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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Court of Common Pleas
The Honorable Jean H. Toal, Circuit Court Judge

Civil Action No. 2023-CP-40-01759
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 Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell

Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC.....**DEFENDANTS,**

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, Third-Party Plaintiff..... **RESPONDENT,**

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) LLC, Charter Consolidated Ltd., ESAB Corporation, Central Mining & Investment Corporation Ltd., Cape Holdco Ltd., The Law Debenture Corporation PLC, Cape Industrial Services Group Ltd., Mohed Altrad, Altrad UK Ltd., Cape UK Holdings Newco Ltd., Altrad Services, Ltd., f/k/a Cape Industrial Services Ltd., Altrad Investment Authority S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC.....**THIRD-PARTY DEFENDANTS,**

Of which Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the..... **APPELLANTS.**

FINAL BRIEF OF APPELLANTS CHARTER CONSOLIDATED LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD.

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CORPORATION LTD.**

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STATEMENT OF ISSUES ON APPEAL

1. Must the circuit court strictly adhere to the directives set forth by the Court in the June 26, 2025, order remanding the case (*Tibbs v. 3M Co.*, Appellate Case No. 2024-001423 (S.C. June 26, 2025) (“June 26 Order”))?
2. Does the June 26 Order permit the circuit court to allow a prejudgment receiver appointed pursuant to S.C. Code Ann. § 15-65-10, et seq, over Cape PLC (an active foreign company) in the *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727 (“*Park*”) to bring a third-party complaint in an unrelated case (*Tibbs*) where no party to that case has made a motion to appoint a receiver?
3. Does the June 26 Order permit the circuit court to appoint a prejudgment receiver and grant him retroactive authority to validate previous ultra vires activity?
4. Does the June 26 Order (or South Carolina law) permit the circuit court to make retroactive/*nunc pro tunc* findings of fact to a previously entered prejudgment receiver appointment order? Or, if the circuit court recognizes that there were no factual findings in a receiver appointment order to satisfy the June 26 Order requirements, must the circuit court declare the appointment order to be void *ab initio*?
5. May a prejudgment receiver appointed pursuant to S.C. Code Ann. § 15-65-10, et seq, over a foreign active entity in one asbestos case act in another unrelated case, including by accepting service, answering a complaint, filing third-party claims, seeking default judgments, and making a motion requesting the court appoint him as receiver over the entity in that case?
6. To act as a prejudgment receiver for Cape PLC in the *Tibbs* case, must a *Tibbs* plaintiff (or some other party in the case) first make a motion to appoint a receiver in *Tibbs*?
7. May a prejudgment receiver be appointed in this case (*Tibbs*) over a foreign corporation who is not a party in *Tibbs* (i.e., Cape Intermediate Holdings Ltd. (“CIHL”)) and who was not served with the operative summons and complaint?
8. May a prejudgment receiver purportedly authorized in one case (*Park*) make a motion to authorize his own actions in another case (*Tibbs*)?
9. May the circuit court expand the role of a prejudgment receiver to do more than hold and preserve property pending judgment in a case?
10. Must the circuit court have personal jurisdiction over a party prior to appointing a prejudgment receiver over its assets?
11. May counsel purportedly acting on behalf of a former administrator of an estate in an asbestos case make a motion to appoint a prejudgment receiver on behalf of the estate after it has been closed by the probate court?
12. As there is no receiver appointment order (in *Park*, *Tibbs* or otherwise) over Cape PLC or CIHL that contains the mandatory clause “fixing the value of the property for which the

bond may be given” in accordance with the requirements of S.C. Code Ann. § 15-65-60, are any purported receivership appointment orders over Cape PLC or CIHL void *ab initio*? See *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343, 348 (1928) (interpreting the provision under the previous receivership statute containing substantively identical language to Section 15-65-60 and holding that “[t]he provision for inserting a clause fixing the value of the property in the order appointing a receiver is mandatory, and without such clause the order is void.”).

13. Is the Receiver estopped by the facts and legal issues actually litigated and decided in Cape’s favor in *Adams v. Cape Industries Plc* [1990] 1 Ch. 433 (“*Adams*”), or can the receiver take positions that are inconsistent with the positions Cape previously successfully took in front of the UK courts?

14. Should the South Carolina courts recognize, under principles of comity, the decision in *Adams* when it evaluates whether it has personal jurisdiction over Cape because of NAAC’s contacts with South Carolina?

15. Can the South Carolina courts exercise personal jurisdiction over Appellants based on an alleged relationship between Appellants and Cape, an alleged relationship between Cape and NAAC, and NAAC’s contacts with South Carolina, when *Adams* found that Cape could not be subjected to jurisdiction in the United States based on NAAC’s contacts?

16. Where the circuit court denied Appellants’ motion to dismiss for lack of personal jurisdiction, and where Appellants continued to preserve the personal jurisdiction objection in every subsequent filing and at every hearing in the case, have appellants waived personal jurisdiction?

I. SUMMARY OF ARGUMENT

The circuit court’s order “confirming” the Receiver’s authority in *Tibbs* rests on a premise that South Carolina law does not recognize: that a prejudgment receivership may arise without an appointment order entered in the case where the receiver intends to act. No such appointment order exists in *Tibbs*. The *Park* Appointment Order—entered in a different lawsuit, at the request of a movant that did not legally exist, for the sole purpose of marshalling assets tied to a different plaintiff’s alleged injury—cannot be transformed into the prejudgment appointment order that *Welch*¹ and SC. Code Ann. § 15-65-10 require in *Tibbs*. Because no *Tibbs* appointment order was ever entered, the purported receivership never came into existence. Every action by the Receiver in *Tibbs*—including accepting service, filing the Third-Party Complaint, seeking discovery, moving for sanctions, and trial—was taken without legal authority and is void.

Even if the *Park* Appointment Order had been validly entered—which it was not—it could never supply authority in *Tibbs*. An appointment of a prejudgment receiver is strictly derivative of the plaintiff’s injury in that case. The *Park* order was limited to preserving assets for the benefit of Ms. Park. The *Tibbs* plaintiffs assert a different injury, in a different lawsuit, based on different facts. An prejudgment receiver appointment over a foreign corporate defendant’s South Carolina property in *Park* cannot—under any statutory, equitable, or historical principle—authorize litigation on behalf of different plaintiffs in *Tibbs*. The circuit court’s contrary conclusion collapsed the boundaries between cases and expanded the prejudgment receivership provisional remedy into a cross-docket litigation tool the Legislature has never permitted.

The infirmities go deeper. The *Park* Appointment Order was issued without jurisdiction because the movant—the Park estate—had been closed, the personal representative had been

¹ *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d.32 (2025).

discharged, and no estate existed to invoke prejudgment relief. A closed estate is a non-entity, incapable of holding rights, asserting claims, or filing motions. The receivership motion was therefore a nullity, and the resulting order is void. A void order has no legal force in the case where it was issued, and it certainly cannot authorize litigation in an entirely different case.

The Receiver's Third-Party Complaint suffers from an additional fatal flaw: it takes positions that Cape itself, and the Receiver, are legally barred from asserting. In *Adams*,² after a multi-week trial, Cape prevailed on the very theories the Receiver now refutes. The *Adams* courts rejected each of the Receiver's assertions: that NAAC was Cape's alter ego, that Cape had complete domination and control over NAAC, that corporate separateness was a façade, and that the corporate structure was a liability-avoidance scheme. The Receiver is bound by Cape's victory. Judicial estoppel bars him from asserting the opposite position; collateral estoppel and res judicata bar him from re-litigating issues actually decided; and, under principles of comity, the Court should recognize the *Adams* judgment and preclude the Receiver from making contrary arguments.

The circuit court's October 13 Order disregards core receivership principles, assumes the existence of a receivership that never existed in *Tibbs*, treats a void order in *Park* as if it supplied statutory authority here, authorizes actions beyond the scope of any prejudgment receivers appointment recognized by South Carolina law, and nullifies the constraints this Court imposed on remand. Because the Receiver took actions in *Tibbs* without an appointment order, because the *Park* order cannot be used across cases, because the Receiver's claims depend on allegations Cape has already disproven, and because a prejudgment receivership cannot be created or validated by implication, the October 13 Order must be reversed.

Accordingly, this Court should reverse, declare that no prejudgment receiver was ever

² *Adams v. Cape Indus. Plc* [1990] 1 Ch. 433 ("*Adams*").

appointed in *Tibbs*, and vacate all actions the Receiver purported to take in this case.

II. STATEMENT OF THE CASE

This matter is before the Court on appeal from an order of the Honorable Jean Toal in the Court of Common Pleas for the Fifth Judicial Circuit, dated October 13, 2025 (the “October 13 Order”). Appellants Charter Consolidated Ltd. (“Charter”), ESAB Corporation (“ESAB”), and Central Mining and Investment Corporation Ltd. (“Central Mining” and, collectively, “Appellants”) filed a notice of appeal on October 14, 2025 (Appellate Case No. 2025-002104) (“Appeal”) and petitions for writs of prohibition and common law writs of certiorari (“Petitions for Writ”) with this Court on October 19, 2025. Although the Court of Appeals dismissed the notice of appeal on October 20, 2025, this Court issued an order on November 20, 2025 certifying the Appeal to the Court pursuant to Rule 204(b), SCACR, as well as holding the petitions in abeyance.

A. The *Tibbs* And *Park* Suits.

These proceedings arise out of an asbestos personal injury action (“*Tibbs*”) in which a receiver has purported to act (a) pursuant to an appointment order in a separate asbestos personal injury action, *Park v. Armstrong International, Inc., et al.*, C/A No. 2021-CP-40-02727 (“*Park*”), from June 29, 2023 until October 13, 2025 and (b) pursuant to the October 13 Order “confirming” and modifying the *Park* Appointment Order from October 13, 2025 forward.

1. The Receiver’s Appointment in *Park*.

On November 14, 2021, in *Park*, Keith W. Park, individually and as the personal representative of the estate of Isabella Park (the “Park Estate”), filed a First Amended Complaint (“*Park* FAC”)³ against, *inter alia*, an existing viable company named “Cape PLC, individually and as successor-in-interest to Cape Asbestos Company” (“Cape PLC”) and another existing viable

³ (R. pp. 625 – 690).

company named “CAPE INTERMEDIATE HOLDINGS LIMITED f/k/a CAPE INTERMEDIATE HOLDINGS PLC, individually and as successor-in-interest to CAPE ASBESTOS COMPANY” (“CIHL”).⁴ A Second Amended Complaint (“*Park* SAC”) was filed on December 23, 2021 and again identified Cape PLC and CIHL as two separate defendants.⁵ On June 3, 2022, the *Park* plaintiffs’ counsel reported to the circuit court that *Park* was “fully resolved.”⁶ On June 6, 2022, Mr. Park represented to the probate court in a sworn declaration that he had collected and distributed all the estate’s assets, and requested that the probate court close the estate and fully terminate him as personal representative. This filing included releases from the estate’s beneficiaries, each of whom acknowledged that he or she had received “[a]ll of the property to which I am entitled” through the estate and “releases and forever discharges the estate and the Personal Representative from any and all rights and claims which the undesigned may have relating to the estate.”⁷ In August 2022, the probate court closed the *Park* Estate and terminated Mr. Park’s appointment as personal representative.⁸

On March 6, 2023, nine months after *Park* was “fully resolved” and seven months after the *Park* Estate was closed, the *Park* Estate’s counsel moved to appoint a prejudgment receiver over Cape PLC (the “Motion to Appoint”), stating that Cape PLC is the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) . . . and its subsidiaries and global affiliates,”

⁴ (R. p. 625, 633, 638).

⁵ (R. pp. 691, 703, 708 – 709).

⁶ (R. pp. 770 – 771).

⁷ *See* (R. pp. 2432, 2433, 2435).

