RECEIVED

Dec 30 2025

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 Nos.: 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 Corandp.; 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., Arran Co 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.; Mohed Altrad; and Altrad Investment Authority SAS are the...APPELLANTS.

RESPONDENTS' JOHN AND MARGARET TIBBS' FINAL RESPONSE BRIEF

Charles W. Branham, III (SC Bar No. 106178)
DEAN OMAR BRANHAM SHIRLEY, LLP
1801 N. Lamar Street, Suite 300
Dallas, TX 75202
T: 214-722-5990
F: 214-722-5991
tbranham@dobslegal.com

Theile B. McVey (SC Bar No. 16682)
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202-1476
T: 803-256-4242
F: 803-256-1952
tmcvey@kassellaw.com
Other email: emoultrie@kassellaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

<u>*Statutes*</u>

<u>*Other Authorities*</u>

I. STATEMENT OF ISSUES

Charter Consolidated Ltd., ESAB Corporation, and Central Mining and Investment Corporation Ltd. (collectively, "Charter Appellants") and Mohed Altrad and Altrad Investment Authority SAS ("Altrad Appellants") (all collectively, "Appellants") continue their pattern of unceasing interlocutory requests from rulings made by Justice Toal in the consolidated asbestos docket.[1] This Court, accepting one of those appeals for immediate consideration, directed the parties to specifically address several specific issues. Appellants pay mere lip service to the questions posed by this Court, apparently dismissing them as impediments to the arguments they wish to repeat and which have been previously rejected.

At its heart, this appeal is about whether South Carolina courts should yield their authority to determine tort cases involving products sold and used in South Carolina by South Carolina residents causing injuries in South Carolina. Appellants contend U.K. law as determined by U.K. courts, showing no deference to South Carolina laws nor concern for the rights of South Carolina citizens, should control. Appellants' arguments are without merit, and would result in South Carolina subjugating its laws and citizens to a foreign jurisdiction. In the words of this Court, such a result would be "shocking and indefensible." *See,* this Court's January 16, 2025 Order.

Issue 1: What impact does *Adams v. Cape Industries Plc* [100] Ch. 433 have on South Carolina's exercise of personal jurisdiction over Cape, PLC and its related companies? The Tibbs answer is, "*Adams* has no impact," because under South Carolina's choice-of-law rules, a South Carolina court must look to South Carolina's long-arm statute and federal due process to determine

[1] In its June 26, 2025 Order, this Court chastised asbestos defendants for the number of interlocutory appeals filed in asbestos cases, noting "many of the appeals from those orders have bordered on frivolous."

issues of personal jurisdiction. As *Adams* did not address South Carolina's jurisdiction over Cape under either South Carolina or U.S. due process, it has no impact on this case.

Issue 2: What impact does *Adams* have on the Receiver's pursuit of alter ego/amalgamation theories? The Tibbs answer is, "*Adams* has no impact." Once again, under South Carolina's choice-of-law rules, it is South Carolina, not U.K., law which governs the Receiver's various amalgamation claims. As *Adams* did not purport to analyze this issue under South Carolina law, it has no impact on this matter.

Issue 3: Have Appellants waived their personal jurisdiction defenses? The Tibbs answer the question "yes," as Appellants 1) have no standing to assert Cape, PLC's personal jurisdiction defense, and 2) Appellants' use (and abuse) of South Carolina courts in seeking substantive remedies which requires the court to have jurisdiction acts as a waiver.

Issue 4: Do Appellants have any right to challenge the appointment of a receiver for Cape, PLC, and if so, do their arguments have merit? The Tibbs answer this issue by asserting Appellants have no standing to challenge the appointment of a receiver over a third party, and even if they did, such challenge has no merit and cannot be collaterally raised in the instant case.

II. STATEMENT OF THE CASE

As this Court has previously recognized, asbestos defendants have begun to overwhelm South Carolina courts with repetitive motions and interlocutory appeals, explicitly noting "many of the appeals from those orders have bordered on frivolous." June 26, 2025 Order. This current appeal has become so byzantine that Appellants' Statements of the Case do not only set forth the history of this matter, but also of *Parks v. Armstrong International, Inc.,* case no. 2021-CP-40-02727, *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 32 (2025)*, Adams v. Cape Industries Plc* [1990] 1 Ch. 433, a 1990 case out of the United Kingdom which declined to enforce

Texas judgments, *Mann I*, a 2024 proceeding commenced to collaterally attack the rulings of the South Carolina courts, and *Smith*, yet another English proceeding brought by Appellants to collaterally attack South Carolina's jurisdiction and jurisprudence.

Both Appellants highly editorialize their statements of the case, and include numerous references to *other* cases, and thus the Tibbs provide this brief recitation of the operative facts and filings for the Court's ease of reference.

The underlying lawsuit at issue in this case involves the Respondent Tibbs' claims against various entities which they allege exposed Mr. Tibbs' to asbestos which caused his mesothelioma. Amongst the Defendants named was Cape PLC. (R. 50, 141).

Peter D. Protopapas is the acting receiver for Cape PLC, appointed pursuant to a March 17, 2023 order entered after Cape was defaulted in *Parks*. (R. 780). Mr. Protopapas appeared in *Tibbs* on Cape's behalf as its Receiver, and subsequently filed a Third-Party Complaint against various entities, including Appellants. (R. 249). The Receiver asserted Appellants and Cape were successors, alter egos, amalgamations, and/or a single business enterprise under various veil-piercing theories of liability *(Id.*).

Third-party Defendants responded by filing a series of Motions to Dissolve the Receivership and Motions to Dismiss for Lack of Personal Jurisdiction (R. Vols II-IV). Appellants sought to collaterally attack Mr. Protopapas's appointment as Cape's receiver in *Park* by raising defenses personal to Cape, including that South Carolina has no jurisdiction over Cape, that Cape was not properly served, and that the appointment of Mr. Protopapas as Cape's receiver violated South Carolina law. (*Id.*).

On December 6, 2023, the trial court issued a 74-page consolidated Order addressing Appellants' various pending motions. (R. 1104). Stated briefly, the court found Mr. Protopapas had

been properly appointed Receiver for Cape in the *Park* matter, and Appellants were subject to personal jurisdiction in South Carolina.

Appellants subsequently began appealing and re-appealing this and every other order entered by the trial court. (*see, e.g.*, R. 1178-1230). Although the Court of Appeals summarily dismissed Appellants' appeals as interlocutory, Appellants continued to file requests for rehearing and multiple other appeals and requests for writs. Eventually, this Court intervened, and on June 26, 2025 entered an order remanding this matter to the trial court with certain instructions. (R. 1643[2]).

