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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2025-002104

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

v.

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

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 the ..... Appellants.

ALTRAD APPELLANTS' OPENING BRIEF

Respectfully submitted,

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STATEMENT OF ISSUES

This case is unlike any other known to South Carolina jurisprudence. It risks pushing the Rule of Law beyond its breaking point, but the governing principles that should bring it to an immediate close are familiar and established. The issues presented include:

1. **Preclusive Effect of English Decisions:** The Court has requested that the litigants address the preclusive effect of *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA), regarding two specific points:

   (a) whether a South Carolina court has personal jurisdiction over Cape Intermediate Holdings Limited ("CIHL") and related entities; and

   (b) whether the putative Receiver is estopped from seeking a ruling (purportedly in CIHL's name, no less) that is expressly foreclosed by *Adams* and its progeny, and that would create liability against CIHL, the Altrad Appellants, the Charter Appellants, and scores of other entities not before the Court.[1]

2. **Release:** The Altrad Appellants have executed a mutual release with CIHL regarding the very claims presented by the putative Receiver in the circuit court proceedings. Thus, if those claims have any potential viability following *Adams*—they don't—they have been extinguished by that release. Nevertheless, the circuit court has allowed those claims to persistent. Have those claims been released?

3. **Personal Jurisdiction Over Altrad Appellants:** The circuit court erroneously held that it had personal jurisdiction over the Altrad Appellants, who have no contacts with South Carolina, because they are the current indirect owners of CIHL, which also has no contacts with South Carolina. Are the Altrad Appellants subject to personal jurisdiction in South Carolina and, if not, have they somehow waived their personal jurisdiction objections?

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[1] For ease of reference, copies of all relevant foreign cases are included in the Record on Appeal, and citations to pinpoints in foreign cases will include a reference to the page number in the Record.

4. **Proceedings Below and Receivership are Nullities:** The following are evident in the record in this matter:

(a) CIHL is an active English company and is not named as a defendant in *Tibbs*.

(b) At the time of the putative Receiver's initial appointment in *Park*, *Park* lacked a plaintiff, a defendant, a live dispute, and a judgment.

(c) The appointment in *Park* was made over the wrong entity—Cape plc, instead of CIHL, neither of which has any property in South Carolina that could be subject to a receivership in the first place.

(d) The appointment in *Park* was made over an entity that was never served with an operative pleading in *Park* and, accordingly, has no default or default judgment.

(e) The appointment in *Park*, issued without a hearing, failed to make any factual findings that could support the appointment.

(f) The appointment in *Park* failed to identify any property in South Carolina that could be subject to a receivership.

(g) The appointment in *Park* was made without setting a bond that would extinguish the putative receivership.

(h) The putative Receiver unilaterally transported his activities from *Park* into *Tibbs*, claimed to accept service on behalf of Cape plc, and purported to file pleadings on behalf of Cape plc without any authorization to do so.

(i) The putative Receiver unilaterally sought to convert his appointment in *Park* as a putative receiver for Cape plc into an appointment in *Tibbs* as a putative receiver for CIHL, even though CIHL is not named as a defendant in *Tibbs*, has never been served with process or anything else in that case, and has never been the subject of a "receivership" motion.

(j) In *Tibbs*, the putative Receiver has attempted—in CIHL's name—to assert self-piercing third-party claims against the Altrad Appellants, the Charter Appellants, and others even though such claims are not derivative of any first-party claim.

(k) In *Tibbs*, the circuit court affirmed all of the activity listed above, yet still has never identified any property in South Carolina that could be subject to a receivership, nor did it set a bond that would extinguish the putative receivership.

Did the circuit court err by ignoring any or all of the above when allowing this putative receivership to proceed?

IDENTIFICATION OF ENTITY WHOSE ASSETS ARE THE TARGET OF PUTATIVE RECEIVERSHIP

This is a complicated case, but it is important at the outset that the Court recognize a core point that appears to be conflated throughout the proceedings below and has re-emerged in the Court's November 26, 2025 Order: ***CIHL and Cape plc are not the same entity.***

CIHL is an English company that traces its history to 1893. It formerly was involved in the mining and manufacture of asbestos, but progressively ceased those operations, beginning in the 1960s, when it essentially became a holding company. It had various corporate names through history—including "Cape plc," from 1989 to 2011—but it has been known as CIHL since 2013. (R. pp. 2776–77, *Mann I* ¶¶ 9–10 (Nov. 22, 2024).)

Cape plc is a separate entity from CIHL. Cape plc was created in 2011 in the Bailiwick of Jersey, and it was listed on the London Stock Exchange. Cape plc is the holding company of the Cape Group, of which CIHL is a part. In 2017, the share capital of Cape plc was acquired by a Altrad UK, a subsidiary of a French company (Altrad Investment Authority SAS), which is ultimately owned by a French individual (Mohed Altrad). (R. p. 2777, *id.* ¶ 11.)

CIHL was the lead defendant in the *Adams* case, which was the subject of the first two issues on which the Court requested further briefing in its November 26th Order. However, the November 26th Order referenced Cape plc instead of CIHL as being the subject of *Adams*. To avoid potential further confusion, the Altrad Appellants provide this explicit distinction between these two foreign companies at the outset of this brief to assist the Court in its review.

This distinction is critical. Cape plc was the subject of the initial order creating the receivership in dispute; in *Park*, the plaintiff named both Cape plc and CIHL as defendants, but counsel only sought a receivership involving Cape plc. In *Tibbs*, the putative Receiver himself later asked, and the court agreed, to switch the receivership to CIHL. CIHL is not a party in *Tibbs*.

SUMMARY OF ARGUMENT

The Altrad Appellants' arguments center on the legal and procedural defects that have nullified the receivership as a matter of law from its inception. Many of those arguments overlap and are strengthened by the issues identified in the Court's request to explain the preclusive effect of *Adams*. The best illustration of this point relates to personal jurisdiction.

The Receiver's argument to attach personal jurisdiction over the Altrad Appellants has been to allege that they are the "alter ego" of CIHL, and that CIHL is the "alter ego" of NAAC. But this latter allegation—the key link to this entire dispute, and a point on which South Carolina has no interest at all, as none of these entities are South Carolinians—is directly counter to *Adams*. *Adams* considered that same question in exhaustive detail and concluded that CIHL was not the alter ego of NAAC, and therefore CIHL was not present in the United States for jurisdictional purposes. As such, *Adams* precludes both a finding of personal jurisdiction and the Receiver's claims of alter ego and amalgamation. *Adams* alone is dispositive.

Likewise, this Court recently issued specific instructions regarding receiverships in *Welch* and *Tibbs*, but those rulings have been ignored below. Title 15 of the South Carolina Code expressly limits the role of a prejudgment receiver to holding and preserving discrete, identified in-state assets. A receiver is not a roving collections agent, and it is not an omnipotent corporate executive. A foreign company (like CIHL) can never be "in receivership" under South Carolina law, and this Court just reiterated in *Welch* that a receiver must stay out of a company's boardroom.

Yet, with no connection to or assets in South Carolina, CIHL does not qualify for a receivership appointment in South Carolina. As such, the circuit court's appointment order can be readily vacated and the case dismissed on these and a number of other independent grounds, ***each one fatal*** to the Receiver's case in its own right, including:

- **No Personal Jurisdiction: CIHL.** First, CIHL has no contacts with South Carolina and cannot be subject to personal jurisdiction here, as confirmed decades ago by *Adams*. Second, it was never served with process in *Park* or *Tibbs*, and it is not even identified as a defendant in *Tibbs*. In short, the putative Receiver's litigation efforts all involve an active English company that is not even before the Court.

- ***Adams* Controls.** *Adams* estops the putative Receiver from attempting to create liability for CIHL where *Adams* conclusively precluded it. CIHL was a party to *Adams*, presented its case to the English court, and carried the day. There is no basis in law for a state court with no connection to CIHL to allow a receiver—in CIHL's name—to take a position contrary to that on which CIHL previously prevailed in *Adams*.

- **Claims Resolved.** The "claims" the putative Receiver filed against the Altrad Appellants have already been released and resolved by CIHL's actual board, the only entity that can lawfully speak for CIHL. A court of competent jurisdiction has recognized that release as proper under English law, which is the law that governs CIHL. There is nothing left to do here but effectuate the will of the CIHL "boardroom" and dismiss the Altrad Appellants from a nonexistent case.

- **No Personal Jurisdiction: Altrad Appellants.** There is likewise nothing in the record to support any finding of personal jurisdiction regarding the Altrad Appellants, who are all foreign to this State. The only thing the putative Receiver has ever said on the point is his allegation the Altrad Appellants—who indirectly purchased an ownership stake in CIHL in 2017—are somehow CIHL's "alter ego." Foreign entities cannot be subject to personal jurisdiction in South Carolina because they are supposedly the "alter ego" of a different foreign entity that itself is not subject to jurisdiction here.

- **State Receivership Law Ignored.** Receivership laws are strictly construed and must be meticulously followed, given the drastic remedy of a receivership. But this case violates practically every legal principle associated with receiverships in South Carolina, as well as federal constitutional safeguards that ensure states do not reach beyond their jurisdictional boundaries.

STATEMENT OF THE CASE

This appeal involves the invalidity of a putative receivership appointment arising from the Asbestos Docket. It is one of over two-dozen receiverships that have emerged from that docket, but this case stands alone in its departure from the Rule of Law. The putative Receiver's goal has been unapologetically clear: to manufacture liability against CIHL and its shareholders where none lawfully exists in order to create an artificial payment flow to unknown plaintiffs, with the putative Receiver assigning himself a massive share of those proceeds.

This litigation has an extensive history, as the Court is aware. The order giving rise to this appeal was entered on October 13, 2025 (R. p. 1), following this Court's remand on June 26, 2025. That remand contained specific instructions for the circuit court to follow in all receiverships pending in the Asbestos Docket—instructions that have largely been disregarded, as the circuit court has stated its belief that this Court "is not completely aware of how receiverships are used in South Carolina." (R. p. 1737; Hr'g Tr. 17:21–25 (July 22, 2025) (remarks of Judge Toal).)

To understand how the case got to that point, though, it is important to understand the basic structure of this entire situation. The following axioms emerge from the full history of this matter:

- **CIHL is not present in the United States.** Whether CIHL was present in the United States through NAAC—a now-dissolved Illinois entity that served as a wholly-owned marketing subsidiary for CIHL—was the subject of extensive adversarial proceedings in England. In 1990, the Court of Appeal in England held that CIHL was not present in the United States such that personal jurisdiction could attach to it and render enforceable a default judgment rendered by a federal court in Texas. (R. p. 2703, *Adams* at 547.)

- ***Park* is the fountainhead for this putative receivership.** The origin of this putative receivership traces to the *Park* case, but everything associated with the initial appointment was done without jurisdiction: no plaintiff, no defendant, no active case, no property, no judgment, nothing at all. The entire receivership is a nullity.

- **The putative Receiver jumped from *Park* to *Tibbs* and from Cape plc to CIHL.** Though the origin of this matter is in *Park*, the order on appeal was entered in *Tibbs*. But no plaintiff in *Tibbs* ever sought a receivership. Instead, the putative Receiver unilaterally claimed to accept service of process in *Tibbs* on behalf of Cape plc; morphed his appointment into one involving CIHL, which is not even a defendant in *Tibbs*; and asserted "third-party" claims in CIHL's name in *Tibbs*.

