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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Jean H. Toal  
Acting Circuit Court Judge

Appellate Case No. 2025-002104

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering

Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ..... Defendants,

of which

Asbestos Corporation Limited is the..... Appellant in Related Case,

and

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC, ..... Third-Party Defendants,

of which

Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd; Mohed Altrad; and Altrad Investment Authority SAS, are the..... Appellants.

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ALTRAD APPELLANTS' REPLY BRIEF

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Respectfully submitted,

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January 6, 2026

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## INTRODUCTION

*We are judges, and our duty is to follow the rule of law.*

\* \* \*

*The law anticipates that the two goals—ascertainment of the truth and certainty of a fair process—may collide, and when they do, the certainty of a fair process must prevail.*

*In short, in the law, the ends do not justify the means.*

*State v. Harrison*, 432 S.C. 448, 464, 476, 854 S.E.2d 468, 476, 483 (2021).

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The putative Receiver is pretending that his appointment allows him to (1) represent CIHL, enter into contracts in CIHL’s name, and waive service of claims against it, even though it is an English company that isn’t a party to any of these proceedings; and then (2) facilitate future payments of CIHL monies to (a) himself and his lawyers and (b) unknown tort plaintiffs and their lawyers who originally sought the putative Receiver’s appointment.

There is nothing in U.S. or South Carolina law that would ever allow for such a thing; an American lawyer seizing the corporate identity of an active English company to create a mass tort enterprise, and doing so through the authority of a state trial court order, violates numerous obvious principles of constitutional law. Yet, despite being patently unlawful, the putative Receiver begs the Court to allow this payment scheme to continue—ironically—in the name of “justice.”

The entirety of this receivership structure is legally infirm from its inception. The only “just” outcome is one that follows the law, not the interests of the putative Receiver and counsel who serially seek his appointment as receiver in the Asbestos Docket. Truly, there is not a single South Carolina plaintiff who has sought this receivership; it originated in *Park* on the motion of counsel who lacked a plaintiff, it then morphed into *Tibbs* on the putative Receiver’s own insistence, and now it is backed by an amicus brief signed by law firms on behalf of themselves. All the while, the putative receivership has been a legal nullity.

In his return brief, the putative Receiver largely ignores the dozen-plus threshold issues that render him a nonexistent entity in the eyes of the law. So do the Plaintiffs, who aren't even respondents. The avalanche of jurisdictional defects associated with the appointment order might obscure the absurdity of what the order on appeal supposedly allows: an omnipresent, omnipotent ability to "marshal" CIHL's assets for untold numbers of claimants for past, current, and future asbestos claims. This Court's decisions in *Welch* and *Tibbs* forbid such a boundless scheme, but the putative Receiver does not run from this unlawful outcome; instead, he doubles down on it.

The Receiver's desire to continue this "unprecedented exertion of power over a foreign corporation whose internal affairs are governed by the laws of a sister state [or country], and a radical intrusion into the province of a co-equal sovereign" should end now to preserve public confidence in the Rule of Law and the integrity of the Judiciary. *Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, 152 F.4th 432, 447 (3d Cir. 2025).

## **ARGUMENT**

### **I. This case lacks every element necessary for this putative receivership to exist.**

To affirm the proceedings below, the Court must find that the circuit court had jurisdiction every step of the way over all relevant entities and issues. This is impossible. The proceedings below are void for over a dozen cascading failures; each supports vacatur, but their collective heft and the seriousness of abuses below should prompt this Court to end this matter for good.

The Plaintiffs repeatedly insist that the Appellants are unable to make any of the arguments herein because only CIHL can make them. (Plaintiffs' Br. 11–12, 16, 19.) Not so. Under Rule 14(a), SCRCF, third-party defendants (like the Appellants) are fully entitled to "assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim." And under South Carolina Code § 15-65-90, "any party to the cause" can challenge a receivership appointment.

**Failure 1: No service on CIHL in Park.**

To bring a defendant within the jurisdiction of a South Carolina court, a plaintiff must first serve the defendant with a summons and complaint. Rules 4(g) & 4.1(c), SCRCP. There is no personal jurisdiction without proper service. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). But proper service did not occur in *Park* with respect to Cape plc or CIHL.

The putative Receiver did not respond to this threshold point, while the Plaintiffs argued that, apparently, the process server did not mean exactly what he said both in his testimony and in his actual communications. (Plaintiffs’ Br. 24–25.)

The process server swore under oath that he sent a “First Amended Summons” to those entities (R. p. 444), he reported the same in his cover letters (R. pp. 447–48), and then he took a picture of his mailing showing that it cost only a single pound to mail the entire packet (R. pp. 454–55). That’s the sum total of his testimony. Without any basis, the Plaintiffs want the Court to assume the process server sent a nearly 70-page complaint with that packet (apparently without paying more postage). Even assuming *arguendo* that he did, though, Mr. Park mooted his First Amended Complaint before any response could have been due by filing a Second Amended Complaint, which all agree was never served on Cape plc or CIHL. (R. p. 708.)

Because there is no evidence in the record that either Cape plc or CIHL was ever served with an operative pleading in *Park*, the circuit court never acquired personal jurisdiction over either company. Everything that flowed from *Park*, therefore, is void *ab initio*. See *BB&T*, 369 S.C. at 551, 633 S.E.2d at 503 (“A judgment is void if a court acts without personal jurisdiction.”).

**Failure 2: No justiciable case existed when initial appointment in Park was attempted.**

*Park* was part of a group of cases set for trial to begin on June 20, 2022. (R. p. 769.) Shortly before that trial block began, *Park* was successfully mediated, prompting plaintiffs’ counsel to

report to the circuit court and all counsel who had appeared in the batch of asbestos cases heading to trial that “the *Park* and *Garren* cases have both fully resolved. The remaining Defendants in *Wannamaker* and *Wilson* are listed below.” (R. p. 2452.)