⁸ (R. p. 2436, 2437 – 2438).

to which it referred collectively as “Cape.”⁹ CIHL was not identified in the Motion to Appoint.¹⁰

The Motion to Appoint asked the circuit court to place Cape PLC into receivership based on assertions that (a) “Cape” allegedly engaged in a scheme to avoid asbestos liabilities in the United States in the 1970s and (b) did not timely respond to the *Park* Second Amended Summons supposedly served upon it.¹¹ The Motion to Appoint did not point to any evidence of misconduct by Cape in *Park*, but rather referenced old, unauthenticated documents that it said warranted the remedy of prejudgment receivership “for all purposes,” not limited to marshaling available assets of Cape.¹² As to service, the Motion to Appoint cited to an “Exhibit A” as purported proof that Cape was served with the operative pleading, but no Exhibit A was provided, and it was later revealed that no entity named Cape PLC was served with the *Park* FAC or the *Park* SAC.¹³

On March 17, 2023, the *Park* court entered an order (the “*Park* Appointment Order”) appointing Peter Protopapas as prejudgment receiver for Cape PLC on grounds not established in the Motion to Appoint and that have since been acknowledged to be incorrect: “because Cape . . . [had been] dissolved and Cape, a foreign corporation, ha[d] forfeited its charter and [had] further failed to answer this case.”¹⁴ The *Park* Appointment Order broadly authorized the Receiver to “take any and all steps necessary to protect the interests of Cape whatever they may be.”¹⁵

2. The *Tibbs* Suit.

On April 5, 2023, John A. Tibbs and Margaret B. Tibbs (“Plaintiffs”) commenced *Tibbs*,

⁹ (R. p. 462) (internal citations omitted); *see also* (R. pp. 462 – 470).

¹⁰ *See generally* (R. pp. 462 – 470).

¹¹ *See Id.*

¹² (R. p. 469).

¹³ (R. p. 440); (R. p. 444, ¶¶ 4-6); (R. pp. 465 – 46); (R. p. 994, line 42:2 – R. p. 995, line 46:9).

¹⁴ *See* (R. p. 780); *see generally* (R. pp. 780 – 783); (R. pp. 462 – 470).

¹⁵ (R. p. 780).

the action out of which this matter arises, against numerous defendants, including Cape PLC (but not CIHL), in the Court of Common Pleas for the Fifth Judicial Circuit, County of Richland.¹⁶ Plaintiffs alleged Mr. Tibbs developed lung cancer from asbestos exposures at various jobsites in South Carolina and North Carolina.¹⁷ Plaintiffs also alleged that Cape PLC was “liable for damages stemming from its own tortious conduct or the tortious conduct of . . . CAPE INDUSTRIES LTD., CAPE ASBESTOS COMPANY LTD., and its subsidiaries and global affiliates.”¹⁸

The circuit court docket does not indicate that Cape PLC was served in *Tibbs*. On June 29, 2023, an “Answer of Cape PLC” was filed by “Defendant Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)(‘Cape’) by and through its Receiver Peter D. Protopapas.”¹⁹ The Receiver had not been appointed in *Tibbs* and his answer made no mention of where he obtained his authority to act as a receiver for Cape.²⁰

3. The *Park* Receiver files a Third-Party Complaint in *Tibbs*.

On June 30, 2023, the Receiver, although not a party, filed a third-party complaint in *Tibbs* (the “Third-Party Complaint”) against numerous entities (the “Third-Party Defendants”), including Appellants. The Third-Party Complaint purported to admit that Cape PLC had incurred billions of dollars of liability for torts committed over many decades, and it further alleged that each of the Third-Party Defendants should be held liable for Cape PLC’s torts as confessed by the Receiver and that Third-Party Defendants generally should be held responsible for widespread asbestos sales causing massive injury and damages, and for diverting funds that should have

¹⁶ See generally (R. pp. 056 – 140).

¹⁷ (R. p. 107).

¹⁸ (R. p. 065 – 066).

¹⁹ (R. pp. 245 – 248).

²⁰ (R. p. 247).

remained available to injured claimants (and provided resources for Cape to meet the obligations the Receiver just confessed to on Cape’s purported behalf).²¹ The Third-Party Complaint asserts four “causes of action” unrelated to the allegations asserted by the *Tibbs* Plaintiffs: unjust enrichment, constructive trust, alter ego and veil-piercing liability, and accounting.²²

B. Appellants Move To Dismiss The Third-Party Complaint And Dissolve The Receivership.

On September 1, 2023, Appellants filed three separate Motions to Dismiss the Third-Party Complaint and requested orders (a) granting dismissal, pursuant to Rule 12(b)(2), SCRCPP, of the Third-Party Complaint on the grounds that the circuit court lacked personal jurisdiction over Appellants; (b) granting dismissal of the Third-Party Complaint on other grounds; and (c) staying discovery pending resolution of their motions to dismiss (“Appellants’ Motions to Dismiss”).²³

On October 6, 2023, Appellants moved to dissolve the Cape PLC receivership (“Motions to Dissolve”)²⁴ on multiple grounds. For example, Appellants argued that the *Park* Appointment Order was improperly sought and issued in a fully resolved case, without notice to affected parties, without identifying any South Carolina property, without satisfying statutory requirements, and based on grounds that were factually incorrect. Appellants further argued that the order violated due process, failed to fix the value of any property, and was used not to protect the company but to pursue liability-creating alter-ego and veil-piercing claims against third parties.²⁵

C. The Hearing On Certain Third-Party Defendants’ Motions.

The Court held a hearing on the Motions to Dissolve and Motions to Dismiss for Lack of

²¹ (R. p. 258); (R. p. 308, ¶ 134).

²² (R. p. 307, ¶ 125 – R. p. 312, ¶ 146).

²³ See (R. pp. 360 – 376; R. pp. 377 – 393; and R. pp. 394 – 410).

²⁴ See (R. pp. 807 – 812; R. pp. 819 – 824; and R. pp. 813 – 818).

²⁵ See (R. pp. 808 – 811, 814 – 817, 820 – 823).

Personal Jurisdiction on October 25, 2023.²⁶ At the hearing, the Receiver argued that “a reasonably intelligent person [should] understand” that the appointment of a receiver over *Park* defendant Cape PLC was actually the appointment of a receiver over *Park* defendant CIHL.²⁷ The Receiver also argued that South Carolina Code § 15-65-10(5) creates a virtually unfettered ability to place an entity in receivership “so that justice can prevail,”²⁸ even if: (1) none of the statutory receivership requirements have been met; (2) the operative pleading was never served on the entity placed in receivership; (3) a different entity was named in the Motion to Appoint and/or the correct entity was named but never served; (4) the Motion to Appoint contained significant factual misstatements about service and failed to attach proof of such service; and (5) the *Park* Appointment Order was granted on the grounds that the entity in question was dissolved and forfeited its charter (which was never asserted in the Motion to Appoint and is untrue).

D. The December 2023 Order And The December 2023 Appeal.

On December 6, 2023, the circuit court entered an order denying the Motions to Dissolve and Motions to Dismiss for Lack of Personal Jurisdiction (“December 2023 Order”). Among other things, the December 2023 Order adopted the Receiver’s expansion of the *Park* Appointment Order to encompass CIHL, including changing the definition of Cape to include CIHL, even though that entity was not named in the Motion to Appoint or the *Park* Appointment Order.²⁹

Employing this new definition of Cape to include CIHL, the December 2023 Order denied the Motions to Dissolve and held, *inter alia*, that courts may appoint receivers in the asbestos

²⁶ See generally (R. pp. 0892 – 1032).

²⁷ (R. p. 0994, line 42:2 – 25); see also (R. pp. 0994-0995). The Receiver made this argument even though the *Park* FAC and SAC identified Cape PLC and CIHL as two separate defendants, and CIHL was not named as a defendant in *Tibbs*.

²⁸ See (R. pp. 0996, line 49:13 – 51:4.)

²⁹ See (R. pp. 1106 – 1107); see also (R. pp. 462 – 470).

docket “where the Court is concerned that the party at issue may move assets and avoid litigation,” and thus the circuit court is authorized to do so under South Carolina Code § 15-65-10(5) where it sees fit, even if there has been no default, entry of judgment, or satisfaction of other receivership prerequisites.³⁰ The December 2023 Order also held that the circuit court had specific jurisdiction over Appellants based on the unproven alter ego allegation in the Third-Party Complaint.³¹

On December 19, 2023, Appellants filed a notice of appeal of the December 2023 Order (the “December 2023 Appeal”) and provided notice of same to the circuit court and all parties. Despite the pendency of the December 2023 Appeal, the circuit court permitted the Receiver to proceed with pursuing the Third-Party Claims. In all of Appellants’ filings and at any hearings in front of the circuit court, Appellants continued to assert and preserve their jurisdictional defenses.

E. The December 2023 Appeal And The June 26, 2025 Order.

While the circuit court moved forward with the Third-Party Claims over Appellants’ objections, the December 2023 Appeal moved through the appellate courts, culminating in Appellants’ filing of a petition for writ of certiorari. On June 26, 2025, the Court issued an order (“June 26 Order”) converting Appellants’ petition to a common law writ of certiorari, granting it, remanding the case, and directing the circuit court on how to proceed.³²

First, the Court cited to its opinion in *Welch*, in which it “analyzed the circuit court’s jurisdiction to appoint a receiver, discussed the factual basis on which such an order must be based, and set forth limitations on the receiver’s scope of authority.”³³ In describing *Welch*, the June 26 Order reiterated the Court’s caution that a prejudgment receiver may only be appointed in the most

³⁰ See (R. pp. 1127 – 1128).

³¹ See (R. pp. 1168 – 1174).

³² (R. p. 1645 – 1646).

³³ (R. p. 1646, Section A).

drastic of circumstances: “appointing a receiver before judgment is permissible only in the ‘rarest’ and ‘most extraordinary’ cases.”³⁴ This is because the “extreme power” to appoint a Receiver “may only be used in extreme cases, such as where a defendant’s conduct demonstrates it is fraudulently concealing or disposing of assets that may be responsive to a later judgment” or “there is danger that the property will be materially injured before the case can be determined.”³⁵

The *Welch* Court also found that even if misconduct in that case warranted a prejudgment receivership, equity required the receiver’s powers to be strictly limited to marshalling insurance assets “that have the potential to cover [the *Welch* plaintiff’s] injuries,” and reversed and vacated the remainder of the appointment order granting the receiver control over “any other assets which are related to, touch or are otherwise relevant to such insurance.”³⁶ It also warned that a receiver’s power “does not properly extend to reach every claim relating to [the entity in receivership’s] assets and business activities,” nor does the receivership order “grant the Receiver entry into the [that entity’s] boardroom or some vague right to ‘take over’ operation of the company.”³⁷

Second, the June 26 Order directed the circuit court to complete three tasks in *Tibbs*: (1) ensure that the Receiver has been authorized to conduct his work by a receiver appointment order filed in *Tibbs*; (2) ensure that (a) the receiver appointment order issued in *Tibbs* is based on findings of fact meeting *Welch*’s standards and (b) the Receiver’s scope of authority is limited as required by *Welch*; and (3) to the extent the circuit wishes to proceed with appointing a receiver in *Tibbs* whose mandate differs from the receiver’s mandate in *Welch* (to identify and marshal insurance assets), the circuit court must make specific findings of fact and conclusions of law that it believes

³⁴ (R. p. 1646, Section A).

³⁵ *Welch*, 445 S.C. at 659–662 (citations omitted).

³⁶ *Welch*, 445 S.C. at 666–67.

³⁷ *Id.*

justifies its actions.³⁸ The June 26 Order also mandated, *inter alia*, that the circuit court provide the Court with progress reports every 30 days.³⁹

F. The Circuit Court’s Post-June 26 Order Activities.

Following the remand, on July 11, 2025, the Receiver filed an application (“Motion to Confirm”) asking the circuit court to bless his *Tibbs* activities retroactively as well as going forward. Although his application was styled as a “Motion to Confirm Appointment” and requested that the circuit court “Confirm [sic] his appointment in the *Tibbs* action,”⁴⁰ as discussed above, no underlying appointment had ever been made in *Tibbs*. Rather, the Motion to Confirm asked the circuit court to find that the Receiver’s *Tibbs* activities were “conducted within the scope of [the *Park*] Appointment Order . . . as was clarified and confirmed by th[e circuit] [c]ourt in its November 5, 2024 Order [in *Park*],”⁴¹ essentially seeking to transport the *Park* Appointment Order (which itself was invalid for a number of reasons) to *Tibbs*.

The circuit court conducted hearings on the Motion to Confirm on July 22, August 12, and October 6, 2025, during which it indicated an inclination to depart from the June 26 Order’s directives. For instance, at the July 22, 2025 hearing, the circuit court suggested that the Court, in *Welch* and the June 26 Order, may simply not be “completely aware of how receiverships are used in South Carolina.”⁴² The circuit court also indicated it viewed the June 26 Order not as a constraint, but rather as an invitation for her to explore receivership law more expansively:

³⁸ (R. p. 1646, Section A).

³⁹ (R. p. 1646, Section C).

⁴⁰ (R. p. 1688).

⁴¹ (R. pp. 1650 – 1651).

