RECEIVED

Jan 06 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Civil Action No. 2023-CP-40-01759
Appellate Case No. 2025-002104

John A. Tibbs and Margaret B. Tibbs……**PLAINTIFFS**,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; Aiw-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell

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

and

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

v.

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

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

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

A. Victor Rawl, Jr. (S.C. Bar No. 09261)
Email: vrawl@grsm.com
GORDON REES SCULLY MANSUKHANI, LLP
677 King Street, Suite 450
Charleston, South Carolina 29403
Tel.: (843-714-2501

ATTORNEYS FOR APPELLANTS CHARTER CONSOLIDATED LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD.

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

I. SUMMARY OF ARGUMENT

Respondents'[1] Briefs avoid the basis of this appeal: no valid receiver was ever appointed in *Tibbs*. The October 2025 Order does not satisfy the requirements of *Welch*, the June 26 Order, or South Carolina law. Nor can the Order rectify defects underlying the *Park* Appointment Order pursuant to which the Receiver acted until October 2025. A court cannot retroactively validate ultra vires conduct. Authority must exist before it is exercised and cannot be supplied after the fact.

Respondents likewise fail to grapple with the consequences of *Adams*, which binds Cape—and the Receiver's purported actions for Cape—by Cape's own prior litigation positions and the fully litigated determinations regarding corporate separateness, control, and alter-ego theories. Nevertheless, Respondents improperly attempt to relitigate those issues through mischaracterized evidence while ignoring *Adams*' resolution on the merits on a complete and heavily contested record. Their position is also internally inconsistent: the Receiver claims to stand in Cape's shoes to wield its authority yet disavows Cape's prior litigation posture when it becomes inconvenient. Principles of comity, estoppel, and judicial integrity do not permit that selective inheritance.

Finally, none of Respondents' arguments establishes personal jurisdiction over Appellants. There is no basis for general or specific jurisdiction, and Respondents' waiver theories fail as a matter of law and record. Appellants expressly preserved their jurisdictional objections, the circuit court and the Receiver agreed on the record that no waiver would result, and compelling litigation after the denial of jurisdictional motions cannot retroactively create consent to jurisdiction.

Respondents seek to enforce a void appointment order and expand the case-specific property preservation role of a prejudgment receiver into a broad enforcement mechanism beyond

[1] For the Court's ease only, "Respondents" refers to both the Receiver and Tibbs Plaintiffs. By filing this Reply, Appellants specifically preserve (and do not waive) all defenses, including personal jurisdiction.

the purview of South Carolina law. As a result, the October 2025 Order should be reversed.

II. ARGUMENT

A. Respondents Largely Ignore The Central Question On Appeal: Whether Any Valid Receiver Was Ever Appointed In *Tibbs* (Or *Park*).

The October 2025 Order should be reversed and the Third-Party Complaint dismissed because no valid receivership has ever existed in *Tibbs*. Each purported justification—whether the subsequent administration of the Park Estate, the belated accusation of "moral fraud" to support ultra vires actions, or the suggestion that holding companies are inherently insolvent—fails as a matter of law and logic. None provides a lawful foundation for a prejudgment receivership, much less for the extraordinary (and legally impermissible) step of retroactively validating a void one.

Respondents try to avoid the dispositive issue appealed: that the October 2025 Order violates this Court's directives and a receiver was never validly appointed in *Tibbs* (or *Park*). Indeed, the few pages Respondents devote to the October 2025 Order largely ignore the numerous deficiencies raised by Appellants, instead making generic statements that the circuit court's rulings were "sound" and "there is no colorable argument that the circuit court erred,"[2] or stating that Appellants are wrong simply because the circuit court "rejected" the arguments.[3] To the extent Respondents superficially address any deficiencies in the October 2025 Order, they rely on a series of after-the-fact rationales that cannot cure fundamental defects in the Receiver's actions in *Tibbs*.

1. Respondents' retroactive-ratification theory finds no support in law or logic.

Respondents' defense of the receivership hinges on a single proposition: because the October 2025 Order in *Tibbs* included purported factual findings that Respondents contend *could* support a receiver appointment (they do not), the circuit court's earlier order in *Park*—entered

[2] *See*, *e.g.*, Receiver's Brief, at p. 41.
[3] *See*, *e.g.*, Tibbs' Brief, at p. 24.

more than two years prior in a null case—must be valid in both *Park* and *Tibbs*. That reasoning is fundamentally flawed. A prejudgment receivership's validity turns on whether there was a lawful appointment when the receiver purported to act, not on a later determination of possible justification. Certainly, Respondents identify no authority permitting a court to retroactively supply authority for a receiver's ultra vires prior actions. A prejudgment receiver's authority derives exclusively from a valid appointment order complying with statutory and constitutional requirements. Otherwise, the receiver's actions are ultra vires and void, not merely irregular. Subsequent findings cannot transform unauthorized conduct into lawful authority.

The October 2025 Order does not cure that defect. At most, it reflects the circuit court's view, years later, that the record at that time supported receivership-type findings. But the critical question is whether there was a lawful appointment order in place in *Tibbs* from the time the Receiver first assumed authority and began acting in that case. Respondents' argument asks this Court to endorse a form of retrospective validation unknown to South Carolina law.

Nor does Respondents' view of the October 2025 Order answer the specific defects identified by Appellants. Respondents largely bypass the question whether *Park* appointed a receiver with authority to act in *Tibbs*, instead assuming that later findings render the issue academic. But, the *Park* Appointment Order did not contain the findings required to appoint a receiver, legally authorize the sweeping actions later taken, and or comply with the standards governing this extraordinary remedy. Respondents do not meaningfully dispute that point. Instead, they argue that the October 2025 Order—entered after years of litigation and receiver activity based on the *Park* Appointment Order—somehow cures the defects.

The law does not and should not permit such bootstrapping. A receiver must be validly appointed *before* exercising authority; the absence of a lawful appointment cannot be cured by

hindsight. Because Respondents' argument depends on retroactive approval of ultra vires conduct, it fails as a matter of law.

2. The closure of the Park Estate is not a "gotcha"—it goes to the fundamental question of whether the circuit court had any jurisdiction to act in March 2023.

Respondents' contention that the Probate Court's granting of a "subsequent administration" of the Park Estate in the summer of 2025 retroactively supplied jurisdiction for court proceedings in March 2023 fails as a matter of law.[4] The original Park Estate's closure before entry of the *Park* Appointment Order goes to the threshold question of the court's jurisdiction to act at the time of the appointment. A court cannot appoint a receiver in a vacuum, nor can it exercise jurisdiction over an estate that no longer exists. The estate's closure is not a trap or technicality—it is dispositive of whether the court originally had power to appoint a receiver. Because it did not, the *Park* Appointment Order cannot serve as the foundation for the Receiver's actions in any case.

