a procedural framework replicated statewide, authorizing pre-judgment receivers to act interchangeably across cases and to resolve "damages" claims for plaintiffs who never requested the appointment of a pre-judgment receiver at all.[15] Such an interpretation fundamentally alters the nature of a pre-judgment receivership, transforming it from a case-specific equitable measure into a broad, instrument unconstrained by the statutory framework and individualized findings required under *Welch* and this Court's June 26 Order.

Indeed, while the issue of Mr. Protopapas' authority to act is on appeal and the remittitur is with the appellate court, the Receiver has already used this approach to get the circuit court to issue the October 30, 2025 Order Granting Motion to Approve Confidential Settlement Agreement (the "QSF Order") and establishing the South Carolina Asbestos Victims Compensation QSF, LLC,

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[13] *See*, *e.g.*, Oct. 6, 2025 Hr'g Tr., at 79:11-15 Charter Petitioners' 1st Supp. App. 079 ("Now, I will observe for Mr. Protopapas . . . there may be other receiverships that now need some attention in terms of confirming orders….") (remarks of Judge Toal).

[14] *See*, *e.g.*, Oct. 6, 2025 Hr'g Tr., at 79:16-80:10, 3d Supp. App. 079-080 ("Now that I have got the directive from the Court that makes it clear that I am to proceed with [settlement orders], I want to revive or look at those and get them dealt with in regular format. So I know I've got a couple with Heat and Frost that are sitting on my desk, and I now feel that the Court has given me direction sufficient to deal with those matters and I want to deal with them. . . . I've got several of them in folders sitting here right now, but I want them in one comprehensive series of orders and get those matters out of the way now that I've got the courts indication that I should proceed with those. And that nothing within their purview, by way of any [other] appeals or any other filings, prevents me or stays me from acting as a trial judge on these settlements. And that's what I want to do.") (remarks of Judge Toal).

[15] *See*, *e.g.*, Oct. 6, 2025 Hr'g Tr., at 73:4-20, 3d Supp. App. 073 ("[I]t's very clear to me from that directive from the Supreme Court that they fully anticipate that I will continue the judgments I already made upholding the legitimacy of the receiverships . . . . Had the Court not intended for me to do that, I think it would have said so. I think it is a direct [repudiation] of the arguments that have been made by Mr. Carroll and Mr. Rawl on behalf of their clients previously and [at] today's proceedings where they contend that the June order of the Supreme Court called into question the viability or the legitimacy of the receiverships.") (remarks of Judge Toal).

without a hearing and over Charter Petitioners objections. The QSF Order and accompanying operating agreement ("QSF Operating Agreement") expand Mr. Protopapas' authority in many ways, including, but not limited to, the following: 1) creating a "fund," to be managed solely and exclusively by Mr. Protopapas, and to be used by Mr. Protopapas to pay himself, his lawyers, and any claimants (in his discretion),[16] and 2) expanding the Receiver's own authority to act in unlimited future cases (without additional appointment orders) for the next 30 years, including the ability to accept/waive service of process for the active entity in receivership.[17] In other words, the settlement approvals are not simply of a defendant settling with an injured plaintiff. Instead, the Receiver's settlements include a court-approved formation of a qualified settlement fund ("QSF") that has the effect of massively expanding Mr. Protopapas' authority, often with no court oversight.

Without this Court's timely review, the circuit court's approach will not remain confined to *Tibbs*. It will expand the circuit court's asserted "confirmation" power into a parallel system of pre-judgment receiverships operating beyond statutory authority, purporting to bind parties and adjudicate liabilities without lawful appointment or jurisdiction. Each such order compounds the original error and magnifies the risk of inconsistent, void judgments. Immediate review is therefore essential to prevent this proliferation of unauthorized pre-judgment receiverships and to reaffirm that a pre-judgment receiver's authority—and the circuit court's—extends only as far as the law allows, not as far as perceived expediency might invite.

B. Respondents' Claimed Justifications For The Receivership—Unsupported Allegations Of Generic Moral Fraud, The Reopening Of The Park Estate, And The General Nature Of Holding Companies—Are Legally And Factually Baseless.

[16] *See*, *e.g.*, QSF Order, at p. 12-13, 1st Supp. App. 125-126; QSF Operating Agreement, at p. 2, 1st Supp. App. 130, 132.