- **The putative Receiver is attempting to manufacture liability against CIHL in *Tibbs* by ignoring *Adams* and CIHL's express instructions.** An obvious scheme has appeared: the putative Receiver is attempting to create liability for CIHL (without authority or consent of CIHL's actual board) by admitting liability in South Carolina on CIHL's behalf; and then seeking to spread that otherwise-nonexistent liability to scores of foreign companies (and a foreign individual, Mr. Altrad) if they don't pay him "billions" of dollars, of which he will take a percentage and then provide the rest to anyone who comes to South Carolina claiming liability against CIHL. *Adams*, though, makes clear that such liability never existed in the first place, and CIHL's directors have released these claims and instructed the putative Receiver to cease.

The details supporting each of these axioms are below and are presented in the order of the relevant cases: *Adams*, *Park*, and *Tibbs*.

I. *Adams*: CIHL is an active English company that has no presence in the United States.

As described above, CIHL is an English company that began in 1893. It was previously involved in asbestos business and eventually became a holding company for subsidiaries that handled the mining, manufacturing, and sale of asbestos. (R. p. 2777, *Mann I* ¶ 10.) Within the same family of companies was Egnep Pty Ltd., a subsidiary of CIHL that was the "principal asbestos mining company in the group." (R. p. 2776, *id.* ¶ 9.) Some of Egnep's asbestos was sold into the United States through an Illinois company called North American Asbestos Corporation ("NAAC"), which was a wholly owned subsidiary of CIHL. (R. pp. 2777–78, *id.* ¶ 12.)

Beginning in the 1970s, NAAC became a defendant to product liability claims in the United States. After settling scores of claims, its insurance eventually exhausted, and NAAC dissolved in 1978. (R. p. 2778, *id.* ¶ 13.)

With NAAC having no resources left to pay claims, American claimants began suing CIHL directly in the United States, arguing that CIHL was subject to personal jurisdiction in American courts by virtue of its contacts with NAAC, as CIHL had no assets in the United States other than its shares in NAAC. (R. p. 2605, *Adams* at 449 (part of trial decision).)

In 1983, a federal judge in Texas entered a default judgment in excess of $15 million against CIHL on behalf of 206 American plaintiffs. (R. p. 2661, *Adams* at 505.) The United States government then funded the American plaintiffs' efforts to enforce their judgment against CIHL in England. (R. p. 2665, *Adams* at 509.) The English courts—after trial and appellate proceedings totaling ***over 50 days*** of in-court presentations, witness examinations, and arguments—

unanimously held that CIHL was not present in the United States for purposes of subjecting itself to jurisdiction in American courts, rendering the judgment unenforceable.

The American plaintiffs asserted three arguments to establish CIHL's presence in the United States sufficient for personal jurisdiction to attach, each of which was rooted in CIHL's relationship with NAAC: (1) NAAC was merely CIHL's agent; (2) NAAC and CIHL constituted a "single economic unit"; and (3) CIHL so thoroughly controlled NAAC that NAAC's corporate veil should be pierced, and NAAC's presence in the United States should be considered that of CIHL. (R. pp. 2687–88, *Adams* at 531–32.)

The English courts, both at trial and on appeal, issued lengthy rulings that rejected these arguments as a matter of fact and law. At the trial level, Justice Scott issued a 61-page decision detailing his rejection of these arguments. (R. pp. 2597–2658.) The Court of Appeal affirmed that judgment in a 69-page judgment. (R. pp. 2659–2728.). The Court of Appeal added a 40-page Appendix that rebutted in incredibly specific terms the numerous fact-based arguments that the American plaintiffs presented in support of their various theories—which mirror the arguments asserted by the putative Receiver here—designed to create personal jurisdiction in the United States over CIHL. (R. pp. 2729–2768.)

After careful, critical examination through a heavily-adversarial process (financed on the plaintiffs' side by the United States government), the courts recognized that NAAC maintained its own corporate identity; that all corporate formalities had been observed to maintain corporate separateness; that NAAC was the direct purchaser of asbestos from Egnep, not from CIHL; that NAAC had no authority to bind CIHL to any contractual obligation; and that NAAC ran its own business and managed its own staff and internal affairs, including managing its office and warehouses, its own insurance, its own pension, its own accounts, its own borrowing and spending,

and its own taxes. The courts reiterated the facts (including citations to specific testimony and exhibits) supporting these conclusions throughout their opinions and the Appendix.

The Court of Appeal summarized the only conclusion to be drawn from the evidence:

> Having regard to the legal principles stated earlier in this judgment, and looking at the facts of the case overall, our conclusion is that the judge was right to hold that the business carried on by NAAC was exclusively its own business, not the business of Cape [*i.e.*, CIHL] or Capasco, and that Cape [*i.e.*, CIHL] and Capasco were not present within the United States of America through NAAC at any material time.

(R. p. 2703, *Adams* at 547.)

Accordingly, the default judgment issued by the Texas federal court was not enforceable against CIHL for want of jurisdiction. That was established in 1988 at the trial level; affirmed in 1990 at the appellate level; remained true when the Altrad Appellants acquired CIHL in ***2017***; and remains true today.

* * * * *

The putative Receiver's aim is to have a South Carolina trial court avoid the considered judgment of the English courts decades ago on questions controlled by English law regarding an English company's activities after those courts reviewed evidence presented by witnesses with personal knowledge. The South Carolina proceedings take part across two cases: *Park* and *Tibbs*.

II. *Park*: The putative receivership is created, but only after *Park* was "fully resolved" and had no plaintiff, no defendant, no claims, no in-state property, and no judgments—in other words, no jurisdiction.

Pleadings

Park is the fountainhead from which the proceedings before this Court flow. It was commenced on June 4, 2021, by the filing of a summons and complaint in the Asbestos Docket. The original plaintiff was Isabella Park. Though "Cape plc" appeared in the caption, no "Cape" entity was actually sued in that pleading. (R. p. 2210, *Park* Compl.)

Ms. Park passed away on June 9, 2021. On June 21, 2021, her son Keith Park filed a petition with the Spartanburg County Probate Court to open her estate and have himself appointed as the personal representative. In that application, he answered, apparently incorrectly, "NO" to the following two questions: "11(c): Are you seeking appointment as Personal Representative in order to pursue civil litigation on behalf of the Decedent's estate?" and "11(d): At the time of Decedent's death, was he or she involved in any pending civil litigation?" (R. p. 2389, Probate Application.)

On August 4, 2021, the Probate Court granted the request and appointed Keith Park as the personal representative of Ms. Park's estate. (R. p. 2404, Fiduciary Letters.)

On November 17, 2021, Mr. Park filed a First Amended Complaint in the *Park* tort case. That was the first pleading to assert claims against any "Cape" entity. It identified two new defendants: (i) CIHL, and (ii) Cape plc. (R. p. 638, *Park* First Am. Compl. ¶¶ 26–27.) These are two different companies, the complaint identified them as such.

On December 13, 2021, Mr. Park filed a petition with the circuit court to approve wrongful death and survival settlements. The court approved that petition on December 22, 2021.

While the motion to approve a settlement was pending, Mr. Park moved to amend the complaint again, which the circuit court granted on December 23, 2021. That same day, Mr. Park filed a Second Amended Complaint. Like the First Amended Complaint, the Second Amended Complaint identified both CIHL and Cape plc as separate defendants. (R. p. 708, *Park* Second Am. Compl. ¶¶ 26–27.)

No Record of Valid Service on Any Cape Entity in *Park*

There is no proof in the record that any of these pleadings—the initial Complaint, the First Amended Complaint, or the Second Amended Complaint—was lawfully served on either CIHL or Cape plc. In August 2023, counsel for Mr. Park has filed an "affirmation" from an English

solicitor, Andrew Morgan, but he makes no mention of ever even attempting to serve any complaint, as required by Rules 4 and 4.1, SCRCP, and as was the plaintiffs' burden to prove.

In his statement, Mr. Morgan testified only: "On 14 December 2021, I did serve copies of the ***First Amended Summons*** in this matter on Cape PLC and Cape Intermediate Holdings Limited at the aforementioned registered address and I did so by Royal Mail First Class post." (R. p. 444, Affirmation of Morgan ¶ 6 (emphasis added).) He attached copies of his letters to CHIL and Cape plc, both of which state: "We enclose herewith by way of service the ***First Amended Summons*** in this matter which is proceeding in the Court of Common Pleas for the Fifth Judicial Circuit in the County of Richland in the State of South Carolina, one of the United States of America, with C/A No. 2021-CP-40-02727." (R. pp. 447–48, Mr. Morgan's Cover Letters (emphasis added).) Those letters identify the only enclosure as: "***First Amended Summons***." (*Id.* (emphasis added).) No mention of service of ***any complaint*** anywhere.

Mr. Morgan also attached photographs of his mailings, which show that they required only £1 of postage, not a postage sum needed to mail a packet of at least seventy pages of a pleading and accompanying materials. (R. pp. 454–55.)

And, as noted above, just nine days after Mr. Morgan mailed a "First Amended Summons" to these foreign entities, Mr. Park filed the Second Amended Complaint on December 23, 2021. That filing mooted his First Amended Complaint as a matter of law before any response could have even been due assuming that any pleading was ever served on CIHL or Cape plc in *Park* (again, an assumption that finds no support in the record). *See, e.g.*, *Schein v. Lamar*, 284 S.C. 252, 255, 325 S.E.2d 573, 574 (Ct. App. 1985) ("Since the First Amended Complaint has been superseded by the Second Amended Complaint, it is no longer the operative pleading in the case. Thus, any questions as to the sufficiency of the First Amended Complaint are now moot.").

Trial is Scheduled, then Case is Reported as "Fully Resolved" in June 2022

The *Park* case was set to begin trial on June 20, 2022. (R. p. 769, Asbestos Trial Docketing Order (Dec. 1, 2021).) In the time leading up to trial, though, the case was mediated. Tom Wills, who routinely serves as the mediator for matters in the Asbestos Docket, mediated *Park* on May 24, 2022. (R. p. 2448, Mediation Calendar Appointment.)[2]

Mediation was successful. Less than two weeks after mediation, plaintiffs' counsel in *Park* sent an email to the circuit court, copying counsel of record who had appeared in the *Park* case. It was titled: "June Pretrial Hearing." That email stated: "By way of update, the *Park* and *Garren* cases have ***both fully resolved***. The remaining Defendants in *Wannamaker* and *Wilson* are listed below." (R. p. 2452, Email of Counsel (June 3, 2022) (emphasis added).)

Park Estate Closed and Personal Representative Appointment Terminated in August 2022

On Monday, June 6, 2022—the very first business day after counsel reported that *Park* was "fully resolved"—Mr. Park filed a notarized Application for Settlement with the Spartanburg County Probate Court. In that filing, Mr. Park attested that he had performed all acts "pertaining to Estate of Decedent" and that "[t]he time period for submission of claims has expired." He then requested that the Probate Court discharge him as personal representative for the estate. (R. p. 2435, Application for Settlement in Probate Court Case No. 2021-ES-42-01296.)