Respondents' continued reliance on S.C. Code Ann. § 62-3-701 is unavailing. On its face, Section 701 addresses a narrow and specific circumstance: the interim period between a decedent's death and the court's appointment of a personal representative.[5] Here, Mr. Park's authority to act on behalf of the Park Estate was terminated at his request. At the same time, the Park Estate was formally closed—not abated, not dormant, and not awaiting appointment, but wholly terminated. Once the Estate was closed, no one had authority to act on its behalf because no estate existed. Section 701 does not—and cannot—revive a closed estate or retroactively confer jurisdiction. It is a fundamental jurisdictional error that cannot be cured post hoc by relation-back principles

[4] With respect to this argument, as well as all other arguments, pursuant to Rule 208(b)(6), SCACR, Appellants incorporate herein all arguments raised and authorities cited by similarly situated appellants in any filed Reply Briefs in Appellate Case No. 2025-002104.

[5] Given that process takes time, Section 701 permits a person named as personal representative in a will to take limited steps to protect estate property before formal appointment, with the statute providing that once appointment occurs, the personal representative's powers "relate back" to validate those interim acts.

designed for an entirely different situation.

The three cases Respondents cite from other jurisdictions on this point are unavailing.[6] For example, in *Saltmarsh v. Burnard*,[7] a Michigan court remanded for a factual determination of whether the plaintiff knew her authority as personal representative had been terminated and the estate closed, expressly holding that if she had such knowledge, the later reopening of the estate and reappointment would not relate back to validate filings made while the estate was closed. Even if this Court were to apply the Michigan court's rationale, the result here would be the opposite of what Respondents seek. The record establishes that Mr. Park was indisputably aware that his appointment was terminated, as the probate court mailed notice of his termination directly to Mr. Park's personal address—separate and apart from his counsel—on August 26, 2022.[8]

Furthermore, in the remaining cases cited by Respondents, the courts purportedly held that, when a former personal representative takes action on behalf of a closed estate, then it is a "real party in interest" issue that can be retroactively cured. However, this Court has already rejected this conclusion in *McCullar*, holding that when an estate has been closed (as opposed to merely not having a personal representative appointed yet), it is not an issue of "capacity, standing, or party in interest, but something much more fundamental."[9]

3. A new appointment order is required before a prejudgment receiver can preserve property for a different plaintiff in a different action.

A prejudgment receiver's authority is both case-specific and plaintiff specific and exists solely to hold and preserve property to satisfy a potential future judgment obtained by the party who sought the appointment. Respondents rely on *Porter v. Sabin*[10] for the sweeping proposition

---

[6] *See* Tibbs Brief, at pp. 21-23.
[7] 151 Mich. App. 476, 493, 391 N.W.2d 382, 390 (1986).
[8] (R. pp. 2437–2438).
[9] *See McCullar v. Est. of Campbell*, 381 S.C. 205, 207, 672 S.E.2d 784, 785 (2009).
[10] 149 U.S. 473, 13 S. Ct. 1008 (1893).

that a prejudgment receiver may preserve assets on behalf of any plaintiff the receiver wants, including plaintiffs who never sought a receiver or even sued the receivership entity. *Porter* does not support that claim. The *Porter* court placed an entire company under a receiver's control, pursuant to Minnesota law, and then liquidated it in its entirety at a public auction.[11] That wholesale liquidation bears no resemblance to a limited, prejudgment receivership under South Carolina law.

Critically, Respondents do not engage with the arguments demonstrating why their theory fails under South Carolina law. They never address the statute's plain language; decades of South Carolina practice limiting prejudgment receiverships to the case in which they are appointed; the limitations in the *Park* Appointment Order itself; the application of *Welch*; or the purpose of a prejudgment receivership: preserving a defendant's property to satisfy a *potential* judgment obtained *by the party* who sought the receiver. Citing an inapposite case about a liquidation receivership under a different law in a different jurisdiction, Respondents simply assume the authority they cannot establish. South Carolina law, including *Welch*, makes clear that a prejudgment receiver is limited to preserving property for the specific plaintiff who sought the appointment.[12]

Even if a prejudgment receiver had authority to sue in the name of the party whose property he was appointed to preserve (he does not), a third-party complaint must be derivative of the Tibbs' injuries,[13] the Tibbses must have requested a receivership over Cape, with an appointment order entered in *Tibbs*, prior to the Receiver filing any third-party complaint.[14] There is no dispute that

---

[11] *Porter*, 149 U.S. at 473, 13 S. Ct. at 1009 (all of the receivership entities' "property and tangible assets had been placed in the hands of the receiver appointed by the state court, and, under an order of that court, had been sold, by public auction, as a whole, and delivered to the purchaser").
[12] *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 667, 916 S.E.2d 32 (2025).
[13] *See* Rule 14(a), SCRCP.
[14] Such a limitation makes sense given the requirement that a plaintiff must demonstrate "the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and

no order has appointed a receiver to preserve assets on the Tibbs' behalf, and thus there can be no dispute that the Receiver lacked authority to bring the Third-Party Complaint in *Tibbs*.

4. The moral fraud described by Respondents, even if proven by admissible evidence, is not the type of moral fraud justifying a prejudgment receiver.

Respondents' attempt to invoke "moral fraud" to retroactively justify the *Park* Appointment Order and the October 25 Order rests on a fundamental misfocus. The purpose of a prejudgment receivership is not to punish alleged corporate misconduct, but to prevent a defendant in the case before the court from fraudulently dissipating property during the litigation in a way that threatens the enforceability of a future judgment.[15] That standard turns on egregious litigation conduct in the case at bar, not on allegations of past wrongdoing occurring decades ago.

Rather than pointing to any litigation misconduct by Cape in *Park* or *Tibbs*, Respondents recycle a catalogue of historical allegations about Cape's corporate behavior. But historical allegations—particularly those common to fraud or alter-ego disputes—do not establish the kind of "moral fraud" required to support the extraordinary remedy of a prejudgment receiver. Respondents also cite Cape's conduct in the U.K. courts *after* and in response to the improper *Park* Appointment Order. However, a foreign company's actions, in its home jurisdiction, challenging an improper receiver cannot justify that receiver's appointment as this would retroactively validate an unauthorized prejudgment receivership any time a company defended itself.