⁴² (R. p. 1737, lines 21 – 25) (“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).

So what they simply say is a very narrow understanding they have of receiverships but emphasize if there's not an order in place appointing a receiver in every specific case, look at signing such an order on findings sufficient under *Welch* to justify that receivership; and two, to the extent the --three, to the extent the circuit court intends to authorize the work of the receiver based on facts not found sufficient in *Welch* or to authorize scope of work not approved in *Welch*, the circuit court should make specific findings of fact. In other words, I understand that to leave it to me to explore more broadly this receivership issue and what the law is in regard to the appointment of a receiver and whether a receiver must -- can act on matters other than the claim in the case in which the receiver was first appointed.⁴³

The Receiver submitted proposed orders for the Motion to Confirm to the circuit court on August 20, 2025, and Appellants submitted their objections to the proposed orders on August 27, 2025. However, as of the October 6, 2025 hearing, the circuit court still had not issued a receiver appointment order in *Tibbs*, even though a bench trial was set (over Appellants' objections) for October 20, 2025.

G. The Circuit Court's Issuance Of The October 13 Order.

On October 13, 2025—nearly four months after the June 26 Order, only one week before the scheduled trial, and over the objections of Appellants and other third-party defendants—the circuit court issued the October 13 Order in purported compliance with the June 26 Order. The October 13 Order, which was substantively identical to the proposed orders submitted by the Receiver, did not identify any prior receivership appointment order entered in *Tibbs*.

Instead, the October 13 Order acknowledged that the Receiver accepted service of the *Tibbs* complaint and then filed the Third-Party Complaint on behalf of Cape against Appellants and others under the auspices of his “authority” purportedly granted in *Park*—not pursuant to any

⁴³ (R. p. 1742, lines 1 – 20).

appointment order issued in *Tibbs*.⁴⁴ Rather than identify a prior receivership appointment in *Tibbs*, the October 13 Order simply found that the Receiver “referenced” the *Park* Appointment Order “multiple times in *Tibbs*” and that the *Park* Appointment Order was an exhibit to various *Tibbs* filings, most of which were motions challenging the Receiver’s authority to act filed months after the Receiver filed the Third-Party Complaint, sought discovery, and sought default judgments.⁴⁵

The October 13 Order also significantly modified the *Park* Appointment Order. Although the October 13 Order claims it simply “clarified” the *Park* Appointment Order “to better reflect the facts of the Cape receivership,”⁴⁶ the so-called clarifications in truth materially altered the receivership, including revising the scope of authority described in the *Park* Appointment Order to the “administ[r]ation of] the assets of Cape responsive [sic] asbestos personal injury claims properly brought in South Carolina,” granting the Receiver authority to conduct work in any case by accepting service on behalf of Cape, even if no appointment order was filed in that case, and changing the entity in receivership.⁴⁷ Indeed, in Paragraph 7 alone, the October 13 Order changed the scope of the Receiver’s purported authority twice; struck a paragraph from the *Park* Appointment Order; and added new language.⁴⁸

On October 14, 2025, Appellants filed a notice of appeal pursuant to S.C. Code Ann. § 14-3-330(4), which creates a right to immediately appeal “[a]n interlocutory order or decree in a court

⁴⁴ See (R. pp. 003 – 005) (describing the Receiver’s “appointment” in *Park*); (R. p. 006) (indicating that the Receiver accepted service of the *Tibbs* complaint and commenced a third-party action in *Tibbs* “[f]ollowing his appointment in *Park*”).

⁴⁵ See (R. p. 043).

⁴⁶ See (R. p. 046).

⁴⁷ See (R. p. 046, ¶¶ 1 – 2); (R. p. 047, ¶¶ 5 – 6).

⁴⁸ See (R. pp. 047 – 048).

of common pleas . . . granting, continuing, modifying, or refusing the appointment of a receiver.”⁴⁹

The Receiver moved to dismiss the Appeal on October 15, 2025, and the Court of Appeals granted the Receiver’s motion on October 20, 2025, before Appellants’ deadline to submit a return. Appellants also filed the Petitions for Writ on October 19, 2025.

Despite the pending Petitions for Writ and the lack of the return of the remitter or a receivership order compliant with *Welch* and the June 26 Order, the circuit court commenced a bench trial on October 20, 2025, with hearings on post-trial motions adjourned to a later date. Further proceedings have now been stayed pursuant to this Court’s November 20, 2025 Order.

III. SUPPLEMENTAL BACKGROUND FOR ARGUMENT

On November 26, 2025, this Court directed the parties to address certain issues relating to *Adams* and personal jurisdiction in their submissions. Accordingly, Appellants include limited background on certain facts related to these points.

A. Background on *Adams*.

In *Adams*, several Texas plaintiffs filed suit in the High Court of Justice of England and Wales (the court of first instance, i.e., the trial court) seeking enforcement of a default judgment against CIHL⁵⁰ and related entities based on the actions of and relationship with NAAC. The ultimate 140-page *Adams* reported opinion was the product of (i) a 34-day trial before the High Court of Justice in the United Kingdom spanning from February through July 1988 and (ii) a 17-day appellate process before the Court of Appeal of England and Wales spanning from April through July 1989, culminating with the appellate court affirming the trial court’s decision in favor

⁴⁹ (R. p. 3050 – 3056).

⁵⁰ At that point in time, CIHL was named Cape Industries plc. They are the same entity, and in *Adams* and accompanying materials, CIHL is often referred to simply as “Cape.”

of CIHL in all relevant and material respects and dismissing the plaintiffs' appeal.⁵¹

The core issues in *Adams* were: (i) whether Cape was present in the United States, directly or indirectly via NAAC or another, such that jurisdiction could be exerted over Cape, and (ii) as extensions thereof, (A) whether NAAC or another was Cape's agent / alter-ego, (B) whether NAAC, Cape, and others were part of a single-business enterprise or amalgamated unit, and (C) whether the corporate structure of Cape should be pierced or otherwise disregarded.⁵² Cape prevailed on *each and every one* of these core issues, which are precisely the same issues upon which the Receiver seeks the opposite outcome in the pursuit of his claims under alter-ego, amalgamation, and related piercing theories of derivative liability.⁵³

These issues were fully addressed as part of a complete and comprehensive factual record that was subject to thorough challenge and appellate review.⁵⁴ The Receiver—on behalf of the entity that prevailed decades ago—is seeking to recycle these same facts to support his fictional narrative and reach the opposite result against Cape's interests, to establish or otherwise concede the jurisdiction (i.e., "presence") that both the trial and appellate court in *Adams* found to not exist, and to short-circuit liability and damages as part of a pursued "reckoning" for the recovery of billions of dollars. That is improper; *Adams* is wholly dispositive.

Indeed, both the *Adams* court of first instance and the appellate court found that CIHL was *not present* within the United States directly or indirectly through NAAC under any theory⁵⁵ and

⁵¹ See (R. p. 2597 – 2568, lines 441G–502H) (trial court decision); (R. pp. 2660 – 2728, lines 504H–572F) (appellate judgment).

⁵² See (R. pp. 2610 – 2612).

⁵³ See (R. pp. 2622 – 2640); (R. pp. 2648 – 2658).

⁵⁴ See, e.g., (R. pp. 2729 – 2768).

⁵⁵ See, e.g., (R. p. 2703, line E) (“[O]ur conclusion is that [Scott J] was right to hold that the business carried on by [NAAC] was exclusively its own business, not the business of Cape . . . ,

further found, *inter alia*:

1. NAAC and CIHL were separate legal entities.⁵⁶
2. NAAC had no authority to behave or act on behalf of CIHL, or any of its related entities.⁵⁷
3. NAAC carried on its own business.⁵⁸
4. NAAC was the direct purchaser of asbestos fibers, but not from CIHL.⁵⁹
5. All NAAC did was assist in sale of asbestos. That was not enough to find action on behalf of CIHL.⁶⁰
6. There was no evidence of any control by CIHL over NAAC's commercial activities.⁶¹
7. The corporate form and formalities of the "Cape Group," including as to NAAC, were observed. Each member of the group had its own commercial functions, which were well-defined and provided no basis for veil-piercing.⁶²

The conclusions reached and affirmed in *Adams* are crystal clear as to CIHL and its relationship with NAAC and others—no alter ego, no single-business enterprise or amalgamated unit, and no basis to pierce or otherwise disregard the corporate form. Indeed, the *Adams* court

and that Cape [was] not present within the United States of American, through [NAAC] at any material time. We see no sufficient grounds for disturbing this finding of fact.”).

⁵⁶ See (R. p. 2630, line G); (R. p. 2633, line E); (R. p. 2688, line E); (R. p. 2701, line A – R. p. 2702, line C); (R. p. 2741) (“The picture derived from the evidence relied on . . . is, again, as it seems to us, in accordance with Scott J.’s conclusions as to how the subsidiaries of Cape operated, i.e., with each one carrying out its own function.”).

⁵⁷ See (R. p. 2633, lines E – F); (R. p. 2683, line G).

⁵⁸ See (R. p. 2633, line F); (R. p. 2683, line E); (R. p. 2640, line A); (R. p. 2701, line G); (R. p. 2703, line E); (R. p. 2741).

⁵⁹ See (R. p. 2599, lines D – E); (R. p. 2693, lines F-G); *see also* (R. pp. 2732, 2735, 2744).

⁶⁰ See (R. p. 2599, line F); (R. p. 2628, line E – R. p. 2629, line C); (R. p. 2683, line H); (R. p. 2661, line H); (R. p. 2701, line F); (R. p. 2702, lines D-G); (R. p. 2741).

⁶¹ See (R. p. 2629, line H); (R. p. 2630, line B); (R. p. 2738, 2750).

⁶² See (R. p. 2630, lines F – H); (R. p. 2638, line H – R. p. 2639, line A); (R. p. 2702, line C); (R. p. 2738).

found that there “is *no reasonable basis*, in my view, for regarding [NAAC] as the alter ego of Cape”⁶³ and that “*it is indisputable* that at very least a substantial part of the business carried on by [NAAC] at all material times was in every sense its own business.”⁶⁴

B. Appellants’ Personal Jurisdiction Arguments.

Appellants continue to assert that the circuit court erred in finding personal jurisdiction because no general or specific jurisdiction over Appellants could exist given (a) Appellants are not South Carolina corporations and do not maintain principal places of business in South Carolina; (b) the claims in the Third-Party Complaint do not arise out of or relate to conduct by Appellants in South Carolina; and (c) there is no evidence that Appellants exercised sufficient domination or control over NAAC (or Cape) such that NAAC’s contacts with South Carolina could be imputed to Appellants. Furthermore, given *Adams*’ holding that NAAC’s contacts cannot be imputed to Cape for purposes of personal jurisdiction, NAAC’s contacts similarly cannot be imputed to Appellants, whose only connection to NAAC is through Cape.

IV. STANDARD OF REVIEW

“[T]he appointment of a receiver is within the discretion of the circuit [court].”⁶⁵ However, “[t]he appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.”⁶⁶ A prejudgment “receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in

⁶³ (R. p. 2630, line F) (emphasis added) (rejecting “alter ego” argument for finding CIHL presence in the United States).

⁶⁴ (R. p. 2701, line G) (emphasis added) (rejecting “agency argument” for finding CIHL presence in the United States).

⁶⁵ *Richland Cnty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (first alteration in original) (quoting *Midlands Util., Inc. v. S.C. Dep’t of Health & Envtl. Control*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989)).

⁶⁶ *Richland Cnty.*, 422 S.C. at 313. (quoting *Midlands Util., Inc.*, 301 S.C. at 228).

his complaint, and there is danger that the property will be materially injured before the case can be determined.”⁶⁷ Importantly, the purpose of an appointment of a prejudgment receiver is “to preserve the property [put into the hands of the receiver] pending the litigation so that relief awarded by the judgment, if any, may be effective.”⁶⁸

Matters within the circuit court’s discretion are subject to reversal for abuse of discretion, and abuse of discretion occurs when the circuit court’s decision is controlled by an error of law or lacks evidentiary support.⁶⁹

V. ARGUMENT

A. **The Circuit Court Erred In “Confirming” A Non-Existent Prejudgment Receivership Because No Prejudgment Receiver Was Ever Appointed In *Tibbs*.**

This Court’s June 26 Order announced a clear rule that was consistent with long-standing South Carolina practice: a prejudgment receiver “is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.”⁷⁰ That rule resolves this appeal. It is undisputed that no prejudgment receivership appointment order was ever entered in *Tibbs* that satisfies the requirements of South Carolina receivership statutes and *Welch*.