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[2] Notably, just days before mediation, the other two beneficiaries of Ms. Park's estate—Fiona Wiley and Alastair Park, Keith Park's siblings—signed "Receipt and Release" forms that affirmed: (1) each had already received "[a]ll of the property to which I am entitled" from the estate, (2) each consented to closing the estate "without the filing of an interim or final formal accounting," (3) each "waives notice of right to demand a hearing on all accountings," and (4) each "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." (R. pp. 2432–33, Releases for Co-Beneficiaries.) Nothing in the record shows that Mr. Park disclosed to his co-beneficiaries or to the Probate Court that the *Park* litigation even existed or that he received any proceeds from *Park*.

On August 26, 2022, Judge Caldwell of the Spartanburg County Probate Court granted Mr. Park's motion, held "the estate is closed," and declared "the appointment is hereby terminated." (R. p. 2436, Order Closing Estate in Probate Court Case No. 2021-ES-42-01296.) That same day, Judge Caldwell issued an order terminating Mr. Park's status as personal representative of Ms. Park's estate due to his "satisfactory completion of assigned duties." (R. p. 2438, Termination of Appointment in Probate Court Case No. 2021-ES-42-01296.)

Without a Plaintiff, Receivership Motion Filed and Granted in March 2023

On March 6, 2023—over ***nine months after*** counsel represented that the *Park* case was "fully resolved," and over ***six months after*** the Spartanburg County Probate Court terminated Mr. Park's appointment as personal representative and closed the Park estate—plaintiffs' counsel in *Park* filed a motion to appoint a receiver over Cape plc. (R. p. 462, Motion to Appoint Receiver (Mar. 6, 2023).) That filing made ***no mention of CIHL.*** (R. pp. 462–70.)

Just 11 days after the motion was filed, and without holding a hearing, the circuit court granted the motion. In the order, the circuit court stated that Cape plc has "dissolved" (which is not true), "has forfeited its charter" (which is not true), and "has further failed to answer this case" (which was impossible, having never been lawfully served in the first place)," therefore, Plaintiffs' request for an expedited ruling on this motion is appropriate." (R. p. 780, *Park* Order Appointing Receiver at 1 (Mar. 17, 2023).) These statements are not true.

The order granting counsel's motion to appoint a receiver in *Park* did not identify any specific property in dispute that could be subject to the putative receivership, nor did it set a statutorily-required bond that would have allowed the appointment to be dissolved. While it specifically limited the scope of the putative Receiver's authority to "this case"—that is, *Park*—the remainder of the order essentially turned Cape plc's entire business over to the putative

Receiver, purportedly giving him "the power and authority to fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be." (*Id.*) The order also purported to give the Receiver power to "collect all accounts receivable of Respondent and all rents due," to "endorse and cash all checks and negotiable instruments payable to Respondent," and even to "sell any real property" it owns, all without regard to where these assets are located—as none of it is in South Carolina. (*Id.*)[3]

All told, the order on which the putative receivership is based was entered in a case with no plaintiff, no defendant, no in-state property, and no live claims—in short, nothing that could possibly have given the circuit court jurisdiction to enter the order. The original appointment is, therefore, a nullity.

No Cape Entity in Default in *Park*

There is no entry of default, request for any entry of default, default judgment, or motion for default judgment against CIHL or Cape plc. Plaintiffs' counsel represented to the circuit court that the June 3, 2022 email that reported "the *Park* and *Garren* cases have both fully resolved" actually meant that *Park* was:

> fully resolved but we had a tolling agreement with the receiver and that Cape was up for trial and the underlying *Park* case had many defendants in it had been up for trial and we had resolved with everybody but Cape and the receiver had not finished doing his work so we didn't want to go get any kind of judgment that couldn't be collected.

(R. pp. 1870–71, Hr'g Tr. 150:6–151:7 (July 22, 2025) (statements of Ms. McVey, cleaned up).)[4]

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[3] To be sure, the *Park* order reads as if it was appointing a custodian to run the daily affairs of Cape plc, rather than a receiver of its (nonexistent) domestic assets. Of course, one state cannot reach outside of its jurisdictional borders to control the affairs of a foreign company; such overreach would violate, at least, the Commerce Clause and Due Process. Accordingly, South Carolina law specifically prohibits a court from appointing a custodian over foreign companies. S.C. Code Ann. §§ 33-14-320(a) & (c)(2).

[4] This answer is, at best, puzzling. Counsel reported that *Park* was "fully resolved" in June 2022. How could she have been referencing interactions with the putative Receiver (who wasn't appointed until March 2023), and a purported "tolling agreement" (that wasn't executed until June 2023) in that email from June 2022?

III. *Tibbs*: In the face of a host of incurable jurisdictional defects, the putative Receiver is unilaterally attacking *Adams*, and he is claiming to do so in CIHL's name even though *Adams* fully protects CIHL from the very liability to which the putative Receiver is trying to expose it.

Though entered without jurisdiction, the *Park* order instructed the putative Receiver "to protect the interests of Cape whatever they may be." (R. p. 780, *Park* Order Appointing Receiver at 1 (Mar. 17, 2023).) The putative Receiver, however, is doing precisely the opposite.

Shortly after he was appointed, the putative Receiver entered into a so-called "tolling agreement" with the plaintiffs' lawyers responsible for each of his two-dozen Asbestos Docket receivership appointments—not potential claimants, but the law firm itself—through which the putative Receiver agreed to suspend the limitations period for claims against Cape plc so that he and counsel could privately pay claims outside of public view. (R. p. 2457, Tolling Agreement.)

And despite his authority being limited only to engaging in activity in "this case"—that is, *Park*—the putative Receiver inserted himself into *Tibbs*, from which this appeal arises.

Pleadings

Tibbs was commenced on April 5, 2023, in Richland County in the Asbestos Docket. The Tibbs family are North Carolinians. (R. p. 70, *Tibbs* Compl. ¶ 21 (Apr. 5, 2023).) They are represented by the same counsel who sought the receivership appointment in *Park* months after *Park* was "fully resolved" and no longer had any plaintiff who could even request such relief.

The *Tibbs* plaintiffs named Cape plc as a defendant in the complaint. There isn't a single allegation against Cape plc beyond simply stating that it is a defendant. (R. p. 78, *id.* ¶ 41.) ***The complaint does not reference CIHL in any way.***

There is no proof of service in the Public Index regarding alleged service on Cape plc. During a July 22, 2025 hearing, plaintiffs' counsel stated that they "served the receiver as Cape in the *Tibbs* case." (R. p. 1876, Hr'g Tr. 156:23–24 (July 22, 2025) (statement of Ms. McVey).)

On June 29, 2023, the putative Receiver filed an answer, allegedly on behalf of Cape plc. The entire filing was three sentences long; it asserted no affirmative defenses, but instead incorporated the allegations of a "Third-Party Complaint." (R. p. 247, "Cape" Ans..)

The putative Receiver filed the "Third-Party Complaint" the next day. It is not derivative of any claim asserted by the Tibbs family against Cape plc, which is the only circumstance under which third-party practice is permitted under Rule 14, SCRCP. Instead, it is a standalone pleading through which the putative Receiver nakedly asserts Cape plc (or, apparently, CIHL) should be deemed liable for a "reckoning" worth "billions" of dollars of past, present, and even future damages within the United States because of its relationship with NAAC—the very issue resolved in *Adams* decades earlier. (R. p. 258, Third-Party Compl. at 10.) He then alleged that these "billions" of dollars of liability should flow through from Cape plc to the various third-party defendants—including the Altrad Appellants and the Charter Appellants—through theories of "alter ego" and "veil piercing." (R. pp. 307–11, *id.* ¶¶ 125–141.)

The putative Receiver essentially argued, and continues to maintain, that a South Carolina trial court should revive NAAC's nonexistent liability, then impute that nonexistent liability to a foreign company with no contacts with South Carolina, and then further transfer that nonexistent liability to other foreign companies that never had any historic involvement or ownership interest in Cape plc (or, apparently, CIHL). The putative Receiver's proposed solution: the foreign third-party defendants should be "paying the Receiver" those "billions" of dollars. (R. p. 307, *id.* ¶ 129.)

Responses to the Third-Party Complaint

The Altrad Appellants (and all other third-party defendants who appeared in the case) moved to dismiss for lack of personal jurisdiction, as not a single third-party defendant is a South Carolina entity. (R. p. 316, Mr. Altrad Mot. to Dismiss for Lack of Personal Jurisdiction; R. p.

336, Altrad Investment Authority Mot. to Dismiss for Lack of Personal Jurisdiction.) Conditioned on their respective personal jurisdiction arguments, the Altrad Appellants (and all other third-party defendants who appeared) also moved to dissolve the putative receivership, as it is a nullity and has been from the outset. (R. p. 411, Altrad Defendants' Mot. to Dissolve.)

The circuit court denied those motions through an order entered December 6, 2023, stating that generic allegations of "alter ego" were enough for personal jurisdiction to attach, and modifying the putative Receiver to establish jurisdiction and maintain his claims. (R. p. 1104, Order (Dec. 6, 2023).) Every third-party defendant who appeared appealed that order.

Initial Appellate Proceedings

Because that order continued and modified an existing receivership appointment, the Altrad Appellants appealed it on December 18, 2023, in Appellate Case No. 2023-002006. S.C. Code Ann. § 14-3-330(4). They filed an initial brief (arguing *inter alia* that the circuit court lacked personal jurisdiction over them) and designation of matter on February 22, 2024.The putative Receiver responded on April 16, 2024, with a motion to dismiss the appeal—specifically asking the appellate court not to consider the personal jurisdiction question. (R. pp. 1493–94.)

The Court of Appeals granted the motion and dismissed that appeal. While that matter was pending before the appellate courts, the circuit court entered a series of additional orders that attempted to modify the respective rights of the parties despite having no jurisdiction to do so—the putative receivership arising from *Park* was void as a matter of law at the moment it was created, the circuit court has no personal jurisdiction over the Altrad Appellants or any of the strictly-foreign issues presented in the Third Party Complaint, and the circuit court lacked jurisdiction to proceed with anything involving the putative receivership while the very legitimacy of the receivership was pending on appeal pursuant to Appellate Court Rule 205.

The Altrad Appellants (and others) appealed every subsequent adverse order that met the appealability criteria under South Carolina Code § 14-3-330, as the risk of waiver associated with not appealing an immediately-appealable ruling could be devastating in the extreme circumstances of this case. Those orders included: the refusal to enjoin proceedings below pursuant to Appellate Court Rule 205, a contempt order striking part of the Altrad Appellants' answer resulting from their adherence to a then-pending appeal and refusal to waive the protections of Rule 205, and two orders setting a bench trial on claims for money damages.

The Court of Appeals dismissed those appeals, often without explanation, and the Altrad Appellants (and others) timely sought this Court's certiorari review over each of these orders.

English Proceedings: *Mann I*

The putative Receiver's increasingly-aggressive posturing and litigation tactics being taken in Cape plc's name (or, seemingly, in CIHL's name, even though it is not a party to *Tibbs*) prompted these European companies to hire counsel—Winston & Strawn. In August 2024, they instructed the putative Receiver through counsel to cease purporting to speak on their behalf. (R. p. 2488, Correspondence from CIHL Counsel.) In response, the putative Receiver (in Cape plc's name, no less) sued Winston & Strawn in South Carolina state court, even though that firm does not maintain a presence in this state. (R. p. 2461, Compl. in Case No. 2024-CP-40-05397.)