5. Respondents' remaining assertions do not supply the missing prerequisites for a prejudgment receivership.

Respondents' remaining arguments do not address the controlling requirements for a prejudgment receivership under South Carolina law. None cures the absence of a valid appointment

---

there is danger that the property will be materially injured before the case can be determined." *Welch*, 445 S.C. at 659, 916 S.E.2d at 330 (internal quotations omitted).

[15] *See Welch*, 445 S.C. at 659, 916 S.E.2d at 330.

order in *Tibbs*, grounded in identified in-state assets, statutory necessity, and lawful authority at the time the Receiver *first* purported to act.[16]

Cape's alleged status as a non-operating or "shell" company cannot justify the "rare" and "extraordinary" remedy of a prejudgment receiver under S.C. Code Ann. § 15-65-10(4). If this were sufficient to support receiverships, prejudgment receiverships would cease to be a narrow, extraordinary remedy and would instead become commonplace. Additionally, while Respondents label the assertion that Cape has no assets in South Carolina as "incorrect and unsupported," Respondents never identify any such assets and have effectively stipulated that Cape has never had insurance covering any liability in the United States.[17] Moreover, Respondents contend that Cape's status as an "ongoing concern" is beside the point,[18] but that contention ignores that the basis for the *Park* Appointment Order was Cape being "dissolved" and "forfeit[ing] its charter,"[19] which Respondents have since conceded is untrue.

Also, although the Receiver insists he has no "intention" of taking over Cape's boardroom decisions, this is irreconcilable with his purported admission of millions of dollars of liability on Cape's behalf. Unlike steps taken to preserve property, admitting liability permanently alters the company's rights and exposure; that power belongs to the board alone, not to a prejudgment

---

[16] Appellants incorporate by reference, per Rule 208(b)(6), SCACR, their arguments contained in their Petition for Rehearing filed in Appellate Case No. 2025-002372.

[17] *See* Receiver's Brief, at p. 11 ("The Receiver also learned that Cape employees deposed in historical asbestos litigation testified that Cape did not provide for any insurance for claims by injured U.S. workers, but it did purchase coverage for U.K. claimants exposed to its asbestos-containing products Cape sold in England."); *see also* Rule 208(b)(2), SCACR ("If a respondent does include his own statement of the case, he shall be bound by the matters stated or alleged in his statement of the case."); *Skelton v. Summit Builders of Greenville, Inc.*, 288 S.C. 453, 455, 343 S.E.2d 446, 447 (1986) ("Parties to an appeal are bound by facts as set forth in the statement of the case.").

[18] Receiver's Brief, at p. 44.

[19] (R. p. 780).

receiver. Accordingly, the Receiver's actions, taken despite the strong objections of Cape's board, constitute the usurpation of core corporate decision-making authority.

Furthermore, Respondents never meaningfully address how the Receiver could accept service, file a third-party complaint, seek discovery, and pursue default judgments in *Tibbs* without the *Park* Appointment Order even being filed in that case prior to those actions—much less without any receivership appointment order ever being entered in *Tibbs*.

Moreover, Respondents' assertion that Appellants cannot challenge the Receiver's appointment or the circumstances giving rise to it because these are exclusively Cape's "personal defenses"[20] is wrong. Under Rule 14(a), SCRCP, third-party defendants like 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 Ann. § 15-65-90, "any party to the cause" can challenge a receivership appointment. In any event, Appellants are not "rest[ing a] claim to relief on the legal rights or interests of [Cape]," as Respondents suggest.[21] When, as here, a party is forced to litigate against a prejudgment receiver whose very appointment is void, that party has an unquestionable interest in contesting the prejudgment receiver's authority to proceed.[22]

Respondents ask this Court to uphold sweeping prejudgment receiver powers based on post hoc attempted justification—rather than on a lawful appointment grounded in statutory prerequisites and contemporaneous authority. South Carolina law does not permit that result.

B. <u>Respondents Either Ignore Or Misinterpret Appellants' *Adams* Arguments.</u>

Respondents are wrong about *Adams*. Their arguments mischaracterize both what Appellants ask this Court to do and what *Adams* actually decided, and they fail to appropriately

[20] *See* Tibbs' Brief, at pp. 11–12, 25.
[21] *See* Tibbs' Brief, at p. 19.
[22] *See Porter v. Brown*, 149 S.C. 151, 146 S.E. 810, 814 n.1 (1929).

grapple with the legal consequences of Cape's prior litigation positions and the fully adjudicated findings on corporate separateness and control.

1. Respondents fail to overcome the preclusive effect of *Adams* pursuant to collateral estoppel and res judicata.

The only element of res judicata and collateral estoppel that Respondents dispute is whether there was the same subject matter (res judicata) or same issue (collateral estoppel) litigated in *Adams*.[23] Specifically, Respondents contend that there is no identity of the issues or subject matter because: (a) South Carolina law is different than the law applied in *Adams*; and (b) there is a "mountain of evidence" that Respondents allege—without any substantiation—was not considered by the two *Adams* courts over the course of a 34-day trial that included live testimony of witnesses with first-hand knowledge of relevant facts, more than eleven days of written deposition transcripts, and a large amount of written materials,[24] as well as 17-days of argument at the appellate level. Neither of these arguments has merit.

a. Piercing the corporate veil (either through alter ego or amalgamation) fails absent domination and control—an issue the Adams courts decided.

As an initial matter, Respondents improperly invoke South Carolina veil-piercing, alter-ego, and amalgamation law to try to hold Cape responsible (and then hold Appellants responsible) for NAAC's conduct, but *Pertuis v. Front Roe Rests., Inc.*[25] does not support that approach. There, South Carolina law applied because of substantial in-state connections, including a South Carolina incorporated affiliate, a South Carolina resident shareholder, and conduct occurring in South

[23] At no point do Respondents contest that res judicata and collateral estoppel apply to receiverships—nor could they do so. *See* Restatement (First) of Conflict of Laws § 576 (1934) ("[a] judgment rendered prior to the appointment of a receiver for or against the association of which such receiver has been appointed binds the receiver, and the facts thereby established become res judicata as to all receivers, whether the judgment was for or against the association.").
[24] *See* (R. pp. 7760).
[25] 423 S.C. 640, 817 S.E.2d 273 (2018).

Carolina.[26] Respondents identify no comparable contacts here that would justify displacing the internal-affairs doctrine and applying South Carolina law to the governance of a foreign corporation.[27] Indeed, *Pertuis* itself confirms that, outside the narrow single business enterprise (or amalgamation) context involving a South Carolina company, "the internal affairs doctrine precludes consideration of any remaining issues" involving foreign corporations.[28] Accordingly, South Carolina's choice of law rules require application of the law of Cape's place of incorporation—the United Kingdom—to veil-piercing, alter-ego, and amalgamation issues.