On July 11, 2025, the Receiver filed a Motion to Confirm, requesting the trial court address the concerns of this Court's June 26, 2025 order, and confirm his right to act in *Tibbs* pursuant to his appointment in *Parks*. (R. 1649). On October 13, 2025, the trial court granted the Receiver's motion. (R. 1).

Yet again, Appellants filed multiple requests for interlocutory relief, both with the Court of Appeals and this Court. The Court of Appeals once again dismissed Appellants' appeals, leading them to file motions for reconsideration.

On November 20, 2025, this Court certified the matter from the court of appeals. Six days later, it set a briefing schedule, and specifically instructed the parties to address the following issues: (1) the impact of *Adams* on South Carolina's exercise of personal jurisdiction over Cape PLC and various related companies including Appellants, (2) whether *Adams* estops the receiver from pursuing its alter ego/amalgamation theories on Cape's behalf, and (3) whether Appellants have waived their personal jurisdiction defense.

[2] Appellants' table of contents for the Record mistakenly identifies this order as having been issued on June 16, 2025).

III. STANDARD OF REVIEW

"[T]he appointment of a receiver is within the discretion of the circuit judge." *Midlands Utility, Inc. v. South Carolina Dep't of Health*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989). A trial court's decision whether to appoint a receiver is reviewed for abuse of discretion. *Richland County v. South Carolina Dep't of Revenue*, 422 S.C. 292, 312, 811 S.E.2d 758, 769 (2018).

Offensive collateral estoppel is determined under an abuse of discretion standard, *see, e.g.*, *Roberts v. Recovery Bureau, Inc.,* 316 S.C. 492, 497 450 S.E.2d 616, 620 (Ct. App. 1994) while questions regarding issue preclusion are reviewed de novo with no deference to the lower courts. *Crosby v. Prysmian Communications Cables and Systems USA, LLC*, 397 S.C. 101, 106, 723 S.E.2d 813, 816 (Ct. App. 2012).

With respect to personal jurisdiction determinations, "the decision of the trial court will be affirmed unless unsupported by the evidence or influenced by an error of law." *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 88, 666 S.E.2d 218, 221 (2008)

IV. ARGUMENT

A. South Carolina's Long-Arm Statute and Federal Due Process Determine Whether South Carolina has Personal Jurisdiction over Cape and its Related Entities

Appellants claim *Adams v. Cape Industries Plc* [100] Ch. 433 stands for the proposition that South Carolina cannot have personal jurisdiction over Cape or its related entities. In making this claim, Appellants fail to acknowledge an obvious point: South Carolina's personal jurisdiction is determined by South Carolina's long-arm statute and United States federal due process. A U.K. court's determination of an American court's jurisdiction under U.K. law has absolutely no binding or persuasive authority for this Court to consider.

S.C. Code. Ann. § 36-2-803 sets forth South Carolina's long arm statute, and states,

> (A) A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's:

(1) transacting any business in this State;
(2) contracting to supply services or things in the State;
(3) commission of a tortious act in whole or in part in this State;
(4) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State;
(5) having an interest in, using, or possessing real property in this State;
(6) contracting to insure any person, property, or risk located within this State at the time of contracting;
(7) entry into a contract to be performed in whole or in part by either party in this State; or
(8) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.

(B) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him.

Adams made no attempt to analyze this statute. Indeed, *Adams* had no connection to South Carolina whatsoever. Even if it had deigned to make such an analysis, it would not be binding on this Court, which has supreme interpretive authority over South Carolina's long-arm statute.

This Court has used that authority on numerous occasions, noting among other things that, "physical presence in the State is not required," and "solicitation of business 'is not a *sine qua non* of jurisdictional power.'" *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). This Court has further pronounced that the State's long-arm statute extends to the limits of federal due process. *Id.*at 260.

Once again, *Adams* made no effort to determine the personal jurisdiction of any U.S. jurisdiction under United States due process. Instead, the *Adams* court applied a much narrower personal jurisdiction analysis, presumably in compliance with U.K. law. Regardless, given that *Adams* did not analyze either South Carolina's long-arm statute or U.S. due process, and that even

if it had such analysis would not be binding on this Court, *Adams* has no effect whatsoever on the determination of whether South Carolina courts can exercise personal jurisdiction over Cape or its related entities.

B. South Carolina Law, Not U.K. Law, Governs the Receiver's Alter Ego / Amalgamation Claims

Adams is equally irrelevant when considering the Receiver's alter-ego, successor, and other amalgamation claims. This Court has set forth South Carolina's choice-of-law principles with respect to alter ego and other amalgamation claims on various occasions. In fact, in *Pertuis v. Front Roe Restaurants*, 423 S.C. 640, 817 S.E.2d 273 (2018), this Court noted that the choice-of-law issue was the starting point for any veil-piercing or amalgamation theories presented in the case. *Id.* at 649.

In *Pertuis*, this Court first recognized that the "internal affairs doctrine" generally applies to corporate law choice-of-law questions, and that under this doctrine the law of the state of incorporation typically governs the relations between a corporation, and its shareholders, directors, officers, or agents. *Id.* at 649-650. Appellants take the position that the Receiver's claims against them invoke this doctrine, suggesting U.K. or other foreign laws should apply.

But *Pertuis* continued on to make a deeper analysis of the internal affairs doctrine in the context of alter-ego and corporate amalgamation theories. And consistent with most U.S. jurisdictions considering the issue, this Court held the internal affairs doctrine does <u>not</u> apply to veil piercing, alter ego, and other amalgamation theories of law.

"[A]lthough veil piercing cases implicate corporate law, they involve disputes that reach beyond the confines of the corporation." *Id*. at 650 (int'l edits omitted, *citing* 1 William Meade Fletcher, et al, *Fletcher Cyclopedia of the Law of Corporations* §43.72 (perm. Ed., rev. vol. 2015)).

> Indeed, this threshold amalgamation issue is not as much a question of the inner-workings of foreign corporations as it is an assessment of whether these entities

> actually operate as a single business enterprise, and thus should be treated as a single entity.

Id. at 650 (concluding application of South Carolina's veil piercing law was appropriate).

Numerous other jurisdictions are in accord with South Carolina's choice-of-law analysis with respect to alter ego, veil piercing, successorship liability, and other amalgamation theories. As explained in 63B Am. Jur.2d Products Liability §1350 (emphasis added),

> Many courts characterize the issue of successor liability as one sounding in tort, and in applying the modern approach to choice of law for tort issues, the court focuses upon the consequences of the relationship between the corporate parties and the injured plaintiff. ***This often results in application of the law of the state where the injury occurred and where the plaintiff was domiciled***. . . .A contractual choice-of law clause in an agreement for the purchase of assets of a corporation does not affect product liability claims against the successor corporation that are based upon alleged defects in products manufactured by the predecessor corporation because a products liability plaintiff is not a party to a contract for the purchase of assets of the manufacturer by a successor corporation."