Once the case became “fully resolved,” it lacked a justiciable controversy. *See S.C. Pub. Interest Found. v. S.C. DOT*, 421 S.C. 110, 120, 804 S.E.2d 854, 860 (2016) (“A justiciable controversy must be present before any action can be maintained.”).

In response, the Plaintiffs suggest that an email stating two cases were “fully resolved,” followed by a listing of defendants who remained in the trial block, somehow meant that *Park* was *not* “fully resolved” and that Cape plc and CIHL remained as defendants in *Park* even though they were not listed in counsel’s email with the remaining defendants in the trial block. (Plaintiffs’ Br. 20 n.18.) The putative Receiver goes along with this story. (Putative Receiver’s Br. 39.)

But this *post hoc* explanation doesn’t hold up. Nothing in the record corroborates it. And even for defaulting defendants, a trial is necessary to establish damages. Rule 55(b)(2), SCRC. Thus, if claims remained left to be resolved in *Park*, the trial was still necessary. So when counsel reported that *Park* was “fully resolved,” that’s exactly what she meant, because that was the truth, as was further borne out when the estate closed shortly thereafter. And the “full resolution” of *Park* ended the circuit court’s jurisdiction, as there was no longer any case.

**Failure 3: Only counsel—not an actual party—sought the initial appointment in *Park*.**

The *first business day after* counsel reported to the circuit court and the Asbestos Bar that *Park* and another case were both “fully resolved,” Mr. Park sought to terminate his appointment as the personal representative of Ms. Park’s Estate and to close the estate. (R. p. 2435.) The Probate Court granted that motion on August 26, 2022, closing the estate and terminating his appointment. (R. pp. 2436, 2438.) As of that day, *Park* no longer had a plaintiff.

A case that lacks a plaintiff is a legal nullity and does not exist as a matter of law. *Glenn v. E.I. DuPont de Nemours & Co.*, 254 S.C. 128, 133–34, 174 S.E.2d 155, 158 (1970). And once an estate is closed, it no longer exists as a matter of law. *McCullar v. Estate of Campbell*, 381 S.C. 205, 207, 672 S.E.2d 784, 785 (2009). But South Carolina law allows only a “party” to seek the appointment of a receiver. S.C. Code Ann. § 15-65-90.

In March 2023, plaintiffs’ counsel filed a motion to appoint a receiver over Cape plc in *Park*. Because their client ceased to exist as a matter of law for nearly seven months prior to that filing, the motion and the order granting it are a nullity.<sup>1</sup>

In response, the putative Receiver argues that Mr. Park was also a plaintiff in *Park* “in his individual capacity.” (Putative Receiver’s Br. 38–39.) This is not true; there isn’t a single claim alleged in any of the *Park* pleadings that belongs to Mr. Park individually. (R. pp. 2210 (Initial Complaint), 625 (First Amended Complaint), 695 (Second Amended Complaint).)

The putative Receiver and the Plaintiffs also argue that this legal nullity can be retroactively fixed—years after the deadline for creditors to file claims against the estate had lapsed, and years after Mr. Park’s co-beneficiaries had released all rights they had to the estate—by simply opening a new estate for Ms. Park and re-appointing Mr. Park as personal representative. (Putative Receiver’s Br. 37–38; Plaintiffs’ Br. 19–24.) Both cite South Carolina Code § 62-3-701 for this proposition, but that statute doesn’t control here: South Carolina Code § 62-3-608 does, and it provides that the termination of a personal representative’s appointment “terminates his authority to represent the estate in *any pending or future proceeding*.” (Emphasis added).

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<sup>1</sup> Counsel argues that Mr. Park’s filing of a sworn motion to close the estate and to terminate his appointment as personal representative, followed by the Probate Court’s determination that he had done everything needed to close the estate and discharge his appointment, were all due to an undisclosed “miscommunication.” (Plaintiffs’ Br. 20.) As with the explanation that “‘fully resolved’ means ‘not fully resolved,’” nothing in the record supports this.

Accordingly, after the Probate Court closed the estate and his appointment was terminated, neither Mr. Park nor his counsel had authority as a matter of law to do anything in *Park* or any other case, and anything he tried to do was strictly barred by the Probate Code itself.

Section 62-3-701's "ratification" provision only gives a subsequent personal representative discretion, while an estate is still open, to ratify acts "***done by others*** where the acts ***would have been proper*** for a personal representative." (Emphasis added.) Mr. Park is obviously not "others," and post-termination acts done in Mr. Park's name are ineligible for any *post hoc* "ratification effort," as Section 62-3-608 specifically barred Mr. Park from doing anything else in *Park* after his appointment was terminated.

This is exactly how courts enforce these statutes when confronted with a situation where a personal representative's appointment is terminated, litigation activities ensue without an open estate or an appointed personal representative, and then a re-appointment is sought:

Although the South Carolina probate court reappointed the defendant as the personal representative of the decedent's estate after the plaintiff made its present motion to dismiss the counterclaims and before the defendant submitted her opposition papers, such reappointment constituted a subsequent administration, which has no *nunc pro tunc* effect and ***does not relate back to the initial appointment.***

*Bargil Assocs., LLC v. Crites*, 135 A.D.3d 676, 677–78 (N.Y. App. Div. 2016) (citing South Carolina Code § 62-3-608, among several other South Carolina authorities) (emphasis added).

Finally, even if Mr. Park could have ratified in Fall 2025 his counsel's unilateral behavior from March 2023 (he couldn't), there is nothing in the record indicating he has even tried to ratify it. Section 62-3-701 makes ratification for eligible acts discretionary, not automatic. Yet, Mr. Park has represented to the Probate Court that his interest in opening a subsequent administration and being re-appointed as a personal representative is forward looking ("Possible Civil Litigation"), not to ratify something that has already happened. (R. p. 2443.)