Nevertheless, even under South Carolina law, there is identity of issues such that *Adams* binds the Receiver. Although Respondents focus on the refusal to pierce the veil "to achieve fairness or redress injustice" in *Adams*,[29] they ignore that, under South Carolina law, it is also improper to pierce the veil solely "to achieve fairness or redress injustice."[30] Instead, South Carolina mandates "total domination and control of one entity by another" prior to holding a party responsible under an alter ego, piercing the corporate veil, or single business enterprise theory.[31]

---

[26] *Pertuis*, 817 S.E.2d at 278.

[27] The Tibbses are citizens of North Carolina (R. p. 164, ¶ 21); Cape, Charter, and Central Mining are U.K. organizations (R. p. 265, ¶ 40), (R. p. 261, ¶¶ 19, 21); and ESAB is a Delaware company, with its principal place of business in Maryland (R. p. 261, ¶ 20). Furthermore, there is no evidence in the record that any purported activity between NAAC and Cape or between Cape and Appellants occurred in South Carolina.

[28] *Pertuis*, 817 S.E.2d at 281–82; *see also In re Exactech Polyethylene Orthopedic Prods. Liab. Litig.*, No. 22MD3044NGGMMH, 2024 WL 991210, at *7 (E.D.N.Y. Mar. 7, 2024).

[29] Receiver's Brief, at pp. 24-25.

[30] *See*, *e.g.*, *Oskin v. Johnson*, 400 S.C. 390, 400, 735 S.E.2d 459, 465 (2012) (to prove alter ego, a plaintiff must show both "(1) total domination and control of one entity by another and (2) inequitable consequences caused thereby."); *Sturkie v. Sifly*, 280 S.C. 453, 456–57, 313 S.E.2d 316, 318 (Ct. App. 1984) (explaining there is a two prong test to pierce the corporate veil, with South Carolina courts first looking at an eight-factor analysis to determine if corporate formalities were sufficiently observed and then examining the element of injustice or unfairness).

[31] *See* note 30, supra; *see also Pertuis*, 423 S.C. at 655 (a party seeking to impose the existence of a single business enterprise must show both (1) the intertwining of the operations of the entities ***and*** (2) evidence of "bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions.") (emphasis added); *see also TELECO, Inc. v. Mutolo*, C.A. No.

The *Adams* courts squarely resolved the control issue, holding at both the trial and appellate levels, based on a well-developed and contested record, that NAAC's presence in the U.S. could not be imputed to Cape because Cape did not sufficiently control NAAC to pierce the veil through either alter ego or single economic unit theories.[32] Reframing the claim under South Carolina law does not change the determinative fact that *Adams* already decided—and rejected—the necessary element of control between Cape and NAAC. Because *Adams* fully litigated and decided the essential control inquiry required under both legal regimes, Respondents' veil-piercing, alter-ego, and amalgamation theories are precluded.

b. Respondents' claim of "new" or previously unconsidered evidence rests on repeated mischaracterizations of the record.

Respondents attempt to diminish the significance of *Adams* by asserting they now present "significantly more evidence" than was before the UK courts. That contention does not withstand scrutiny. In multiple instances, Respondents either mischaracterize the substance of the evidence they cite or incorrectly assert that such evidence was not before the *Adams* court—even though the *Adams* record demonstrates the opposite.

One example illustrates the problem. The Receiver asserts that "[t]he NAAC President [Mr. Morgan] himself testified that he didn't run NAAC, Cape did," and further claims that this supposed admission "does not appear in *Adams*."[33] That characterization is unsupported by the cited testimony. To the contrary, the Receiver's citation is Mr. Morgan's deposition testimony explaining the interview process he went through to originally become employed with NAAC,

---

6:23-cv-03563-DCC, 2025 WL 3280842, at *9 (D.S.C. Nov. 25, 2025) ("overlapping ownership of a business entity alone is not enough to demonstrate that it is intertwined with other entities" sufficient to amalgamate various businesses).

[32] Speculation about the motivations of the *Adams* judges has no bearing on the estoppel analysis, which focuses on the issues decided and their preclusive effect.

[33] Receiver's Brief, at p. 25.

which involved interviewing first with NAAC's Acting President and then with Dr. Gaze, a member of NAAC's board and a director of Cape. Mr. Morgan's belief that NAAC's board member and its parent company had a say in hiring senior personnel is not some critical admission that Cape "ran" NAAC's day-to-day affairs. Nor is it even accurate to suggest that this testimony was absent from *Adams* as the record reflects that the *Adams* court specifically considered Mr. Morgan's deposition testimony concerning his interview with Dr. Gaze.[34] Respondents' assertion that this evidence "does not appear in *Adams*" is therefore demonstrably incorrect.

The same pattern appears elsewhere in Receiver's Brief. The Receiver relies on a July 4, 1977 telex from A. Penna to S. Milwid as purportedly new or overlooked evidence of control.[35] That telex, however, is one of many documents the *Adams* court expressly relied upon in analyzing issues of control, alter ego, and veil piercing.[36] Similarly, the Receiver relies on testimony from A. Penna[37] without acknowledging that the quoted testimony was not merely available to the *Adams* court, but was given as live, in-person testimony during the 34-day trial in *Adams*. That omission is telling. Evidence presented through extensive live testimony at trial cannot plausibly be recast as "new" or unconsidered simply because Respondents now ascribe greater significance to it.

These examples are illustrative, not exhaustive. They demonstrate Respondents' effort to distinguish *Adams* does not rest on genuinely new evidence, but on selective quotations, incomplete descriptions, and incorrect assertions about what the *Adams* court did or did not consider. Whether particular evidence is repackaged or emphasized differently does not alter the fact that *Adams* resolved the underlying factual questions previously raised and litigated by Cape

[34] (R. p. 2731).
[35] *See* Receiver's Brief, at p. 25.
[36] (R. p. 2756).
[37] *See* Receiver's Brief, at p. 26.

concerning control, agency, and corporate separateness that Respondents now seek to relitigate.

Where a party's effort to distinguish a prior adjudication depends on misdescribing testimony and overlooking the findings that court actually made, the argument fails not because the prior court lacked evidence, but because the factual narrative has already been adjudicated.