This same reasoning applies whether the amalgamation theory is veil piercing, alter ego, single-business enterprise, or successor liability. It is the situs of the plaintiff, injury and tort which merit consideration, not the residency of the defendants. *See also*, *Young v. Fulton Iron Works Co.,* 709 S.W.2d 927 (Mo.App. 1986) (holding Missouri applies tort, rather than contract, choice-of-law rules, and declining to apply law of state of incorporation to amalgamation claim); *Chrysler Corp. v Ford Motor Co.,* 972 F. Supp. 1097 (E.D.MI. 1997) (holding Michigan law applies most significant relationship test and declining to apply the law of state of incorporation to successor liability question); *Lopez v. Stanley Black & Decker, Inc.*, 765 Fed.Appx. 703 (10th Cir. 2019) (applying New Mexico choice of law principles and rejecting application of Delaware law based on choice-of-law provision in asset purchase agreement); *Roll v. Tracor, Inc.* 140 F. Supp. 2d 1073 (D. Nev. 2001) (applying New York choice-of-law principles to determine state of incorporation did not control successor liability issue); *Barron v. Kane and Roach, Inc.* 398 N.E.2d 244 (Ill.App.

1979) (declining to apply choice-of-law provision in asset purchase agreement to determine amalgamation tort claim); *Litarowich v. Wiederkehr*, 405 A.2d 874 (N.J.Super 1979) (declining to apply law of state of incorporation to successor liability tort claim).

As the Supreme Court of Alaska explained in declining to apply the law of the state where an asset purchase occurred to a successor-liability claim,

> [W]e believe that when a defective product causes personal injury, successor liability is most appropriately characterized as a torts question. Successor liability is essentially an expansion of products liability law, which derives from tort principles of negligence and strict liability, and rejects contract-derived requirements such as privity. The purpose of the modern strict liability regime "is to insure that the cost of injuries resulting from defective products is borne by the manufacturers that put such products on the market rather than by the injured persons who are powerless to protect themselves." Treating a successor liability question solely as one of contract law would allow "the party who benefitted from the bargain [to] escape liability even though the party who transferred the benefit would have been liable had not the contract been consummated." Such a result would undermine the principles that govern our products liability law.

Savage Arms, Inc. v. Western Auto Supply Co., 18 P.3d 49, 53-54 (Alaska 2001).

The instant matter involves South Carolina residents injured by products sold, used, and causing injury in South Carolina. Thus, under *Pertuis*, South Carolina's veil piercing, alter-ego, successorship, single business enterprise, and/or amalgamation law should apply.

Further, although not a major factor in choice-of-law analyses of these issues, it is notable that both the Altrad Appellants and Charter Appellants conduct business in South Carolina. During the (currently stayed) bench trial in this matter, James Buxton testified as an expert in the fields of corporate form and corporate governance.[3] He testified that his research shows Altrad maintains a branch office in Williamston, South Carolina.[4] He further testified that Altrad maintains a shared website with RMD Kwikform North America. Inc., which is registered to do business in the South

[3] *See*, Tibbs Appendix to Record, 12-13 (10/22/25 Trial Transcript).
[4] *Id.* p. 53.

Carolina.[5] He opined, without objection,[6] that Altrad is holding itself out as doing business in South Carolina.[7]

Mr. Buxton further testified concerning the Charter Appellants, again without objection. He explained that ESAB's website contains contracts with choice-of-law provisions showing they would be governed by South Carolina law.[8] He opined that there would be no reason to choose South Carolina in a contractual choice-of-law provision unless the party intended to be subject to jurisdiction in South Carolina.[9]

Thus, under South Carolina's choice-of-law doctrine, South Carolina law should apply to the amalgamation claims in this case. Appellants' argument that such legal theories are bound by the internal affairs doctrine has been explicitly rejected by this Court.

As was the case with its personal jurisdiction analysis, the *Adams* court relied on U.K. law in considering various veil-piercing theories, and made no reference to or analysis of South Carolina law. Among other examples, nothing in South Carolina law (or that of any other U.S. jurisdiction) permits related entities to "release" alter ego, veil piercing, successorship, or other amalgamation theories against each other to avoid liability to persons injured by their products.

To the contrary, such self-serving releases are evidence that these are not independent entities, but are instead acting as a single amalgamated entity. To once again quote *Savage Arms Inc.*, permitting companies to self-determine whether they are alter-egos or amalgamations of each other "would allow the party who benefitted from the bargain to escape liability even though the

---

[5] *Id.* p. 54-55
[6] Throughout the trial, Appellants repeatedly took the position that the entire proceeding was "void," but did not specifically object to any of the referenced testimony. They further declined the opportunity to cross-examine the witness. *Id.*, p. 60-61.
[7] *Id*, p. 55.
[8] *Id.*, p. 55-57.
[9] *Id.*

party who transferred the benefit would have been liable had not the contract been consummated. Such a result would undermine the principles that govern our products liability law." 18 P.3d at 53-54. As set forth above, claims for alter ego and amalgamation sound in tort, not contract, and thus Appellants' attempts to "mutually release" themselves cannot bind parties (such as creditors whom the Receiver is assigned to protect) who did not participate in the release.

The questions currently presented in the Receiver's third-party action, including whether any amalgamation theory is available under South Carolina law, were not litigated in *Adams*, and the U.K. court's analysis of U.K. personal jurisdiction law has no bearing on this case. Appellants' "mutual release" is not binding on parties who were not privy to the release, including the Receiver and the creditors he is assigned to protect. For these additional reasons, Appellants' requests for relief are without merit.

C. Appellants Have No Standing to Challenge South Carolina's Personal Jurisdiction Over Cape, Have Waived Their Personal Jurisdiction Defenses, and Those Defenses are Without Merit

This Court also requested the parties address whether Appellants have waived their personal jurisdiction defense. The Tibbs respond that South Carolina has jurisdiction over Appellants for a variety of reasons, including but not limited to waiver. These reasons are addressed below.

1. Appellants have no standing to challenge South Carolina's personal jurisdiction over Cape.

Personal jurisdiction represents an individual liberty interest protected by due process that can be waived through various means, including express or implied consent. *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982). "Objections to personal jurisdiction, unlike subject matter jurisdiction, are waived unless raised." *State v. Dudley*, 354 S.C. 514, 521, 581 S.E.2d 171, 175 (2003).