There isn't an affidavit, a letter, an email, or anything else from Mr. Park indicating that he wants to or has tried to ratify something his counsel did in March 2023. Accordingly, without a plaintiff to seek the initial receivership appointment, the initial appointment order is, and must remain, void for lack of jurisdiction.

**Failure 4: The receivership appointment exceeds Title 15's jurisdictional boundaries.**

Each of the two-dozen-plus Asbestos Docket receiverships has been under *Title 15* of the South Carolina Code, but they read as if they arise under *Title 33*. These are fundamentally different things, serving different functions and having different jurisdictional boundaries.

A receivership appointment under Title 15 is a potential remedy for use in civil litigation. It must be specific to securing a particular asset that may be in dispute between a particular plaintiff and a particular defendant. A Title 15 receiver's sole job is to preserve that particular property either during the course of litigation, or to satisfy a judgment the specific plaintiff secured against the defendant. The State Code expressly says so; virtually every section of Title 15, Chapter 65 affirms the statutory scheme is limited to "the property." And when it comes to foreign companies, only in-state property is eligible for seizure by a receiver. S.C. Code Ann. § 15-65-10(4).

This "specific property only" limitation is why a Title 15 receivership appointment must be accompanied by a bond amount: so a defendant can reclaim its property from a receiver. *Id.* §§ 15-65-50 & -60. *Welch* reinforced this "specific property only" limitation through the points on which it reversed the circuit court's appointment in that case. *See Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 667, 916 S.E.2d 320, 334 (2025) ("We find equity only allows insurance policies that have the potential to cover Mr. Welch's injuries to be included in this definition, and we reverse and vacate the portion of this definition that allows the Receiver to have power over 'any other assets which are related to, touch or are otherwise relevant to such insurance.'"). *Tibbs*

reinforced an appointment must be specific to an actual plaintiff and case. *See Tibbs v. 3M Co.*, Appellate Case Nos. 2024-001243 *et al.*, ¶ (A)(1) (S.C. June 26, 2025) (“The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.”).

By contrast, Title 33 allows a court to appoint a receiver or a custodian as part of the judicial dissolution of an entire business. Crucially, a Title 33 appointment can only occur with respect to a *South Carolina corporation*. S.C. Code Ann. § 33-1-400(4) (defining a “corporation” as “a corporation for profit, *which is not a foreign corporation*, incorporated pursuant or subject to the provisions of Chapters 1 through 20 of this Title”) (emphasis added).<sup>2</sup>

To assist in the wind-up process of a domestic corporation, the court may appoint a custodian to “exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.” S.C. Code Ann. § 33-14-320(c)(2). Or the court may appoint a receiver to “dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court,” and it “may sue and defend in his own name as receiver of the corporation in all courts of this State.” *Id.* § 33-14-320(c)(1).<sup>3</sup>

A Title 15 receiver has none of these powers: neither the power to get involved in corporate management, nor the power to search for, collect, and dispose of a business’s assets “wherever located.” But that is exactly what the circuit court has attempted to authorize here.

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<sup>2</sup> Stunningly, the putative Receiver claims that “Cape’s status as a foreign corporation or as an ongoing concern is beside the point.” (Putative Receiver’s Br. 44.) But this isn’t “beside the point”—it is *dispositive under the law*. The South Carolina Code specifically prohibits the very actions the putative Receiver is attempting to take with respect to non-South Carolina corporations.

<sup>3</sup> The Plaintiffs’ objection to this Court’s requirement that a new receivership appointment must be made for every plaintiff and every case seems to be based on a conflation of a Title 15 receiver (who may take custody over discrete property) with a Title 33 receiver (who may take control over the entirety of a South Carolina company’s assets). (Plaintiffs’ Br. 17–18.) Properly understood, there is no risk that multiple Title 15 receivers will vie for the same unique piece of property.

The initial appointment in *Park* did not identify a single asset that supposedly required a Title 15 receivership; instead, it purported to give the putative Receiver *carte blanche* “power and authority to fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be.” (R. p. 780.) And he has used that authority to purportedly accept service on behalf of Cape plc in this case, assert claims in Cape plc’s name, sue multiple lawyers and law firms in Cape plc’s name, enter contracts in Cape plc’s name, serve as Cape plc’s lawyer, breach Cape plc’s attorney-client privilege, and convert his appointment into one over CIHL.

This litany of activity smacks of a Title 33 custodianship—an appointment for which there is no authority under the law with respect to foreign companies like CIHL. *See Protopapas*, 152 F.4th at 446–47 (“So it is no surprise that the Constitution limits the authority a state court can exercise over a corporation incorporated in a sister state [or another country]. Those limitations are as intuitive as they make good sense.” (citing the Due Process Clause and the Commerce Clause)); *Welch*, 445 S.C. at 667, 916 S.E.2d at 335 (holding an appointment may not give a receiver “boardroom” access or “some vague right to ‘take over’ operation of the company”).

Even now, the putative Receiver describes his charge to be “marshaling and administering Cape assets to pay historical liabilities.” (Putative Receiver’s Br. 29; *see id.* (claiming a receiver’s job is to “evaluate all information available to him to discharge his obligations to marshal the company’s assets” in order “to pay viable historic liabilities”); *id.* at 46 (arguing that he “was appointed for the purpose of investigating and marshaling Cape’s assets here in South Carolina”).) The Plaintiffs agree. (Plaintiffs’ Br. 17–18 (explaining their view that a receiver can simply take all of a company’s assets).) This smacks of a Title 33 receivership—also an appointment for which there is no authority under the law with respect to foreign companies like CIHL.

This is a pervasive problem within the Asbestos Docket. As the Court is aware, the putative Receiver is never tasked with protecting a specific piece of property for a specific plaintiff with a corresponding bond set that would release that property, as required by Title 15. Instead, he acts as a roving collections agent on behalf of an entire pool of unknown potential claimants, asserting authority over assets far beyond what Title 15 permits, retaining a portion for himself and his counsel, and then distributing the rest to the attorneys responsible for his appointments and their clients (including future unknown clients) without any meaningful oversight or public scrutiny.