2. The Receiver cannot stand in Cape's shoes for authority but not for judicial estoppel.

The Receiver's argument misstates the issue for judicial estoppel. Appellants are not asking this Court to give a foreign judgment "automatic, case-ending force"; they are asking the Court to hold the Receiver to *Cape's own prior factual litigation positions*.[38] Judicial estoppel is concerned with consistency of factual positions, not the forum in which those positions were taken. Respondents cannot claim that the Receiver "stands in the shoes" of Cape[39]—thereby asserting full control over Cape's assets and rights—while simultaneously insisting that the Receiver occupies a different legal posture when it comes to Cape's prior representations to courts. Those positions are wholly inconsistent. If the Receiver derives his authority by stepping into Cape's place, he necessarily inherits Cape's litigation posture as well.[40] The Receiver's effort to accept the benefits of that status while disclaiming its consequences is precisely the kind of inconsistency judicial estoppel exists to prevent.

---

[38] *See Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 252, 489 S.E.2d 472, 477 (1997) ("When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him."); *see also Fleming v. Lind-Waldock & Co.*, 922 F.2d 20, 25 (1st Cir. 1990) ("the receiver can only make a claim which the corporation could have made"). Furthermore, judicial estoppel applies with equal force when the parties are the same or in privity and, at a minimum, the Receiver is in privity with Cape. *See Cothran v. Brown*, 357 S.C. 210, 215-216, 592 S.E.2d 629, 632 (2004).

[39] *See* Receiver's Brief, at p 45 ("'The Receiver stands in the companies' shoes.'") (quoting *Welch*, 445 S.C. at 663–64, 916 S.E.2d at 333).

[40] *See*, *e.g.*, *Van Metre Holding Co. v. Dixon*, 23 F. Supp. 315, 316 (E.D.S.C. 1938) (holding that "the receiver steps into the shoes of the [underlying company] and takes its assets subject to all claims and defenses that might have been interposed as against the [underlying company]").

Furthermore, the Receiver's contention that Appellants have not alleged an attempt by the Receiver to mislead the circuit court is incorrect. Appellants have expressly argued that the Receiver misled the circuit court by failing to disclose the existence of the *Adams* decision[41]—an omission that prevented the circuit court from evaluating Cape's prior litigation positions and directly implicates the integrity concerns judicial estoppel is designed to address.

3. Principles of comity support recognition of *Adams*.

Comity is grounded in respect for foreign judgments. Where, as here, the proceedings were fair, the issues were fully litigated, and recognition would promote consistency and judicial integrity, a court is to enforce the judgment absent extraordinary circumstances.[42]

Respondents' attempt to resist comity based on *Adams*' purported refusal to recognize the Texas default judgment misses the point.[43] Whether a foreign court recognized a default judgment has nothing to do with whether its own decision merits comity.[44] In any event, the *Adams* courts declined to recognize the Texas judgment for a reason that United Sates courts themselves would require: the absence of personal jurisdiction over Cape.[45] Courts do not (and should not) permit recognition of a judgment entered without jurisdiction, whether under comity or full faith and credit. Far from undermining comity, the *Adams* courts' jurisdictional analysis reflects the same

---

[41] *See, e.g.,* (R. p. 3253) ("Instead of bringing forth the extensive legal and factual findings…in *Adams*…the imposter Receiver has ignored and obfuscated them completely"); (R. p. 3263) ("the Receiver has never put [*Adams*] before this Court even though he was duty bound to do so").
[42] *See Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895).
[43] The *Adams* court did not refuse to apply principles of comity in its decision regarding the Texas judgment because comity was specifically not relied on at trial. *See* (R. p. 2666, lines 510B).
[44] Furthermore, applying comity to the *Adams* decisions does not run afoul of the application of the full faith and credit clause to the Texas judgment, which as a default judgment would not have addressed the substantive arguments in *Adams.*
[45] *See*, *e.g.*, *Pony Express Recs., Inc. v. Springsteen*, 163 F. Supp. 2d 465, 472 (D.N.J. 2001) (applying comity to enforce a UK judgment based on the requirements that, "the foreign judgment was entered by a competent court, having both personal and subject-matter jurisdiction, [] the judgment was brought upon due allegations and proofs, giving the parties opportunity to defend against the claims, and [] the judgment is entered in a clear and formal record").

threshold principles South Carolina courts apply and reinforces the reliability of their decisions.

Finally, the Receiver's suggestion that *Adams* should yield to a handful of U.S. cases identifying "fact questions" on alter-ego issues ignores both posture and substance. Those cases did not find an alter-ego relationship; they merely declined to resolve the issue on an undeveloped record. By contrast, *Adams* involved a full evidentiary record and definitive findings on control, separateness, and corporate structure. Comity does not require a court to disregard a final, merits-based foreign adjudication in favor of preliminary rulings that expressly left the issue unresolved—particularly where subsequent merits determinations have repeatedly rejected such alter-ego theories.[46] Recognizing *Adams* under principles of comity promotes coherence, respects final adjudications, and avoids relitigation of issues already fully and fairly decided.

C. Respondents' Waiver Arguments Fail.

Respondents incorrectly argue that the Court should find waiver because (1) Appellants filed a Motion for Protective Order and to Dissolve Receivership while their personal jurisdiction motion was pending before the circuit court; (2) after Appellants obtained a denial of their personal jurisdiction motion to dismiss, they argued *Adams* binds the Receiver and that the circuit court should consider *Adams* under principles of comity; and (3) Appellants did not participate in matters that were affected by a then-pending appeal pursuant to Rule 205, SCACR. None of these actions can legally constitute waiver of Appellants' personal jurisdiction defenses.

1. Appellants did not waive personal jurisdiction by filing a motion to dissolve conditioned on the court first rejecting their personal jurisdiction objections.

Respondents' position contradicts their express agreement in open court—and the motion itself—that Appellants' conditional motion to dissolve the receivership would not waive personal jurisdiction. Importantly, Appellants expressly requested that the circuit court reach the dissolution

[46] *See* note 65, infra.

arguments ***only if***—***and only after***—it denied Appellants' pending motions to dismiss for lack of personal jurisdiction. A filing framed in that manner does not constitute consent to jurisdiction.

The conditionality of the motion to dissolve was explicit on the face of the motion itself. Indeed, Altrad Appellants' motion, which was adopted in full by Charter Appellants, stated:

> By filing this motion, [Appellants] do not waive, but instead specifically preserve, their objection to personal jurisdiction in South Carolina . . . . specifically request that the Court rule on their motions to dismiss for lack of personal jurisdiction ***before*** addressing any of the arguments raised in the present motion to dissolve the receivership, all of which are asserted in the ***strict alternative*** to [Appellants'] personal jurisdiction objections.[47]

Respondents nonetheless assert that the motion to dissolve "necessarily required" the exercise of personal jurisdiction. That assertion ignores both the plain language of the motion and settled waiver doctrine. Where a defendant raises lack of personal jurisdiction at the outset and conditions any request for further relief on the court first rejecting that objection, the defendant has not invoked the court's authority in a manner inconsistent with its jurisdictional defense.[48] Moreover, Rule 12, SCRCP, specifically contemplates that a motion to dismiss for lack of personal jurisdiction would be made in the same motion as one for failure to state a claim, which necessitates a substantive ruling on the case, without any waiver of personal jurisdiction defenses occurring.[49]

---

[47] (R. p. 412) (emphasis added).