Courts have routinely recognized that personal jurisdiction is a personal defense that cannot be raised by another party. "The defense of a lack of personal jurisdiction is a personal defense and can only be raised by the affected individual." *Dakota Provisions, LLC v. Hillshire Brands Company*, 226 F.Supp.3d 945, 959 (D.S.D. 2016), *citing*, *Ins. Corp. of Ir.*, 456 U.S. 694, 702 (1982). "A personal defense may not be raised by another on behalf of a party." *Williams v. Life Sav. And Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986).

Appellants argue that the *Park* Receivership is improper because South Carolina does not have personal jurisdiction over Cape. Given Cape itself has never appeared to raise such a defense, Appellants have no standing to raise it on Cape's behalf. Thus, Appellants' arguments based upon their claim that Cape is not subject to South Carolina's personal jurisdiction are without merit and cannot support their requested relief.

2. Appellants waived their personal jurisdiction defenses.

Appellants have also waived their own personal jurisdiction defenses. While Trial Rule 12(h)(1) provides two means of waiving personal jurisdiction which are inapplicable to this matter, courts have recognized multiple other ways in which a personal jurisdiction defense may be waived. *See, e.g.*, *Dunbar v. Vandermore*, 295 S.C. 493, 496, 369 S.E.2d 150, 152 (Ct. App. 1988). "The law is clear that words alone are insufficient to preserve a personal jurisdiction defense where conduct indicates waiver. And defendants can forfeit the defense even through conduct that is involuntary." *In re Asbestos Product Liability Litigation*, 921 F.3d 98, 108 (3rd Cir. 2019). *See also*, *Lowe v. CVS Pharmacy, Inc.*, 233 F.Supp.3d. 636, 641 (N.D.Ill. 2017) (defendant engaging in motion practice and causing court to expend considerable effort waived personal jurisdiction defense).

In *Smalls v. Weed*, 291 S.C. 258, 353 S.E.2d 154 (Ct. App. 1987) (remanded on separate issue), the South Carolina Court of Appeals found waiver when the defendant attempted to invoke

three grounds for dismissal in addition to a personal jurisdiction defense. The Court of Appeals determined that asserting the additional bases for dismissal implicitly acknowledged South Carolina's jurisdiction.

> Weed's attempt to assert the Tennessee court's injunction in bar of this action and his request that the trial court rule that Smalls had elected to be bound by the Tennessee proceeding constitute a general appearance and a waiver of his right to question the jurisdiction of the court over his person. Weed's claim that Smalls was enjoined by the Tennessee court is an effort to have the court afford full faith and credit to a Tennessee order which cannot be raised by special appearance. Likewise, Weed's insistence that Smalls has elected to assert his claim in the Tennessee court constituted a plea to the merits of the suit. *By asserting these claims, Weed implicitly acknowledges jurisdiction of the court because the court has no authority to dispose of these issues without jurisdiction of the person of Weeds*.

Id. at 261 (emphasis added).

In the instant matter, Appellants invoked South Carolina's jurisdiction before the trial court ruled on their personal jurisdiction motions. They moved to dissolve the Cape receivership and argued the merits of dissolving the receivership under South Carolina law in an October 25, 2023 hearing. *See,* R. 92, Oct. 25, 2023 Hearing Transcript, at 12 (invoking South Carolina court's jurisdiction in attempt to dissolve receivership). In fact, the trial court issued its orders on Appellants' motions to dissolve the receivership and to dismiss based upon lack of personal jurisdiction *in the same order*. *See*, R. 1104, December 6, 2023 Order Denying Certain Third-Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction.

Appellants continued to invoke South Carolina courts' jurisdiction after these orders were issued. Among other requests for substantive relief, they filed memoranda in opposition to the motion to confirm the Receiver's appointment. (R. 1711). The Altrad Appellants filed a Notice of Recent Supreme Court Authority Voiding Third Party Litigation, Renewed Motion to Dismiss, and Motion to Strike All Filings and Orders in the Third-Party Case. (R. 1691). Appellants also filed

notices of appeal of the December 6, 2023 order denying the motions to dissolve the receivership ("Dissolution Appeals"). See Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, 2023-002011. Such detailed filings requesting substantive relief implicitly acknowledged South Carolina's jurisdiction over Appellants.

Appellants have repeatedly and consistently sought to elicit rulings from the trial court, Court of Appeals, and this Court which implicitly acknowledge South Carolina courts' jurisdiction over them and the controversy at issue. As such, Appellants' personal jurisdiction defenses should be deemed waived.

3. Appellants personal jurisdiction defenses are without merit.

Even if they were properly preserved, Appellants' personal jurisdiction defenses are without merit. "At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits." *Cockrell v. Hillerich & Bradsby Co*., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). A court may rely on the allegations in a complaint to find such a prima facia showing. *Brown v. Inv. Mgmt. & Res., Inc*., 323 S.C. 395, 475 S.E.2d 754, 756 (1996).

The trial court made detailed findings of fact on this issue. It considered evidence that Cape Asbestos Company began advertising its asbestos for sale in the United States in 1920.[10] It advertised mainly in *Asbestos Magazine*, which was a monthly trade journal published in Philadelphia, Pennsylvania, and circulated nationally from 1919 to 1983. Cape advertised in virtually every issue until 1978—almost 600 issues.[11] It further sold asbestos directly to South Carolina customers.[12] This evidence alone is sufficient for a preliminary finding of personal

[10] R. 17 (*Park* 10/13/25 Order, at 17).
[11] *Id*.
[12] R. 37 (*Park* 10/13/25 Order, at 37).

jurisdiction over Cape. *See, Welch*, 445 S.C. 640 (recognizing placing products into the stream of commerce with the knowledge or expectation that the products would be sold and used by consumers in South Carolina could support a finding of personal jurisdiction, *citing*, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98 (1980)).

The trial court also considered alter ego, piercing the corporate veil, and single business enterprise theories of personal jurisdiction,[13] finding "jurisdiction over Cape as a person who act[ed] directly or by an agent as to a cause of action arising from" Cape and NAAC "causing tortious injury or death in this State by an act or omission outside this State," and by "regularly . . . engag[ing] in [a] persistent course of conduct, or deriv[ing] substantial revenue from goods used or consumed or services rendered in this State." It also found the Cape entities engaged in "production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed." S.C. Code §§ 36-2-803(4),(8).[14]

Justice Toal also considered and rejected Appellants' personal jurisdiction arguments, finding the Receiver's Third-Party Complaint, affidavits, and publicly available materials sufficient to support personal jurisdiction under an alter ego, guiding light, and/or single business enterprise theory.[15] *See, e.g., Newport News Holdings Corp. v. Virtual City Vision, Inc*., 650 F.3d 423, 433 (4th Cir. 2011) (observing that courts have "consistently acknowledged that it is compatible with due process to exercise personal jurisdiction over an individual . . . who is an alter ego" (citation omitted)); *Ranza v. Nike, Inc*., 793 F.3d 1059, 1072–73 (9th Cir. 2015) (noting that alter ego test "may be used to extend personal jurisdiction").