*Welch* attempted to curb this unlawful behavior and reversed the circuit court on the scope of the receiver's authority. *See* 445 S.C. at 667, 916 S.E.2d at 334 (“However, we hold that power does not properly extend to reach every claim relating to Atlas Turner’s assets and business activities.”). *Tibbs* reinforced that limitation. *See Tibbs* ¶ (A)(2) (requiring “that the receiver’s scope of authority is limited as set forth in *Welch*”).

Notwithstanding this Court’s rulings in *Welch* and *Tibbs*, the circuit court stated that those decisions “illustrate that the Court is not completely aware of how receiverships are used in South Carolina.” (R. p. 1737.) And now the putative Receiver has confirmed that he will not voluntarily abide by the jurisdictional limits of a Title 15 receivership that are imposed by the U.S. Constitution, the South Carolina Code, and this Court, but instead will press forward unabated in attempting to seize all assets belonging to and pretending to speak on behalf of companies who are subject to receivership orders arising from the Asbestos Docket.

The circuit court has no authority to make such appointments, particularly with respect to foreign companies that have no assets in South Carolina. The putative Receiver’s desire to create a mass tort payment scheme trumpeted throughout his return brief makes clear the urgency with which the Court needs to address this overreach and vacate the proceedings below.

**Failure 5: A receivership appointment cannot morph from one entity to another.**

The *Park* pleadings rightly recognized that Cape plc and CIHL are two separate companies. (R. pp. 638, 708.) Yet, the initial appointment motion and order only involved Cape plc and made no mention of CIHL. (R. pp. 462–70 (motion), 780–83 (order).)

Now, the circuit court has—at the putative Receiver’s request in *Tibbs*—morphed the appointment in *Park* from involving Cape plc to one involving CIHL, even though they are distinct entities. (R. p. 46.) But South Carolina law holds that anything a receiver does in the name of an entity that was not the intended target of a receivership appointment is void. *Porter v. Brown*, 149 S.C. 151, 158, 161–62, 146 S.E. 810, 812–14 (1929). No one rebuts this.

**Failure 6: CIHL isn’t a party to *Tibbs*.**

As a corollary, CIHL is not a party to the *Tibbs* case. A court obviously cannot purport to do anything that involves an entity that is not even before it, including appointing a receiver. *Porter* specifically addressed this situation and declared that anything related to a receivership appointment involving an entity that is not before the court to be “*coram non judice*.” *Id.* As above, neither the putative Receiver nor the Plaintiffs rebut this dispositive argument.

**Failure 7: No service on CIHL in *Tibbs*.**

Like the two preceding points, the circuit court cannot possibly have jurisdiction over CIHL in *Tibbs* without it being served with process. *BB&T*, 369 S.C. at 551, 633 S.E.2d at 503. That never happened, and the Plaintiffs have admitted as much, indicating that they only “served the receiver as Cape in the *Tibbs* case.” (R. p. 1876.)

The putative Receiver has no authority to accept service, as (a) his appointment from *Park* is void, (b) he cannot lawfully function outside of *Park*, (c) he cannot engage in such “boardroom” activity, and (d) he supposedly accepted service while appointed as a putative receiver for Cape

plc assets, not CIHL assets (under Title 15) nor CIHL the entity (under Title 33). Neither the putative Receiver nor the Plaintiffs rebut this dispositive argument.

**Failure 8: Adams confirms CIHL is not subject to personal jurisdiction here.**

There is nothing in the record suggesting that CIHL—an English company—has ever had any contacts with South Carolina that could possibly subject it to personal jurisdiction in this state. Faced with this threshold problem, both the Plaintiffs (who remained silent on this issue before the circuit court) and the putative Receiver argue that CIHL somehow purposefully availed itself of South Carolina for purposes of litigation today because of NAAC’s sales of asbestos throughout the United States prior to 1979. (Plaintiffs’ Br. 14–16; Putative Receiver’s Br. 39–41.)

Whether the actions of NAAC can be imputed to CIHL for purposes of melding the companies together for *in personam* jurisdiction is precisely the question resolved in *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA). The putative Receiver rightly recognizes that *Adams* destroys his case, which is why he devotes the bulk of his brief to attacking *Adams*.

But his arguments are truly puzzling. He takes aim only at *Justice Scott’s trial-level opinion* in *Adams* while practically ignoring the controlling decision from the Court of Appeal. (See, e.g., Putative Receiver’s Br. 3–8 (discussing only Justice Scott’s opinion); *id.* at 21–32 (repeatedly challenging Justice Scott’s opinion).) By only addressing the trial-level decision, the putative Receiver all but concedes the dispositive impact of *Adams’s* appellate judgment.

*Adams* stands for the proposition that CIHL has no presence in the United States that would render it subject to *in personam* jurisdiction here. That decision came in two parts:

- (1) A unanimous judgment by the Court of Appeal on the controlling legal points (R. pp. 2661–2728); and
- (2) An appendix that examined the facts in painstaking detail demonstrating the corporate separateness of CIHL (English) and NAAC (Illinois) (R. pp. 2729–2768).

*Adams* analyzed three different theories as to how CIHL could have subjected itself to jurisdiction in the United States through its dealings with NAAC: (1) by the companies operating as a “single economic unit” (R. pp. 2688–95); (2) by piercing the “corporate veil” between CIHL and NAAC (R. pp. 2695–2700); and (3) by treating NAAC as an “agent” of CIHL (R. pp. 2701–03). Based on a comprehensive review of the record, and after 17 days of appellate hearings, the Court of Appeal rejected all three theories, concluding that NAAC carried on its own business and that CIHL and NAAC both rightly maintained corporate formalities.