[17] *See*, *e.g.*, QSF Operating Agreement, at § 1.6 (setting the duration of the fund to be 30 years), § 3.2 (granting the Receiver discretion to waive service on behalf of Cape on any asbestos claim), 1st Supp. App. 131-132.

Respondents' Returns rely on a series of factual and equitable premises that do not withstand scrutiny. Each purported justification—whether the supposed "re-opening" of the Park estate, a belated accusation of "moral fraud" to support ultra vires actions, or the suggestion that a holding company is inherently insolvent—fails as a matter of both law and logic. None provides a lawful foundation for a pre-judgment receivership, much less for the extraordinary (and legally impermissible) step of retroactively validating a void one.

1. The closure of the Park Estate and termination of Mr. Park as the personal representative of the Estate effectively nullified the Park litigation—an action that cannot be cured by the re-opening of the Estate.

The Park estate was fully administered and closed by the probate court. The personal representative submitted sworn filings confirming that all assets were distributed, all beneficiaries had executed receipts and releases, and the personal representative was formally discharged.[18] Once the estate was closed, the *Park* litigation ceased to exist as a live controversy.[19]

[18] Indeed, as outlined in the Charter Petitioners' Petition, three days after his counsel represented to the circuit court that the Park case was "fully resolved," Keith Park (Personal Representative for the Park Estate) filed an Application for Settlement to the Spartanburg County Probate Court, requesting that the Estate be closed and that he be discharged as the Personal Representative of the Estate of Isabella Park. *See* June 6, 2022, Application for Settlement, 3d Supp. App. 185. Mr. Park's June 6, 2022, signed and witnessed statement swore that: "The undersigned hereby acknowledges receipt… of…All of the property to which I am entitled under the last will and testament of Isabella F. D. R. Park. I am totally familiar with the assets in this estate, their disposition, and the manner in which the administration has taken place, and I desire that the estate be closed... In consideration of the distribution, the undersigned releases and forever discharges the estate and the personal representative from any and all rights and claims which the undersigned may have relating to the estate." 3d Supp App. 184. On August 26, 2022, the Probate Court entered an Order Closing Estate, granting Keith Park's Application and ordering: "The Personal Representative(s) in the above estate appear(s) to have completed the administration, and the appointment is hereby terminated." *See* Aug. 26, 2022, Order Closing Estate, 3d Supp. App. 186. The Probate Court ordered that "the estate is closed." *See id*.

[19] *See McCullar v. Estate of Campbell*, 381 S.C. 205, 207, 672 S.E.2d 784, 785 (2009) (any alleged litigation by an estate after it is closed is a nullity because the estate ceases to be a legal entity).

The subsequent attempt to "reopen" the estate cannot resurrect jurisdiction that had already been extinguished. A closed estate has no legal capacity to prosecute claims, and a terminated personal representative cannot retroactively authorize new litigation or pre-judgment receivership motions. The Receiver's assertion that the *Park* case remained "open" because it appeared as such on the public index confuses docket maintenance with jurisdiction. The probate court's closure order—based on the estate's own sworn representations—conclusively terminated the estate's legal existence. The circuit court's issuance of a pre-judgment receivership order in that closed matter therefore lacks any jurisdictional footing.

Respondents' reliance on S.C. Code Ann. § 62-3-701 is misplaced and does nothing to change the outcome under *McCullar*. Section 701 states that a personal representative may ratify acts "on behalf of the estate done by others where the acts would have been proper for a personal representative."[20] But at the time, there was no estate because Mr. Park had closed it (all while being fully aware of the estate's purported claims against Cape). No one has standing to bring a claim or motion on behalf of an entity that does not exist.[21] Given that it would not have been proper in March 2023 for any purported personal representative or lawyer to bring the pre-judgment receivership motion because the estate no longer existed, Section 701 does not and cannot grant Mr. Park authority to ratify the pre-judgment receivership motion and retroactively confer standing that did not originally exist.[22] Indeed, Section 701 was already in place at the time

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[20] S.C. Code Ann. § 62-3-701.

[21] *Com. & Sav. Bank of Lake City v. Ward*, 146 S.C. 77, 143 S.E. 546, 548 (1928) ("if there is a lack of legal entity, the whole action fails. *** If an action is brought in the name of that which under the Lex fori has no legal entity, it is as if there was no plaintiff in the record and therefore no action before the court; which presents an instance of want of jurisdiction.").