In September 2024, CIHL commenced proceedings against the putative Receiver in the High Court of Justice for the Business and Property Court of England and Wales. *CIHL v. Protopapas* [2024] EWHC 2999 ("*Mann I*") (R. p. 2769.) Through that case, CIHL attempted to put an immediate end to the putative Receiver's efforts to wreak havoc on the company by claiming to speak on its behalf, and on behalf of the company's board, while trying to expose CIHL to liability in the United States that had been expressly rejected by *Adams* decades earlier.

CIHL rightly sought the assistance of an English court to assess whether the putative receiver had authority to speak on CIHL's behalf while trying to create liability against CIHL. The English High Court had, and still has, jurisdiction over (a) CIHL, which is an English company; (b) Mr. Protopapas, who is holding himself out to the world as if he is the manifestation of CIHL, who purports to be entering contracts in CIHL's name, and who was lawfully served with process in the English proceedings but chose not to participate, instead writing letters to CIHL's counsel outlining his positions on the merits; and (c) the internal corporate dealings of CIHL.

Justice Mann held three days of proceedings, during which he exhaustively questioned counsel and considered the totality of materials filed with the circuit court, correspondence from the putative Receiver to CIHL's counsel outlining the putative Receiver's position, and an expert opinion submitted by former Chief Judge Wilkins. Following that review, Justice Mann produced a 73-page judgment, which carefully examined and challenged every aspect of this situation, including the international law implication of this case.

In that judgment, it is unmistakable that Justice Mann was at pains to show the highest judicial respect to the South Carolina Judiciary and the mutual need for comity between these jurisdictions. In this regard, he stated expressly that he was not seeking to act as an appellate court, but rather that the basis of his judgment was that as a matter of international law, the English court is the appropriate jurisdiction to deal with questions concerning the governance of CIHL, an English company. In this instance, he concluded that it was for the directors of CIHL (which is not insolvent and where there are no judgments against it) to manage the company in accordance with their legal duties and to make decisions in its name.

The central points of *Mann I* are:

(1) At no point in time did CIHL have any actual presence in the United States, including South Carolina. Nor does it have assets in the United States or South Carolina.

(2) That NAAC (incorporated in Illinois) did not make contracts for and on behalf of CIHL in the United States, and that the relationship between NAAC and CIHL did not give rise to the presence of CIHL in the United States—as the High Court and Court of Appeal found on the facts in *Adams*. The arguments as to alter ego, piercing the corporate veil or single economic unit were dismissed on the facts. The English appellate court produced a 40-page Appendix, which involved a thorough consideration of the facts in question.

(3) Justice Mann concluded that the High Court and Court of Appeal effectively covered the same ground as the claims now sought to be made in South Carolina in the "third-party complaint" and that the allegations made in that pleading were exactly contrary to the findings of the English courts.

(4) He found that it was hard to see how a Receiver charged with protecting the interests of CIHL could serve a pleading in *Tibbs* that all but conceded liability, responsibility, and presence.

(5) He concluded that a matter of private international law, CIHL did not have a presence in South Carolina (or anywhere in the United States) at the time which was relevant in *Adams*, and it has not had one since. Nothing alleged in any of the court documents relating to the receivership demonstrated a change in facts between then and now.

(6) He held that the problems created by the receivership were real, their consequences serious, and that the board was justified in being concerned about them and in wanting to have them removed.

(7) He determined that the putative Receiver, in choosing to initiate and pursue the "Third Party Complaint," was committing a tort under English law against CIHL. The Receiver had acted without the consent of the legitimately appointed board of CIHL and is potentially and unjustifiably damaging the legitimate interests of CIHL.

Justice Mann concluded that, while fully respecting issues of comity, and intending no disrespect to the jurisdiction of South Carolina, the strength of the connection of the English jurisdiction and the need to protect that jurisdiction both required and justified the declaratory orders and injunctions set forth in *Mann I*.

Mann I was issued on November 22, 2024. Earlier that same month, the putative Receiver engaged in a new round of *ultra vires* activity that forced the English court to restrain further conduct. First, the putative Receiver filed a motion for summary judgment with the circuit court regarding his "alter ego" theory that was expressly designed to undercut *Adams*. (R. p. 1556, Mot.

for Summ. J. (Nov. 8, 2024).) He sought privileged materials from the Herbert Smith Freehills, LLP law firm: "client files" regarding its prior representation of CIHL. (R. p. 1522, Mot. to Compel. (Nov. 18, 2024).) And he began holding himself out to the public as the "attorney for" Cape plc, including claiming to accept service on behalf of the company just four hours after a new lawsuit was filed in the Asbestos Docket. (R. p. 2588, Acceptance of Service in Case No. 2024-CP-40-06639 (Nov. 12, 2024).)

The Putative Receiver's Motion to Strike and this Court's Initial Response to *Mann I*

The Altrad Appellants provided this Court with notice of *Mann I* on November 24, 2024. Almost immediately, the putative Receiver moved to strike it from the record and claimed that the English court was threatening to put him, his counsel, and "members of the Federal and State Bench" in prison. (Mot. to Strike *Mann I* in Appellate Case No. 2024-001499 *et al.*, at 6 (Dec. 6, 2024).) This hyperbole was obviously not true and was, apparently, based on nothing more than boilerplate language on the cover page accompanying the English court's order.

Nevertheless, this Court issued an order on January 16, 2025, indicating its perception that *Mann I* interfered with a matter that is "properly pending in the courts of South Carolina," which "this Court will hear during its February [2025] term of court and resolve after oral argument." (R. p. 1641, Order (S.C. Jan. 16, 2025).)

Respectfully, the January 16th Order appears to have been issued before the Court could be provided a full picture of this situation's background and context. This case was not on the February 2025 docket; at that point, it was still in the "certiorari pending" stage of the appellate process.

French Courts Affirm *Mann I*

As reiterated in this brief and their myriad filings before this Court and others, the Altrad Appellants are French—a French company, and a French individual. Accordingly, they presented *Mann I* to a court in France for exequatur proceedings, which that court granted on April 8, 2025. (R. p. 2923, *Cape plc v. Protopapas*, Case DBYB-W-B7J-PM3N, at 7 (Montpellier Court of Appeal Apr. 8, 2025).) The Montpellier Court of Appeal independently examined and concluded the English High Court had jurisdiction to render its decision, that *Mann I* did not violate any norm of international public policy, and that there was no fraud involved in those proceedings. *Mann I*—and, by extension, *Adams*—is therefore the law governing the Altrad Appellants.

CIHL and Altrad Appellants Enter Mutual Release that Extinguishes All Claims Against Altrad Appellants in this Case

Also in April 2025, with *Mann I* confirming that CIHL's actual executives—rather than the putative Receiver—had authority to speak on behalf of the company, CIHL and the Altrad Appellants (among other entities, none of whom have any connection South Carolina) entered into a mutual release of all claims that have been or could have arisen from the allegations of the Third Party Complaint. (R. p. 2976, Agreement for Full and Final Settlement and Release of Claims.)

***Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (May 21, 2025)**

The following month became a pivot point in this dispute and, indeed, to the entire receivership scheme dwelling within the Asbestos Docket.

On May 21, 2025, this Court issued its opinion in *Welch*, where it reversed the circuit court's receivership appointment order over a different active, foreign company on several points and provided instruction regarding key points of law, including: (1) a receivership appointment order cannot authorize a receiver to conduct work other than to collect assets needed to pay the specific claim of the plaintiff who actually sought the receivership appointment; (2) an

appointment cannot authorize a receiver to engage in "boardroom" or "business activities" of the company that was the target of that receivership; (3) a receivership appointment must contain the statutorily-required bond; and (4) a receivership appointment remains "an extraordinary remedy reserved for the most extraordinary cases." *Id.* at 667–68, 916 S.E.2d at 334–35. The putative Receiver was a party to *Welch*, but he did not ask the Court to rehear any part of its decision, including the above-listed points of law on which this Court reversed the circuit court.

Welch also discussed the receivership at issue in this case. It described *Mann I* as "shocking to American eyes," and disregarded it as "an empty noise." *Id.* at 665–66, 916 S.E.2d at 333–34. But the Court only assigned those pejorative labels to *Mann I* after describing CIHL as a "defaulting company" that has "shun[ned] the civil process of South Carolina's courts to the point of being declared in default and then fight the enforceability of the default judgment on what it perceives to be friendlier soil." *Id.*

Like the January 16th Order, comments in *Welch* appeared to have been made before the procedural context of *Mann I* came into sharper focus. The Court's remarks about CIHL were simply incorrect; not only was CIHL never a "defaulting party," it had not been served with lawful process in *Park* that could have compelled any responsive pleading, nor has it ever been a party in *Tibbs*.

Accordingly, the Altrad Appellants alerted the Court to these misstatements in *Welch* via a Notice of Supplemental Authority filed on June 4, 2025. That notice also pointed out that the original *Park* appointment gave this putative Receiver precisely the broad authority forbidden by *Welch* (and the South Carolina receivership statute and the U.S. Constitution).

***Tibbs v. 3M Co.*, Appellate Case Nos. 2024-001423 *et al.* (S.C. June 26, 2025)**

The propriety of the receivership had been pending on appeal since December 18, 2023. On June 26, 2025, the Court issued an order granting common law certiorari review of the initial appeals filed by the Altrad Appellants and the Charter Appellants, and it remanded this matter with specific instructions that applied broadly across all receiverships within the Asbestos Docket.

First, it ordered the circuit court to "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." (R. p. 1646, *id.* ¶ (A)(1).) This instruction derives from a point on which *Welch* reversed the circuit court.

Second, it ordered the circuit court to "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***. To the extent the circuit court intends to authorize the work of a receiver based on facts not found sufficient in *Welch*, or to authorize a scope of work not approved in *Welch*, the circuit court should make specific findings of fact and conclusions of law the circuit court finds justify its action." (*Id.* ¶¶ (A)(2)–(3) (emphasis added).) This instruction is also based on one of the points on which *Welch* reversed the circuit court.

Third, the Court acknowledged the practice within the Asbestos Docket of motions filed by defendants "in this case and other asbestos cases that have not been ruled on by the circuit court," and it specifically flagged two motions filed by the Troutman Pepper Locke law firm—yet another law firm that the putative Receiver has sued in the context of this dispute, this time via another "third-party complaint" in the *Park* case—aimed at dissolving this specific receivership:

one filed on September 15, 2023, and another filed on November 15, 2024. (*Id.* ¶ (B).)[5] The Court ordered the circuit court to "either rule on all pending motions or set forth an explanation of the reasons the court determines it should not rule at this time." (*Id.*)

Fourth, the Court ordered the circuit court to provide a report every 30 days regarding "its progress" on complying with this Court's instructions. (*Id.* ¶ (C).)