The Court of Appeal thoroughly recited the facts supporting its conclusions, including *inter alia* that NAAC: leased its own offices in Chicago, paid its own rent, owned its office furniture, employed its own staff of several employees, ran its own pension system, periodically bought asbestos “from United States government stocks,” “imported asbestos goods from Japan and sold them to United States customers,” rented and paid for warehouse to store stocks of asbestos, earned profits, paid U.S. taxes, maintained its own accounts of customers and expenses (“not those of Cape,” although CIHL was able to place maximum expenditure levels), returned a dividend only after passing a resolution by NAAC’s board of directors, performed the normal functions of a salesman and was paid a commission based on it, and could not bind CIHL in contract. (*E.g.*, R. pp. 2693–94, 2701–03, 2731–33, 2746–50.)

That judgment controls here. First, South Carolina has no interest in reexamining how those companies (CIHL in England, and NAAC in Illinois) maintained their corporate status and performed their distinct corporate functions generations ago. *See Protopapas*, 152 F.4th at 447 (“Thus, when it comes to control over corporate decision-making, a state has no interest in regulating the internal affairs of foreign corporations.” (cleaned up)).

Second, comity compels adherence to *Adams*. To dodge comity, the putative Receiver argues that *Adams* isn't deserving of recognition by this Court because, in his view, the law "is substantially different," the facts are "wholly different" in this case than they were in *Adams*, and adherence to *Adams* would be unfair. (Putative Receiver's Br. 21–28.)<sup>4</sup> This is entirely untrue.

**Same Law.** There is no material difference in the law analyzed in *Adams* and the law governing (a) personal jurisdiction or (b) when a court can disregard the corporate form.

Regarding personal jurisdiction, the U.S. Supreme Court has been unequivocal that Due Process will not find personal jurisdiction over a foreign manufacturer simply because it targets the U.S. market—the manufacturer must do "something more" that specifically connects it with the particular state where litigation is pending in order for personal jurisdiction to attach. *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 882 (2011) (concurrency); *see, e.g., Sutton v. Motor Wheel Corp., LLC*, Case No. 3:17-01161-MGL, 2018 U.S. Dist. LEXIS 80484, at \*18 (D.S.C. May 14, 2018) ("HZR's manufacturing of tires for distribution in the United States, using Leopard to distribute the tires nationwide, and co-advertising with Leopard in the United States does not constitute contact with South Carolina." (citing *J. McIntyre*)). That "something more" is precisely the "presence" point for which the *Adams* court went searching.<sup>5</sup>

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<sup>4</sup> For their part, the Plaintiffs argue that this Court shouldn't recognize *Adams* because the English courts don't recognize Mr. Protopapas's appointment, and the Plaintiffs make shockingly inaccurate statements alleging "fraud" and "*ex parte* representations" before the English courts to justify their position. (Plaintiffs' Br. 28–30.) To be clear: *Adams* predates these proceedings by 33 years, and the circuit court's putative receivership appointment here runs directly contrary to *Adams*. It is disingenuous to suggest that this Court should ignore English rulings simply because the English courts won't subvert their own precedent ***on the exact issues presented here involving an English company decided decades ago*** to a circuit court order from South Carolina rendered in a case that had no plaintiff, no defendant, no live controversy, no judgment, no hearing, and no notice—in short, without any jurisdiction or due process.

<sup>5</sup> Due Process rejects the notion that simply placing a product in the "stream-of-commerce" with the hope or expectation that it will work its way to a specific forum is sufficient for personal

And, just like the putative Receiver, the *Adams* plaintiffs attempted to connect CIHL to the United States—making it “present” for jurisdictional purposes—by linking CIHL to NAAC through the exact same theories for disregarding the corporate form that the putative Receiver pushes here. (R. pp. 2686–88.)

The putative Receiver suggests that English law never permits a court to disregard the corporate form. (Putative Receiver’s Br. 24–25.) But *Adams* itself expressly explains otherwise.

Indeed, if English law did not allow for a court to override corporate formalities when circumstances so required, then *Adams* would have simply said so and never engaged in its analysis of whether CIHL and NAAC operated as a “single economic unit,” whether the corporate veil should be pierced, or whether NAAC was a mere agent of CIHL. (R. pp. 2688–2702.) The fact that *Adams* addressed the issue proves the inaccuracy of the putative Receiver’s argument.

Throughout its discussion, *Adams* cited cases where English courts disregarded the corporate form when “the business realities of a situation” so required, when the corporate form was a “mere façade concealing the true facts,” or when the subsidiary was in reality doing only the principal’s business. (*Id.*) That is no different than *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 655, 817 S.E.2d 273, 280–81 (2018), where this Court held it will potentially treat multiple companies as one when they disregard corporate formalities and do so for fraudulent purposes.

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jurisdiction to attach. This Court previously indicated its view that a basic “stream-of-commerce” theory was sufficient to create personal jurisdiction in *State v. NV Sumatra Tobacco Trading Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008), which is cited in both the putative Receiver’s brief (at 23 nn. 85–86) and the Plaintiffs’ brief (at 5). Respectfully, that is not the law; in fact, the New Jersey Supreme Court favorably cited *NV Sumatra* in its decision that was ultimately reversed by the *J. McIntyre* Court. See *Nicastro v. McIntyre Machinery Am., Ltd.*, 987 A.2d 575, 588 n.11 (N.J. 2010) (citing *NV Sumatra* as supporting authority for that court’s view of the “stream of commerce” theory of personal jurisdiction), *rev’d* 564 U.S. 873 (2011).

What's more, both the English courts and this Court agree on the very same overarching point of corporate law on which a capitalist economy is based: "[W]e acknowledge that corporations are often formed for the purpose of shielding shareholders from individual liability; there is nothing remotely nefarious in doing that." *Id.*, 817 S.E.2d at 280. Allowing an investor to commit resources to corporate opportunities while limiting his or her potential liability is a key tool to increasing market participation in the U.S., the U.K., and other Western jurisdictions and is obviously not evidence of fraudulent or bad-faith behavior. Both South Carolina and England recognize and value the purpose of the corporate form, and the putative Receiver's "the law is different" argument is simply wrong.