[22] *See*, *e.g.*, *Bargil Associates, LLC v. Crites*, 135 A.D.3d 676, 677-678, 24 N.Y.S.3d 119, 120 (2d Dept. 2016) (applying South Carolina law, court held "[a]lthough the South Carolina probate court reappointed the defendant as the personal representative of the decedent's estate after the plaintiff made its present motion to dismiss the counterclaims and before the defendant submitted her

McCullar was decided, yet the Supreme Court held that an action involving a closed estate was a "nullity" and did not exist, even if the estate was later reopened.[23]

Accordingly, when the Park estate was closed and Mr. Park's capacity as personal representative of the estate was terminated, all controversies (especially those that were already pending) involving the estate ceased to exist; no plaintiff existed to pursue any claims in *Park*;[24] no live dispute supported further judicial action or jurisdiction; and the *Park* case became moot as a matter of law. Section 701 does not alter this result. Accordingly, the *Park* order appointing Mr. Protopapas as pre-judgment receiver over Cape is a nullity and cannot form the basis for Mr. Protopapas to act for Cape in *Park*, *Tibbs* or any other matter.

2. The moral fraud required under *Welch* relates to litigation conduct—and a failure to respond to a complaint is not sufficient.

The Receiver's invocation of "moral fraud" misconstrues this Court's decision in *Welch*. In *Welch*, this Court used the term to describe egregious *litigation* conduct—an intentional manipulation of the judicial process in a particular case to mislead the court or opposing parties—not mere disagreement with the manner in which a defendant defends itself. Here, neither Respondents, the *Park* Appointment Order, nor the October 13 Confirmation Order describes egregious litigation conduct by Cape in either *Park* or *Tibbs*. Indeed, the only litigation "conduct" by Cape in either *Park* or *Tibbs* is a failure to answer a complaint in *Park*, where service was

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opposition papers, such reappointment constituted a subsequent administration, which has no nunc pro tunc effect and does not relate back to the initial appointment.").

[23] *McCullar*, 381 S.C. at 207-208 (finding the entire action a "nullity" such that there was "no action before the Court" because, even though the estate had been subsequently reopened, at the time the suit was commenced, no "juridical entity known as" the estate existed).

[24] Respondents' reference to Mr. Keith Park being a plaintiff in his individual capacity is unavailing—Mr. Park did not assert any claims whatsoever in the *Park* case, even if he was listed in the case caption in his individual capacity.

questionable at best and no default judgment was ever sought or obtained. Declining to appear in response to a void pleading is not "fraud" of any kind; it is a recognition that the tribunal lacks authority. Nor does a company's decision to structure itself through legitimate corporate entities or hold assets through subsidiaries amount to fraud. Furthermore, as the Supreme Court recently pointed out, a pre-judgment receivership is "not to be used in the typical default case."[25]

Critically, *Welch* did not expand "moral fraud" into a catch-all equitable label that overrides statutory limits on pre-judgment receiverships. Additionally, the circuit court cannot base actions taken after the appointment of a pre-judgment receiver as a legal and factual basis for the original appointment of a pre-judgment receiver. Respondents' reliance on historical conduct—some by Cape and some by other entities Respondents want to attribute to Cape—based on hearsay, and current legal conduct by Cape in the very courts where Cape is incorporated, is simply not the type of "moral fraud" sufficient to justify a prejudgment receiver. This Court should reject the Receiver's attempt to transform lawful corporate behavior into a moral offense in an effort to replace legal standards with moral rhetoric.

3. Being a holding company does not establish insolvency.

Equally flawed is Respondents' claim that Cape's current status as a holding company demonstrates danger of insolvency under Title 15. A holding company's function is to own and manage subsidiary assets, not to operate independently. That structure, common to countless corporations, says nothing about solvency or the ability to satisfy liabilities. If the mere fact of being a holding company were deemed sufficient to establish "insolvency," nearly every corporate parent in South Carolina—and countless entities that utilize this common corporate structure—could be subject to pre-judgment receivership at any moment. Such a precedent would collapse

[25] *Welch*, 445 S.C. at 668.