[13] R. 1131- 1138 (Trial Court 12/6/23 Order, p. 28-35).
[14] R. 1139
[15] R. 1138

Taken together, this information is sufficient to make a *prima facia* showing that Appellants' objections to personal jurisdiction over Cape and the Appellants are without merit.

D. The Appointment of a Receiver in *Park* was Proper, Cannot be Collaterally Challenged in this Lawsuit, and the Receiver is Acting Within the Scope of his Appointment in this Lawsuit

1. Appellants Cannot Collaterally Attack the Receivership Order in this Case

This Court has previously held, "[t]he general doctrine is that a court of equity, by taking jurisdiction over a matter and appointing a receiver, draws to it the right to hear and determine all claims against its receiver *and to completely adjudicate the receivership*." *Stoney v. Mincey,* 180 S.C. 317, 185 S.E. 619, 622 (1936) (emphasis added). "A receiver represents the Court appointing him; he is an officer of the Court and is the agency through which the Court acts. As he has no power other than that given him by the Order of appointment, his authority is derived solely from the Court. *He is subject only to the Court's direction*." *Kirven v. Lawrence,* 244 S.C. 572, 580 (1964) (emphasis added).

In *National Cash Register Co. v. Burns*, 217 S.C. 310, 316, 60 S.E.2d 615, 618 (1950), this Court determined "a court which creates a receivership usually draws to itself jurisdiction *over all controversies concerning the assets and liabilities of the debtor in receivership* and is ordinarily the *exclusive* forum for the adjudication of them*."* (emphasis added). This case not only suggests a trial court has the power to set or modify the bounds of a receiver's authority over the debtor's assets and liabilities, it ordinarily has exclusive jurisdiction to do so.

Thus, to the extent Appellants wish to challenge the receivership, they must do so in *Park,* not this matter. Collateral attacks in different cases are not permitted, providing yet another reason for this Court to deny Appellants their requested relief.

2. The Receiver Does Not Need to be "Reappointed" in Every Case

Appellants also misconstrue this Court's June 26, 2025 Order, suggesting it required a receiver be *appointed* in every case in which he acts. But that is not what this Court instructed. Instead, the June 26 Order states a receiver may conduct work if there is "an order filed in the specific case as to which the work is to take place. The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed." (emphasis added). This only makes sense. A receiver takes control of certain property as established by the original receivership order. There is no need for additional appointments in other cases, as the receiver already has control of the assets. Further, if a separate receiver was appointed in each case, each receiver after the first would come into possession of nothing, as the first appointed receiver would hold all the assets placed into receivership. As recognized in *Porter v. Sabin*, 149 U.S. 473, 480 (1893), "[t]he whole property of the corporation [is] within the jurisdiction of the court which appointed the receiver, including all its rights of action, except so far as already lawfully disposed of under orders of that court, [and] remains in its custody, to be administered and distributed by it." If a receiver's powers were limited to a single case, as Appellants suggest, it could hardly be said that "the whole property of the corporation . . . including all its rights of action" would be in a receiver's possession.

The purpose of this Court's requirements that a receivership order be filed in other cases is to verify and provide a record of the receiver's already-existing authority, and that authority encompasses property or matters at issue in the subsequent case(s). The plain language of this Court's directive does not require a receiver to be *appointed* in every case in which he or she acts. Instead, it merely requires a receivership order be *filed*. And that is exactly what happened in *Tibbs*.

The *Park* order appointing Mr. Protopapas Receiver for Cape has been filed in *Tibbs*, and in fact appears in the record at least 23 times.[16]

Similarly, it is nonsensical to suggest either the same or different receivers might be granted repetitive or duplicative authority over particular assets. Mr. Protopapas has already been granted the authority to bring third-party actions via his appointment in *Parks*. He does not need to be granted the same authority in *Tibbs*. Indeed, such a requirement would completely undermine the point and authority of a receiver, as it could easily lead to two different individuals being appointed receiver over the same assets. In the instant case, reappointment would merely be redundant, as Mr. Protopapas would be granted powers he already has. But in another situation involving two or more individuals being appointed, it would lead to an unavoidable conflict as to which receiver had authority to control the assets in question.

The Receiver's appearance in *Tibbs* complies with the specific language of the June 26, 2025 Order, and Appellants' suggestion that Mr. Protopapas had to be appointed as Receiver again in *Tibbs* is without merit.[17] For this additional reason, Appellants' requests for relief are without merit.

---

[16] *See*, R. 43 - Order on Altrad Defendants' Notice of Recent Supreme Court Authority Voiding Third Party Litigation, Renewed Motion to Dismiss and Motion to Strike All Filings and Orders in the Third party Case and the Receiver's and Tibbs Plaintiffs' Motions to Confirm the Appointment of the Receiver ("Trial Court 10/13/25 Order"), p. 43, FN 143 (listing every time *Park* Receivership Order filed in *Tibbs*).

[17] Charter Appellants argue that *Whittaker Clark & Daniels v. Protopapas*, App. 152 F.4th 432 (3d Cir. Sept. 10, 2025) is "controlling federal appellate authority." This statement is untrue . . . South Carolina State courts are not "controlled" by the 3rd Circuit. Further, Charter Appellant's claim is supported only by the 3rd Circuit's "doubt" (contrary to Appellant's representation, the 3rd Circuit did not include the "significant" qualifier) that a South Carolina court could give a Receiver control over a foreign corporation's board and prevent it from declaring bankruptcy. The fact that the 3rd Circuit would find such an act, *without the parties actually litigating the issue* (*see, Id.* at 447), of "(doubtful) constitutionally" is not persuasive, let alone "controlling." Finally, the 3rd Circuit case deals with the internal affairs of a corporation, specifically its ability to file bankruptcy after a receiver is appointed. But Appellants' arguments on this issue do not involve "internal affairs."

3. Appellants lack standing to raise Cape's affirmative defenses.

Further, as set forth above, Appellants have no standing to assert Cape's personal defenses. This limitation not only precludes them from arguing Cape's personal jurisdiction arguments, it also precludes them from arguing Cape's defenses to a receivership. Cape, not Appellants, had the right to appear in *Park* and contest service or jurisdiction. Cape, not Appellants, had the right, in *Park*, to contest the receivership or argue that it did not commit moral fraud. Appellants have no standing to argue these issues on behalf of Cape. *Warth v. Seldin*, 422 U.S. 490,499 (1975) (a litigant "cannot rest his claim to relief on the legal rights or interests of third parties.").