Proceedings Following Remand

In their first filing with the circuit court following remand, the Altrad Appellants cited *Welch* and *Tibbs* and explained that everything that had happened to date involving this putative receivership was a legal nullity, that the circuit court lacks jurisdiction (including personal jurisdiction over the Altrad Appellants, CIHL, and Cape plc), and that *Welch* and *Tibbs* foreclose exactly the conduct in which the putative Receiver has engaged. The other third-party defendants made similar arguments in reliance on this Court's rulings in *Welch* and *Tibbs*.

For his part, the putative Receiver conceded, as he must, at the first hearing after remand that the initial *Park* appointment order does not comply with *Welch* and *Tibbs*. (R. p. 1774, Hr'g Tr. 54:21–23 (July 22, 2025) (statement of counsel for the putative Receiver).) Yet, he also filed a motion that essentially asked the circuit court to ignore those decisions and to convert his

[5] Promptly after remand, the Receiver dismissed his "third-party complaint" against Troutman Pepper Locke to avoid any further judicial scrutiny over the circuit court's practice of ignoring certain motions. To be clear, that matter was not settled; it was outright dismissed. And, though the Court instructed the circuit court to either rule on all pending motions or explain why it won't, long-pending motions remain below. To counsel's awareness, examples of such unruled-on motions date back to at least a pre-pandemic Rule 59 motion to reconsider a contempt order that was filed on ***January 17, 2020***, in several matters arising out of the Covil receivership, including Case Nos. 2015-CP-46-02155, 2015-CP-46-03456, 2019-CP-40-00076, 2018-CP-40-04680, and 2018-CP-40-04940. The consequences of that contempt order were severe, yet they have gone unreviewed on appeal because the Rule 59 motion has been pending for ***nearly six years***.

appointment to one over CIHL and not Cape plc. The putative Receiver, without explanation, also dismissed the mutual release signed between CIHL and the Altrad Appellants as a sham agreement.

For its part, the circuit court has expressed its belief that, based on its rulings in *Welch* and *Tibbs*, this Court must not be "completely aware of how receiverships are used in South Carolina." (*See* R. p. 1737, Hr'g Tr. 17:21–25 (July 22, 2025) ("I also think that it [*Welch*] and the *Tibbs* case and its third-party receivership is the subject of all this illustrates that the [Supreme] Court is not completely aware of how receiverships are used in South Carolina.") (remarks of Judge Toal).)

Since that hearing, the circuit court has charted a course on remand that is incompatible with this Court's recent rulings, longstanding South Carolina law, the United States Constitution, international law, and this Court's express instructions in the *Tibbs* remand order.

English Proceedings: *Smith*

Because the putative Receiver refused to accept that the underlying claims had been released, the Altrad Appellants and others brought proceedings in the High Court of Justice in the Business and Property Courts of England and Wales seeking a declaration as to the validity of the mutual release. On September 30, 2025, after a two-day trial and notice to all parties, the English court—this time, through Justice Smith—issued a ruling that affirmed the validity and enforceability of the release between an English company and French entities (among others).

At its core, the English court's ruling recognizes that the Receiver's "Third-Party Complaint" runs immediately afoul of settled jurisprudence in *Adams*: "The effect of the ***factual*** decision in *Adams v. Cape* is that liability for US claims for asbestos related disease begins and ends with NAAC." (*See* R. p. 2965, *Altrad Investment Auth. SAS v. Protopapas* [2025] EWHC 2470, ¶ 84 (Ch) ("*Smith*") (emphasis in original).) Moreover, *Adams* settled expectations for so many in the United Kingdom for the last several decades. (*See* R. pp. 2947–48, *id.* ¶¶ 33–34

(describing Altrad's arm's-length acquisition of CIHL that was in reliance on the enforceability of *Adams* and the claims system based on *Adams*); R. pp. 2953–55, *id.* ¶¶ 44–49 (describing the "comprehensiveness" of the litigants' arguments and the courts' analysis in *Adams*); R. pp. 2955–56, *id.* ¶¶ 50–53 (describing the court approved claims system that is based on *Adams*).)

Smith's reasoning is consistent with *Welch*'s holding that a receiver cannot interfere with "boardroom" decisions. The actual directors of the company on whose behalf the putative Receiver purports to speak have decided to release the claims asserted in the "Third Party Complaint."

DeBeers/Oppenheimer Defendants Announce "Settlement"

Following remand, the circuit court jettisoned the bulk of this Court's instructions in *Tibbs* in favor of moving forward with a bench trial on the "Third Party Complaint"—even though the fundamental, threshold issues of jurisdiction and the myriad problems with the putative receivership remained unaddressed and uncured. Between July 22, 2025 and October 6, 2025, the circuit court held several hearings and announced an October 20, 2025 trial date, yet never issued an order complying with *Welch* and *Tibbs* that this Court specifically required in its remand order.

Facing the uncertainty of a potential trial on illusory claims brought by a putative Receiver whose appointment remained facially defective, the DeBeers/Oppenheimer Defendants announced they had reached a "settlement" with the putative Receiver during an October 6, 2025 hearing. The Altrad Appellants and Charter Appellants immediately pointed out an obvious problem: despite *Welch*'s guidance and *Tibbs*'s instructions, no order existed that would render the putative Receiver a jural entity with any ability to enter into any agreement. (R. p. 2110–12, Hr'g Tr. 24:16–26:11 (Oct. 6, 2025).) That prompted the circuit court to enter the order on appeal, and it prompted further litigation abroad.

Circuit Court Enters Order Converting Appointment to a Receivership Over CIHL

On October 13, 2025, at the putative Receiver's request, the circuit court entered the order on appeal (along with a companion order in *Park*, which it then subsequently withdrew), in which it expressly modified the receivership appointment to be over CIHL, not Cape plc. (R. p. 46, Order at 46.) But CIHL is not even a party to this case.

It is not named as a defendant.

It has never been served with process.

It has released the very claims that the putative Receiver is attempting to assert in its name.

It has not authorized the putative Receiver to do anything in its name.

It is an English company that has never conducted business or had assets in South Carolina.

No plaintiff has ever sought a receivership appointment over any CIHL property. Only the putative Receiver—whose initial appointment in *Park* was made without jurisdiction and therefore does not exist in the eyes of the law—has sought a receivership appointment over CIHL as a whole.

On October 14, 2025, the Altrad Appellants and the Charter Appellants filed and served their respective notices of appeal of this order creating a new receivership appointment over CIHL and modifying the prior appointment involving Cape plc. (R. pp. 3044–56.)

On October 19, 2025, the Altrad Appellants and the Charter Appellants also filed petitions in this Court's original jurisdiction to issue extraordinary writs to put an end to this putative receivership and improper proceedings.

On October 20, 2025—just one week after creating a receivership appointment over CIHL, and while that order was on appeal—the circuit court began the bench trial of the putative Receiver's efforts to undo the protections afforded to CIHL by *Adams*, which he is allegedly undertaking in CIHL's name.

The Altrad Appellants and the Charter Appellants responded to the proceedings at trial by resting on their longstanding objections to personal jurisdiction and the fact that everything that has happened below regarding this putative receivership is a nullity as a matter of law.

English Proceedings: *Mann II*

In *Mann I*, the English High Court specifically enjoined the putative Receiver from undertaking any activity in CIHL's name. Once the DeBeers/Oppenheimer Defendants announced a "settlement" with the putative Receiver, the English High Court addressed whether such a "settlement" would result in a contempt finding against the DeBeers/Oppenheimer Defendants.

On October 20, 2025—the first day of the bench trial—Justice Mann issued his second decision in this matter. (R. p. 2986, *CIHL v. Protopapas* [2025] EWHC 2706 (Ch) ("*Mann II*").) In it, Justice Mann weighed the plight in which the DeBeers/Oppenheimer Defendants found themselves—seeking to pay money to the putative Receiver in order to avoid a trial in South Carolina—against the extensive English law that he outlined in *Mann I*.

Justice Mann ultimately concluded the court would not hold the DeBeers/Oppenheimer Defendants in contempt of *Mann I* if they ultimately went through with a "settlement," but that any payment "is effectively making a present to the receiver, so far as English law is concerned;" and that the DeBeers/Oppenheimer Defendants would risk exposing themselves to tort damages for aiding and abetting the putative Receiver's conduct against CIHL. (R. pp. 2996, 3003, *id.* ¶¶ 23, 41.) Despite this outcome, Justice Mann insisted that the principles of law expressed in *Mann I* remained true and in effect, including his finding that the Receiver had no authority to bind CIHL to agreements without the consent of CIHL's board. (R. p. 3002, *id.* ¶ 40.) Put simply, Justice Mann held that the DeBeers/Oppenheimer Defendants would not be penalized with contempt for entering into a "settlement" but that his order would not release them from liability towards CIHL.

Following *Mann II*, the circuit court entered an order on October 30, 2025, approving and sealing from public scrutiny a settlement agreement between the putative Receiver and the DeBeers/Oppenheimer Defendants, instructing future claimants to bring their claims against CIHL in South Carolina, and authorizing the putative Receiver to waive service on CIHL's behalf and to resolve claims in its name. That order vastly expands the putative receivership far beyond *Welch*, *Tibbs*, and constitutional boundaries, and it is by definition a nullity because the putative Receiver does not now and has never existed as a legal entity.

This Court has now entered an order holding the petitions in the Court's original jurisdiction in abeyance and instructing the Altrad Appellants and the Charter Appellants to proceed with their appeals of the October 13, 2025 Order.

STANDARD OF REVIEW

The proper interpretation of a statute is a question of law, which this Court reviews d*e novo* and "without any deference to the court below." *Powell v. Keel*, 433 S.C. 457, 462, 860 S.E.2d 344, 346 (2021). Likewise, to the extent the Court determines that any aspect of this appeal is subject to the abuse-of-discretion standard of review, a legal error or a factual conclusion lacking evidentiary support amounts to an abuse of discretion. *Abdulla v. S. Bank*, 439 S.C. 391, 400, 887 S.E.2d 138, 143 (Ct. App. 2023).

ARGUMENT

Despite the protracted litigation that has led to this appeal, the legal issues before the Court are straightforward. Familiar principles of jurisdiction, and this Court's recent reinforcements of the tight boundaries of receivership law, provide numerous independent grounds for vacating the circuit court's order.

I. South Carolina does not have personal jurisdiction over CIHL.

The entirety of these proceedings are null as a matter of law because the circuit court has no personal jurisdiction over CIHL, an English company that has no contacts with South Carolina. An order entered without personal jurisdiction is void. *See BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006) ("A judgment is void if a court acts without personal jurisdiction.").

Personal jurisdiction is a constitutional safeguard arising under the Due Process Clause that protects litigants from courts stepping beyond their boundaries to assert authority over defendants who have no true connection to the court. It is a function of "the territorial limitations on the power of the respective States." *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 263 (2017) (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)).

A. CIHL has no contacts with or "presence" in South Carolina.

Due Process is met, and personal jurisdiction can attach, only when there are sufficient "minimum contacts with the State such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *BNSF Ry. v. Tyrrell*, 581 U.S. 402, 413 (2017) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). A court without personal jurisdiction over a defendant "does not have the 'power' to adjudicate the action" against that defendant. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 492, 611 S.E.2d 505, 508 (2005).