the distinction between legitimate corporate structure and financial distress, inviting intrusive judicial management of solvent, functioning enterprises despite this Court's explicit mandate in *Welch* that prejudgment receiverships are an "extreme power," reserved only for the "rarest" and most "extreme cases."[26] Further, this finding cannot have retroactive effect and, instead, could only constitute a new basis for an appointment as of October 13, 2025. Any "new" appointment of Cape in *Tibbs*, however, is unlawful given that the circuit court never obtained jurisdiction over Cape because Cape was never served with any pleadings in *Tibbs*—it is undisputed that the Receiver, not Cape, was served with the complaint in *Tibbs*.[27]

C. Respondents Fail To Explain How Asserting Legal Claims And Admitting Massive Liability On Cape's Behalf Does Not Qualify As An Improper "Boardroom" Decision.

Without explanation or justification, Respondents baldly assert that the Receiver "has no intention . . . nor is any boardroom 'take over' necessary for the Receiver to fulfill his court-appointed obligations."[28] This flatly ignores that—regardless of whether it is "necessary" to fulfill his obligations—the Receiver is in fact improperly making boardroom level decisions on behalf of Cape. These actions include, among other things: (1) accepting service of the *Tibbs* Complaint on behalf of Cape—thereby depriving Cape of notice and an opportunity to respond; (2) filing an answer in Cape's name; (3) waiving Cape's jurisdictional and substantive defenses; (4) confessing Cape's liability for an alleged "liability avoidance scheme" that purportedly exposes Cape to billions of dollars in damages; (5) seeking to pierce Cape's own corporate veil; (6) asserting third-party claims against the Charter Petitioners based on unprecedented theories of unjust enrichment

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[26] *Id.* at 659.

[27] *See id.* at 656-658 (prior to analyzing whether a receivership was properly appointed over Atlas Turner, this Court examined whether the trial court had personal jurisdiction over Atlas Turner).

[28] *See* Receiver's Return, at p. 37.

and alter-ego liability; (7) producing or "de-privileging" Cape's confidential and privileged attorney communications; (8) advancing the extraordinary position that Cape shares a "common interest" with the very asbestos plaintiffs suing it for personal injuries; (9) purporting to enter into a tolling agreement with those adversaries in an effort to "resolve" their claims outside the tort system; (10) appointing counsel to act for Cape and to pursue litigation strategies directly contrary to the positions of Cape's duly constituted board; and (11) seeking sanctions and removal of Cape's own retained counsel. The power to make these types of litigation decisions on behalf of a solvent company has long been recognized by the courts of this state and across the country as belonging exclusively to a company's board of directors.[29]

By taking these actions, the Receiver is making quintessential boardroom level decisions that this Court has found to be improper for a prejudgment receiver.[30] The Receiver's conduct—whether he deems that conduct "necessary" to fulfill his function or not—illustrates the depth of his overreach and the extent to which his actions (approved by the circuit court in the October 13

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[29] *See, e.g.*, *Carolina First Corp. v. Whittle*, 343 S.C. 176, 187, 539 S.E.2d 402, 408 (Ct. App. 2000) (a corporation's "directors are, under the laws of every state, responsible for the conduct of the corporation's business, including the decision to litigate" (citation omitted)); *Muzek v. Eagle Mfg. of N. Am., Inc*., 2019 WL 13168879, at *2 (E.D. Ky. Oct. 23, 2019) ("[A] decision whether to bring a lawsuit, refrain from litigation on behalf of a corporation, or the appointment of an examiner is a decision concerning the management of a corporation. Such decisions are part of the responsibility of a board of directors . . . ." (citation omitted)); *Freedman v. Redstone*, 753 F.3d 416, 424 (3d Cir. 2014) (same); *In re Universal Health Servs., Inc., Derivative Litig*., 2019 WL 3886838, at *30 (E.D. Pa. Aug. 19, 2019) (same); *Hirschfeld v. Beckerle*, 405 F. Supp. 3d 601, 605 (D.N.J. 2019) (same); *see also* S.C. Code Ann. § 33-2-102(1) (providing "sue and be sued, complain, and defend in its corporate name" as the very first "general power" of a South Carolina corporation); id. § 33-8-101 (providing that, with limited irrelevant exceptions, "all corporate powers must be exercised by or under the authority of, and the business and affairs of a corporation must be managed under the direction of, a board of directors").