[48] *See Williams v. Williams*, 436 S.C. 550, 559–60, 873 S.E.2d 785, 789–90 (Ct. App. 2022) (finding no consent to personal jurisdiction even though defendant litigated because he raised the jurisdictional objection "at his earliest opportunity and before he took any further action . . . . [and] reasserted his objection at every stage of the proceeding, including in his answer and counterclaim"); *see also Vermeer Mfg. Co. v. Aerocine Ventures Inc.*, No. 3:24-cv-00699, 2024 WL 5125134, at *8 (M.D. Tenn. Dec. 16, 2024) (rejecting waiver where defendant's personal jurisdiction arguments "precedes and predominates over its merits challenge" such that it was an "argument in the alternative and a request for relief in the alternative"); *Wausau Underwriters Ins. Co. v. State Auto Mut. Ins. Co.*, 557 F. Supp. 2d 502, 509–10 (D.N.J. 2008); *Brunson v. Capital Cmg, Inc.*, No. 3:20-cv-01056, 2021 WL 3081327, at *2 (M.D. Tenn. July 21, 2021).

[49] *See* Rule 12(b), SCRCP ("No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion."); Rule 12(g), SCRCP ("A party who makes a motion under this rule may join with it any other motions herein provided for and

Additionally, the conditional nature of Appellants' request was expressly confirmed on the record and agreed to by Respondents. At the October 25, 2023 hearing, in response to the circuit court's request to start with oral arguments on the motion to dissolve (instead of the motion to dismiss for lack of personal jurisdiction), counsel for certain third-party defendants stated that they were presenting dissolution arguments "as an alternative to [their] motion to dismiss for lack of personal jurisdiction" and sought to avoid "any misunderstanding about a waiver of personal jurisdiction."[50] The circuit court immediately confirmed: "No waivers by any presentations made today by defendants," and the Receiver expressly agreed.[51] The circuit court reiterated that understanding later in the same hearing, assuring another set of third-party defendants that arguing the dissolution motion would not waive personal jurisdiction rights.[52]

Respondents' current position contradicts their on-the-record agreement that no waiver exists and ignores that Appellants took every necessary step to ensure preservation of their right to appeal an adverse personal jurisdiction finding. Under Respondents' theory, a defendant who expressly preserves a jurisdictional objection in motion papers, asks the court to rule on jurisdiction first, and receives an on-the-record assurance that no waiver will occur would be deemed to have consented to jurisdiction. Waiver doctrine does not operate that way.

2. Appellants' litigation conduct after the circuit court denied their personal jurisdiction objections cannot constitute waiver.

Respondents also argue that Appellants waived personal jurisdiction by filing motions seeking substantive relief after the circuit court denied their motion to dismiss for lack of personal jurisdiction. That argument misunderstands waiver doctrine and improperly collapses preservation

---

then available to him."); Rule 12(h), SCRCP ("A defense of lack of jurisdiction over the person . . . is waived (A) if omitted from a motion in the circumstances described in subdivision (g)").

[50] (R. p. 0986).

[51] *Id.*

[52] *See* (R. p. 0990) ("If you join the dissolution, you will not waive any rights.").

into forfeiture. Once a trial court has definitively rejected a defendant's jurisdictional objection after a timely filed motion to dismiss, the defendant does not waive the personal jurisdiction defenses by continuing to litigate the case rather than defaulting.[53]

Waiver turns on whether a defendant sought unconditional merits relief while jurisdiction remained unresolved, not on whether a defendant litigated after the court ruled against it. Critically, where a defendant timely raises and preserves a personal-jurisdiction objection, later merits filings—made only after the objection has been denied—do not retroactively create consent.[54] This principle reflects a basic due-process reality: once a court has ruled that it will exercise jurisdiction, a defendant must either litigate or suffer default.[55] Waiver doctrine does not penalize defendants for complying with a court's ruling while preserving the issue for appellate review.

The cases Respondents rely on arise from a materially different procedural posture. For example, in *In re Asbestos Product Liability Litigation*,[56] defendants prevailed on personal jurisdiction, then affirmatively chose to litigate the merits in that same court rather than accept transfer—conduct the court found waived their jurisdictional defense. In *Lowe v. CVS Pharmacy, Inc.*,[57] defendants litigated the case for almost two years before filing a motion to dismiss for lack

---

[53] *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 781 (1993) (describing how a denial of a motion to dismiss for lack of personal jurisdiction is interlocutory because a defendant "may show that there is a lack of personal jurisdiction at trial"; in other words, once a motion to dismiss has been denied, a defendant can participate freely in the litigation even up through trial and still maintain the ability to assert a personal jurisdiction defense at trial).

[54] *See Mid-State*, 310 S.C. at 330; *see also Cruson v. Jackson Nat'l Life Ins. Co.*, 954 F.3d 240, 252–53 (5th Cir. 2020) (holding no waiver where defendant filed summary-judgment motion after jurisdictional objection had been preserved, emphasizing that contemporaneous litigation conduct reflected a continuing objection to personal jurisdiction).

[55] *See Williams*, 436 S.C. at 561, 873 S.E.2d at 791 (finding it was an error for the court to not have ruled on defendant's personal jurisdiction motion first because it would have improperly placed the defendant "in the position of either not answering [plaintiff's] complaint or potentially waiving his jurisdictional issue").

[56] 921 F.3d 98, 108 (3rd Cir. 2019).

[57] 233 F. Supp. 3d 636, 641 (N.D. Ill. 2017).

of personal jurisdiction. Nothing like either of these scenarios occurred here.

Here, Appellants followed the sequence required by the rules. They raised lack of personal jurisdiction at the outset, litigated that issue to decision, and only thereafter filed merits motions in a case the Court had determined it would adjudicate. That conduct does not signal consent; it reflects preservation. Accepting Respondents' position would transform any post-denial merits litigation into retroactive waiver, effectively eliminating appellate review of personal jurisdiction rulings. Waiver doctrine does not—and cannot—operate in that manner.

