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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting 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.; Lowserve 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, Incl; SPX Corporation; ii 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,

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

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

Appellants.

AMENDED BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Whether *Adams v. Cape Industries Plc* [1990] Ch. 433, an English decision interpreting English law on the issue of corporate veil piercing, has any impact on South Carolina's exercise of personal jurisdiction over Cape and its subsidiaries, affiliates, or successors in interest, including NAAC and Appellants.

2. Whether *Adams v. Cape Industries Plc* [1990] Ch. 433, an English decision interpreting English law on the issue of corporate veil piercing, estops the Receiver, as a matter of international law, from pursuing its South Carolina alter ego/amalgamation theory on behalf of Cape against Appellants.

3. Whether Appellants have waived the defense of lack of personal jurisdiction.

4. Whether the circuit court properly confirmed the Receiver's authority to act in *Tibbs*[1] pursuant to this Court's June Remand Order.

I. Summary of the Argument

This appeal is about whether the successors in interest to three entities – Cape Intermediate Holdings Limited ("Cape"), Central Mining & Investment ("Central Mining"), and Charter Consolidated Limited ("Charter") – can use a series of English decisions with holdings directly contrary to South Carolina law to avoid liability in South Carolina even though they were part of an amalgamated enterprise to perpetrate a fraud in the United States. In short, Cape Asbestos Company Ltd. (now Cape Intermediate Holdings Limited, and known as Cape plc for decades before a complicated transaction in 2011), benefitted from the U.S. market through the sale of thousands of tons of raw asbestos fiber into the U.S. market for nearly 80 years.

When the company faced settlement discussions in its first asbestos-related product liability lawsuit in Tyler, Texas in the summer of 1977, the threat of becoming embroiled in U.S. litigation loomed. Rather than take responsibility for the product it sold, which it knew it was required to do under U.S. law, Cape and the corporate structure that ran it—known as the

[1] *Tibbs v. 3M Co., et al.*, No. 2023-CP-40-01759 (Ct. Com. Pl. Richland Cnty.) (hereinafter "*Tibbs*").

Oppenheimer Group System of South Africa—developed a scheme to (i) strip its wholly owned U.S. subsidiary, North American Asbestos Company ("NAAC"), of assets and shutter it; (ii) ostensibly flee the jurisdiction; and (iii) establish a new Lichtenstein corporation (still part of the Oppenheimer Group System) to mask Cape's identity in the United States so that it could continue to profit from asbestos sales to the U.S. market.

These decisions were effective. While the Oppenheimers and their close allies ran the companies as one, the Group System afforded them the flexibility of walling off liabilities and evading responsibilities or authorities at critical moments such as this. Cape and Charter have evaded their U.S. liabilities for the devasting harm caused to U.S. claimants exposed to Cape's asbestos for more than four decades, and their owners have profited from this liability evasion.

Appellant Altrad Investment Authority S.A.S ("Altrad") is an international scaffolding company that has owned Cape since 2017 and, according to its lawyers, is responsible for Cape.[2] Altrad, which has operations in Williamston, South Carolina, has refused to participate in this case despite its advertised presence in South Carolina, and has attempted to supplant the decisions of the circuit court by asserting that a 35-year old decision from England – *Adams v. Cape Industries Plc* [1990] Ch. 433 ("*Adams*") – is binding in South Carolina. Altrad has filed parallel foreign proceedings in England to obtain confirmation that *under English law* the Receiver cannot pursue remedies available under South Carolina law. Altrad has used *Adams* and the English rulings it obtained as a proxy for defending against the Receiver's claims, appealing every interlocutory order of the circuit court, and leading the Receiver to believe that Altrad would defend the Receiver's case against it on the merits. Appellant Mohed Altrad is the majority owner of Altrad.

[2] *See* R. p. 2489, 7599 ("Cape plc is a company incorporated in Jersey in 2011. It is the ultimate parent company of the Cape group of companies ('the Cape Group'). In 2017 Altrad UK Ltd acquired Cape plc (which is part of the "Altrad group of companies").

Appellant ESAB Corporation ("ESAB"), the company with responsibility for Appellants Central Mining and Charter, is a Delaware company registered to do business in South Carolina.[3] Its standard vendor contracts include a South Carolina choice of law provision,[4] and it maintains workers compensation insurance coverage in South Carolina.[5] ESAB also has failed to participate in litigation at the circuit court, relying on the defense of lack of personal jurisdiction to avoid participation in the merits of the case, yet relying on *Adams* as a proxy for defending the Receiver's claims, and appearing to defend the case on its merits.