[30] *See Welch*, 445 S.C. at 667 (courts cannot "grant the Receiver entry into the [company's] boardroom or some vague right to 'take over' operation of the company").

Confirmation Order) exceed the boundaries set forth by South Carolina receivership law, *Welch*, and the June 26 Order.

D. Respondents' Arguments Provide No Basis To Deny Review.

1. Charter Petitioners have standing to challenge an invalid pre-judgment receivership.

Respondents' contention that the Charter Petitioners do not have standing to raise arguments about the invalid pre-judgment receivership is misplaced. The Charter Petitioners are not purporting to act on behalf of Cape—they are defending themselves against claims that only exist because a purported pre-judgment receiver, acting without lawful authority, has asserted the claims against them. When a party is forced to litigate against a pre-judgment receiver whose very appointment is void, that party has an unquestionable interest in contesting the court's jurisdiction to allow the pre-judgment receiver to proceed. The Charter Petitioner's "standing" to make these arguments is a long held right, acknowledged by the South Carolina Supreme Court for almost one hundred years.[31]

2. The claim that pre-judgment receivers need not be appointed in each case is contrary to the law and the June 26 Order.

Respondents' assertion that South Carolina law allows a pre-judgment receiver to act in multiple cases without separate appointment orders is irreconcilable with this Court's holdings in *Welch* and the June 26 Order. Indeed, Respondents' contention that merely "filing" the *Park* Appointment Order in another case meets the letter of this Court's mandate in *Welch* and the directives in the June 20 Order is absurd.[32] As the Supreme Court has made clear, pre-judgment

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[31] *See Porter v. Brown*, 149 S.C. 151, 146 S.E. 810 (1929) (holding that where "it appears upon the face of the proceedings that a Court's order appointing a receiver was without authority of law, and, therefore, void, the order may be assailed collaterally and with impunity by anybody.").

[32] This Court directed that the circuit court make a separate determination pursuant to *Welch* for each case in which a prejudgment receiver is sought before the circuit court may appoint the

receivers are rare and should only be appointed in the most "extreme cases."[33] Furthermore, based on longstanding receivership law, as laid out again in *Welch*, a pre-judgment receivership must be *limited*, as a matter of law, to marshalling assets that have the potential to cover the injuries of the party seeking the receivership.[34] This was further mandated in the June 26 Order that again expressly limited pre-judgment receivers' authority to act to the specific case in which they were appointed.[35]

Respondents' position would not merely expand a pre-judgment receiver's authority—it would erase the requirement that a pre-judgment receiver's appointment be tied to the cause, the property, and the parties before the court.[36] This is particularly true here, where the Receiver, by necessity, must be bringing a claim that is derivative of the Tibbs' alleged injuries (not Ms. Park's).[37] In other words, as a matter of law, what the Receiver is seeking to recover in *Tibbs*

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receiver and directed that such receiver not act beyond the particular case in which the circuit court makes such findings. If compliance with this Court's directive required nothing more than "filing" the same appointment order from one case into every other case, the limitation that a receiver may act only within the case he is appointed would become meaningless, and the detailed analysis in *Welch*—as well as this Court's June 26 Order—would be effectively nullified.

[33] *Welch*, 445 S.C. at 659.

[34] *See id.* at 667 ("We find equity only allows insurance policies that *have the potential to cover Mr. Welch's injuries* to be included in this definition") (emphasis added).

[35] *See* June 26 Order, at p. 4 ("Ensure the receiver has been authorized to conduct its work by an order filed in the specific case as to which the work is to take place. The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.").

[36] Ironically, even Respondents' assertion that merely "filing" a receivership order from another case would suffice collapses under the facts: the Receiver engaged in extensive activity in *Tibbs* long before any such order was ever filed, including submitting a 65-page Third-Party Complaint, serving that complaint, propounding discovery, and seeking default judgments against certain third-party defendants.