**Same Facts.** The putative Receiver does not identify any authority that would allow a court to refuse comity to a judgment because a litigant in the second forum claims to have a new "fact." The law actually provides to the contrary. *See Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895) (explaining comity prevents cases decided by fair, impartial foreign courts from being "tried afresh" based "upon the mere assertion of the party that the judgment was erroneous in law or in fact").

Relatedly, a core purpose of collateral estoppel is to enforce the finality of prior judgments without inviting litigants to reframe the evidentiary presentation. *See, e.g., Montana v. United States*, 440 U.S. 147, 153–54 (1979) ("Application of both doctrines [res judicata and collateral estoppel] is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions. To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.").

But even if such an argument had any legal merit—it doesn't—there are no new facts here. Given that *Adams* was the result of heavily contested litigation over the span of more than 50 days of in-court time and was resolved 36 years ago, how could there possibly be anything new?

Because CIHL sold its interests in the relevant asbestos subsidiaries in 1979, the record remains unchanged from how it was captured and articulated by *Adams*—it has been frozen in place since the time of the *Adams* record. And yet the putative Receiver wants the world and this Court to believe that it was CIHL that directed and controlled distribution of asbestos fibers in the United States. Given the highly-contested findings of fact in *Adams*, it is not possible for this or any other court to make such a conclusion without suspending reality. Stated otherwise, *Adams* stands for the unassailable position that it is factually impossible for this Court to conclude that CIHL directed or controlled the distribution of asbestos in the United States, when in reality it has been finally determined by a competent court with jurisdiction that it was other subsidiaries (not controlled by CIHL) that mined the asbestos and sold it into the United States.

Absent the ability to make such a factual finding, the premise of the putative Receiver's third-party claims falls away; that is, *Adams* both legally and factually precludes a finding that CIHL could be sued in the United States for the conduct of its affiliates. The connection becomes even more remote given that the Altrad Appellants did not acquire control of CIHL until 2017, long after CIHL sold its interest in its asbestos-mining subsidiaries in 1979.

The putative Receiver doesn't identify anything specifically that he claims is "new" beyond opinions from one of his so-called "experts." But an "expert" opinion in 2025 is obviously not a new fact about foreign corporate activity in the 1960s and 1970s. And the "evidence" cited in the putative Receiver's brief was indeed considered by the English court. *Compare* Putative Receiver's Br. 25 n.93 (citing deposition testimony from Mr. Morgan), *and id.* 25 n.95, 26 n.104

(citing a message from Mr. Penna to Mr. Milwid dated July 4, 1977), *with* R. pp. 2730–34 (citing the *same deposition* from Mr. Morgan in support of the *Adams* judgment), *and* R. p. 2756 (citing the *same message* from Mr. Penna to Mr. Milwid in support of the *Adams* judgment).

**Same Public Policy.** Both the putative Receiver and the Plaintiffs contend that giving a preclusive effect to *Adams* would somehow work an injustice to “South Carolina citizens.” (Plaintiffs’ Br. 30; Putative Receiver’s Br. 32 (“South Carolinians”).)<sup>6</sup> The only thing to which they point, though, is the prospect of having a claim against NAAC that goes unpaid. That has never been a basis for a South Carolina court to refuse recognition of a foreign judgment. (*See* Altrad Appellants’ Opening Br. 39 (collecting cases).)

There is nothing to suggest that NAAC was somehow undercapitalized or uninsured. Indeed, the trial court in *Adams* dedicated several pages of his decision to recounting how NAAC had negotiated and settled asbestos claims until “the insurance cover was, apparently, virtually exhausted,” which is obviously not an unusual situation in which asbestos companies of that era found themselves. (R. p. 2605.) But the fact that NAAC’s insurance eventually ran out is simply an economic reality, not a basis for refusing to extend comity to the English courts. The putative Receiver’s efforts to distinguish or otherwise run from *Adams* all fail.

**Failure 9: No party sought a receivership appointment in *Tibbs*.**

Like Failure 3, the plaintiffs never sought a receivership appointment in *Tibbs*. In fact, they have conceded this point in other filings to this Court. (Plaintiffs’ Return in Opposition to Petition for Extraordinary Writs at 8 n.10.) But as discussed above, only a “party” can seek the appointment of a receiver. S.C. Code Ann. § 15-65-90.

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<sup>6</sup> There are no such “South Carolina citizens” or “South Carolinians” involved in this case, as the *Tibbs* Plaintiffs are from North Carolina. (R. p. 70, ¶ 21.)

Here, the order on appeal is the result of a motion by the putative Receiver. He has no standing to seek his own appointment. *See id.* (requiring a “party” to seek a receivership appointment and, in turn, to accept the monetary consequences that accompany an improper appointment). Allowing a receiver to seek his own appointment would violate the principles of *Welch* and *Tibbs* that a receiver’s work is by law restricted only to the case in which a plaintiff sought the appointment. And this is particularly improper here, as a person without a valid appointment in *Park* cannot possibly have any standing to do anything in *any* case. As with so many other dispositive points, neither the putative Receiver nor the Plaintiffs rebut this argument.

**Failure 10: There is no “moral fraud” that could justify a receivership.**

Even though the circuit court has appointed approximately two-dozen receiverships—virtually always without a hearing—this Court emphasized in *Welch* that a receivership appointment is reserved for “the rarest of cases.” 445 S.C. at 659, 916 S.E.2d at 330. It explained the “extreme power” of a prejudgment receivership under Title 15 “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 responsible to a later judgment.” *Id.* And it affirmed that a prejudgment Title 15 receivership was acceptable in *Welch* because the defendant had engaged in three discrete activities during litigation: (1) ignoring discovery rulings, (2) misrepresenting its insurance coverage, and (3) refusing to tender claims to its carriers. *Id.* at 661, 916 S.E.2d at 331.