4. Appellants' collateral attacks on the Receivership lack merit.

The bulk of Appellants' briefs are devoted to collaterally attacking the appointment of the Receiver in *Park*. Such attacks are not only procedurally improper, but the substance of Appellants' arguments lacks merit and ignores the plain language of South Carolina statutes.

a. The Park Personal Representative could ratify the request for a receiver.

Appellants attempt to play "gotcha" with a miscommunication between the Tibbs' and Park's trial counsel (the undersigned) and Park's probate counsel, which resulted in the Park Estate being temporarily closed during the pendency of that action. Appellants suggest all actions in the *Park* case, including the appointment of the Receiver are void. These arguments are based upon inapplicable case law, and attempt to restrict the scope of S.C. Code §62-3-701. This statute

---

Rather, they claim Cape's board maintained the exclusive ability to release claims against Appellants. This is not a matter of "internal affairs," and as the U.S. Supreme Court has recognized, the powers of a receiver may include exercising control over "all [the debtor's] rights of action." *Porter,* 149 U.S. at 480. As such, it was clearly within the trial court's powers to appoint a receiver with authority to determine whether to pursue or release potential rights of action. Cape's "release" after the appointment of a Receiver was merely a sham attempt to violate the Receiver's authority, and as set forth below, is evidence of Cape's "moral fraud" in attempting to escape responsibility for its deadly asbestos in the United States. It involved separate entities, and attempted to bind other parties (such as Park and the Tibbs) who were not parties to the release. In short, *Whittaker Clark & Daniels* is inapplicable.

explicitly states (emphasis added), "[t]he powers of a personal representative *relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter*." Appellants' interpretation of the statute, which would only allow ratification of acts done while the estate was open, would make this provision meaningless.

On August 26, 2022, due to a miscommunication between Mr. Park's probate and litigation counsel, the Estate of Isabella Park was closed unbeknownst to litigation counsel (the undersigned). Not realizing the Estate had been closed, on March 6, 2023, the Park litigation attorneys filed a motion on Park's behalf requesting a receiver be appointed over Cape PLC and its subsidiaries, affiliates, successors, and assigns."[18] This motion was granted on March 17, 2023, with Peter Protopapas being appointed Receiver for Cape.

Upon learning that the Estate had been closed, Park immediately moved for it to be reopened, which it was on July 30, 2025. Pursuant to South Carolina Code §62-3-701, Mr. Park, in his renewed capacity as Personal Representative, was able to ratify the seeking the appointment of a receiver, and his authority related back to the filing of the motion to appoint receiver filed on his behalf while the Estate was lapsed.

The Altrad Appellants fail to even address §62-3-701, while the Charter Appellants fail to reference the above-cited language from the statute. Appellants deal with §62-3-701 by pretending it does not exist.

[18] Appellants attempt to make much out of a statement by Park's counsel that all claims had been "fully resolved." This imprecise statement was with respect to the active litigants in the case who had been scheduled for a trial date, not the Cape entities which had never appeared, and the *Park* matter was never closed nor requested to be closed.

Pursuant to this statute, “the powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter.” Further, a Personal Representative “may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.” *Id.* As set forth in *Fisher v. Huckabee*, 422 S.C. 234, 239 (2018), when a personal representative seeks to cure issues regarding the real party in interest, a “circuit court would [be] required to allow time for ratification, joinder or substitution of the proper party.”

Trial Rule 17 points toward the same result. This rule states in pertinent part, “[n]o action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest." In the instant matter, the Personal Representative was the real party in interest until the Estate was unknowingly closed. The Personal Representative’s attorneys, unaware of the closure, requested the appointment of the Receiver on his behalf. And as soon as the closure was brought to counsel’s attention, the Estate was re-opened and the Personal Representative reappointed. Trial Rule 17 is an equitable rule designed to avoid “pleading traps” involving the real party in interest. “Voiding” the request for a receiver would be contrary to the equitable underpinnings of this rule.

Other states considering similar rules of civil procedure recognize the equitable nature of the rule. For instance, in *Fitch v. Johns-Manville Corp*., 46 Wash.App. 867, 733 P.2d 562 (1987), a widow who was discharged as personal estate representative brought a wrongful death action as estate representative even though she was not reappointed at the time the complaint was filed. In

upholding the trial court's denial of defendants' motion to dismiss, the Washington Court of Appeals noted that Rule 17 “is designed to expedite litigation, not to afford a technical shield whereby a trial on the merits can be avoided.” *Id.* at 869. The court also explained that Rule 17 allowed correction after notice of a mistake, which meant "a positive step to bring the matter before the court so that the mistake could be corrected.” *Id.* Because the widow corrected her mistake promptly by being reappointed as estate representative, "under the plain language of the rule, the correction related back to the commencement of the action.” *Id* at 870.

Saltmarsh v. Burnard, 151 Mich.App. 476, 391 N.W.2d 382 (1986), involves similar facts in which an estate was prematurely closed. The Michigan court declined to impute error to the plaintiff.

> [W]e do not impute plaintiff's attorneys' apparent negligence (in failing to reopen the estate and seek reappointment of plaintiff as personal representative) to plaintiff in the case at bar. It may well be that plaintiff had reasonable grounds, such as the estate attorney's failure to inform her that the estate was closed and she was thereby discharged as personal representative, or her current attorney's assurances of her status as personal representative, leading her to believe that she was a duly appointed personal representative having the authority to bring the legal malpractice suit.

Id. at 492-93.

In *Troester v. Sisters of Mercy Health Corp*., 328 N.W.2d 308 (Iowa 1982), a plaintiff who brought a wrongful death action as administrator of her husband's estate was discharged as personal representative after she filed the complaint, and was subsequently reappointed. The trial court granted a motion to dismiss based on the lapsed appointment, but the Iowa Supreme Court reversed the trial court decision. It held, "the closing of the estate does not automatically terminate or abate a pending action commenced on behalf of an estate, although, at some period a successor or assignee must come forward to replace the plaintiff .... While it is necessary that there be a party plaintiff to commence and maintain a cause of action, the parties and the claim are separate and

exist apart from each other. Generally, the discharge or removal of the personal representative of an estate does not abate a pending action." *Id*. at 313.