[37] By its plain terms, Rule 14(a), SCRCP, makes clear that a defendant may implead and assert claims against a third party ***only if*** it "is or may be liable to [defendant] for all or part of the plaintiff's claim"; it "does not allow the defendant to assert a separate and independent claim." Rule 14(a), SCRCP; *CNH Industrial Capital America LLC v. Able Contracting, Inc.*, CA No. 9:16-cv-2520- RMG, 2017 WL 512453, at *1 (D.S.C. 2017); *Laughlin v. Dell Financial Services, L.P.*,

improperly goes above and beyond the assets "to cover [Ms. Park's] injuries." Respondents' approach effectively turns a single extraordinary pre-judgment receivership into a statewide license to marshal any assets to cover anyone's injuries, contrary to Title 15, *Welch*, and the June 26 Order. It defies logic and the structure of South Carolina's receivership law to treat a pre-judgment receivership as a rare and extraordinary remedy tied to a particular plaintiff's claim, yet then permit that pre-judgment receiver to roam freely across unrelated cases pursuing recoveries for others who never sought or obtained such relief.

3. The Receivership was void ab initio and beyond the circuit court's power to cure through some type of "modification" or "confirmation."

Respondents claim that the June 26 Order did not compel the circuit court to void the *Park* Appointment Order if it failed to satisfy *Welch* misses the point. When an order is void from inception, South Carolina law leaves the circuit court no discretion to "amend" or "modify" it—its only lawful course is to recognize its nullity. Critically, under well settled law, once an order is void for want of jurisdiction or statutory authority, it is void from the beginning.[38] No subsequent modification, amendment, or confirmation can breathe legal life into it. The circuit court's inherent

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465 F.Supp.2d 563, 566 (D.S.C. 2006). "The third party claim must be derivative of the plaintiff's claim" such that "the third-party defendant's liability arises only if the defendant/third-party plaintiff is first held liable to plaintiff." *Id.* at *2; *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) ("The outcome of the principal claim must impact the third-party defendant's liability[.]").

[38] *See*, *e.g.*, *Ross v. Richland Cnty.*, 270 S.C. 100, 103, 240 S.E.2d 649, 651 (1978) ("It is a universal principle as old as the law, that the proceedings of a Court without jurisdiction are a nullity, and its judgment without effect, either on the person or property.") (citing *Ex parte Hart*, 186 S.C. 125, 133, 195 S.E. 253, 256 (1938)); *see also Thomas & Howard Co., Inc. v. T.W. Graham and Co.*, 318 S.C. 286 (1995) ("generally, a judgment is void only if a court acts without jurisdiction."); *Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 613, 815 S.E.2d 780, 781 (Ct. App. 2018), aff'd as modified, 425 S.C. 568, 824 S.E.2d 214 (2019) ("Void judgments are defined as those from courts that lacked personal or subject matter jurisdiction, or failed to provide due process.").

power to modify or amend its orders presupposes a valid order to begin with; it does not extend to rewriting history to create jurisdiction where none existed.[39]

Here, the supposed pre-judgment receivership originated in *Park*—a case that had already been fully administered and closed in probate, leaving no living estate or party before the circuit court and no jurisdiction for the circuit court to act.[40] Furthermore, the pre-judgment receiver was appointed without complying with the mandatory statutory requirements for a pre-judgment receivership and without the factual findings necessary (as described in *Welch*).[41] In *Welch*, unlike in *Park*, this Court found that the original appointment order had sufficient factual findings to support the appointment of a pre-judgment receiver, but found that the order gave overly broad authority to the pre-judgment receiver. The *Park* defects were not procedural irregularities—they were jurisdictional. Because the statutory prerequisites for appointment were never satisfied, the pre-judgment receivership was void ab initio.[42]

Once it became clear that the *Park* Appointment Order was void, it could not be cured through the circuit court's attempt to "confirm" or "amend" that order. The October 13 Confirmation Order, therefore, did not clarify an existing appointment; it created an entirely new one under the guise of modification, attempting to retroactively validate years of ultra vires

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[39] *See* 60 C.J.S. Motions and Orders § 76 ("An order that is 'void ab initio' is null from the beginning. It has no legal effect, it may be attacked at any time, and it may be set aside or vacated at any time. . . . A void order is not susceptible of ratification or confirmation.").

[40] *See Porter v. Brown*, 149 S.C. 151, ___ n. 1, 146 S.E. 810, 814 n. 1 (1929) (Cothran, J, concurring in result) ("if the court is without jurisdiction to appoint a receiver the order is void.").

[41] *See generally Welch*, 445 S.C. at 659-667.