There is no such in-litigation conduct by CIHL that approximates anything that *Welch* identified as a potential basis for appointing a Title 15 receiver before a judgment is in hand. And that’s no surprise: CIHL has no in-litigation conduct here because it is not a party to *Tibbs*.

The most the putative Receiver and the Plaintiffs muster on this point is to complain that CIHL has not appeared in these cases (in which it hasn’t been served with process) and about

CIHL initiating litigation in England adverse to the putative Receiver. But there was nothing fraudulent about that; CIHL properly served the putative Receiver with process and gave him a chance to explain to the English courts why he—a lawyer in Columbia, South Carolina—believed he could hold himself out to the world as the corporate spokesman for CIHL and the decisionmaker regarding all of its assets. The putative Receiver refused to appear for those proceedings; according to his and the Plaintiffs’ own arguments, then, the putative Receiver has also engaged in “moral fraud.” Obviously, their arguments on this point fail.

**Failure 11: There is no valuation for which a bond may be offered.**

South Carolina law requires any Title 15 receivership appointment to include a valuation of the property so a bond can be paid to dissolve the receivership and release the disputed property back to the defendant. S.C. Code Ann. §§ 15-65-50 & -60. This isn’t discretionary—both sections of the Code use the word “shall” when describing the bond requirement—yet the circuit court has not included one in the appointment order here or in any other Asbestos Docket appointment.

The putative Receiver and the Plaintiffs both treat this statutory requirement as if it can be freely ignored. The Plaintiffs suggest that “there is no reason to set a bond” (Br. 28), while the putative Receiver argues that he is exempt from the bond requirement because he doesn’t know the value of the property he claims to have seized (Br. 48–50).

These are not legitimate responses. State law requires a bond because a defendant has to have a mechanism to reclaim its private property from a receiver. The fact that the putative Receiver believes it would be “absurd” to include the statutorily-required bond underscores the impropriety of these proceedings. If the circuit court is going to engage in the harsh and extreme remedy of a Title 15 receivership, it has to strictly adhere to the guidelines the General Assembly has set for such seizure of private property.

The truth is that there is no valuation because there is no property that is at-risk of being squandered over the course of this litigation. There never has been. There was no property at issue in *Park*, nor is there any at issue in *Tibbs*. If there were, then presumably a bond would be set. But as it stands, there is no bond, voiding the receivership. *See Truesdell v. Johnson*, 144 S.C. 188, 204, 142 S.E. 343, 348 (1928) (“The provision for inserting a clause fixing the value of the property in the order appointing a receiver is mandatory, and without such clause the order is void.”).

**Failure 12: The claims have been released.**

The Altrad Appellants and CIHL (among other entities) executed mutual releases that extinguish the very claims asserted by the putative Receiver in CIHL’s name here. (R. p. 2976.) In *Smith*, an English court reviewed that agreement and endorsed it as enforceable. (R. p. 2968.)

The putative Receiver argues only that the mutual release is invalid due to a lack of consideration. (Putative Receiver’s Br. 47.) This is wrong. Each side to the bargain agreed to release the counterparty from any potential liability that may arise from the nucleus of facts at issue in this litigation. The fact that the putative Receiver is attempting to manufacture liability through a self-piercing claim allegedly on behalf of CIHL is proof-positive that the mutual releases necessarily confer a benefit to other signatories: avoiding potential litigation like this case.

The decision to enter such a mutual release is within the “boardroom” control of CIHL with which the putative Receiver may not interfere. *See, e.g., Star v. TI Oldfield Dev., LLC*, 962 F.3d 117, 130–33 (4th Cir. 2020) (holding that the board of directors controls all litigation decisions, and that shareholders’ derivative suits were rendered moot by the board’s decision to “resolve them in the manner they saw fit”). That mutual release moots this case, rendering the circuit court without jurisdiction. *See Bailey v. S.C. State Election Comm’n*, 430 S.C. 268, 273–74, 844 S.E.2d 390, 393 (2020) (dismissing as nonjusticiable an appeal that became moot).

**Failure 13: There is no personal jurisdiction over the Altrad Appellants.**

Finally, even if the putative Receiver can somehow sweep every one of the above issues—he can’t, and he doesn’t even try to argue otherwise—dismissal is still required because the Court does not have personal jurisdiction over the Altrad Appellants, both of which are French (and one is an individual) with no relevant contacts in South Carolina. (R. pp. 332–35, 354–59 (jurisdictional affidavits).)

In response, the Plaintiffs argue that the Altrad Appellants are subject to personal jurisdiction because the circuit court said so without any meaningful analysis or discussion. (Plaintiffs’ Br. 15–16.) That’s not a real rebuttal. The putative Receiver, however, argues that a May 23, 2024 order from the circuit court that contains “adverse inferences” that defeat the Altrad Appellants’ personal jurisdiction arguments. (Putative Receiver’s Br. 36–37.) According to the putative Receiver: “Appellants are bound by these adverse inferences.” (*Id.* at 37.)

This is a striking about-face from the putative Receiver’s prior representations to this Court and the Court of Appeals. When the circuit court entered that May 23, 2024 order, the Appellants appealed it, arguing that these “inferences” effectively struck a defense and thus rendered the order immediately appealable under South Carolina Code § 14-3-330(2)(c).

In response, the putative Receiver predictably bemoaned the fact that the order had been appealed, and he assured both the Court of Appeals (when seeking dismissal of the appeal) and this Court (when opposing certiorari review) that these inferences were *not* binding: “[T]he adverse inferences are simply rebuttable presumptions that Petitioners can refute through evidentiary challenge.” (Response to Pet. for Writ of Certiorari in Appellate Case Nos. 2024-002116 & -002117, at 15 (Jan. 15, 2025); Mot. to Dismiss Appeals of Interlocutory Orders in Appellate Case Nos. 2024-001063, -001064 & -001065, at 3 (Aug. 16, 2024) (same).)