A prejudgment receivership is a statutory creation.⁷¹ It may not exist except by virtue of a case-specific order entered in the case in which the receiver seeks to act. It cannot be implied or imported, and cannot be confirmed unless it exists. Because there was no prejudgment receiver appointed in *Tibbs*, the circuit court lacked authority to “confirm” one.

1. The mandate in the June 26 Order prohibits any actions by a prejudgment

⁶⁷ *Richland Cnty.*, 422 S.C. at 313 (quoting *Pelzer v. Hughes*, 27 S.C. 408, 3 S.E. 781 (1887)).

⁶⁸ *Porter v. Brown*, 149 S.C. 151, 146 S.E. 810, 814 n. 1 (1929) (Blease and Stabler, JJ, concurring).

⁶⁹ *Burke v. Republic Parking System, Inc.*, 421 S.C. 553, 558, 808 S.E.2d 626, 628 (Ct. App. 2017).

⁷⁰ (R. p.1649, Section A).

⁷¹ See S.C. Code Ann. § 16-65-10 *et seq.*

receiver in *Tibbs* absent a *Tibbs*-specific appointment order.

Every aspect of the June 26 Order turns on one threshold inquiry: was a prejudgment receiver appointed in *Tibbs*? The answer is undisputed: no. Even the Receiver’s own filings admit that his *Tibbs* activities were carried out “in fulfillment of his duties [under the *Park* Appointment Order],” not pursuant to any *Tibbs*-specific authority.⁷² But the *Park* Appointment Order is not a *Tibbs* order and cannot function as one.

Absent a *Tibbs*-specific appointment order, the circuit court lacked authority to authorize, expand, “clarify,” or confirm any prejudgment receivership in *Tibbs*.

2. A prejudgment receivership cannot be imported from another lawsuit.

Even apart from this Court’s mandates in the June 26 Order, the October 2025 Confirmation Order must be reversed because South Carolina law does not allow a prejudgment receivership order entered in one lawsuit to serve as authority for a receiver to act in a separate case. The bar against cross-case use of prejudgment receivership authority is structural, jurisdictional, and embedded in the statutory scheme and the “existing practice” incorporated into § 15-65-10(5). Several independent principles make this clear.

First, a prejudgment receivership is inherently case-specific. S.C. Code Ann. §§ 15-65-50 and 15-65-60 demonstrate the clear intent for a receiver appointed pursuant to Title 15 to be limited to the cause in which he was appointed. The statutes repeatedly limit the appointment of a receiver to “the cause” (singular) and refer to “before final judgment” (again referring to a single case).⁷³ The receivership statute that allows a party to vacate a prejudgment appointment of a receiver by

⁷² See (R. p. 2307, ¶ 3).

⁷³ S.C. Code Ann. § 15-65-50.

providing a bond further demonstrates that an appointment is limited to a single case.⁷⁴ In addition, pursuant to S.C. Code Ann. § 15-65-90, plaintiffs seeking appointment of a receiver are responsible for any improper appointment of a receiver, further suggesting that a receiver's actions are limited to the case in which he was appointed.⁷⁵

Section 15-65-10(5)'s requirement that the appointment conform to the "existing practice" further confirms that prejudgment receivership authority cannot extend from one case to another. Importantly, the "existing practice" cited in S.C. Code Ann. § 15-65-10(5) is the practice of Courts of Equity prior to passage of the statute in 1870. As this Court held in *Virginia-Carolina Chem. Co. v. Hunter*, this provision requires an inquiry into what Courts of Equity had jurisdiction to the 1870 passage of Code of Procedure (1870 S.C. Acts 423 *et seq.*):

[Section 265, now 15-65-10(5)] gives the old practice the force of a statute by the enactment that a receiver may be appointed "in such other cases as are now provided by law, or may be in accordance with the existing practice, except as otherwise provided in this Code of Procedure." *The first inquiry* is whether the record shows a case warranting the appointment of a receiver *under the general jurisdiction and practice of the court of equity*, aside from the special provisions of the Code of Procedure. . . .⁷⁶

Under traditional equity practice, receivers were appointed only for the purposes of the suit in which the appointment took place, and their authority was strictly limited to the subject matter and property involved in that suit.⁷⁷ A prejudgment receivership in one case therefore cannot, as a

⁷⁴ S.C. Code Ann. § 15-65-60.

⁷⁵ S.C. Code Ann. § 15-65-90 (1976 as amended).

⁷⁶ 84 S.C. 214, 220, 66 S.E. 177, 179 (1909) (emphasis added).

⁷⁷ See *Clinkscales v. Pendleton Mfg. Co.*, 9 S.C. (9 Rich.) 318, 323 (1878) (where a receivership was issued in a particular case *pendente lite*, "the sole object of the Receivership is to preserve the property, to answer the purposes of a decree, as between the parties to the suit, without affecting the interest of third persons not parties"); *Gadsden v. Whaley*, 14 S. C. 210 (1880) ("In a proper case the court will appoint a receiver who is an executive officer – the hand of the court – to

matter of historical practice, open the door to litigation activity in another, unrelated matter.

Second, the *Park* Appointment Order itself expressly limits the receiver’s authority to *Park*. It appoints Mr. Protopapas as receiver “in this case.” That language is a binding, substantive limitation. A prejudgment receivership is created by the words of the order; it cannot be enlarged by implication or convenience. The October 13 Order improperly disregarded the textual boundaries of the *Park* Appointment Order.

Third, the *Park* Appointment Order did not—and could not—appoint a prejudgment receiver over CIHL or Cape PLC in *Tibbs*. Neither entity was before the court in *Tibbs* in any capacity that would permit the court to displace their corporate governance or control their litigation positions. A court cannot impose a prejudgment receivership on a non-party in absentia, and it certainly cannot extend such a receivership into a case where that entity has not been made the subject of a statutory application supported by the findings required under *Welch* and S.C. Code Ann. § 15-65-10. The absence of any such application in *Tibbs* is therefore fatal.

Fourth, the use of a prejudgment receivership to control litigation across lawsuits conflicts with the foundational purpose of the remedy. A prejudgment receivership is designed to preserve property for the benefit of the party seeking the receiver until a judgment can be obtained—not to litigate claims, assert corporate authority, or manage complex, multi-party proceedings.⁷⁸ Indeed, prejudgment receivers are rare and should only be appointed in the most “extreme cases.”⁷⁹

administer the assets of the estate.... By virtue of any general authority as receiver, he has no right to sue or be sued or defend”); *In re Fiftv-Four First Mortg. Bonds*, 15 S. C. 304 (1881).

⁷⁸ See *Porter*, 146 S.E. at 814, n. 1 (receiver’s “purpose is to preserve the property pending the litigation so that relief awarded by the judgment, if any, may be effective”) (Blease and Stabler, JJ, concurring); *Vasiliades v. Vasiliades*, 231 S.C. 366, 376, 98 S.E.2d 810, 815 (1957) (“The appointment of a receiver . . . was purely a provisional remedy—to preserve the assets”).

⁷⁹ *Welch*, 445 S.C. at 659.

Treating the *Park* Appointment Order as authority for the Receiver to file third-party claims in *Tibbs* transforms a narrow, preservation-focused interim remedy into an all-purpose litigation tool.

For all these reasons, the *Park* Appointment Order cannot operate as a prejudgment appointment order in *Tibbs*. South Carolina law does not allow a prejudgment receivership to leap from one case to another, to bind new parties, to support litigation in separate proceedings, or to function as a roving corporate surrogate. The circuit court’s contrary conclusion was error.

3. A mere reference in a filing to an appointment order in another case can never be the basis for a prejudgment receiver to act.

The circuit court further erred when it held that the Receiver’s mere reference to the *Park* Appointment Order, buried in the text of the Third-Party Complaint, satisfied a requirement for an actual appointment order in *Tibbs*. Indeed, the October 13 Order asserts that the *Park* Appointment Order was “referenced” multiple times in *Tibbs* by the Receiver, including in the Receiver’s Third-Party Complaint.⁸⁰ Then, after several months of litigating, including accepting service, filing the complaint, seeking discovery, and pursuing default judgments, the “parties filed the Cape Receiver Appointment Order” in *Tibbs* on August 21, 2023—when contesting the Receiver’s authority to act.⁸¹ Neither referencing an order from another case nor submitting a copy of the order while challenging a receiver’s authority to act should constitute an “appointment order” sufficient to authorize the Receiver to have committed its prior actions in *Tibbs*.

Indeed, the October 13 Order’s reliance on a “reference” to an order from another case demonstrates a fundamental misunderstanding of a prejudgment receivership. A prejudgment receiver obtains authority only through a court’s order entered and filed in the case in which he intends to act. A pleading cannot create that authority. A litigant cannot transform a reference into

⁸⁰ (R. p. 043).

⁸¹ (R. p. 043).

a filing, and a complaint cannot substitute for a judicial act. If the law allowed a receiver to manufacture his own authority simply by invoking another court's order inside a pleading, the statutory requirement that a receiver be appointed "by the court" would be meaningless.

Moreover, accepting that theory would permit the circumvention of the requirement that an appointment order—with the mandatory, case-specific *Welch* findings—be entered before a receiver may act. Nothing in South Carolina law empowers a receiver to bootstrap authority by referencing an external order, and therefore, the Receiver's reference to the *Park* Appointment Order has no legal effect. It did not confer standing, authorize the filing of a Third-Party Complaint, permit him to accept service, or empower him to seek discovery or try the case. Authority must flow from a *Tibbs* appointment order, entered and filed on the *Tibbs* docket *by the court*. A prejudgment receivership must arise from a court's order, not from a party's description of one.

4. The *Park* Appointment Order was limited to preserving assets to cover any ultimate judgment to Ms. Park and, therefore, cannot justify the receiver's action in *Tibbs*, which by necessity are derivative of the *Tibbs*' injuries.

Even if the *Park* Appointment Order were valid—which it was not—it could never serve as the legal predicate for the Receiver's actions in *Tibbs* because a prejudgment receivership is tied exclusively to the injury and the property interests related to the case in which it is entered. The *Park* Appointment Order was, by its own terms and operation of *Welch*, limited to preserving assets to satisfy the alleged injury in *Park*, not *Tibbs*.⁸² A prejudgment receivership may hold and preserve assets only for the benefit of the plaintiff in the action where it is created; it cannot be used as a platform to pursue claims based on injuries suffered by other plaintiffs in other lawsuits.⁸³

⁸² (R. p. 780) ("Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver *in this case* pursuant to South Carolina law . . .") (emphasis added).

⁸³ See *Welch*, 445 S.C. at 667. The Supreme Court repeated over and over again that the receiver over Atlas Turner only had power and control over the assets to "cover Mr. Welch's injuries." *Id.* at 666. Under South Carolina law, a prejudgment receiver simply does not have the authority to

This framework makes the scope of any prejudgment receiver inherently derivative of the plaintiff's claim in that particular lawsuit. It does not supply general authority for a receiver to pursue claims related to other alleged injuries, other plaintiffs, or other causes of action in other courts. The *Park* Appointment Order was therefore confined to preserving property relating to the *Park* plaintiff's asserted losses.⁸⁴ It could not authorize litigation on behalf of the *Tibbs* plaintiffs, because they asserted a different injury in a different action and thus required a separate, Welch-compliant appointment order in *Tibbs*.

Welch's limitations are particularly critical here given the Receiver's own conduct in initiating a third-party action that, as a matter of law, must be derivative of the *Tibbs*' alleged injuries.⁸⁵ In *Tibbs*, the allegations concern a distinct plaintiff, distinct exposure facts, distinct claims, and a distinct injury. A prejudgment receiver appointment order designed to preserve assets for the benefit of the *Park* plaintiff cannot be repurposed into an all-purpose vehicle to litigate on behalf of an entirely different plaintiff. The injuries are not interchangeable, and *Welch* does not allow a prejudgment receiver to aggregate them or carry authority from one case to another.

Treating the *Park* Appointment Order as authority to file the Third-Party Complaint in

pursue claims to marshal assets to generically "address the liabilities for injured South Carolinians," as the Receiver now requests in his Motion to Confirm Appointment. Such an appointment order runs afoul of the clear mandate from the Supreme Court in *Welch* that a receiver be appointed only to marshal assets sufficient to cover a particular plaintiff's injury.

⁸⁴ (R. p. 780).