Personal jurisdiction takes two forms: general jurisdiction, and specific jurisdiction. General jurisdiction vests a forum with authority over a defendant for any litigation, and it attaches only when a defendant is "at home" in a forum, either through overwhelmingly systematic and continuous operations in the forum, or because the forum is a business's place of organization or its principal place of business. *BNSF*, 581 U.S. at 413. No one has ever suggested CIHL (or the Altrad Appellants) are subject to general jurisdiction in South Carolina.

Specific jurisdiction, by contrast, allows a forum to exercise authority over a defendant only for the limited purpose of the particular case. *See, e.g.*, *Coggeshall v. Reproduc. Endocrine Assocs.*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007) (explaining that "[s]pecific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum"). It can only arise when "the defendant purposefully avails itself of the privilege of conducting activities within the forum state." *Id.* The only acts that can possibly give rise to specific jurisdiction are those that are attributable to the defendant itself, not activities of a third party. *See, e.g.*, *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 261, 423 S.E.2d 128, 131 (1992) ("In addition, the defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity.").

In addition to having "minimum contacts" with the forum state, specific jurisdiction can only attach if it would be "fair" to hale the defendant into that forum. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. "Under the fairness prong, the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction of the nonresident defendants; and (4) the State's interest in exercising jurisdiction." *Id.*

There is nothing in the record below—neither in *Park* nor in *Tibbs*—that could possibly support any finding of personal jurisdiction over CIHL in South Carolina. In fact, the circuit court has never explained how it could assert personal jurisdiction over CIHL consistent with Due Process. Neither has the putative Receiver. And that's because there is no such basis for a South Carolina court to assert any authority over CIHL.

Truly, the only mention of any connection to this State in any of the circuit court's orders appears in discussions of how NAAC, a long-dissolved Illinois company, distributed asbestos, decades before the Altrad Appellants acquired CIHL. (*See, e.g.*, R. pp. 36–37, Order at 36 n.125, 37 n.127 (citing NAAC documents as proof of "Cape" connections to South Carolina).) Citing NAAC's contacts as the basis for jurisdiction over CIHL is legal error for two dispositive reasons.

First, Due Process is concerned only with the specific entity's contacts with the forum; where ***NAAC*** distributed asbestos has nothing to do with whether a South Carolina court can exercise personal jurisdiction over ***CIHL*** as a matter of U.S. constitutional law. *S. Plastics Co.*, 310 S.C. at 261, 423 S.E.2d at 131.

Second, whether CIHL itself was ever present in the United States was the exact question conclusively resolved in *Adams*. This issue was of paramount importance, as the English Court of Appeal dedicated pages 512 through 550 of its opinion to addressing both the law and facts regarding whether CIHL was "present" in the United States through its work with NAAC such that *in personam* jurisdiction could attach to CIHL in American courts.

After more than 50 days of trial and appellate proceedings, where the English courts considered in extreme detail all facts that could possibly inform this issue during heavy adversarial proceedings, the answer is "No, CIHL was not present in the United States." That is the core holding of *Adams*. In 2024, the English courts again considered the question—this time, in litigation to which the putative Receiver was a party—and again reaffirmed *Adams* as the controlling law in *Mann I*.

The theories presented and thoroughly rejected in *Adams* to connect CIHL with the United States for personal jurisdiction purposes are the exact same as those presented by the putative Receiver here: whether NAAC was merely CIHL's agent in the United States, whether NAAC and

CIHL operated as a "single economic unit," or whether CIHL used NAAC as its "alter ego" in the United States. (R. pp. 2687–2706, 2729–2768, *Adams* at 531–50 and *Adams* Appendix.) Put simply:

> Although NAAC was a subsidiary of the Cape group, it had its own business and traded on its own account, both as an intermediary for sales by Egnep and another subsidiary, and when making its own sales of asbestos. NAAC had no authority to enter into contracts on behalf of CIHL or any other company in the group. The [*Adams*] judgment itself says it is 'clear beyond argument" that NAAC was carrying on business of its own.

(R. p. 2789, *Mann I* ¶ 32(i) (citing *Adams* at 546).)

Adams controls this issue because how CIHL conducted its business and maintained corporate formalities sufficient to cabin its conduct to jurisdictions other than the United States is a question of English law. The U.S. Constitution prohibits the circuit court from trying to override a foreign company's "at home" law regarding that company's operations. *See Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, 152 F.4th 432, 447 (3d Cir. 2025) ("Thus, when it comes to control over corporate decision-making, a state has no interest in regulating the internal affairs of foreign corporations." (cleaned up)). This is the law in South Carolina as well. *See Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 649–50, 817 S.E.2d 273, 277–78 (2018) ("In South Carolina, our Legislature has made clear that this state is not authorized to regulate the organization or internal affairs of a foreign corporation even if the corporation is registered to conduct business in South Carolina, which Lake Point and Beachfront are not." (cleaned up)).

This prohibition on substituting local law for that of the company's "home" is especially applicable here, where a South Carolina court is attempting to supersede English law about an English company on the exact question addressed by multiple English courts—and is doing so in a case where that English company has never been before the South Carolina courts, and where no South Carolina plaintiff has even asked the Court to engage in this inquiry. In short, South Carolina

law has nothing to do with this inquiry because South Carolina has no interest in how an English company structured and managed its internal affairs in the 1950s, 1960s, and 1970s.

Because CIHL has no presence in the United States sufficient to vest an American court with personal jurisdiction over it—much less contacts specifically with South Carolina—the Court should vacate all activity below accordingly for lack of personal jurisdiction over CIHL.

B. The basic procedural steps to attach personal jurisdiction—naming an entity as a defendant and then serving it with process—never happened here.

Along with these constitutional requirements, personal jurisdiction cannot attach without proper service of process—including serving a summons and complaint, as required by Rules 4(g) and 4.1(c), SCRCP. Without proper service, there can be no personal jurisdiction. *BB&T*, 369 S.C. at 551, 633 S.E.2d at 503.

There is nothing in the record indicating that CIHL was served with a summons and complaint in *Park*—the case from which this putative receivership originated—and both the *Tibbs* plaintiffs and the putative Receiver concede that CIHL was never served with anything in *Tibbs* (in fact, it isn't even named as a defendant in the *Tibbs* case).

No Service of Process in *Park*. In the purported appointment order in *Tibbs*, the circuit court states without citation as follows: "In December 2021, the Park Plaintiffs served Cape Intermediate Holdings Ltd. and Cape plc with the First Amended Complaint through an English process server." (R. p. 3, Order at 3.)

This is simply not true. The only evidence regarding alleged service is on Pages 443 through 461 of the Record. The process server himself affirmed he never sent a complaint—any complaint—to CIHL. Instead, he testified that he sent only "the First Amended Summons" to CIHL. (R. p. 444, ¶ 6.) His cover letters say the same thing—"First Amended Summons"—both in the body and in the "Enclosure" line. (R. pp. 447–48.) No mention of any complaint anywhere.

Because lawful, complete service of process is an essential element of personal jurisdiction, this Court reviews the evidence *de novo* and can take its own view of the facts. *See, e.g.*, *Paschal v. Price*, 392 S.C. 128, 131–32, 708 S.E.2d 771, 773 (2011) ("Because the question presented is one of jurisdiction, this Court may take its own view of the facts upon which jurisdiction is dependent."); Jean Hoefer Toal *et al.*, *Appellate Practice in South Carolina* 276 (3d ed. 2016) ("When deciding a jurisdictional question based on facts, a reviewing court has the power and the duty to review the entire record, find the jurisdictional facts within the record, and decide the jurisdictional question in accord with the preponderance of evidence.").

Here, there is nothing at all in the record that indicates that ***any*** complaint was ever served on CIHL in *Park*. Nothing. Standing alone, the complete absence of proof of service—which the Plaintiffs have the burden of proving—means that the circuit court never acquired jurisdiction over CIHL, and the fountainhead for this entire receivership dispute has been a nullity from the outset.

Not a Defendant in *Tibbs*. Nor has CIHL been served with process in *Tibbs*; in fact, it is not even a defendant in *Tibbs*. Since it isn't even a defendant, there is no way anything can happen with CIHL in *Tibbs*, and all proceedings related to CIHL "are *coram non judice*." *See Porter v. Brown*, 149 S.C. 151, 158, 161–62, 146 S.E. 810, 812–14 (1929) (finding an order appointing a receiver mis-identified the entity to be placed in receivership and, therefore, all proceedings initiated by the receiver "must fall" because he "is not the legally appointed receiver in this case," and holding that because the "proceeding for the appointment of a Receiver was instituted without the institution of an action against the [correct] Opera Company, the Court was without authority to appoint a receiver, and all proceedings connected therewith are *coram non judice*").[6]

[6] This holding is reported in two concurring opinions in *Porter*, but four of the five justices deciding the case signed on to the above-quoted passage. "*Coram non judice*" means "'before a person, not a judge'—meaning, in effect, that the proceeding in question was not a ***judicial***

In addition to this obvious threshold point, after this Court's remand order, plaintiffs' counsel in *Tibbs* confirmed that they have never actually served CIHL with process in *Tibbs*, but instead they "served the receiver as Cape in the *Tibbs* case." (R. p. 1876, Hr'g Tr. 156:23–24 (July 22, 2025) (statement of Ms. McVey).) But the Receiver had no authority to accept service on behalf of any "Cape" entity, as (a) his appointment from *Park* is void, (b) he cannot lawfully function outside of *Park*, and (c) he cannot engage in such "boardroom" activity in any event.

Because it is not a defendant in *Tibbs* and there has never been any service of process over CIHL in *Tibbs*, there has been no personal jurisdiction over CIHL for anything arising out of this case, rendering the putative receivership in *Tibbs* and the "Third Party Complaint" a nullity.

The absence of lawful service in *Park*, the absence of lawful service in *Tibbs*, and CIHL's absence as a defendant in *Tibbs* all provide further independent grounds for the Court to vacate the proceedings below as a jurisdictional nullity.

II. The putative Receiver is precluded from seeking a ruling that is squarely contrary to *Adams*, which was based on CIHL's own representations to that court.

In addition to controlling the "presence" issue, *Adams* precludes the "Third Party Complaint." The Court has inquired as to whether the putative Receiver is estopped "from pursuing its alter ego/amalgamation theory on behalf of Cape plc [*sic*: CIHL] against Appellants." (Order at 4 (Nov. 26, 2025.) The answer is a resounding "Yes."

No treaty requires a state to enforce a judgment from an English court. Instead, the enforceability of a foreign judgment is governed by comity. *See, e.g.*, *S.C. Nat'l Bank v. Westpac*

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proceeding because lawful judicial authority was not present," and therefore anything involved in the proceeding is "void and, 'is, in legal effect, nothing.'" *Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 614–15, 815 S.E.2d 780, 782 (Ct. App. 2018) (quoting *Burnham v. Superior Court of Cal.*, 495 U.S. 604, 609 (1990), and *Turner v. Malone*, 24 S.C. 398, 401 (1886)) (emphasis in original).

Banking Corp., 678 F. Supp. 596, 598 (D.S.C. 1987) (explaining that courts in the United States apply principles of comity to determine the effect of foreign judgments (citing *Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895))). In *Hilton*, the U.S. Supreme Court explained the standards for recognizing and enforcing foreign judgments:

> [W]here there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact.