3. Appellants' reliance on Rule 205, SCACR, does not and cannot legally waive their personal jurisdiction defenses.

Respondents inaccurately characterize Appellants' compliance with Rule 205, SCACR, as "gamesmanship" that warrants waiver of personal jurisdiction defenses. There is no legal justification, however, for any argument that a party has "violated the spirit of preserving their personal jurisdiction challenge" by appealing orders that were improperly granted while another appeal was pending that affected the outcome of those orders. Indeed, Appellants' limited participation in the underlying proceedings stemmed not from a refusal to submit to the circuit court's incorrect personal jurisdiction ruling, but from compliance with Rule 205, SCACR, which automatically deprives the circuit court of jurisdiction over "matter affected by the appeal."[58]

Once Appellants appealed, on December 19, 2023, the order captioned "Order Denying

[58] *See* Rule 205, SCACR ("[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal"); *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) ("Rule 205 divests the lower court or administrative tribunal of jurisdiction over '*matters affected by the appeal*'") (emphasis in original) (quotation omitted); *Maybank 2754, LLC v. Zurlo*, 444 S.C. 47, 68, 906 S.E.2d 94, 105 (Ct. App. 2024) (Rule 205 deprives the circuit court of jurisdiction where the appellate outcome would have an impact on the circuit court ruling); *Tillman v. Oakes*, 398 S.C. 245, 255 & n.3, 728 S.E.2d 45, 51 & n.3 (Ct. App. 2012) ("[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal" and explaining that this rule "deprives the lower court of the power to address a particular issue, or 'matter,' during the pendency of the appeal").

Certain Third-Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction," the circuit court had no authority to continue to act with respect to the Receiver's Third-Party Complaint as that matter, in its entirety, would be "affected by the appeal" of whether the pre-judgment receivership was void from its outset. Far from "engaging in gamesmanship," Appellants have adhered to the procedural safeguards this Court itself established to preserve appellate jurisdiction and prevent inconsistent rulings while an appeal is pending. Indeed, it was in that very appeal that this Court, in its June 26 Order, converted Appellants' petition to a common law writ of certiorari.[59] Appellants then appealed the October 2025 Order, which, again, deprived the circuit court of jurisdiction to continue hearing and making rulings on the Receiver's Third-Party Complaint as it is directly "affected by" the appeal of the validity of the prejudgment receivership.[60]

Appellants' actions do not constitute improper gamesmanship,[61] but an effort to protect themselves against a rogue prejudgment receiver acting without legal authority. Relying on this Court's own procedural rules cannot constitute waiver of their personal jurisdiction defenses.

D. The Circuit Court Does Not Have Personal Jurisdiction Over Appellants.

The circuit court lacks personal jurisdiction over Appellants, and none of Respondents' arguments cures that defect.

1. There is no general or specific jurisdiction over Appellants.

There is no personal jurisdiction over Appellants in *Tibbs*. As the Receiver alleged in the Third-Party Complaint, Central Mining is a corporation organized under the laws of England,

[59] *See* June 26 Order.
[60] *See* Rule 205, SCACR.
[61] To the extent there are references to the actions in the UK as "gamesmanship" by Appellants generally, Charter Appellants have no connections to the U.K. court injunction proceedings. Any claim that Charter Appellants are using the U.K. injunction "as a sword and a shield at every opportunity to substantively defeat claims in South Carolina" is patently false.

United Kingdom, with its principal place of business in Essex, England, United Kingdom; Charter is a corporation organized under the laws of England, United Kingdom, with its principal place of business in Essex, England, United Kingdom; and ESAB is a corporation organized under the laws of the State of Delaware, with its principal place of business in Montgomery County, Maryland.[62] As foreign corporations that do not maintain principal places of business in South Carolina, Appellants are not "at home" in South Carolina such that they are subject to general personal jurisdiction there.[63] Specifically as to ESAB, although Plaintiffs' Brief cites an expert's opinion that ESAB must have "intended to be subject to jurisdiction in South Carolina" because he found an ESAB contract governed by South Carolina law on the internet, this does not satisfy "at home" requirement for general jurisdiction. Similarly, while the Receiver's Brief claims the circuit court found that "ESAB" previously maintained a principal place of business in South Carolina, that assertion misstates the record, as that finding was regarding ESAB Group, Inc., a different entity.[64]

Nor has the Receiver demonstrated specific personal jurisdiction over Appellants in South Carolina. Even if he had authority to act (which he does not), he has not established that any injuries alleged in the Third-Party Complaint arise out of or relate to any specific contacts by Appellants with South Carolina as required by S.C. Code Ann. § 36-2-803. In fact, the Receiver has never even alleged, much less proven, that Appellants themselves ever engaged in any of the enumerated activities set forth in South Carolina's long-arm statute.

Rather, all the alleged contacts with South Carolina were through a separate entity, NAAC.

---

[62] *See* (R. p. 261, ¶¶ 19-21).
[63] *See, e.g.*, *Daimler AG v. Bauman*, 571 U.S. 117, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014); *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358, 141 S. Ct. 1017, 1042 (2021); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).
[64] *See* (R. pp. 3095 – 3097, ¶¶ 43-49) (imputing various South Carolina-based activities to ESAB Group, Inc., but not to ESAB Corporation).

The Receiver argues those contacts should be imputed to Cape, and then to Charter and its subsidiary Central Mining, through theories that have been rejected by multiple courts in this country and abroad, including in *Adams*.[65] The Receiver then argues that NAAC's South Carolina contacts should also be imputed to ESAB through Charter because ESAB's former parent bought Charter's successor in 2012, ESAB came into existence in 2022, and ESAB's parent spun Charter off as a subsidiary of ESAB in 2022, many decades after the alleged NAAC contacts occurred.[66]

Even at its outermost reach, South Carolina's long-arm statute cannot support personal jurisdiction over Appellants here. Appellants have no assets in South Carolina. [67] They do not own, lease, or have any interest whatsoever in any real property in South Carolina; nor do they maintain any bank accounts in South Carolina.[68] Moreover, Appellants currently do not, and have not