⁸⁵ By its plain terms, Rule 14(a), SCRCPP, makes clear that a defendant may implead and assert claims against a third party **only if** it "is or may be liable to [defendant] for all or part of the plaintiff's claim"; it "does not allow the defendant to assert a separate and independent claim." Rule 14(a), SCRCPP; *CNH Indus. Cap. Am. LLC v. Able Cont., Inc.*, 2017 WL 512453, at *1 (D.S.C. 2017); *Laughlin v. Dell Fin. Servs., L.P.*, 465 F. Supp. 2d 563, 566 (D.S.C. 2006). "The third party claim must be derivative of the plaintiff's claim" such that "the third party defendant's liability arises only if the defendant/third-party plaintiff is first held liable to plaintiff." *Id.* at *1 – 2; *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) ("The outcome of the principal claim must impact the third-party defendant's liability[.]").

Tibbs would erase this fundamental distinction. It would convert a prejudgment receiver—whose role is limited to preserving property tied to a single plaintiff’s potential judgment—into a roaming agent empowered to litigate across the asbestos docket amassing money without any case-specific appointment order. Nothing in South Carolina law allows a prejudgment receiver appointed to preserve assets to satisfy Ms. Park’s alleged injury to assert claims to cover the alleged injury to the *Tibbs*’ plaintiffs, whose rights and potential judgments arise from a different controversy altogether. The circuit court’s contrary conclusion was error.

5. All actions taken by Mr. Protopapas in *Tibbs* are void because he was never appointed as a prejudgment receiver in this case.

Without a prejudgment appointment order entered in *Tibbs*, Mr. Protopapas lacked any authority to appear, file pleadings, initiate third-party litigation, or purport to act on behalf of Cape PLC or CIHL. A prejudgment receiver who acts in a case without an appointment order acts ultra vires, and his acts are void and can be challenged by Appellants.⁸⁶

Accordingly, the Third-Party Complaint is void; all appearances, filings, and representations are void; and all purported exercises of corporate authority are void. The circuit court further lacked jurisdiction to confirm, ratify, or validate any such acts. Because no prejudgment receivership appointment order ever existed in *Tibbs*, the circuit court’s October 13 Order must be reversed.

B. The Circuit Court Erred In Relying On The *Park* Appointment Order Because That Prejudgment Appointment Order Was Void Ab Initio.

Even if a prejudgment receivership could be imported from another case (it cannot), several defects render the *Park* Appointment Order void and incapable of creating or supporting a

⁸⁶ See *Porter*, 146 S.E. at 814, n. 1 (where “it appears upon the face of the proceedings that a Court’s order appointing a receiver was without authority of law, and, therefore, void, the order may be assailed collaterally and with impunity by anybody”) (Blease and Stabler, JJ, concurring).

prejudgment receivership in *Tibbs*.

1. The movant seeking appointment of the prejudgment receiver in *Park* had no legal existence when the motion was filed.

A prejudgment receivership can arise only “on the application of either party,” and only where that party has a legally cognizable interest capable of protection.⁸⁷ Those requirements presuppose that the movant actually exists as a juridical entity at the time the relief is sought. Here, the entity that purportedly moved for the appointment of a prejudgment receiver in *Park*—the Park Estate—no longer existed in law or in fact when the motion was filed. Because the movant lacked legal existence, capacity, and standing, the *Park* court lacked jurisdiction to consider the application, and any order issued in response is void ab initio.⁸⁸

a. Mr. Park closed the Park estate and the probate court terminated him as personal representative—months prior to the Park receivership motion.

The October 13 Order incorrectly held that the intentional closing of the Park Estate constituted a mere “lapse” of the Estate that had no judicial effect. But the Park Estate did not “lapse.” Mr. Park represented to the probate court (and the estate’s creditors and beneficiaries)—fully knowing that the estate had filed a wrongful death action against Cape and that the estate had notified the circuit court that the case was “fully resolved”—that he had collected and distributed all assets of the estate, and requested that the probate court close the estate and fully terminate him as personal representative.⁸⁹ Indeed, a quick summary of the events is helpful:

- In August 2021, Mr. Park was appointed as personal representative of the estate;

⁸⁷ S.C. Code Ann. § 15-65-10; *see also 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”).

⁸⁸ *See McCullar v. Est. of Campbell*, 381 S.C. 205, 207, 672 S.E.2d 784, 785 (2009) (any alleged litigation by an estate after it is closed is a nullity because the estate ceases to be a legal entity).

⁸⁹ *See* (R. p. 2435).

- In November 2021, Mr. Park filed a claim, as personal representative of Ms. Park’s estate, against Cape;
- On June 6, 2022, in a sworn declaration Mr. Park represented to the probate court that he had collected and distributed all assets of the estate, and requested that the probate court close the estate and fully terminate him as personal representative.
- On August 26, 2022, relying on Mr. Park’s representations, which would fully encompass the estate’s purported claims against Cape, the probate court **closed** the Park Estate and terminated Mr. Park as personal representative of the estate.⁹⁰
- Over six months later, the *Park* receivership motion was made.

Accordingly, when the Motion to Appoint was filed in *Park*, the Park Estate had already been closed, thus terminating its legal identity.⁹¹ A closed estate is has no rights; obligations; ability to sue or be sued; property interests; ongoing claims, representative, or capacity to appear before a court.⁹² Once closed, the estate ceases to exist as a juridical person; there is nothing left in existence that can file a motion, seek statutory relief, or invoke the court’s authority.⁹³

Therefore, as a matter of law, no one had standing to bring any motion or claim against any

⁹⁰ See (R. p. 2346 – 2348). Mr. Park should now be estopped from claiming that the *Park* case, including the estate’s claims against Cape, was not fully resolved in June 2022. “Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation.” *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). “When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him.” *Id.* Here, Mr. Park made certain representations to the probate court that were relied on by the probate court to close the estate—a situation that has significant legal ramifications to the estate’s beneficiaries and creditors. Mr. Park and Park’s counsel are estopped from now taking a contrary position.

⁹¹ See (R. p. 2346 – 2348).

⁹² See *McCullar*, 381 S.C. at 207, 672 S.E.2d at 785.

⁹³ See also *Prickett v. Hot Spring Cnty. Med. Ctr.*, 2010 Ark. App. 282, *7, 373 S.W.3d 914, 919 (2010) (holding that an estate, through its representative, did not have standing to bring an action after the estate was closed); *Branch v. Cox*, 2018 WL 468284, at *3–4 (E.D. Ark. Jan. 18, 2018), *aff’d sub nom. Branch v. Vural*, 742 F. App’x 158 (8th Cir. 2018) (holding that an order reopening an estate and reappointing the administrator did not retroactively confer standing that did not exist when the estate was closed and plaintiff had been discharged from being the administrator); *In re Est. of Martin*, 1979 WL 178108, at *2 (Del. Ch. Jan. 30, 1979) (finding former attorney for an estate had no standing to agree to certain relief on behalf of the estate since the estate was closed).

party in *Park* and the action was a complete nullity.⁹⁴

b. Neither a closed estate, nor its representatives, can act as a plaintiff under South Carolina law.

The October 13 Order tries to go around this Court’s binding decision in *McCullar* by mischaracterizing it as merely examining whether a “wrongful death lawsuit” could move forward “when a personal representative of an estate had not been appointed.”⁹⁵ But that ignores the very heart of *McCullar*. In that case, Dr. Campbell died in December 2001 and his estate remained open, with a personal representative appointed, for several years until January 2004.⁹⁶ Months after the estate was closed, the McCullars filed a suit against Dr. Campbell’s estate. When the estate moved to dismiss for lack of subject matter jurisdiction based on the closure of the Campbell estate, the McCullars did exactly what Mr. Park did here—they petitioned the probate court, reopened the estate, and got the personal representative appointed, all before a motion to alter or amend the decision on the motion to dismiss was decided by the trial court.⁹⁷ The Court of Appeals relied on the fact that the estate was “reopened and the personal representative reappointed before the motion to dismiss was concluded in the circuit court” to reverse the circuit court’s dismissal of the action.⁹⁸ This Court, however, held that the reopening of the estate did not matter because the “fundamental” question was “whether, at the time the suit was purportedly commenced, there existed a juridical entity known as ‘Estate of Dr. William Cox Campbell.’”⁹⁹ Because the answer was no—even if

⁹⁴ See *McCullar*, 381 S.C. at 207, 672 S.E.2d at 785.

⁹⁵ See (R. pp. 2328 – 2329).

⁹⁶ See *McCullar v. Est. of Campbell*, 2006 WL 7286778, at *1 (S.C. Ct. App. Sept. 20, 2006), rev’d, 381 S.C. 205, 672 S.E.2d 784 (2009).

⁹⁷ *Id.*

⁹⁸ *McCullar*, 2006 WL 7286778, at *3.

⁹⁹ *McCullar*, 381 S.C. at 207.

the estate was reopened before a decision on the motion to dismiss—the entire case was a “nullity” such that there was “no action before the Court” to even be dismissed.¹⁰⁰ Similarly, here, the fundamental question is whether a “juridical entity” known as the “Estate of Isabella Park” existed when the Motion to Appoint was made. The undisputed answer is no. Therefore, just like in *McCullar*, there could be “no action before the Court,” no valid motion to appoint a receiver, and no valid receivership appointment order.

c. The reopening of the Park Estate cannot cure a void prejudgment receivership order.

The October 13 Order, through an incorrect interpretation of S.C. Code § 62-3-701, wrongly finds that Mr. Park’s reappointment as Personal Representative for the Park Estate retroactively validates all actions that were taken when there was no “Park Estate” in legal existence. The circuit court’s reliance on Section 62-3-701 is misplaced. That statute allows a duly appointed personal representative to ratify acts taken “on behalf of the estate,” but only where (1) “the estate” exists, (2) the representative exists (or could exist), and (3) the act being ratified is one “proper for a personal representative.” None of these prerequisites apply here. When the Motion to Appoint was filed, because the moment the Park Estate was closed, no estate existed, the entire *Park* action was a nullity and had ceased to exist before the court. A legal entity cannot act “on behalf of the estate” when the estate itself has been extinguished. Moreover, initiating litigation or seeking a prejudgment receivership on behalf of a non-existent entity is not a “proper” act for a personal representative because, by definition, there was no estate whose interests could be represented.¹⁰¹ Section 62-3-701 cannot retroactively supply standing at the time the action was

¹⁰⁰ *Id.*, at 208.

¹⁰¹ *See Com. & Sav. Bank of Lake City v. Ward*, 146 S.C. 77, 143 S.E. 546, 548 (1928) (“if there is a lack of legal entity, the whole action fails. *** If an action is brought in the name of that which

taken and cannot convert a nullity into a valid judicial proceeding. The statutory provision presupposes an existing estate; it cannot revive one that was deliberately and formally terminated.

Because the estate was closed and its personal representative discharged before the Motion to Appoint was filed, the *Park* action itself ceased to exist. There was no plaintiff, no party, no controversy, and no jurisdictional basis for any judicial action.¹⁰² The receivership motion—filed by an entity that no longer existed—was a nullity, and the order purporting to appoint a prejudgment receiver in response to that motion is void. A void order has no legal force, cannot be confirmed, cannot be amended, cannot be relied upon, and cannot serve as the foundation for any prejudgment receivership authority in *Tibbs*.¹⁰³

The circuit court thus erred in treating the *Park* Appointment Order as a valid exercise of judicial power capable of authorizing a receiver in any action. Because the movant seeking relief in *Park* lacked legal existence, the resulting order was issued without jurisdiction and is void. It cannot have legal effect or serve as the basis for a prejudgment receivership in *Tibbs*.

Indeed, when an order is void from inception, South Carolina law leaves the circuit court

under the Lex fori has no legal entity, it is as if there was no plaintiff in the record and therefore no action before the court; which presents an instance of want of jurisdiction.”).

¹⁰² See, e.g., *Bargil Assocs., LLC v. Crites*, 135 A.D.3d 676, 24 N.Y.S.3d 119 (2d Dep’t 2016) (finding that “pursuant to applicable South Carolina law, the defendant lacked the authority to assert the subject counterclaims . . . because, at the time the defendant successfully moved to amend her answer to assert the counterclaims, her appointment as the personal representative of the decedent’s estate had been terminated and the estate had been closed.”).