The Respondent will show that 1) *Adams* has no applicability in this case, 2) the Appellants should not be permitted to rely on additional international judgments to make an end run around the jurisdiction of South Carolina courts, and 3) by participating in the merits of the case for the last two years, Appellants have waived any challenge to personal jurisdiction in the circuit court.

II. Background on the *Adams v. Cape Industries Plc* Decision

The *Adams v. Cape Industries Plc* "decision" is two opinions comprising 139 pages reported together—Justice Scott's 69-page trial court opinion,[6] followed by Justice Slade's 69-page appellate opinion.[7] Appellants cast *Adams* as a vindication of Cape on the *merits* of products liability allegations against Cape—which it most certainly is not—and ask this court to make *Adams* decisive here based on various theories.[8]

Appellants' argument hinges on whether *Adams* involved the same claims, evidence, and

[3] *See* R. p. 7624.
[4] *See* R. p. 7620.
[5] *See* R. p. 7740-45 (showing ESAB's current workers compensation coverage through Phoenix Insurance Company).
[6] R. p. 2589-2658.
[7] R. p. 2659-2728.
[8] *See generally* Opening Brief of Altrad Appellants, *Tibbs v. 3M Co., et al.*, Appellate Case No. 2025-002104 (S.C. Dec. 10, 2025) (hereinafter "Altrad Brief").

applicable law as this case such that it is even relevant.[9] It does not. Appellants' Briefs omit any discussion of facts that led Justice Scott to conclude that the Texas default judgment at issue in that case was so flawed on fairness grounds that Cape must prevail for reasons totally unrelated to *this* case. Not only did *Adams* hinge on the unfairness of the Texas default judgment, but also *Adams* relied on English law that is in conflict with South Carolina law. Nor did the *Adams* court have before it the extensive evidence on which the Receiver relies here.

A. *Adams* considered whether Cape, an English company, should have to pay a Texas default judgment.

The sole issue in *Adams* was whether a default judgment against Cape entered by Judge William Steger in the United States District Court for the Eastern District of Texas (Tyler Division) could be enforced against Cape in England.[10] As will be explained below, the U.S. Government sought recovery on the default judgment on behalf of a group of 206 plaintiffs in asbestos litigation in Tyler, Texas (referred to herein as "Tyler 2").[11] The defendants in *Adams* were Cape Industries Plc and Cape's marketing and mining subsidiaries.[12]

All 206 Tyler 2 Plaintiffs claimed they suffered asbestos-related diseases as a result of exposure to Cape amosite asbestos fiber while working at a Pittsburgh Corning Corp. asbestos product manufacturing plant in Owentown, Texas.[13] Justice Scott acknowledged that "one of the main customers in the United States for [Cape's] amosite asbestos was Pittsburgh Corning."[14] Cape's own documents in this action show that the company monopolized about 95% of the worldwide market of amosite and sold asbestos to customers across the United States, including

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[9] Altrad Brief at 4-5.
[10] *See generally* R. p. 2589-2728 (*Adams v. Cape Industries Plc.*, [1990] 1 Ch. 433 (C.A.)).
[11] R. p. 2590.
[12] *Id.*
[13] R. p. 2589-2728.
[14] R. p. 2600.

South Carolina.[15] Cape admitted that its asbestos fiber—after incorporation into insulation products—could expose workers in any U.S. state where those products were ultimately used.[16] The Pittsburgh Corning Trust has paid over 400 *South Carolina-related* mesothelioma claims in the last 8 years alone, *each of which involved exposure to Cape asbestos*.[17]

Justice Scott dismissed the plaintiffs' U.K. action to enforce the default judgment for two reasons. First, he determined that the question of whether Cape was subject to the jurisdiction **of the Texas court** must be answered by applying the **law of England**, not the law of Texas. Justice Scott concluded that Cape was not subject to the jurisdiction of the Texas court because Cape was not "present within the territory of the foreign court"[18] under English law, which would require that Cape itself or an agent had a fixed place of business in the territory from which it operated for a meaningful period of time.[19] Justice Scott also found that NAAC was not the alter ego of Cape such that the corporate veil separating both entities could be lifted.