159 U.S. at 202–03.

Following these principles, courts recognize and enforce the judgments of foreign courts if (1) the foreign court had personal and subject matter jurisdiction; (2) the defendant in the foreign action had adequate notice and opportunity to be heard; (3) the judgment was not obtained by fraud; and (4) enforcement will not contravene important public policy. *SCNB*, 678 F. Supp. at 598 (citation omitted) (concluding that Australian judgment should be recognized and enforced); *see also Bluewave Boat Rentals Ltd. v. Collins*, No. 2:16-CV-01043-DCN, 2016 U.S. Dist. LEXIS 136644, at *6–10 (D.S.C. Oct. 3, 2016) (citing *Hilton*, *SCNB*, and numerous other authorities when concluding that comity likely renders a Bahamian default judgment enforceable against a South Carolina resident).

Adams readily meets the four "comity" points:

The English court undoubtedly had jurisdiction over the parties and the subject matter: American plaintiffs, financed by the United States government, sued CIHL in that forum.

CIHL not only had an opportunity to be heard, it was the victor (after over 50 days of in-court proceedings) on the question of whether NAAC was a separate corporate entity such that CIHL had no "presence" in the United States for purposes of establishing *in personam* jurisdiction.

The judgment was not obtained by fraud, and no one could reasonably suggest otherwise.

Finally, recognizing corporate separateness and limitations of liability is fully aligned with public policy of all industrialized societies, including South Carolina. *See, e.g.*, *Pertuis*, 423 S.C. at 655, 817 S.E.2d at 280 ("[W]e acknowledge that corporations are often formed for the purpose of shielding shareholders from individual liability; there is nothing remotely nefarious in doing that."); *Dawkins v. State,* 306 S.C. 391, 393, 412 S.E.2d 407, 408 (1991) (finding no violation of public policy in applying Georgia tort law that precluded plaintiff's recovery because "[t]he 'good morals or natural justice' of [South Carolina] are not violated when foreign law is applied to preclude a tort action for money damages, whether against an individual or the State, even if recovery may be had upon application of South Carolina law"); *Rauton v. Pullman Co.*, 183 S.C. 495, 507–08, 191 S.E. 416, 419 (1937) (no violation of public policy in applying Mexican law that did not allow recovery for physical pain); *see also Thornton v. Cessna Aircraft Co.*, 886 F.2d 85, 88–89 (4th Cir. 1989) (no violation of South Carolina public policy in applying Tennessee statute of repose that barred plaintiff's claim as untimely).

Courts agree that if a foreign judgment is acceptable as a matter of comity, it can have a preclusive effect on later litigation involving the same issues or claims. South Carolina follows traditional preclusion principles: "Collateral estoppel occurs when a party in a second action seeks to preclude a party from relitgating an issue which was decided in a previous action." *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). There is no mutuality requirement; instead, for collateral estoppel to attach, the issue in dispute

must have been actually litigated in the prior action, directly determined in the prior action, and necessary to support the prior ruling. *Carolina Renewal, Inc. v. S.C. DOT*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (citing *Beall v. Doe*, 281 S.C. 363, 369 n.1, 315 S.E.2d 186, 189–90 n.1 (Ct. App. 1984)). These principles control here.

Consider *Wash v. Finch*, No. 122-cv-01367, 2024 U.S. Dist. LEXIS 133173 (D.N.J. July 29, 2024), where a federal district court examined and enforced the preclusive effect in an American court of the outcome of an English case.

Wash began by outlining the same comity principles announced in *Hilton* and adopted by *SCNB*. The court explained that "if the foreign judgment was entered by a competent court, having both personal and subject-matter jurisdiction, if the judgment was brought upon due allegations and proofs, giving the parties opportunity to defend against claims, and if the judgment is entered in a clear and formal record," then "it should be held conclusive upon the merits tried in the foreign court, unless there is a special ground on which to impeach the judgment." *Id.* at *13–14 (citing *Hilton*, 159 U.S. at 141).

The court then compared this standard with the circumstances presented in that case, which are remarkably similar to those here: after a three-week bench trial before the English High Court of Justice, the presiding judge entered a 62-page opinion resolving several issues in dispute between the parties. The winning party then sought to estop its adversary from taking a contrary position on those same issues before the federal court in New Jersey, and the *Wash* court agreed that the English judgment was "'conclusive upon the merits' for purposes of applying the doctrine of collateral estoppel." *Id.* at *14. It then recited numerous "findings by the UK Court" that "must be given preclusive effect in this case." *Id.* at *16.

Wash is the norm. *See, e.g., Phillips USA, Inc. v. Allflex USA, Inc.,* 77 F.3d 354, 361 (10th Cir.1996) (Australian judgment resolved factual issues against plaintiff and barred the claim); *Sayer Techs., S.L. v. Viscofan Collagen USA Inc.*, No. CV 23-2257 (MAS) (TJB), 2025 U.S. Dist. LEXIS 103540, at *25–30 (D.N.J. May 30, 2025) (affording comity to Spanish judgment and finding Spanish judgment constituted a valid final judgment on the merits to bar party from relitigating trade secrets claims litigated previously in Spanish lawsuit); *Baylis v. Valve Corp.*, No. 2:23-CV-01653-RSM, 2025 U.S. Dist. LEXIS 213514, at *7–13 (W.D. Wash. Oct. 29, 2025) (dismissing plaintiff's copyright infringement claims on summary judgment based on principles of comity and collateral estoppel when a Finnish court had already determined plaintiff did not hold copyright in the works at issue); *Pony Express Records, Inc. v. Springsteen,* 163 F.Supp.2d 465, 473 (D.N.J. 2001) (English judgment was "conclusive as to the issues tried upon the merits therein" because it satisfied the requirements of collateral estoppel and comity).

Just as in *Wash*, there is complete overlap between the issues actually litigated and decided in *Adams*—and on which *Adams*'s outcome was based—and the putative Receiver's claims in the Third Party Complaint. The same "alter ego," "veil piercing," and "amalgamation" theories presented adversely to CIHL in the "Third Party Complaint" are precisely the issues already considered and resolved in CIHL's favor in *Adams* and reaffirmed in *Mann I*, to which the putative Receiver was a party. (R. pp. 2854–2874, Schedule of Overlap of Claims in *Adams* and *Tibbs*.)

In *Mann I*, the English High Court observed the allegations and claims of the "Third Party Complaint" are "quite contrary to the findings of the English court" in *Adams*. (R. p. 2803, *Mann I* ¶ 60.) Put differently: "The case advanced [in South Carolina] is directly contrary to the case on which CIHL succeeded in *Cape v. Adams*." (R. p. 2805, *id.* ¶ 61(c).) And the court summarized:

> At the heart of the receiver's case in his Third Party proceedings, and underpinning his appointment, is the proposition that NAAC and CPC were

> essentially to be treated as being one with CIHL for the purposes of founding liability and getting into the rest of the group. That encapsulation is flat contrary to the findings of the courts in *Adams v. Cape* when they found that they were not effectively one entity, there was no justification for piercing the corporate veil and that CIHL did not operate through NAAC or CPC. CIHL did ***not*** control NAAC in any meaningful sense, and the participation of CPC was ***not*** a ruse or a sham. The receiver (and the applicant for the receivership, who may well have been motivated and prompted by the receiver) simply ignores this and advances the opposite case.

(R. p. 2818, *id.* ¶ 90 (emphasis in original).)

What's more, judicial estoppel should attach here as well. *Adams* was the product of CIHL's express representations and presentation to the English courts. The putative Receiver now, while purporting to speak on CIHL's behalf, is seeking exactly the opposite outcome. Such an about-face is squarely blocked by judicial estoppel, which prevents a party from taking an inconsistent position in serial litigation after it successfully advanced its position and received a benefit in the prior litigation. *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 598, 748 S.E.2d 781, 788 (2013). This is especially applicable when others—like the Altrad Appellants—have rightly relied on the jurisprudence that stemmed from the previous litigation. *See New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (enforcing judicial estoppel where the failure to do so would "be to the prejudice of the party who has acquiesced in the position formerly taken by him").

There is no legitimate debate that *Adams* conclusively addressed and resolved the issues presented by the putative Receiver's Third-Party Complaint. He is therefore precluded from taking a contrary position in this case. The fact that he purports to be speaking on behalf of CIHL in his efforts to circumvent the protections that *Adams* provides CIHL underscores the need for the Court to enforce *Adams* and conclusively end this litigation.

III. CIHL itself has released the "claims" the putative Receiver is attempting to bring against the Altrad Appellants, mooting this case and rendering it nonjusticiable.

This case should further be dismissed because in April 2025—five months before the circuit court attempted to appoint the putative Receiver in *Tibbs* following remand by this Court—CIHL (through its officers) and the Altrad Appellants (through their officers) executed a mutual release to resolve the exact claims the putative Receiver is attempting to assert. (R. p. 2976, Mutual Release.) An English court—the court with jurisdiction over CIHL, an English company, and its English contract—has reviewed the agreement and found it to be proper and enforceable, and it did so in litigation in which the putative Receiver was named as a defendant and served with process, but in which he chose not to appear. (R. p. 2968, *Smith* ¶ 97.)

That mutual release extinguishes the putative Receiver's claims and renders this litigation moot. *See, e.g.*, *Star v. TI Oldfield Dev., LLC*, 962 F.3d 117, 130–33 (4th Cir. 2020) (holding that a company's board of directors controls all of its litigation decisions, including derivative suits by shareholders, and that a derivative suit was rendered moot—and the court therefore lacked subject matter jurisdiction—by the board's decision to "resolve them in the manner they saw fit"); *Ex parte Doe*, 393 S.C. 147, 152, 711 S.E.2d 892, 894–95 (2011) (dismissing as moot an appeal because the claims presented had been released).

Because the claims presented in the "third-party complaint" are moot, the circuit court lacks jurisdiction and dismissal is appropriate. *See, e.g.*, *Bailey v. S.C. State Election Comm'n*, 430 S.C. 268, 273–74, 844 S.E.2d 390, 392–93 (2020) (holding "[w]e will dismiss any case that does not present a justiciable controversy" and then dismissing a claim as moot).

IV. There is no personal jurisdiction over the Altrad Appellants.

The circuit court also lacks jurisdiction over the Altrad Appellants, a French company and a French individual with no contacts in South Carolina. (*See* R. pp. 332–35, 354–59, Affs. of

Messrs. Altrad and Alcock (explaining in tremendous detail how neither Mr. Altrad nor Altrad Investment Authority have any contacts with South Carolina).)

Despite the fact that neither Altrad Investment Authority and Mr. Altrad lack any contacts with this state, the circuit court decided that it could exercise jurisdiction over these defendants in its December 6, 2023 Order on a theory that the Altrad Appellants were the "alter ego" or "guiding spirit" of CIHL even though they indisputably had nothing to do with CIHL until 2017, decades after CIHL ceased its asbestos operations. (R. pp. 1141–50, Order (Dec. 6, 2023).) The Altrad Appellants challenged that decision immediately (R. p. 1178), briefed it to the Court of Appeals (R. pp. 1399–1412), and have zealously preserved their objections to personal jurisdiction at all times in this litigation—including to the point where they note their ongoing objection in practically all correspondence to this Court and others. They have done nothing to risk waiving their objections to personal jurisdiction.