¹⁰³ See, e.g., *Tyler House Apts., Ltd. v. United States*, 38 Fed. Cl. 1, 7 (1997); see also *Paradise Creations, Inc. v. UV Sales, Inc.*, 315 F.3d 1304, 1308–09 (Fed. Cir. 2003) (rejecting argument that state corporate revival statute, which provided that the revived corporation’s “reinstatement related back to the date of dissolution,” could “retroactively confer standing in federal court” at the time the then-dissolved corporation filed suit, which deprived the court of subject matter jurisdiction); *USS Clamagore SS-343 Restoration & Maint. Ass’n, Inc. v. Patriots Point Dev. Auth.*, 2020 WL 1038741, at *8 (S.C. Com. Pl. Mar. 02, 2020) (“It is improper for a plaintiff to retroactively attempt to correct a standing defect by seeking substitution under Rule 17(a) of the Rules of Civil Procedure or by amending its pleading.”).

no discretion to “amend” or “modify” it—it may only recognize its nullity. Critically, under well settled law, once an order is void for want of jurisdiction or statutory authority, it is void from the beginning.¹⁰⁴ No modification, amendment, or confirmation can breathe legal life into it. The circuit court’s inherent power to modify or amend its orders presupposes a valid order to begin with; it does not extend to rewriting history to create jurisdiction where none existed.¹⁰⁵

2. The *Park* Appointment Order is void because it omits the mandatory valuation clause required by § 15-65-60.

Section 15-65-60 requires that a prejudgment appointment order **must** include a clause fixing the value of the property for which a bond may be given to vacate the order.¹⁰⁶ This provision protects a substantial prejudgment right. An order lacking that clause is void.¹⁰⁷ Neither the *Park* Appointment Order nor the December 2023 Order (nor the October 13 Order) contains this mandatory clause. A prejudgment appointment order missing the statutory valuation requirement is not merely deficient—it is void and without legal effect.¹⁰⁸

¹⁰⁴ See, e.g., *Ross v. Richland Cnty.*, 270 S.C. 100, 103, 240 S.E.2d 649, 651 (1978) (“It is a universal principle as old as the law, that the proceedings of a Court without jurisdiction are a nullity, and its judgment without effect, either on the person or property.”) (citing *Ex parte Hart*, 186 S.C. 125, 133, 195 S.E. 253, 256 (1938)); see also *Thomas & Howard Co., Inc. v. T.W. Graham & Co.*, 318 S.C. 286 (1995) (“generally, a judgment is void only if a court acts without jurisdiction.”); *Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 613, 815 S.E.2d 780, 781 (Ct. App. 2018), *aff’d as modified*, 425 S.C. 568, 824 S.E.2d 214 (2019) (“Void judgments are defined as those from courts that lacked personal or subject matter jurisdiction, or failed to provide due process.”).

¹⁰⁵ See 60 C.J.S. *Motions & Orders* § 76 (“An order that is ‘void ab initio’ is null from the beginning. It has no legal effect, it may be attacked at any time, and it may be set aside or vacated at any time. . . . A void order is not susceptible of ratification or confirmation.”).

¹⁰⁶ See S.C. Code Ann. § 15-65-60.

¹⁰⁷ See *Truesdell v. Johnson*, 144 S.C. 188, 197, 142 S.E. 343, 348 (1928) (where a party whose assets were sought to be put into the hands of a receiver appealed an appointment order without the mandatory clause, the South Carolina Supreme Court held that the appointment order was void).

¹⁰⁸ *Id.*

C. Even If The *Park* Appointment Order Had Been Valid, It Does Not Satisfy The Requirements For The Extraordinary Remedy Of A Prejudgment Receivership.

Even if a *Park* plaintiff could retroactively come into existence as a legal entity and save the *Park* appointment—it cannot—and if the *Park* Appointment Order could somehow extend to *Tibbs*—it cannot—the *Park* appointment itself would still fail to satisfy the stringent criteria imposed by South Carolina statute and by *Welch* for the extraordinary remedy of a prejudgment receivership for multiple reasons.

First, in *Welch*, the appointment order itself contained findings of fact as to the purported moral fraud of Atlas Turner. The *Park* Appointment Order, on the other hand, does not contain a single finding of fact regarding Cape’s purported moral fraud. Instead, the sole basis for appointing a receiver included in the order is that “Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (‘Cape Asbestos’) and its subsidiaries and global affiliates (collectively, ‘Cape’ or the ‘Company’) have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case.”¹⁰⁹ Counsel for the former *Park* plaintiffs (as the *Park* plaintiffs themselves no longer existed as a legal entity), however, did not demonstrate that Cape had been dissolved (it has not), forfeited its charter (it has not), or been served but failed to answer (there is no evidence that Cape was sufficiently served).

Furthermore, the *Park* Appointment Order is devoid of any indication that it was “based on findings of fact sufficient under *Welch* to justify the order.” In the Motion to Appoint, Mr. Park’s counsel argued that a receiver was appropriate under South Carolina Code § 15-65-10(5) because of Cape’s decision to refuse to “appear or accept service in the United States after being faced with substantial asbestos-related liabilities.”¹¹⁰ However, this does not meet *Welch*’s requirements. As

¹⁰⁹ (R. p. 780).

¹¹⁰ (R. p. 469).

the Supreme Court pointed out, the “extreme power” to appoint a receiver before judgment “may only be used in extreme cases” and in the “rarest of cases.”¹¹¹ It is an “extraordinary remedy reserved for the most extraordinary cases. It is not to be used in the typical default case.”¹¹² Importantly, *Welch* did not rely on Atlas Turner’s status as a defaulted party but instead looked to its conduct specifically in the *Welch* case to determine that Atlas Turner engaged in moral fraud sufficient to justify a prejudgment receiver.¹¹³ Indeed, this Court pointed out that the trial court “gave Atlas Turner many chances to comply and follow the rules like every other litigant.”¹¹⁴

Nothing even remotely similar occurred in *Park* (or in *Tibbs*). In fact, the *Park* court did *not* make any findings that 1) Cape was properly served with service of process;¹¹⁵ 2) Cape refused (or failed) to comply with any court orders; 3) Cape was in default; 4) Cape engaged in moral fraud; 5) Cape was fraudulently concealing or disposing of assets that might be responsive to a later judgment; 6) there was a danger that Cape’s property would be materially injured before a judgment could be entered; 7) Cape was disobeying discovery orders; 8) Cape had made misrepresentations to the Court concerning the existence of assets that might cover the plaintiffs’ alleged injuries; or 9) Cape was otherwise engaged in active wrongdoing.

As a result, the October 13 Order disregards the facts, the law, and the explicit mandate of the June 26 Order, which made clear that any appointment order authorizing a receiver to act—which necessarily means it must have been filed *before* the Receiver acted in *Tibbs*—must be based

¹¹¹ *Welch*, 445 S.C. at 659.

¹¹² *Id.*, at 668.

¹¹³ *Id.*, at 659-662.

¹¹⁴ *Id.*, at 668.

¹¹⁵ Such a finding would have been impossible considering that, prior to the *Park* Appointment Order, no certificate of service or other affidavit in support showing service on Cape was ever submitted to the Court for review.

on *Welch*-compliant findings of fact. The *Park* Appointment Order was not based on any such findings of fact, nor did it “limit” the receiver’s authority “as set forth in *Welch*.” The October 13 Order should therefore be reversed as an improper effort to repurpose the *Park* Appointment Order.

Second, the *Park* Appointment Order does not contain any of the findings required by § 15-65-10(4). To the extent a party seeks a prejudgment receivership under § 15-65-10(4), the movant must show: (a) the defendant is insolvent, has been dissolved, or is in imminent danger of insolvency; and (b) the receivership is necessary to manage or preserve property within the jurisdiction.¹¹⁶ None of those elements was present in the *Park* Appointment Order. Critically, the *Park* Appointment Order did not find that Cape PLC, CIHL, or any related entity is insolvent. It did not find imminent insolvency. It did not find that any property exists in South Carolina that needs preserving. Indeed, nothing in the *Park* record (or the *Tibbs* record) identifies any South Carolina property belonging to these foreign corporations. Accordingly, the *Park* Appointment Order was also deficient under S.C. Code Ann. § 15-65-10(4).

Third, even the limited assertions within the *Park* Appointment Order rest on incorrect factual premises. The order states, for example, that Cape PLC was “dissolved.” That statement is simply wrong, which the circuit court now admits.¹¹⁷ A prejudgment receivership cannot and should not rest on materially inaccurate factual assumptions.

Fourth, the absence of findings required by *Welch*, the absence of findings required by S.C. Code Ann. § 15-65-10(4), and the factual inaccuracies embedded in the *Park* Appointment Order all independently preclude that order from operating as a prejudgment appointment order in *Tibbs*. Even if the *Park* Appointment Order had been validly issued—and it was not—it could not serve

¹¹⁶ S.C. Code Ann. § 15-65-10(4).

¹¹⁷ *See* (R. p. 046) (“The Court clarifies that Cape Intermediate Holdings Limited is not dissolved and has not forfeited its charter.”).

as the basis for the Receiver’s ultra vires actions in *Tibbs*.

D. The Circuit Court Erred In Expanding The Purported Prejudgment Receiver’s Authority Beyond The Strict Limits Imposed By *Welch* And The June 26 Order.

Even if the October 13 Order could serve as an initial receivership appointment order in *Tibbs*—it cannot—it still collapses under *Welch* and the June 26 Order. This Court mandated that, if the circuit court wanted to authorize 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” to justify its action.¹¹⁸ Rather than comply with this directive, the October 13 Order authorizes the Receiver based on “facts” that are insufficient under *Welch*, and permits him to make board level decisions for Cape as prohibited by *Welch*. Furthermore, these “facts” are based on improper hearsay materials, not competent evidence, and should not lawfully support the extraordinary remedy of a prejudgment receivership. Indeed, the October 13 Order primarily relies on unsworn statements, unauthenticated exhibits, and out-of-court assertions offered for the truth of the matters asserted that are inadmissible under Rule 802, SCRE and contain inadmissible hearsay within hearsay under Rule 805, SCRE.

1. The October 13 Order improperly conflates Cape with NAAC, a legal theory that has been soundly rejected after an extensive trial on the merits.

The October 13 Order improperly conflates Cape’s purported actions with other parties’ actions under the very same theories the Receiver seeks to prove in this litigation. Specifically, the October 13 Order relies on documents from other parties, such as NAAC, and imputes NAAC’s conduct to Cape. For example, when justifying its purported “jurisdiction” over Cape, the October 13 Order cites to documents showing that NAAC sold asbestos into South Carolina.¹¹⁹ However,

¹¹⁸ (R. p. 1646, Section A).

¹¹⁹ *See, e.g.*, (R. p. 037).

in order to attribute NAAC's conduct to Cape, the circuit court would need to first pierce the corporate veil between Cape and NAAC or find that Cape is the alter ego of NAAC, theories that were soundly rejected after an extensive 34-day trial and a subsequent 17-day appeal decades ago in the United Kingdom in *Adams*. The Receiver (purportedly standing in the shoes of Cape) is bound by, and estopped from taking action inconsistent with, *Adams*. He cannot seek to overturn the conclusive findings made in favor of the entity over which he is required by law to protect.¹²⁰

2. The October 13 Order's bases for appointing a receiver are insufficient under *Welch*.

Even if the "facts" in the October 13 Order were true and based on admissible evidence—they are not—they are insufficient to warrant the appointment of a prejudgment receiver in *Tibbs*.

First, although the October 13 Order finds a receivership is warranted under S.C. Code § 15-65-10(4) because CIHL (not a party in *Tibbs*) is allegedly in danger of insolvency, the "evidence" of such danger cited in the October 13 Order amounts to nothing more than conjecture. The October 13 Order speculates that because CIHL is a non-operating shell company, it *could* hide profits from plaintiffs (but provides no evidence that CIHL is in fact doing this) and because Cape-related entities pay out asbestos-related claims to United Kingdom-based plaintiffs, and not US-based claimants, this must mean there is "danger of imminent insolvency for CIHL."¹²¹ None of this constitutes evidence that CIHL is in immediate danger of becoming insolvent such that the drastic remedy of a prejudgment receivership should be implemented. Indeed, the very features the October 13 Order relies on are nothing more than the ordinary hallmarks of a holding company. To treat those characteristics as proof of insolvency would turn South Carolina law on its head. It would mean that every holding company could be subjected to the drastic remedy of a prejudgment

¹²⁰ See Section E(1), *infra*.