---

[65] *See Craig v. Lake Asbestos of Quebec, Ltd.*, 843 F.2d 145 (3d. Cir. 1988) (finding, as a matter of law, that Charter did not exercise a great enough degree of domination over Cape to hold Charter responsible for Cape's asbestos liability); *In re Asbestos Litig. Venued in Middlesex Co.*, No. L-37243-79 (N.J. Super. Ct. July 10, 1987) (unpublished) (after bench trial on the merits, Charter was determined not to be the alter ego of Cape); *In re Charter Defendants*, 1989 U.S. Dist. LEXIS 15591, at *4, *15 (E.D. Pa. May 18, 1989) (dismissed with prejudice hundreds of claims asserted against Charter in every asbestos action pending in the district, finding that "there are no genuine issues of material fact as to whether Charter is the *alter ego* of Cape and that the Charter defendants are entitled to judgment as a matter of law"); *Culbreth v. Amosa (PTY) Ltd.*, 898 F.2d 13, 15 (3rd Cir. 1990) (affirming summary judgment in Charter's favor as there was insufficient evidence to establish alter ego or veil-piercing liability with respect to asbestos marketed by NAAC). Courts have also declined to hold that Charter was the alter ego of Cape for jurisdictional purposes. *See Dillman v. Celotex*, No. A87-599 Civil (D. Alaska Aug. 22, 1988) (unpublished) (holding that, for personal jurisdiction purposes, the evidence did not establish that Charter was the alter ego of Cape); *Kessinger v. North American Asbestos Corp.*, No. 87-L-120 (11th Cir. McLean Co., Ill. Dec. 1, 1988) (unpublished) (dismissing complaint against Charter for lack of personal jurisdiction because Charter was not the alter ego of Cape or any of Cape's subsidiaries); *A.J. Adams, et al v. A. W. Chesterton, et al.*, No. 251-95-905CIV (Cir. Ct. Hinds County, 1st Judicial Dist., July 10, 1995) (unpublished) (same); *Denham v. Unarco Industries, Inc.*, No. 85-L-360 (11th Cir. McLean Co., Ill. Dec. 1, 1988) (unpublished) (same); *Mohn v. Int'l Vermiculite Co.*, 147 Ill. App. 3d 717, 718, 498 N.E.2d 375, 376 (App. Ct. Ill. 1986) (same); *Gray v. Crown Cork & Seal Co., et al.*, No. 84-6067 (W.D. Ark. Jan. 7, 1986) (unpublished) (same).

[66] (R. pp. 305 – 306, ¶¶ 123-124).

[67] *See* (R. p. 409, ¶ 6); (R. p. 392, ¶ 6); (R. p. 375, ¶ 6).

[68] *See* (R. p. 409, ¶¶ 7 – 8); (R. p. 392, ¶¶ 7 – 8); (R. p. 375, ¶¶ 7 – 8).

historically, mined, milled, or sold asbestos in South Carolina.[69] Appellants also currently do not, and have not historically, produced, manufactured, or distributed asbestos or asbestos-containing products for use in South Carolina.[70] As such, there can be no finding of personal jurisdiction.

2. The circuit court's Adverse Inference Order does not—and cannot—establish personal jurisdiction over Appellants.

The circuit court's May 23, 2024 Order Granting the Receiver for Cape PLC's Motion for Sanctions and Motion for Adverse Inference ("Adverse Inference Order") cannot create personal jurisdiction as it was improperly issued in response to Appellants' assertion of Rule 205, SCACR during the pendency of an appeal for which this Court granted certiorari and issued the June 26 Order.[71] Due process mandates that good-faith reliance on Rule 205, SCACR does not establish the "bad faith and untruth" presumption to impose personal jurisdiction as a discovery sanction.[72]

Indeed, none of the Receiver's cited cases supports a finding that the Adverse Inference Order creates "essentially automatic" personal jurisdictional. *Bailey v. Owen Elec. Steel Co. of S.C.*[73] examines whether a trial court can decide a motion to compel before making a jurisdictional ruling, and *Glenn v. 3M Co.*[74] simply indicates that a sanctions order is subject to reversal for abuse of discretion. Additionally, *Ins. Corp. of Ireland* is inapplicable to the present situation. That case involved several insurers who moved for summary judgment based on lack of personal jurisdiction. As part of the pending motion, the court issued a discovery order requiring the insurers to establish certain jurisdictional facts, but the insurers neither complied nor gave a reason for their

[69] *See* (R. p. 409, ¶ 9); (R. p. 392, ¶ 9); (R. p. 375, ¶ 9).
[70] *See*, *e.g.*, (R. p. 409, ¶ 10); (R. p. 392, ¶ 10); (R. p. 375, ¶ 10).
[71] Appellants' arguments on why the Adverse Inference Order were improper were part of Appellants' Return to Motion to Dismiss and Petition for Rehearing En Banc filed in Appellate Case No. 2024-001065, which are incorporated by reference per Rule 208(b)(6), SCACR.
[72] *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee,* 456 U.S. 694, 705–706, 102 S. Ct. 2099, 2106, 72 L. Ed. 2d 492 (1982) (citations omitted).
[73] *Bailey v. Owen Elec. Steel Co. of S.C.*, 301 S.C. 399, 392 S.E.2d 186 (1990).
[74] *Glenn v. 3M Co.*, 440 S.C. 34, 890 S.E.2d 569 (Ct. App. 2023).

non-compliance, even after repeated warnings that failure to provide the jurisdictional discovery would result in a finding of personal jurisdiction over them. Ultimately, the court found personal jurisdiction over the insurers, not just as a discovery sanction pursuant to Fed. R. Civ. P. 37, but also because the insurers consented to personal jurisdiction in a contract with the opposing party and pursuant to the forum state's long-arm statute.[75] None of these circumstances exist in this case.

In any event, the Adverse Inference Order did *not* – contrary to the Receiver's assertions – include inferences that ESAB "'maintained its principal place of business in Florence, South Carolina, where it ha[d] a manufacturing plant, executive offices, and sales, engineering, and research development divisions' and other contacts that conclusively establish ESAB's presence in South Carolina."[76] Those purported inferences identified a different entity, ESAB Group, Inc.,— not ESAB, the entity that was named as a third-party defendant in *Tibbs*.[77] These inferences, which are void regardless, can have no bearing on ESAB's jurisdictional defenses.

III. CONCLUSION

None of Respondents' theories can supply a lawful receiver appointment, create personal jurisdiction where none existed, or evade the preclusive effect of issues already decided in *Adams*. Because the October 2025 Order rests on authority the circuit court did not possess, the Court should reverse the Order and dismiss the Third-Party Complaint.

[75] 456 U.S. at 705, 102 S. Ct. at 2106.
[76] Receiver's Brief, at p. 37.
[77] *See* (R. pp. 3095 – 3097, ¶¶ 43-49).

Dated: January 6, 2025

Respectfully submitted,

/s/ A. Victor Rawl, Jr.

A. Victor Rawl, Jr. (S.C. Bar No. 09261)
Email: vrawl@grsm.com
Gordon Rees Scully Mansukhani, LLP
677 King Street, Suite 450
Charleston, South Carolina 29403
Tel.: (843-714-2501

ATTORNEYS FOR APPELLANTS CHARTER CONSOLIDATED LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD.