

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Nov 20 2025

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

S.C. SUPREME COURT

Civil Action No. 2023-CP-40-01759

Appellate Case No. 2025-002104

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs,

v.

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

Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; 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.; Anglo American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (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 and Altrad Investment Authority SAS are the,

Appellants.

RETURN TO PETITIONS FOR REHEARING

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondent Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas (“the Receiver”), respectfully submits this Return to Appellants’ Petitions for Rehearing. The Court should not grant rehearing as the order on appeal is an interlocutory confirmation of the Receiver’s authority to act in accordance with the Supreme Court’s June Order remanding this case and another denial of reasserted arguments by the third-party defendants that the case should be dismissed. South Carolina law and the Supreme Court’s June Order require summary dismissal here.

BACKGROUND

These notices of appeal are the twenty-first and twenty-second interlocutory notices of appeal filed in the *Tibbs* case involving the Cape receivership.¹ The other appeals were dismissed by this Court as interlocutory. Appellants petitioned for writs of certiorari from those dismissals with the Supreme Court. 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.² Appellants, however, continued to refuse to participate or comply with the orders of the circuit court.

On June 26, 2025, the Supreme Court granted certiorari in its original jurisdiction over two of the appeals (Appellate Case Nos. 2024-001423 and 2024-001499), and denied certiorari in five

¹ Appellants have attempted to appeal every order issued by the circuit court and refused to participate in the case. During the time Appellants have successfully delayed trial in the case, they have sought favorable rulings in foreign jurisdictions and threaten the Receiver with the seizure of assets, fines, and imprisonment for fulfilling his court-appointed duties. *See, e.g.*, Motion for Sanctions, Appellate Case No. 2024-001499 (filed June 3, 2025).

² 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

of the appeals (Appellate Case Nos. 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052) (“the June Remand Order”). The Court dispensed with further briefing and remanded the case to the circuit court “for all purposes,” including directives that the circuit court (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*.³ 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.* The Court warned further appeals would be “summarily dismissed.” *Id.*

Following remand, 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. The circuit court provided the Supreme 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).

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).

³ In *Welch v. Advance Auto Parts, Inc.*, the Supreme 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.

Also, 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. The Receiver opposed this motion. The Receiver subsequently filed a Motion to Confirm Appointment of Receiver. The Tibbs Plaintiffs joined the Receiver's Motion to Confirm the Appointment. The Charter Appellants and the Anglo-American and De Beers third-party defendants filed memoranda in opposition to the motion to confirm appointment. The Altrad Appellants 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.

The circuit court heard extensive arguments on the pending motions on August 12, 2025. 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, the Supreme 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. At the pre-trial hearing, the Receiver and the Anglo American and De Beers third-party defendants informed the Court they have settled their claims, and the Court acknowledged the settlement on the record pursuant to Rule 43(k), SCRPC. The Anglo American and De Beers third-party defendants were and have been the only defendants participating in the case as Petitioners have at all times refused to participate.

On October 13, 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 the Supreme 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.

Appellants filed Notices of Appeal from the October order. The Receiver filed a motion to dismiss the appeals because the order was interlocutory and not immediately appealable. *Id.* On October 20, 2025, this Court correctly dismissed the appeals, noting “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 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)).

On October 19, 2025, Appellants filed common law Petitions for Writ of Prohibition and Writ of Certiorari with the Supreme Court. In the Petitions, Appellants are contemporaneously seeking the *same* relief in the Supreme Court that they seek in this Court—review of the circuit court’s October 13 Order. Here, Appellants allege the order is immediately appealable. It is not. In the Supreme Court, Appellants seek original jurisdiction review of the Order. Meanwhile, consistent the Supreme Court’s stated instructions that this case be decided on the merits, a trial on the merits of the case proceeded on October 20, 2025, and is set to be reconvened on December 4, 2025. Thus far, Petitioners have refused to participate in the trial, have not cross-examined any of the Receiver’s witnesses and have made no evidentiary objections. Instead, Petitioners made a general objection to the proceeding due to their already-rejected arguments that the circuit court does not have jurisdiction, the receivership appointment is improper and nullity, and South Carolina does not have personal jurisdiction over Petitioners.

ARGUMENT

- I. Appellants reassert arguments that have already been considered by the Supreme Court and remanded to the circuit court.**

Throughout the course of the last two years, Appellants have appealed every interlocutory order issued by the circuit court. This Court dismissed those appeals as interlocutory, and the Supreme Court considered each Petition for Writ of Certiorari arising out of those dismissals. In doing so, the Supreme Court considered Appellants' arguments that the appointment of the Receiver was improper. The Supreme Court ruled. It *granted* Appellants' request in its *original jurisdiction* over the circuit court's December 2023 Order denying the third-party defendants' motions to dismiss the case and dissolve the Receivership. In granting the petitions in its original jurisdiction, the Supreme Court *confirmed* there was no appellate jurisdiction over the interlocutory order. The Supreme Court did not reverse the circuit court's order denying the motions to dismiss the case and dissolve the receivership. Instead, it remanded this case back for the circuit court **"for all purposes, specifically including"** making certain findings of fact as directed by the Supreme Court and continuing to report on the status to the Supreme Court.

In the December 2023 Order—the Supreme Court considered Appellants' arguments, granted the petition, and rather than dissolving the Receivership as Appellants asked, the Court remanded the case to the circuit court to proceed. The circuit court proceeded. Now, even as the trial is underway, Appellants are back before this Court appealing an interlocutory order the circuit court issued under the direction of the Supreme Court raising the same arguments that were considered and rejected by the Supreme Court in the seven petitions for a writ of certiorari. Appellants are utilizing the circuit court's compliance with the June Remand Order to bring the same issues back before the appellate courts—issues that were just remanded five months ago. However, the issues remain interlocutory and not immediately appealable. In fact, in a tacit acknowledgment that the issues are not immediately appealable, Appellants are contemporaneously petitioning the Supreme Court to accept the issues again in its original

jurisdiction. This, now too-common, dual-track appellate strategy is not proper. Appellants cannot seek review of the same order in both this Court and the Supreme Court.

When the Supreme Court granted original jurisdiction review of the appointment of the Receiver, it remanded the case back to the circuit court to proceed with a final decision. The circuit court has not yet made a final decision on the merits of this case. Instead, faced with repeated arguments that the receivership should be dissolved, it confirmed the receivership in accordance with the Supreme Court's instructions. The Supreme Court did not limit its remand to the circuit court in any way. Instead, it remanded for all purposes so it could eventually consider the case on a final, appealable order deciding the merits of the case and a full record.

II. Appellants mischaracterize the Supreme Court's June Remand Order in *Tibbs*.

Appellants seem to suggest the Supreme Court's June Remand Order directed the circuit court to dismiss the third-party complaint. That is far from the truth. The June Remand Order specifically directed the circuit court to proceed. If the Supreme Court wanted, it could have reversed the December Order and directed the circuit court to issue an order dismissing the third-party complaint or dissolving the Cape receivership. It did not do so. The Court did not make any rulings on the merits of Appellants' arguments. Instead, the Supreme Court remanded to the circuit court to make findings of fact and proceed with the case.

Further, contrary to the Charter Appellants' assertions, the circuit court did not exceed the mandate on remand. The Supreme 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. Appellants disagree with that ruling and

as history continues to repeat itself, have determined the ruling simply doesn't apply to them. Appellants' 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 Supreme Court used clear language in the remand that the remand was not limited in any way. The circuit court has complied with the Supreme Court's directives and kept the Court regularly apprised of the status in accordance with the June Remand Order.

III. The October 13 Order does not grant a receivership appointment or modify a receivership appointment.

The Order on appeal does not fall under section 14-3-330(4) of the South Carolina Code. This Court and the Supreme Court have already considered arguments that similar orders *in this case* and in other cases in the asbestos docket are immediately appealable under section 14-3-330(4) and have ruled that these orders are not. *See Childers v. Davis Mechanical Contractors, et al.*, Appellate Case No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024) (dismissing, in an order signed by all five justices, as not immediately appealable an order denying appellants' request to dissolve a receivership); *Welch v. Advance Auto Parts, et al.*, Appellate Case No. 2024-000337 (Ct. App. Order dated April 12, 2024) (dismissing as not immediately appealable an order denying appellants' motions to dissolve a receivership and to dismiss, including on personal jurisdiction grounds, and an order denying appellants' motions for protection from discovery); *Mitchell v. 3M Company, ABB Inc., et al.*, Appellate Case No. 2024-000341 (Ct. App. Order dated April 12, 2024) (same); *Link v. 3M Company, 4520 Corp., Inc., et al.*, No. 2024-000342 (Ct. App. Order dated April 12, 2024) (rejecting appellants' contention that the circuit court's order permitting the receiver to continue his duties during the pendency of the appeal is immediately appealable and dismissing the appeal).

Appellants cannot continue to assert rejected arguments and appeal each time the circuit court rejects the arguments. That is what happened in this case. Following the June Remand Order, the Anglo-American and De Beers third-party defendants, who had been participating in the case and are not appellants here, filed a renewed Motion to Dissolve the Cape Receivership and Dismiss the Third-Party Complaint. The Receiver opposed this motion and filed a Motion to Confirm the Appointment of Receiver. The Charter Appellants and the Anglo-American and De Beers third-party defendants filed memoranda in opposition to the motion to confirm appointment. The Altrad Appellants 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. Again, these were renewed motions that initially led to the December 2023 order, which both this Court and the Supreme Court found were not immediately appealable despite Appellants' arguments that the order fell under section 14-3-330(4). It did not then, and the newest order rejecting the arguments again does not now.

The circuit court's Order confirmed that the previously-appointed Cape receiver's authority extended to the *Tibbs* case in light of the Supreme Court's instructions in the remand order and the continued objections by Appellants and other litigants to the Cape receivership. The circuit court confirmed that the October order attempting to be appealed is a repeat ruling in light of the continued objections raised by Appellants as to the validity of the Cape receivership. On August 25, 2025, the circuit court provided the second status report to the Supreme Court in accordance with the June remand order. In it, the circuit court attached correspondence to the parties ruling on the refiled motions, stating: "I intend to repeat my ruling confirming the . . . ongoing validity of the appointment of the Receiver for Cape and its authority to bring the third-party action in Tibbs." See Correspondence from J. Toal, Appellate Case No. 2024-001499 (filed Aug. 25, 2025).

The circuit court solicited proposed orders from the parties and issued the October order Appellants have attempted to appeal. *See* Correspondence from J. Toal, Appellate Case No. 2024-001499 (filed Sept. 24, 2025). The day after the circuit court submitted the third status report, the Supreme Court issued the September 25, 2025 order clarifying “nothing in the June 26, 2025 order prevents trial court proceedings from continuing in the normal course. . . , including the filing of and decisions on motions to approve settlement agreements.” Order, Appellate Case No. 2024-001499 (filed Sept. 25, 2025). The circuit court’s October confirmation of the appointment of the receiver is simply another refusal by the circuit court to dissolve the receivership, as Appellants argued it should. The issues were not appealable in December 2023 when Appellants first appealed them, and they’re not appealable now.

Contrary to Appellants’ arguments, the October 13 Order does not modify the receivership. Instead, the circuit court clarified the receivership in accordance with the Supreme Court’s instructions in the June Remand Order and in light of the *Welch* decision, which the Supreme Court decided after the appointment of the Cape Receiver. This clarification was in response to the Appellant’s continued filings misinterpreting the scope of the receivership and re-asserting rejected arguments related to the validity of the receivership. Providing additional explanation of the scope of the receivership is not a modification of the receivership. Instead, the circuit court provided additional explanation in light of Appellants’ confusion.

Contrary to the Charter Appellants’ arguments, the October 13 Order did not change the entity in receivership. (Charter Pet. at p. 14.) The circuit court extensively discussed the entity in receivership in the December 2023 Order after Appellants raised confusion regarding the entity in receivership in their motions to dismiss the case and dissolve the receivership. *See* December 6, 2023 Order at pp. 16–19, attached to Notice of Appeal in Appellate Case No. 2023-002009.

However, because Appellants continued to re-assert their arguments regarding their confusion with the entity in receivership, the circuit court explained it once again in the October 13 Order.

A quick peek at Appellants' unilateral renaming of motions, orders, and other filings is not an isolated occurrence when seeking to manufacture an immediately appealable issue and cannot be ignored when analyzing the current arguments relating to the present appeal. *See* Appellate Case No. 2024-0000916 (appeal from interlocutory discovery order of the circuit court which the petitioners recast as an injunction order); Appellate Case No. 2024-001065 (appeal from interlocutory discovery sanctions order recast as a contempt order). Here, many of Appellants' prior rejected arguments as to orders clarifying a receivership have been recycled and reasserted as new. To accomplish appellate review of the Court's order dismissing this appeal, Charter Appellants cite pieces of transcripts from prior hearings as evidence that somehow the present order on appeal is different than the other interlocutory orders of appointment and orders clarifying an appointment of a receiver. Charter Appellants assert "Furthermore, even the Receiver implicitly acknowledge that such actions would constitute a modification when he repeatedly encouraged the circuit court to "modify" the Park receivership order" in Charter petition . (Charter Pet. at p. 14 n.36). Setting aside that Charters' transcript excerpt exhibits are improper and out of context, the arguments made at the hearing do not comport with Charter Appellant's suggestion that the Receiver has acknowledged the order constitutes a modification meriting immediate appeal. On the contrary, the counsel for the Receiver, Mr. Lay, argued on multiple occasions that the court could, if needed, issue an order confirming the existing appointment order and subsequent order clarifying the appointment. *See* Hr'g Tr at 241:16-20 (August 12, 2025) ("You can also confirm that we have the authority. That's what we're asking you to do. Confirm that we have got the authority to do the things that we're doing. You simply confirm it."); *Id.* at 244:4-8 ("And if any