¹²¹ (R. p. 042).

receivership. That result is flatly inconsistent with this Court’s directive that a prejudgment receivership is an “extreme power,” reserved only for the “rarest” and most “extreme cases.”¹²²

Second, although the October 13 Order finds a receivership is also warranted under S.C. Code § 15-65-10(5), it does not identify any moral fraud committed by any Cape entity in the *Tibbs* case that could support the extraordinary remedy of appointing a prejudgment receivership over an active foreign entity. To the contrary, the October 13 Order’s invocation of “moral fraud” misconstrues this Court’s decision in *Welch* and improperly relies on conduct occurring decades before the *Tibbs* litigation and conduct that occurred after any purported receivership orders. Under *Welch*, however, the requisite “moral fraud” is egregious *litigation* conduct—an intentional manipulation of the judicial process in a particular case to mislead the court or opposing parties—not mere disagreement with the manner in which a defendant defends itself. Here, the only litigation “conduct” by Cape in either *Park* or *Tibbs* is a failure to answer a complaint in *Park*, where service was questionable and no default judgment was ever sought. No Cape entity has been served with a summons and complaint or taken any action in *Tibbs*. And in any event, declining to appear in response to a void pleading is not “fraud,” but rather a recognition that the tribunal lacks authority. Nor does a company’s decision to structure itself through legitimate corporate entities or hold assets through subsidiaries amount to fraud. Furthermore, as this Court recently pointed out, a prejudgment receivership is “not to be used in the typical default case.”¹²³

Critically, *Welch* did not expand “moral fraud” into a catch-all that overrides statutory limits on prejudgment receiverships. Additionally, the circuit court cannot base actions taken after the appointment of a prejudgment receiver as a legal and factual basis for the original appointment

¹²² *Welch*, 445 S.C. at 659.

¹²³ *Id.*, at 668.

of a prejudgment receiver. The Receiver's reliance on historical conduct by Cape and others based on hearsay, and current legal conduct by Cape in the very courts where Cape is incorporated, is not "moral fraud" sufficient to justify a prejudgment receiver. The Court should reject the October 13 Order's attempt to transform lawful corporate behavior into a moral offense in an effort to replace legal standards with moral rhetoric.

3. The authority given the Receiver under the October 13 Order would improperly exceed the scope of work authorized by *Welch*.

Even as modified in the October 13 Order, the Receiver's authorized scope of work still exceeds *Welch's* limits. The October 13 Order's conclusion that there is nothing in *Welch* requiring its limitations to be applied to any other receivership¹²⁴ is strictly belied by the June 26 Order mandating that the circuit court "[e]nsure" the Receiver's "scope of authority is limited as set forth in *Welch*." If this Court believed those limitations did not apply in *Tibbs*, it would have had no reason to impose that explicit mandate. The June 26 Order makes clear that *Welch's* restrictions govern here, and the October 13 Order's contrary position cannot be reconciled with that directive.

Furthermore, any conclusion that *Welch's* limitations on a receiver's authority should only be interpreted as clarifying the definition of an "insurance asset" is inaccurate. When the circuit court entered the appointment order over Atlas Turner in *Welch*, the court specifically included non-insurance assets in the scope of the receivership by including any assets that were "related to, touch or are otherwise relevant to such insurance." This Court held the appointment order's explicit grant of control over non-insurance assets exceeded what is allowed for a prejudgment receiver because it would "grant the Receiver entry into the Atlas Turner boardroom or some vague right to 'take over' operation of the company," which is not permissible authority for a prejudgment

¹²⁴ See (R. p. 046).

receiver in South Carolina.¹²⁵ Importantly, the Court in *Welch* did not just say the parties misunderstood or were clarifying the scope of authority in the appointment order. Instead, the Court explicitly stated it was “shrink[ing] the scope of the Receivership order.”¹²⁶

Despite the limits set by *Welch*, the October 13 Order asserts that the law authorizes receivers to take over operations of a functioning company and/or make boardroom level decisions of a company with an operating board so long as that authority is included in an appointment order. Indeed, the powers asserted by the Receiver in *Tibbs*, including making litigation decisions on behalf of a solvent company, have long been recognized by the courts of this state and across the country as belonging exclusively to a company’s board of directors.¹²⁷ The October 13 Order’s position, however, was flatly rejected by this Court in *Welch* and is in direct conflict with controlling federal appellate authority. In *Whittaker Clark & Daniels v. Protopapas*—a decision Appellants promptly notified the circuit court of more than a month prior to the October 13 Order being issued—the United States Court of Appeals for the Third Circuit held that a South Carolina-appointed receiver may not displace the board’s authority over corporate affairs of a foreign

¹²⁵ *Welch*, 445 S.C. at 667.

¹²⁶ *Id.*

¹²⁷ See, e.g., *Carolina First Corp. v. Whittle*, 343 S.C. 176, 187, 539 S.E.2d 402, 408 (Ct. App. 2000) (a corporation’s “directors are, under the laws of every state, responsible for the conduct of the corporation’s business, including the decision to litigate” (citation omitted)); *Muzek v. Eagle Mfg. of N. Am., Inc.*, 2019 WL 13168879, at *2 (E.D. Ky. Oct. 23, 2019) (“[A] decision whether to bring a lawsuit, refrain from litigation on behalf of a corporation, or the appointment of an examiner is a decision concerning the management of a corporation. Such decisions are part of the responsibility of a board of directors” (citation omitted)); *Freedman v. Redstone*, 753 F.3d 416, 424 (3d Cir. 2014) (same); *In re Univ. Health Servs., Inc., Derivative Litig.*, 2019 WL 3886838, at *30 (E.D. Pa. Aug. 19, 2019) (same); *Hirschfeld v. Beckerle*, 405 F. Supp. 3d 601, 605 (D.N.J. 2019) (same); see also S.C. Code Ann. § 33-2-102(1) (providing “sue and be sued, complain, and defend in its corporate name” as the very first “general power” of a South Carolina corporation); *id.* § 33-8-101 (providing that, with limited irrelevant exceptions, “all corporate powers must be exercised by or under the authority of, and the business and affairs of a corporation must be managed under the direction of, a board of directors”).

corporation.¹²⁸ The Third Circuit expressed significant doubt that a South Carolina court had the ability or authority to “issue an order purporting to place the control of Whittaker's corporate affairs in the hands of the South Carolina Receiver.”¹²⁹ The Third Circuit explained that if the South Carolina receivership order had attempted to give the receiver control over the internal affairs of a foreign corporation, “it would be an unprecedented exertion of power over a foreign corporation whose internal affairs are governed by the laws of a sister state, and a radical intrusion into the province of a co-equal sovereign.”¹³⁰ The circuit court’s October 13 Order here does precisely that—asserting control over the governance of a United Kingdom corporation and depriving it of representation by its own directors and chosen counsel over their explicit objections. The *Whittaker* holding squarely refutes the circuit court’s conclusion that the Receiver here could act as Cape’s corporate representative and make binding litigation or business decisions on Cape’s behalf.

Even if the Receiver had been properly appointed in *Tibbs*—which he has not been and cannot be—he would not have the power to make stunning admissions of liability on Cape’s behalf and then bring third-party claims based solely on those admissions to cover all asbestos-related injuries alleged by all South Carolinians, past and present. This goes far beyond the limited case-specific scope of receivership delineated by *Welch* and South Carolina receivership law.

4. The October 13 Order’s findings of facts and conclusions of law are insufficient to justify exceeding South Carolina law as outlined in *Welch*.

The October 13 Order does not contain sufficient findings of fact based on competent evidence or conclusions of law warranting the “extraordinary” remedy of a prejudgment

¹²⁸ 2025 WL 2611753, at *6 (3d Cir. Sept. 10, 2025).

¹²⁹ *Id.*, at *7.

¹³⁰ *Id.*, at *8.

receivership over Cape in the *Tibbs* action. Under South Carolina law, a prejudgment receivership may only be imposed upon a clear, case-specific showing of necessity, supported by evidence and findings in the record, of one of two things (as applicable to this case): (1) proof that Cape is insolvent or imminently at risk of insolvency,¹³¹ or (2) proof that Cape committed a “moral fraud” in the *Tibbs* litigation.¹³² Only upon such a showing may a court consider the extraordinary step of appointing a receiver. This is not optional. It is the legal prerequisite that ensures receiverships are used as a narrowly tailored remedy, not a shortcut for litigants who are dissatisfied with more traditional legal avenues or cannot legitimately obtain personal jurisdiction over an entity.

Implicitly acknowledging there were errors with the scope of authority given the receiver in the *Park* Appointment Order, the October 13 Order seeks to modify and expand the scope of the *Park* Appointment Order.¹³³ Even with these modifications, however, the findings of fact and conclusions of law are simply insufficient to justify exceeding South Carolina law as set forth in *Welch* and the June 26 Order. Importantly, the third prong of the June 26 Order required the circuit court to justify, by specific findings of fact and conclusions of law, any receivership appointment that is based on facts not found sufficient in *Welch*, or to authorize a scope of work not approved in *Welch*. The October 13 Order makes no attempt to do so. Indeed, instead of complying with this Court’s mandate, the October 13 Order simply makes the bald (and incorrect) conclusion that *Welch* does not apply to any receivership beyond a receivership expressly limited to only insurance assets (even though the appointment order in *Welch* originally exceeded insurance assets).

The extraordinary relief of a receiver should not rest on presumptions, assumptions, or

¹³¹ See S.C. Code § 15-65-10(4).

¹³² See S.C. Code § 15-65-10(5); *Welch*, 445 S.C. at 659 – 662.

¹³³ See (R. pp. 046 – 048).

conjecture. There must be evidence—current, case-specific, and admissible—establishing that Cape is insolvent today, is in “imminent danger of insolvency,” or engaged in moral fraud in *Tibbs*. The Receiver has not supplied such evidence (nor has any *Tibbs* plaintiff), and the October 13 Order does not pretend otherwise. By not providing any justification or explanation of why the circuit court can exceed the structures in *Welch*, the October 13 Order ignores the strict mandate handed down by this Court in the June 26 Order and, therefore, must be reversed.

E. Cape’s Victory In *Adams* Should Be Recognized By The South Carolina Courts And Estops The Receiver From Rewriting The Facts Cape Already Litigated And Won.

The factual and legal determinations in *Adams v. Cape Industries plc* foreclose the Receiver’s liability theories as a matter of law. After a 34-day trial and a 17-day appellate review, the English courts rejected the very allegations the Receiver now advances—namely, that Cape dominated NAAC, corporate separateness was a façade, and Cape operated a unified asbestos enterprise designed to evade liability. Cape litigated these issues fully, prevailed fully, and secured a judgment that has since been affirmed repeatedly. Having benefitted from that adjudication, Cape—and anyone standing in Cape’s shoes—is estopped from asserting a contrary position now.

Because the Receiver purports to bring claims on Cape’s behalf, he is bound by Cape’s litigation history. He cannot disavow a judgment that Cape itself won, nor can he repudiate the factual findings that compelled that victory. The doctrines of judicial estoppel and collateral estoppel bar him from re-opening issues that were litigated to finality more than three decades ago.

1. *Adams* is binding on the Receiver.

All of the elements for estopping the Receiver (standing in the shoes with Cape¹³⁴) from challenging the factual and legal issues decided in *Adams* are met under South Carolina law. Cape

¹³⁴ *Welch*, 445 S.C. at 663 – 664 (“The Receiver stands in the companies’ shoes”).

spent decades litigating—and ultimately winning—the precise alter-ego and veil-piercing issues the Receiver now seeks to revive. Indeed, the Third-Party Complaint alleges that NAAC was Cape’s alter ego, that Cape operated as part of a global asbestos enterprise, and that Cape and its affiliates disregarded corporate formalities. Those allegations are the mirror-image opposite of the factual findings Cape established and won in *Adams* and which have been subsequently reaffirmed, including by the 2024 UK High Court judgment. This Court should not permit a purported Cape receiver to repudiate Cape’s own judgment to advance the Receiver’s desired litigation strategy. Allowing such a reversal would not only violate fundamental principles of estoppel—it would allow the Receiver to harm the very entity he is supposed to protect. Accordingly, the Receiver must be estopped from taking contrary factual and legal positions from those that were previously decided in Cape’s favor in *Adams*.

a. Judicial Estoppel Bars the Receiver From Reversing Cape’s Litigated Position.

The Receiver is judicially estopped from arguing that Cape exercised sufficient control of NAAC such that Cape’s veil should be pierced. Judicial estoppel prevents a party, or one standing in that party’s shoes, from adopting a position that is totally inconsistent with a position previously asserted and successfully maintained in prior litigation.¹³⁵ That is exactly what is happening here.

In *Adams*, Cape argued that NAAC was not its alter ego, its subsidiaries were independent companies, and its corporate structure was legitimate and lawfully observed.¹³⁶ The court accepted

¹³⁵ *Cothran v. Brown*, 357 S.C. 210, 215-216, 592 S.E.2d 629, 632 (2004) (holding that judicial estoppel applies when there are: “(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.”).