On its face, the circuit court's ruling is legally indefensible, as it would mean that personal jurisdiction automatically exists for a parent company in every forum where a subsidiary is located. This is not the law and would be impossible to square with Due Process, which requires an examination of an entity's individual contacts with a forum. *See, e.g.*, *Fancy That! Bistro & Catering, LLC v. Sentinel Ins. Co.*, Case No. 3:20-cv-2382-BHH, 2021 U.S. Dist. LEXIS 197621, at *11–12 (D.S.C. Oct. 13, 2021) ("However, a parent company is not subject to personal jurisdiction in a particular forum merely due to its relationship with a subsidiary.").

More fundamentally: if CIHL is not subject to personal jurisdiction in South Carolina (as *Adams* holds, as explained above), the Altrad Appellants cannot have "derivative" personal jurisdiction that supposedly runs through CIHL. Because there is no personal jurisdiction over the Altrad Appellants, they should be dismissed from this case.

Nor is there any colorable argument that the Altrad Appellants have somehow waived personal jurisdiction. They have never flinched from asserting their personal-jurisdiction defenses in all filings and in-court proceedings while pointing out that what's happening below is a nullity. There has been no "defense of the case" that could possibly approach the threshold of a personal jurisdiction waiver; for example, they haven't served a single discovery request or questioned a witness at the trial. Instead, all activity has centered on the advancement of procedural, substantive, and constitutional objections to the initiation and continued prosecution of a third-party action that has been a nullity from the start, especially including the lack of personal jurisdiction. *See, e.g.*, *Wellin v. Wellin*, 427 S.C. 15, 25, 828 S.E.2d 767, 772 (Ct. App. 2019) (finding no waiver of personal jurisdiction "when Appellants continued to voice their objections" to lack of jurisdiction).

V. The putative appointment order violates virtually every norm of law regarding receiverships, including this Court's recent pronouncements in *Welch* and *Tibbs*.

The fatal defects in this matter are not limited to the absence of personal jurisdiction over CIHL and the Altrad Appellants and the fact that *Adams* precludes the entirety of this litigation. There are myriad other errors of receivership law in the orders below, each of which provides an independent basis for vacating the proceedings and dismissing this matter.

As the Court is aware, a receivership appointment amounts to the government authorizing the seizure of private property before a judgment is even entered—which is why it is rightly called a "harsh and drastic remedy." *Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 91, 172 S.E. 787, 788 (1934). Title 15's framework for receiverships (as confirmed by *Welch*, *Tibbs*, and a century's worth of jurisprudence) has several pillars that are designed to eliminate or mitigate risks that come with potential overreach by a receiver or an appointing court, including:

1. A court cannot appoint a receiver over any portion of a defendant's assets without first having personal jurisdiction over that defendant.

This is a threshold constitutional point and was specifically recognized in *Welch*, where the Court held that personal jurisdiction attached to Atlas Turner because Atlas Turner had directly sold asbestos-containing insulation products to a Greenville supplier that may have caused that plaintiff's injury. 445 S.C. at 657, 916 S.E.2d at 329. Without personal jurisdiction, of course, a court is powerless to act. *See, e.g.*, *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 509 ("Without minimum contacts, the court does not have the 'power' to adjudicate the action.").

But as detailed above in the Statement of the Case, nothing in the record suggests that either CIHL or Cape plc has been lawfully served with process in either *Park* or *Tibbs*, and CIHL is not even identified as a potential defendant in *Tibbs*. Service is a prerequisite to any jurisdictional analysis, and the complete failure on this issue alone renders the putative receivership a nullity.

2. A receiver can only act in the case in which he or she is appointed and can only secure specified assets needed to pay the claim of the party responsible for seeking the appointment.

This baseline point comes straight from both *Welch* and *Tibbs*. In *Welch*, this Court reversed in part a receivership appointment from the Asbestos Docket because it exceeded the scope of what a receiver can lawfully do. 445 S.C. at 667, 916 S.E.2d at 334–35. It held that: (1) a receiver can only be authorized to hold an asset needed to pay a debt owed to the party responsible for the receiver's appointment; (2) as a natural corollary, a receiver's activity is limited to the case in which he or she was appointed; and (3) a receiver must stay out of the "boardroom" and "business activities" of the company when holding a specific asset. *Id.*

The Court reiterated these points in *Tibbs*, where it heavily cited its *Welch* opinion and then stated ***without condition or exception***: "The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed." (R. p. 1646, *Tibbs* ¶ (A)(1).)

Welch and *Tibbs* are consistent with the state receivership statutes, which allow only a "party" to seek the appointment of a receiver and does not contemplate a roving receiver or a receivership being established without the specific request of a "party." S.C. Code Ann. § 15-65-90; *see, e.g.*, *White v. Britton*, 72 S.C. 175, 179, 51 S.E. 547, 548 (1905) (vacating an order appointing a receiver where the order was entered "by the Circuit Judge on his own motion" and "no application by either party was made for such appointment").

Acknowledging the gravity of a receivership appointment, the General Assembly built in safeguards. Specifically, the receivership statute directs that "the party procuring the appointment" is responsible for paying all "costs," "charges," "expenses," and "actual damages" that flow from an improper appointment. S.C. Code Ann. § 15-65-90. This cost-shifting aspect of the receivership statute underscores the limited nature of receiverships and reiterates this Court's longstanding admonition that they must be used sparingly and that only a "party" can seek a receivership, as only the "party" alone bears the consequences of an improper appointment.

But here, no "party" ever sought the appointment of a receiver. In *Park*, the motion for a receivership appointment was filed by counsel ***nine months after*** the case was reported as "fully resolved" and ***six months after*** the Probate Court closed the Park estate and terminated the personal representative's appointment. Quite literally, there was no plaintiff present to even file the motion. *See McCullar v. Estate of Campbell*, 381 S.C. 205, 207, 672 S.E.2d 784, 785 (2009) (holding that once an estate is closed, it no longer exists as a legal entity, and a case lacking a legal entity as a party is a "nullity" due to the "fundamental" absence of jurisdiction).

And in *Tibbs*, the plaintiffs confirmed in their recent filing in opposition to this Court's consideration of this matter in its original jurisdiction that they have never sought a receivership appointment. (Plaintiffs' Return to Petition for Extraordinary Writs at 8 n.10.)

And the circuit court has allowed the putative Receiver to jump from *Park* to *Tibbs*; to unilaterally convert the receivership from Cape plc to CIHL; and to essentially appoint himself as a roving collections agent for unidentified claimants adverse to CIHL, all the way down to waiving service and paying claims on behalf of CIHL without any party- or case-specific boundaries. This shape-shifting is an immediate violation of the South Carolina receivership statutes, this Court's reversal in *Welch*, the jurisdictional restrictions embodied by the Commerce Clause and Due Process Clause, and *Porter*'s holding that South Carolina law does not recognize any type of "misnomer" argument when assessing a receivership appointment. 149 S.C. at 158, 161–62, 146 S.E. at 812–14.

3. A receiver is not to be appointed prejudgment absent extraordinary circumstances, such as a clear danger that the property in dispute will be materially injured during litigation or when a debtor's litigation conduct demonstrates that it is fraudulently concealing or disposing of assets.

This point has been reiterated countless times by the Court, and it was reinforced in both *Welch* and *Tibbs*. To be sure, *Tibbs* reminded that "appointing a receiver before judgment is permissible only in the 'rarest' and 'most extraordinary' cases." *Tibbs* ¶ (A). And *Welch* explained that a prejudgment receivership is improper in the absence of in-litigation conduct amounting to "moral fraud" regarding the property in dispute. 445 S.C. at 661–62, 916 S.E.2d at 331–32. This has always been the law. *See, e.g.*, *Va.-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 221–23, 66 S.E. 177, 179–80 (1909) (finding that the defendant's and his sister's sworn statements as to the defendant's finances gave rise to an "inference that there has been a fraudulent disposition of the property" justifying a receiver).

Here, the initial appointment order in *Park* does not contain any of the "extraordinary circumstances" needed to justify a prejudgment Title 15 receivership; instead, it states that Cape plc is dissolved (which is not true) and has "forfeited its charter" (which is also not true). (R. p.

780, *Park* Order Appointing Receiver at 1.) And the circuit court's post-remand attempt to articulate these "circumstances" is based on a recitation of historical facts regarding NAAC's asbestos business, which has nothing to do with in-litigation misconduct and cannot possibly justify a court authorizing a receiver to seize private property.

4. A receiver cannot make "boardroom" decisions or be involved in the "business activities" of the company over whose asset he or she has been appointed.

This was a key point on which *Welch* reversed the circuit court. 445 S.C. at 667, 916 S.E.2d at 334–35.

But this putative Receiver's actions—accepting service in this case on behalf of CIHL, suing lawyers and law firms in CIHL's name, suing the Altrad Appellants in CIHL's name, entering into contracts in CIHL's name, waiving defenses and trying to create adverse precedent on CIHL's behalf, trying to void CIHL's actual contracts, and attempting to create a secret fund from which he can waive service and then pay claims in CIHL's name—are all quintessential "boardroom" activities. *See generally* 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.* § 33-3-102(7) (providing "make contracts" as a "general power" of a 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").

5. Because the limited purpose of a receivership is to "receive" specific property and preserve it for the sole purpose of satisfying a judgment or protecting the property from being squandered or hidden during litigation, an order appointing a receiver must also set a bond sufficient to release that property from receivership.

As a matter of constitutional law, a receiver appointed in one state cannot invade the province of a company elsewhere without the other state's (or, here, other country's) approval.

Protopapas, 152 F.4th at 446–48. The General Assembly recognized this principle when it limited the reach of a receiver to only the in-state property of a foreign corporation. S.C. Code Ann. § 15-65-10(4). But CIHL has no such property, and the circuit court has no jurisdiction to try and seize CIHL's property abroad.

Because the limited purpose of a receivership is to "receive" specific property and preserve it for the sole purpose of satisfying a judgment or protecting the property from being squandered or hidden during litigation, an order appointing a receiver must also set a bond sufficient to release that property from receivership. *See* S.C. Code Ann. §§ 15-65-50 ("No receiver shall be appointed before judgment when bond is offered.") and -60 ("Effect of bond given after appointment; return of property."); *Welch*, 445 S.C. at 667, 916 S.E.2d at 335 ("Finally, we note Atlas Turner retains the right to post a bond to lift the Receiver appointment."). No bond has been set here, underscoring the absence of "property" in dispute and the impropriety of this receivership. Reversal is essential.

CONCLUSION

Everything about this case is a legal nullity, yet the putative Receiver is creating international havoc adverse to an active English company that has no contacts with South Carolina and is not even a party to these proceedings. There is no lawful basis for anything that is happening below. The Court should restore the Rule of Law and terminate this litigation now.

Accordingly, the Altrad Appellants respectfully request that the Court dismiss them from this case for lack of jurisdiction—it is moot, as the claims have been released as to them; *Adams* controls all material issues; and the Court never had personal jurisdiction over them in the first place. It should also declare the entirety of these proceedings void *ab initio*, as there is no lawful basis supporting anything that the circuit court has purported to do with respect to this putative receivership.

Respectfully submitted,

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