The Court should estop the putative Receiver from advancing his newfound mischaracterization of that order. His appellate argument is exactly why the Altrad Appellants believed that order to be immediately appealable at the time they appealed it, and the putative Receiver’s litigation conduct now confirms that they were right to immediately appeal that order.

In any event, the “inferences” are irrelevant, as that order was issued while an appeal involving the issue of personal jurisdiction over the Altrad Appellants was pending (what became Appellate Case No. 2024-001499) and is therefore void. Rule 205, SCACR.

The putative Receiver also notes that RMD Kwikform—a recently-acquired subsidiary of a subsidiary of a subsidiary within the Altrad Group that provides formwork services for construction projects—maintains an office in Williamston, South Carolina. (Putative Receiver’s Br. 42.) That, of course, has nothing to do with asbestos claims or anything else associated with this case. It is, therefore, irrelevant to the personal jurisdiction analysis. *See Ormand-Ward v. Litt*, Op. No. 6127 (S.C. Ct. App. filed Dec. 3, 2025) (Howard Adv.Sh. No. 43 at 43) (affirming a lack of personal jurisdiction where all of the contacts in South Carolina were unrelated to the case).

At bottom, there is no evidence at all that the Altrad Appellants have ever had any contacts with South Carolina. The state’s courts lack personal jurisdiction over them accordingly.

**II. The Altrad Appellants’ arguments have always challenged jurisdiction, thus precluding any waiver of personal jurisdiction.**

In response to the Court’s inquiry about a potential waiver, the putative Receiver and the Plaintiffs predictably argue that the Altrad Appellants waived their personal jurisdiction defenses. But they only point to the fact the Altrad Appellants have repeatedly challenged the validity of the putative receivership in support of this argument. (Plaintiffs’ Br. 13–14; Putative Receiver’s Br. 33–35.) No matter what pejorative or suggestive label they put on it—“gamesmanship,” “selective participation”—nothing the Altrad Appellants have done comes close to a waiver.

In South Carolina, a defendant does not waive a personal jurisdiction defense when he or she asserts that defense at the first available opportunity, reasserts it throughout the litigation, and alerts the court to other jurisdictional problems. *See, e.g., Williams v. Williams*, 436 S.C. 550, 589, 873 S.E.2d 785, 806 (Ct. App. 2022) (“A defendant cannot be said to have waived personal jurisdiction merely because he alerts the court to other types of jurisdictional defects.” (quoting *Maybin v. Northside Corr. Ctr.*, 891 F.2d 72, 75 (4th Cir. 1989))).

The Altrad Appellants have followed exactly this prescription. Their first filings were motions to dismiss for lack of personal jurisdiction. (R. pp. 316, 336.) They then filed a motion to dissolve the putative receivership that expressly requested a ruling on their personal jurisdiction motion first but that pointed out numerous other jurisdictional defects. (R. p. 412.) They then reasserted the lack of personal jurisdiction throughout their answer, which was filed only after the circuit court denied the motion to dismiss for lack of personal jurisdiction. (R. pp. 1294.)

And their filings regularly highlighted those jurisdictional defects: the absence of personal jurisdiction over Cape plc or CIHL, improprieties with the receivership appointment (all of which go to the fact the putative Receiver does not lawfully exist and, therefore, the putative Receiver lacks standing), the lack of a case or controversy in *Park* when the original order was entered, mootness due to the mutual release, and Appellate Rule 205’s exclusive jurisdiction provision.

This is why the Altrad Appellants have consistently used phrases like *ultra vires*, *ab initio*, “putative Receiver,” and nullity throughout their filings. That verbiage is not “sniping” or designed to marginalize the proceedings or litigants, but instead is used to emphasize the absolute absence of jurisdiction that would allow any part of this case to proceed. In fact, after the June 2025 remand, the Altrad Appellants moved to strike everything that has been filed by the putative Receiver or entered by the circuit court from the outset of this dispute due to a lack of jurisdiction. (R. p. 1691.)

The Altrad Appellants have not engaged on the merits, but instead have repeatedly accompanied their personal jurisdiction arguments with a crush of other jurisdictional arguments. Even the putative Receiver concedes the Altrad Appellants' invocation of *Adams* is to demonstrate "there was no personal jurisdiction over Cape [sic: CIHL]," not to engage on the actual merits underlying the litigation. (Putative Receiver's Br. 17.) There has been no waiver.

As the Court weighs this issue, it should consider what the alternative would be. The putative Receiver and the Plaintiffs both suggest that if the Altrad Appellants utter anything about the "merits," they will have waived their personal jurisdiction defense. They have made this point in their appellate filings, and the putative Receiver repeatedly threatens this point in proceedings below in an apparent effort to chill advocacy by the Appellants before the circuit court.

But because the denial of a motion to dismiss for lack of personal jurisdiction standing alone is not immediately appealable, litigants in South Carolina circuit court would be given a Hobson's Choice: engage in the merits and risk having a court later deem the personal jurisdiction defense waived, or don't engage in the merits and risk being tarred with labels like "gamesmanship" or "bad faith" or (in Atlas Turner's case) "moral fraud" and suffering the associated consequences. For purposes of this appeal, though, the answer is obvious: the Altrad Appellants have not waived their personal jurisdiction defense, which should carry the day (along with over a dozen other reasons why the proceedings below are void).

### **CONCLUSION**

Because everything associated with this case and the putative receivership are void as a matter of law, the Court should declare the entirety of these proceedings void *ab initio*, dissolve the putative receivership, and dismiss the Altrad Appellants from this case.

Respectfully submitted,

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