[42] *See*, *e.g.*, *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343, 348 (1928) (holding that a receivership appointment order was void if it did not follow the statutory requirements for a receivership: "[t]he provision for inserting a clause fixing the value of the property in the order appointing a receiver is mandatory, and without such clause the order is ***void***.") (emphasis added).

conduct. That act exceeded the scope of the June 26 Order's remand and, where the required findings from the June 26 Order were lacking, mandated as a matter of South Carolina law that the *Park* Appointment Order be declared void—not repaired or replaced. The circuit court's attempt to retroactively validate the pre-judgment receiver's authority thus compounded, rather than cured, the jurisdictional defect. Because the original *Park* Appointment Order was void from the outset, it remained void thereafter—and every act taken under it by the Receiver was equally without legal effect.

E. Charter Petitioners' Limited Participation Since December 19, 2023 Resulted From Rule 205, SCACR, Not Any Misuse Of Their Personal Jurisdiction Arguments.

Respondents mischaracterize Petitioners' assertion that any filings do not constitute a waiver of personal jurisdiction—after the circuit court has already ruled on their motion to dismiss for lack of personal jurisdiction—as a tactic to avoid litigation. That is demonstrably false and is a clear distortion of the record in this case. Petitioners' limited participation in the underlying proceedings stems not from a refusal to submit to the circuit court's incorrect personal jurisdiction ruling (which has been fully preserved for any ultimate appeal), but from compliance with Rule 205, SCACR, which automatically deprives the circuit court of jurisdiction over "matter affected by the appeal."[43]

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[43] *See* Rule 205, SCACR (providing that "[u]pon the service of the notice of appeal, the appellate court *shall have exclusive jurisdiction* over the appeal") (emphasis added); *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) (explaining that "Rule 205 divests the lower court or administrative tribunal of jurisdiction over '*matters affected by the appeal*'") (emphasis supplied by the Supreme Court) (quotation omitted); *see also Maybank 2754, LLC v. Zurlo*, 444 S.C. 47, 906 S.E.2d 94 (Ct. App. 2024) (reiterating that Rule 205 deprives the circuit court of jurisdiction to issue rulings on all matters that are affected by the appeal, i.e. where the outcome of the appeal would have an impact on the circuit court ruling); *Morris v. Morris*, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) ("This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal."); *Tillman v. Oakes*, 398 S.C. 245, 255 & n.3, 728 S.E.2d 45, 51 & n.3 (Ct. App. 2012) (reiterating that "[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal" and explaining that this rule

Once the Charter Petitioners appealed, on December 19, 2023, the order captioned "Order Denying Certain Third-Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction," which was immediately appealable under South Carolina Code Ann. § 14-3-330(4) because, among other things, it modified the scope of a pre-judgment receivership to cover an entirely new entity, the circuit court had no authority to continue to act with respect to the Receiver's Third-Party Complaint as that matter, in its entirety, would be "affected by the appeal" of whether the pre-judgment receivership was void from its outset. Far from evading litigation, Charter Petitioners have adhered to the procedural safeguards this Court itself has established to preserve appellate jurisdiction and prevent inconsistent rulings while an appeal is pending. Indeed, it was in this very appeal that the Supreme Court, mere months ago, converted Charter Appellants' petition to a common law writ of certiorari and granted it pursuant to article V, section 5 of the South Carolina Constitution and section 14-3-310 of the South Carolina Code.[44] The Charter Petitioners, on October 14, 2025, then appealed the circuit court's order purporting to appoint a pre-judgment receiver to recover assets on behalf of the *Tibbs* Plaintiffs and modifying the powers of the pre-judgment receiver.[45] This, again, deprived the circuit court of jurisdiction to continue hearing and making rulings on the Receiver's Third-Party Complaint as that is directly "affected by" the appeal of the validity of the pre-judgment receivership.[46]

"deprives the lower court of the power to address a particular issue, or 'matter,' during the pendency of the appeal").

[44] *See* June 26 Order.

[45] *See* Notice of Appeal of Order Granting Appointment of a Receiver, dated October 14, 2025, filed by Charter Petitioners.

[46] *See* Rule 205, SCACR.