This same equitable reasoning can and should apply to South Carolina estates, and the inadvertent temporary closing of the Park Estate. The *Park* matter was properly commenced by Ms. Park, and properly continued by her son as Personal Representative after her death. The case remained open after the Estate was mistakenly closed, and the motion to appoint a Receiver was brought on behalf of the Personal Representative. As soon as it was brought to counsel's attention that the estate had been closed, it was re-opened, Ms. Clark's son was re-appointed, and the request for a Receiver was ratified and related back. There was no prejudice to Cape, which had not and never has appeared in the action. Nor was there any limitations period on requesting a receiver which might create a temporal problem with the appointment. Both §62-3-701 and Trial Rule 17 indicate an Estate should not lose its rights due to the timing of appointment of a Personal Representative, and equity fully supports that the Personal Representative should be able to ratify a motion made in his name for the benefit of the Estate.

Appellants cite cases such as *Porter v. Brown*, 149 S.C. 151 (1929), and *McCullar v. The Estate of Dr. William Cox Campbel*, 381 S.C. 205, 672 S.E.2d 784 (2018), claiming they support a finding the *Park* receivership is void.[19] Both cases are distinguished from the instant matter. *Porter* was decided prior to the enactment of South Carolina Code §62-3-701, and thus did not address it.[20] Furthermore, *Porter* addressed whether a Personal Representative could ratify the filing of a case or claim against the debtor before the representative was appointed. In *Park*,

[19] Appellants also cite various cases from other jurisdictions. Not only are these cases factually distinguishable, they did not consider South Carolina Code §62-3-701 or other similar provisions allowing personal representatives to ratify actions taken by others which benefit the estate.
[20] The current version of this statute was made effective in 2014. It appears the earliest that any version may have been enacted was 1976.

Isabella Park was alive at the time the original Complaint was filed, and her Estate was active at the times the Complaint was amended. Thus, unlike in *Porter*, *Park* was initiated (and amended) while Ms. Park was still a living proper party or after Keith Park was appointed Personal Representative. In *Porter*, there was no proper party to initiate the lawsuit, let alone take any action in it. In *Park*, there is no dispute a proper party existed at the time the lawsuit was initiated and when the Complaint was amended. As such, *Porter* is distinguishable from *Park* even without the passage of §62-3-701.

McCullar also failed to address §62-3-701, because that case did not involve a personal representative ratifying acts for the benefit of the estate. To the contrary, *McCullar* involved opposing parties attempting to bring an action *against* the estate. Thus, *McCullar* involved the exact opposite situation than is contemplated by §62-3-701 or is present in *Park.* Its holding is simply inapplicable.

b. Cape was properly served.

Appellants also claim Cape was never properly served, arguing that because the process server only referenced an "amended summons," but not an "amended complaint" in his proof of service, there is no evidence Cape was properly served. Once again, lack of service is a personal defense that cannot be asserted by a different party. *Williams*, *supra*. But even if Appellants had standing to argue about service upon Cape, this argument was fully addressed and rejected by Justice Toal in her December 6, 2023 Order Denying Certain Third Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction, (R. 1123).

> Regardless of what the process server titled the service paperwork, the other record evidence reveals both the summons and the complaint documents were served on Cape: An email from counsel for the Park Plaintiffs to the process server (made a Court exhibit at the hearing) indicates counsel provided the process server with a single PDF document containing both the summons and the complaint, and in the

> Park lawsuit, the "First Amended Summons" and "First Amended Complaint" refer to two parts of the same document filed on November 17, 2021 (the summons is found in the first 4 pages while the complaint comprises the remaining 66 pages). Although individuals involved in the service may have referred to the combined document as "the summons," it is clear from the contents that a combined document containing both the summons and the complaint was served on Cape. Moreover, as previously noted, the record indicates the process server emailed the same materials to an Altrad-affiliated official address designated for the receipt of asbestos-related claims against Cape (elclaimsaltraduk@altrad.com); no Altrad entity has provided a response or other indication that only the summons had been sent to that email address.

As the trial court also recognized in that same order (see FN13), the process server's affidavit included pictures showing "an oversize envelope, with a large-letter stamp, indicating sizeable contents, rather than just a couple of sheets of paper." Given that the Summons was only 4 pages, while the Complaint was 66 pages, the oversized envelope is further evidence that both the summons and complaint were served on Cape.

c. Cape engaged in moral fraud

Appellants also claim there is no evidence of Cape's moral fraud which meets the requirements of *Welch*. As set forth above, Appellants have no standing to make such arguments in this case or otherwise. But even if they did, in making this claim Appellants ignore the findings of fact made by the trial court which show Cape engaged in misconduct that far exceeds the misconduct of Atlas Turner in the *Welch* case. As described by Justice Toal, "Cape's conduct, like Atlas Turner's, was the product of company policy. Cape, however, was far more ruthless and deliberate than Atlas Turner."[21]

Justice Toal's 10/13/25 Order devotes approximately twenty-nine pages to findings of fact showing Cape's "moral fraud."[22] Such findings included that Cape established a subsidiary, the

[21] R. 35 - Trial Court 10/13/25 Order, p. 35.

[22] R. 9-38. Justice's Toal's findings are supported by citations to exhibits filed by Park when requesting a receiver, and exhibits filed by the Receiver in *Tibbs* as part of his July 11, 2025 report to the trial court. Copies of these exhibits are available upon the Supreme Court's request.

North American Asbestos Corporation ("NAAC"), for the purpose of marketing and distributing Cape's South African amosite asbestos into the United States, including South Carolina.[23] NAAC was "essentially a one-man operation" overseen by a board which resigned in 1975 as a "sensible precaution" in light of U.S. litigation.[24] Cape dominated NAAC's decision-making, as the latter could not "borrow one dollar without [Cape Asbestos's] approval, and was routinely required to withdraw cash from the United States to pay Cape dividends.[25]

The trial court further found that at the onset of asbestos litigation in the 1970s, Cape machinated to give the appearance of reduced NAAC oversight while continuing to dominate and control its subsidiary.[26] It also began refusing to accept process or appear in any proceedings in the United States, a practice it continued in *Park*.[27] Cape justified its avoidance strategy by claiming it "really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of [a] US product liability cult."[28] In 1978, Cape liquidated NAAC, and transferred assets to its parent company based upon legal advice that no British or South American court would enforce a judgment if no Cape entity appeared again in the United States.[29]

While seeking to avoid liability, Cape continued to profit from sales of asbestos to the United States. It formed Continental Products Corporation (using the same address as NAAC had

[23] R. 10-11.
[24] R. 11.
[25] R. 11-12.
[26] R. 12-13.
[27] R. 13. Aside from the immediate *Tibbs* matter, in which the Receiver appeared to defend Cape, Cape has continued its policy of refusing to participate in U.S. litigation. Most recently, Cape was defaulted via a December 10, 2025 Order of Default for failing to appear in the matter of *Ross v. Ascend Performance Materials*, Richland County, South Carolina case no: 2024-CP-40-03710. R. 101.
[28] R. 13.
[29] R. 14.