¹³⁶ *See* (R. pp. 2627 – 2629).

Cape's arguments, finding it "not in the least apt" to describe NAAC as Cape's alter ego and holding that the parent-subsidary distinction was "fundamental and cannot here be bridged."¹³⁷

These determinations were essential to the judgment, and Cape benefitted from them directly.

The Receiver now takes the opposite position. He asserts that Cape dominated NAAC, disregarded formalities, and operated as a unified asbestos enterprise. That position is totally inconsistent with the one Cape previously advanced and won. Judicial estoppel therefore bars it. Cape cannot have one set of facts when defending itself and another when its Receiver seeks to impose liability on third parties. The Receiver is bound by Cape's original victory.

b. Collateral estoppel and res judicata likewise preclude relitigating the issues decided in Adams.

Similarly, collateral estoppel and/or res judicata bar the Receiver from relitigating whether Cape dominated or controlled NAAC sufficient to pierce the corporate veil. In South Carolina, a party is barred from relitigating in a second action an issue or claim that has been previously litigated and decided in a prior action.¹³⁸ Res judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction.¹³⁹ Similarly, collateral estoppel applies if the "issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior

¹³⁷ (R. p. 2630 – 2639).

¹³⁸ *See S.C. Prop. & Cas. Ins. Guaranty Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991) ("Collateral estoppel occurs when a party in a second action seeks to preclude a party from relitigating an issue which was decided in a previous action."); *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("Under the doctrine of res judicata, '[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.'").

¹³⁹ *Johnson v. Greenwood Mills, Inc.*, 317 S.C. 248, 250–51, 452 S.E.2d 832, 833 (1994).

judgment.”¹⁴⁰ These doctrines apply in equal force in the context of a receivership: “[a] judgment rendered prior to the appointment of a receiver for or against the association of which such receiver has been appointed binds the receiver, and the facts thereby established become res judicata as to all receivers, whether the judgment was for or against the association.”¹⁴¹

Adams satisfies every element for collateral estoppel and res judicata. The Receiver’s alter-ego, domination, and “single enterprise” allegations were litigated exhaustively. The English courts determined that: (a) NAAC was not the alter ego of Cape; (b) Cape did not dominate or control NAAC; (c) the companies observed real and lawful corporate separateness; and (d) the corporate structure was not a liability-avoidance sham. These findings were essential to the judgment and cannot be re-examined. Cape had a full and fair opportunity to litigate these issues—indeed, it litigated them extensively. Because the Receiver’s claims depend on proving the exact opposite propositions, collateral estoppel and res judicata bar them outright.

c. The “Reception Statute” Requires Enforcement of Adams.

Statutorily, the *Adams* judgment and the principles of law relied on therein (as well as created as a result)—as a part of the common law of England—are already “in full force and effect” in South Carolina by virtue of the “Reception Statute.”¹⁴² Accordingly, the Court should enforce *Adams* as binding authority, the result of which should be the dismissal of the Receiver’s claims.

2. Under principles of comity, the court should recognize the UK court’s decision in *Adams* and grant *Adams* preclusive effect on the alter ego decision.

¹⁴⁰ *Carolina Renewal, Inc. v. S.C. Dep’t of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009).

¹⁴¹ Restatement (First) of Conflict of Laws § 576 (1934).

¹⁴² S.C. Code Ann. § 14-1-50 (“All, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.”).

Alternatively, this Court should recognize and enforce *Adams* pursuant to general principles of comity, the result of which is the same: the dismissal of the Receiver's claims.¹⁴³ Comity obligates courts to respect the final judgments of foreign tribunals when those judgments arise from fair proceedings, address the identical issues, involve the same parties or their privies, and do not offend public policy. *Adams* meets every requirement. It was a lengthy, adversarial, and procedurally robust trial; it produced detailed factual findings; and the parties had a full opportunity to litigate. The judgment speaks directly to the corporate relationships at issue here.

In the seminal *Hilton* case, the United States Supreme Court enunciated the standards to be assessed and applied relative to the recognition and enforcement of foreign judgments, holding that a foreign judgment is entitled to effect in American courts when issued by a court with proper jurisdiction, after regular proceedings that afforded the defendant notice and a meaningful opportunity to be heard, within a legal system that provides fair and impartial justice.¹⁴⁴ Unless there is evidence of fraud, bias, or some compelling reason to refuse recognition, a U.S. court does not re-try the case or revisit the foreign court's factual or legal determinations simply because one party asserts they were wrong.¹⁴⁵ This remains the controlling test today. As the South Carolina district court summarized in *S.C. Nat'l Bank*, U.S. courts will generally recognize a foreign judgment when four conditions are met: the foreign court exercised valid personal and subject-matter jurisdiction; the defendant had adequate notice and opportunity to defend; the judgment

¹⁴³ See, e.g., *S.C. Nat'l Bank v. Westpac 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) (quoting *Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895)).

¹⁴⁴ 159 U.S. at 202–03.

¹⁴⁵ *Id.*

was not procured by fraud; and enforcement would not undermine fundamental public policy.¹⁴⁶

Each of these four factors is clearly satisfied here with respect to *Adams*. *First*, Cape is an English company, and the *Adams* plaintiffs brought their case in England. Thus, the *Adams* court had personal and subject matter jurisdiction—there was and can be no argument or contest about it. *Second*, all parties (inclusive of Cape, a defendant) in *Adams* had adequate notice and a full opportunity to be heard,¹⁴⁷ including in a 34-day trial and 17-day appeal. At both stages, it was conclusively determined that Cape was not “present” in the United States either directly or through its subsidiaries, including NAAC. *Third*, there are no allegations that the *Adams* judgment was obtained by fraud, nor could there be—the *Adams* plaintiffs brought their case decades ago and lost after a lengthy trial and appeal on a developed record. *Fourth*, enforcement of *Adams* will not contravene public policy. Instead, it is entirely consistent with the public policy of this state to enforce long-established English common law, specific to the very entity over which the Receiver purports to act, so as to, *inter alia*, end an unlawful and unconstitutional receivership with an improper extraterritorial aim and ensure that traditional, personal jurisdiction notions of fair play and substantial justice are given effect and preserved.

Recognizing *Adams* under principles of comity both honors the finality of that adjudication and prevents inconsistent judicial determinations concerning the same corporate structure.¹⁴⁸

¹⁴⁶ 678 F. Supp. at 598 (citation omitted) (concluding that Australian judgment should be recognized and enforced); *see also Bluewave Boat Rentals Ltd. v. Collins*, 2016 WL 5720146, at *2 (D.S.C. Oct. 3, 2016) (citing *S.C. Nat’l Bank* and *Hilton* and applying same four factor test).

¹⁴⁷ The Receiver was likewise provided with notice of the recent UK proceedings brought by CIHL and Cape PLC but chose not to participate in that forum, instead seeking to continue his unauthorized endeavor in this case.

¹⁴⁸ *See Wash v. Finch*, 2024 WL 3565783, at *5 (D.N.J. July 29, 2024) (giving preclusive effect to certain findings by the UK Court after the “issues were actually litigated over the three-week-long bench trial and were essential to the [UK] Court’s finding” of fraud).

F. Appellants Preserved, And Did Not Waive, Their Personal Jurisdiction Defenses.

Appellants have consistently asserted the defense of lack of personal jurisdiction and have taken no action that could be construed as express or implied waiver. South Carolina law requires a clear, intentional relinquishment or conduct inconsistent with the continued assertion of the jurisdictional objection before finding waiver.¹⁴⁹ The record here shows the opposite.

Under South Carolina Rules of Civil Procedure, a personal jurisdiction defense is preserved when raised in the first responsive pleading or by a timely Rule 12 motion, and it is not waived by participating in proceedings that are compatible with that defense.¹⁵⁰ Appellants asserted lack of personal jurisdiction in their initial motion to dismiss, which was denied. As the Receiver has repeatedly stressed, the “the denial of a motion to dismiss under Rule 12(b)(2), SCRCPP, is interlocutory and not directly appealable.”¹⁵¹ Accordingly, Appellants’ personal jurisdiction defenses are still viable.

No conduct by Appellants misled the court or opposing parties into believing the defense was abandoned. In every filing and hearing in the circuit court, Appellants asserted and preserved their jurisdictional defenses.¹⁵² While the doctrine of waiver guards against sandbagging and unfair surprise, neither is present here. The Receiver has long been on notice of Appellants’ personal jurisdiction position and the Receiver cannot argue in good faith that he did not understand

¹⁴⁹ See *Ex parte Liberty Mut. Ins. Co.*, 2025 WL 2794501, at *6 (S.C. Ct. App. Oct. 1, 2025); *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007).

¹⁵⁰ See *Abdulla v. S. Bank*, 439 S.C. 391, 405, 887 S.E.2d 138, 145 (Ct. App. 2023) (holding no waiver existed when defendant “stated in its answer the facts and allegations pertinent to its lack of personal jurisdiction defense and timely brought the issue before the circuit court by filing a motion to dismiss after raising the defense.”).

¹⁵¹ *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 781 (1993).

¹⁵² See, e.g., (R. pp. 362, n.1); (R. p. 379, n.1); (R. p. 396, n.1); (R. p. 807); (R. p. 813); (R. p. 819); (R. 0986, lines 9:8 –16); (R. p. 1712, n.1).

Appellants were asserting a personal jurisdiction defense.

The Receiver cannot identify a single case—because none exists—where a defendant was deemed to have waived a personal jurisdiction defense after doing exactly what happened here: (a) asserting the defense in its first responsive pleading; (b) filing a prompt motion to dismiss on that basis; (c) immediately seeking appellate review when that motion was denied (even over the Receiver’s objection that the order was not appealable); (d) expressly preserving the defense in every subsequent filing; (e) reiterating the defense at every hearing; and (f) renewing the defense again in objections leading up to trial. Cases that have found waiver of personal jurisdiction involve the opposite posture: defendants who delayed raising a personal-jurisdiction challenge until after they had engaged in extensive discovery or litigated the merits.¹⁵³ None involves a defendant who led with a jurisdiction motion, obtained a ruling, and continued to preserve the issue thereafter.

Finding waiver in cases like this would strip defendants of their appellate rights on personal-jurisdiction questions. It would force them to choose between defaulting or forfeiting the defense by participating in proceedings after an adverse ruling. That is not the law. Personal jurisdiction is not waived when a defendant defends itself after its motion is denied; to hold otherwise would invert the doctrine and render jurisdictional challenges impossible to preserve.

Accordingly, Appellants have not waived their personal jurisdiction defenses.¹⁵⁴

VI. CONCLUSION

The October 13 Order rests on a premise South Carolina law does not tolerate: that a

¹⁵³ See, e.g., *Maybank v. BB&T Corp.*, 416 S.C. 541, 566, 787 S.E.2d 498, 511 (2016) (finding waiver of personal jurisdiction where defendant actively participated in litigation without “wait[ing] for the trial court to rule whether it could properly exercise personal jurisdiction over” defendant).

¹⁵⁴ Appellants’ personal jurisdiction arguments, which are fully preserved, were part of Appellants’ Initial Brief filed in Appellate Case No. 2023-001461, which is incorporated by reference per Rule 208(b)(6), SCACR. See (R. pp. 1429 – 1490).

prejudgment receivership may be presumed, expanded, or retroactively validated despite the absence of a case-specific appointment order containing the findings required by statute and *Welch*. No such appointment was ever entered in *Tibbs*. The *Park* Appointment Order—void when entered and incapable of satisfying the requirements for a prejudgment receivership in *Tibbs*—cannot be transformed into a source of authority here. By treating it as if it could, the circuit court displaced statutory limits, disregarded jurisdictional boundaries, and disregarded this Court’s directives.

A prejudgment receivership is an extraordinary, strictly limited remedy. It may exist only where the Legislature has authorized it, upon the findings the law demands, and within the confines of the case in which it is created. The Receiver’s actions in *Tibbs* have been taken without a lawful appointment order and are therefore void. The October 13 Order—which presupposes a prejudgment receivership that never existed—must be reversed, and all receiver-initiated actions in *Tibbs* must be vacated.¹⁵⁵

Respectfully submitted,

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¹⁵⁵ Per Rule 208(b)(6), SCACR, Appellants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by similarly situated Appellants Mohed Altrad and Altrad Investment Authority S.A.S. in their filed Briefs in Appellate Case No. 2025-002104.