Although the Charter Petitioners continued to assert that any filings made were subject to and without waiver of their personal jurisdiction defenses—which were properly and timely asserted in a motion to dismiss that was denied by the circuit court and which Respondents assert was not immediately appealable—the purported lack of participation in the *Tibbs* action relates directly to Rule 205, SCACR, depriving the circuit court of jurisdiction over matters affected by the appeal. The Charter Petitioners' actions do not constitute improper gamesmanship, but an effort to protect themselves against a rogue pre-judgment receiver acting without legal authority. Relying on this Court's own procedural rules does not and cannot constitute "contemptuous conduct and 'cavalier disdain of the elementary rules of civil procedure'" as Respondents contend.

F. Any Order Appointing A Pre-Judgment Receiver Is Void If It Does Not Include A Bond Amount "In The Order Of Appointment," Even If Such Amount Is Difficult To Ascertain.

The Court should categorically reject Respondents' claim that the mandatory statutory requirement to include a bond amount on the face of a pre-judgment receivership order simply should not apply when the value of the assets being marshalled are difficult to measure. Such an interpretation misreads both the statute and its purpose. South Carolina Code Section 15-65-60 mandates that whenever a court appoints a receiver before final judgment, "there ***shall be inserted*** in the order of appointment a clause fixing the value of the property for which the bond may be given."[47] This creates a non-discretionary duty for the circuit court when appointing receivers before final judgment.[48] Although that might be a difficult to do in certain cases,[49] the circuit court

[47] S.C. Code Ann. § 15-65-60 (emphasis added).

[48] *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.").

[49] The Receiver claims, without citation to any authority, that "[i]t is impossible to ascertain the value of choses in action for purposes of posting a bond." *See* Receiver's Return, at p. 40. That assertion has no basis in fact or law, and courts across the country have consistently been able to

must make a reasonable determination of value based on the record—not to dispense with the bond altogether. The difficulty of valuation cannot nullify a mandatory safeguard designed to protect against wrongful seizure of property. Were Respondents correct, every pre-judgment receivership involving an uncertain or contingent asset—such as a lawsuit—could proceed without any financial protection for the owner, defeating the very purpose of the statute and one of the major distinguishing characteristics between a pre- and post-judgment receivership. The inability to assign an exact dollar figure to a claim does not relieve the circuit court of the obligation to include on the face of the appointment order the amount of a potential bond; it merely requires the circuit court to exercise judgment in setting an appropriate amount. As the Supreme Court has already held, the failure to include such an amount on the face of the appointment order renders the order void.[50]

III. CONCLUSION[51]

Respondents' rhetoric cannot obscure what the record makes plain: the circuit court exceeded its authority, defied this Court's June 26 Order, and allowed a pre-judgment receiver appointed in one case to act in another without any lawful basis. The pre-judgment receivership

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resolve the valuation of a bond, even when it is difficult to calculate. *See*, *e.g.*, *Montville v. Mobile Med. Indus., Inc.*, 855 So. 2d 212, 216 (Fl. Dist. Ct. App. 2023) (noting that, in context of bond related to temporary injunction application, "trial court's initial determination is often necessarily based upon speculative matters and should subsequent events prove the bond amount to be either insufficient or excessive, an effected party is free to move for modification"); *Topheavy Studios, Inc. v. Doe*, 2005 WL 1940159 (Tx. Ct. App. Aug. 11, 2025) (affirming bond set by trial court in connection with temporary injunction despite recognition that certain aspects of bond amount were "difficult to calculate").

[50] *See Truesdell*, 144 S.C. 188, 142 S.E. at 348 ("The provision for inserting a clause fixing the value of the property ***in the order*** appointing a receiver is ***mandatory***, and without such clause the order is ***void***.") (emphasis added).

[51] Charter Petitioners, per Rule 208(b)(6), SCACR, incorporate herein, to the extent applicable, all arguments raised and authorities cited by similarly situated Appellants Mohed Altrad, and Altrad Investment Authority S.A.S in Appellate Case Nos. 2024-001423 and 2024-001499.

was void from inception, and the circuit court lacked power to "confirm" or "modify" what never legally existed. Respondents' effort to defend those actions through misdirection—by attacking the Charter Petitioners and dismissing statutory safeguards—only underscores the need for this Court's intervention. Respectfully, the Supreme Court should issue the writs of prohibition and certiorari to enforce its prior mandate and vacate the circuit court's October 13 Confirmation Order.

Respectfully submitted,

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