utilized) to act as its commission agent in the United States.[30] Sales were funneled to a new subsidiary, with the "purpose of this corporate arrangement [being] to eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to lawsuits brought against it under theories of strict liability concerning products liability on the sale of asbestos in the United States."[31] Justice Toal found the purpose of these maneuvers was "to escape liability, but [continue] selling asbestos fibers to virtually the same contact list [in the United States]."[32]

Justice Toal made further findings of moral fraud based upon evidence gathered by the Receiver. Such evidence included that Cape concealed early knowledge of asbestos from U.S. customers and suppressed reports and research showing mesothelioma and asbestosis amongst workers in South American asbestos mines.[33]

Finally, Justice Toal recognized Cape's recent moral fraud in seeking to avoid liability in the United States. It noted that in *Park*, Cape continued its U.S. litigation strategy of failing to appear.[34] It further pointed to Cape's efforts to thwart its powers to appoint a receiver by instituting a proceeding against the Receiver in England and Wales.[35] As this Court itself recognized in its January 16, 2025 Order "[a]ny attempt by a foreign court to intervene in and threaten participants in matters properly pending in the courts of South Carolina would be shocking and indefensible." As Justice Toal noted, not only did Cape initiate such intervention, it did so based upon a "one-sided presentation include[ing] many incomplete statements as to the work of the receiver and this

[30] R. 14.
[31] R. 15, 26-29.
[32] R. 29.
[33] R. 15-26.
[34] R. 29.
[35] R. 30.

Court . . .."[36] Justice Toal concluded Cape provided the U.K. court with an "inaccurate portrait of this Court" in "direct violation of the Barton Doctrine."[37] Finally, Justice Toal found Cape's threatening of both the Receiver (including threats of criminal actions and personal money judgments) and insurance companies evidenced a "'conscious intent to defeat, delay, or hinder' creditors of Cape," and established Cape's "moral fraud."[38]

Explicitly comparing Cape's actions to this Court's finding of moral fraud by Atlas Turner in *Welch*, Justice Toal found, "Cape's conduct, like Atlas Turner's, was the product of company policy. Cape, however, was far more ruthless and deliberate than Atlas Turner."[39] "All of these actions are undertaken to avoid enforcement of any judgment against Cape, without the risk of engaging in proceedings in a U.S. court."[40]

d. There is no reason to set a bond given Cape never appeared nor objected to the appointment of the Receiver.

Appellants suggest the Receivership Order is void because the Court did not set a bond amount. But Cape never appeared in *Park*, nor has it ever raised an objection to the appointment of the Receiver in *Park*. Should Cape wish to "bond out" of the receivership, it can certainly appear and request a bond be set. But until it does so, there simply exists no reason to set such an amount for a company which refuses to participate in U.S. litigation.

e. Comity does not require this Court subjugate South Carolina law or South Carolina citizens to U.K. courts which fail to show comity to U.S. courts.

Finally, and perhaps most brazenly, Appellants suggest this Court should abandon South Carolina law and the rights of South Carolina citizens to have South Carolina torts based upon

[36] R. 30-32.
[37] R. 32-33.
[38] R. 34-37.
[39] R. 35.
[40] R. 38.

products sold, used, and causing injury in South Carolina, to U.K. courts which have repeatedly refused to acknowledge U.S. laws or U.S. courts' ability to adjudicate them. The *Adams* matter involved a U.K. trial and appellate judge refusing to recognize Texas judgments. *Mann I* involved a U.K. court not only refusing to recognize a receivership established by a South Carolina court, but issuing an injunction which included the possibility of both civil and criminal penalties against the Receiver while acting as an agent for a South Carolina court. This Court has already recognized this order as "shocking and indefensible."

As Appellants recognize, comity should not be applied when a foreign ruling is obtained by fraud. *See, e.g. Hilton v. Guyot,* 159 U.S. 113, 202–03 (1895). Altrad suggests the "[*Adams*] judgment was not obtained by fraud, and no one could reasonably suggest otherwise."[41] In making this argument, they simply ignore the trial court's findings with respect to the *Mann I* orders which they claim validate *Adams*. Specifically, the trial court found the *Mann I* orders were based upon, "This one-sided presentation included many incomplete statements as to the work of the receiver and this Court," and "an inaccurate portrait of this Court as acting beyond the scope of South Carolina law in the appointment of the Receiver,"[42]

Hilton also requires, "there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting," for comity to be applied. *Id.* at 202. In the instant matter, both *Adams, Mann I, Mann II,* and *Smith* failed to recognize or apply orders of U.S. courts, simply discounting or "void"ing them on the basis of U.K. law and inaccurate, *ex parte* representations by Appellants. The U.K. courts have repeatedly and consistently shown prejudice against United States residents injured in the United States by products sold and used in the United States, refusing

[41] Altrad Appellants' Opening Brief, p. 39.
[42] R. 27, 30, 32.

to extend the same comity to which Appellants now claim the U.K. rulings should be given. To give these courts' orders the effect of law in South Carolina under the guise of "comity" would be to strip South Carolina courts of the power to adjudicate South Carolina torts occurring in South Carolina against South Carolina citizens. This is not comity, it is the complete subjugation of South Carolina law to the *ex parte* rulings of a foreign judge. Appellants' arguments should be rejected, and the relief requested in their appeals denied.

V. CONCLUSION

Appellants attempt to collaterally attack a receivership established in another case by asserting the personal defenses of other entities, citing cases applying foreign law to South Carolina's long-arm statute and amalgamation law, and ignoring or altering the plain language of South Carolina statutes and this Court's rulings. For these reasons Appellants' requests for relief are without merit and should be rejected by this Court.

Respectfully submitted, December 30, 2025

/s/ Theile B. McVey
Theile B. McVey
(SC Bar No. 16682)
tmcvey@kassellaw.com
Jamie D. Rutkoski
(SC Bar No. 103270)
jrutkoski@kassellaw.com
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202-1476
T: 803-256-4242
F: 803-256-1952
Other email: emoultrie@kassellaw.com

and

Charles W. Branham, III
(SC Bar No. 106178)
DEAN OMAR BRANHAM SHIRLEY, LLP
1801 N. Lamar Street, Suite 300
Dallas, Texas 75202
T: 214-722-5990
F: 214-722-5991
tbranham@dobslegal.com

Attorneys for Plaintiffs and Respondents
John and Margaret Tibbs