order -- if the Tibbs order filed is not sufficient, you have the ability to do a confirmation and do the findings of fact the Court asks to verify that the authority exists”.); *Id.* at 250:4-11). (“And, third, if there's any debate, you have it within your purview to issue an order granting the authority to the receiver to make sure that we can move forward on this case and to make sure that any authority that we have and the scope of our authority complies with Welch. You can issue an order that confirms that”).⁴ Despite the Appellants’ mischaracterization of the circuit court order, the plain text of the order makes clear the circuit court is clarifying, as it has done before, its prior appointment order and confirmed the powers of appointment.

Accordingly, the October 13 Order is not immediately appealable, and the Court should not rehear its decision to dismiss these interlocutory appeals.

IV. The improper attachments do not change this Court’s appealability determination.

Appellants have submitted attachments to their Petitions for Rehearing which are not relevant to the question of appealability of the October 13 Order. While these attachments, and the arguments that rely on them, do not change the Court’s appealability determination, they further illustrate Appellants’ improper use of the appellate courts to establish “facts” and “evidence” as opposed to allowing a trial court to perform its proper role.

Contrary to Appellants’ arguments, 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.

⁴ The Appellants’ attachments are the subject of Receiver’s Motion to Strike which is also pending before this Court. The Receiver does not believe the Court needs to consider extraneous materials to decide whether the order on appeal is immediately appealable. However, because Appellants submitted an excerpt from this transcript out of context and the Motion to Strike remains pending, the Receiver provides additional excerpts to provide the context. The August 12, 2025 hearing transcript is included in Receiver’s Return to Petitions for a Writ Of Prohibition and a Writ Of Certiorari, Appendix Vol II-III, Appellate Case Nos. 2025-002120 and 2025-002121.

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 in the appointment order. Hr’g Tr at 54:18–25, 55:1–7 (July 22, 2025).⁵ In the October 13, 2025 Order, the circuit court discussed the evidence before it at the time it appointed the Receiver in *Park*.

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. The *Park* appointment order remains valid. Appellants are attempting to collaterally attack the *Park* appointment order in the *Tibbs* case. However, these arguments were not raised at the time the circuit court appointed the Receiver in *Park* and have not since been raised by a party in *Park*. Cape did not appear to oppose the motion for receivership and has not appeared in South Carolina, including in the *Tibbs* case, to ask to set the receivership aside or make any objections to the receivership.⁶

Appellants 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

⁵ The July 22, 2025 hearing transcript was also included in the Receiver’s Appendix. *See supra* n. 4).

⁶ Appellants’ 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.

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.

The fact that the circuit court vacated the October 13 Order as it relates to the *Park* case is immaterial to this case and this Court's determination of appealability.

V. The Supreme Court's June Remand Order requires summary dismissal in this appeal.

In the June Remand Order, the Supreme Court characterized many of the interlocutory appeals arising out of the asbestos docket by Appellants and others as "border[ing] on frivolous" and warned summary dismissals and sanctions could be appropriate if the improper appellate activity continued. The Supreme Court stated it intended "to reach and address the merits of issues properly before" it. Appellants' 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. Appellants cannot re-raise arguments already presented to this Court and the Supreme 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 the appellate courts on a full record with a final merits-based order soon in accordance with South Carolina law and the Supreme Court's instructions in the June Remand Order. The Court properly dismissed these interlocutory appeals in accordance with the Supreme Court's directions in the June Remand Order.

CONCLUSION

This Court properly dismissed the appeal because the order on appeal is interlocutory and not immediately appealable. Appellants have not identified any fact the Court overlooked or misapprehended. The Court should deny the Petitions for Rehearing.

By: /s/ Jonathan M. Robinson

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November 20, 2025
Columbia, South Carolina