The second reason for Justice Scott's refusal to enforce the default judgment was that the Texas default "offended against English principles of natural justice."[20] Justice Scott began his opinion[21] and ended it[22] with an assault on the machinations of the default judgment and Judge Steger for his conduct in determining the $15.45m amount of the default judgment against Cape

[15] *See, e.g.*, R. p. 7542-71 (listing dozens of states that Cape, through NAAC, sold its asbestos to—including South Carolina locations).
[16] R. p. 7625-7739.
[17] First Amended Complaint, *Trustees of the Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust v. Cape Intermediate Holdings, Ltd.*, No. 2025-CV-40-03108 (Ct. Com. Pl. Richland Cnty. June 6, 2025) at 3, 14-15.
[18] R. p. 2591.
[19] R. p. 2592.
[20] R. p. 2591, 2656.
[21] R. p. 2590.
[22] R. p. 2656.

in Tyler 2 (the "Tyler 2 Default Judgment").[23] The default judgment itself was so offensive to Justice Scott that he would have denied the U.S. Government's petition to enforce the default *regardless of the determination on the issue of whether Cape was present in the territory of the foreign court.*[24]

B. The Texas default judgment against Cape breached English notions of "natural justice."

The context of the Tyler 2 Default Judgment—and the process by which the default was achieved—provides critical background to the motivation behind *Adams*. The Texas litigation against Cape in the 1970s involved a total of 668 plaintiffs with claims against many defendants including Cape. Plaintiffs were split into two groups: 462 in "Tyler 1" and 206 in "Tyler 2." The 462 Tyler 1 Plaintiffs settled their cases as to all defendants in late 1977 for a total of $20m. Cape contributed $8.05m to the Tyler 1 settlement.[25]

The Tyler 1 experience left a sour taste for the company: Cape made the "deliberate tactical decision" to not participate in the Tyler 2 cases, as Justice Scott wrote.[26] Justice Scott stated that Cape "could not understand how tortious liability to the Owentown workers could be visited upon the Cape companies simply on the ground that Cape subsidiary companies had mined the asbestos and sold it into the United States of America."[27] He speculated that Cape "underestimated the breadth of the net of tortious product liability as applied in the United States of America."[28]

Like the Tyler 1 Plaintiffs, the 206 Tyler 2 Plaintiffs sued a number of defendants in

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[23] *See* R. p. 2590, 2656.
[24] R. p. 2649-50, 2656-57, 2728.
[25] *Id.*
[26] R. p. 2605.
[27] *Id.*
[28] *Id.* Justice Scott was partially right—the evidence in this case shows that Cape knew exactly what the U.S. law was and that Cape knew that it *was* subject to U.S. product liability law, but thought that the company could take advantage of the market for asbestos in America, and get to decide for itself whether U.S. law would apply to the company. *See, e.g.*, R. p. 2605-2606.

addition to Cape, including Pittsburgh Corning.[29] The defendants brought third-party claims against the U.S. Government.

Justice Scott wrote at length about the "devise" (as he described it)[30] concocted by the plaintiffs and the defendants that ultimately landed the Department of Justice in the English court seeking enforcement of the default. The "devise" had a few steps, as outlined by Justice Scott:

1. The 206 Tyler 2 Plaintiffs settled their claims against the defendants for $1.33m.
2. The settlement agreement that included a $6.65m total settlement value[31] – but again, defendants were only bound to pay $1.33m. The settlement amount was unilaterally set by plaintiffs' counsel.
3. Under the settlement agreement, Defendants only were bound to pay the remaining $5.32m if the defendants succeeded in prosecuting their third-party claims against the United States Government.[32]

As the trial date on the defendants' third-party claims against the U.S. Government approached, plaintiffs participated in the settlement negotiations with the Government. Plaintiffs' counsel suggested that, in lieu of paying the defendants who sued them, the Government should bear the costs of and do the work necessary to enforce the Plaintiffs' default judgment against Cape in England.[33] The Government agreed.[34] Justice Scott wrote that the "stage was therefore set for applications for default judgments against Cape."[35]

Justice Scott pulled no punches on his view of the "natural justice" implications (roughly

[29] R. p. 2600.
[30] R. p. 2664.
[31] Justice Scott wrote of this as follows: "[h]ow it could have been supposed that the liability of the United States under the third-party claims could exceed the 1.33 that the settling defendants, the third-party claimants, had agreed to pay the claimants, defeats me. But there it is." R. p. 2608. Justice Scott also noted that amount was simply agreed to by the defendants with no negotiation because "it would cost them nothing." *Id.*
[32] *Id.*
[33] R. p. 2609, 2664-65.
[34] *Id.*
[35] R. p. 2609.

translated as fundamental fairness to Cape) of the events leading up to the default judgment, and Judge Steger's process in approving the $15.45m judgment itself:

> Cape and Capasco were, in my view, entitled to expect that their liability to plaintiffs would be assessed by Judge Steger at the hearing of which they had been given notice, in accordance with evidence laid before and considered by the judge and in accordance with the judge's assessment in the light of that evidence of the respective plaintiffs' entitlements in damages. That is not what happened. There was no consideration given by the judge to the medical material relating to the individual plaintiffs.
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> . . .
>
> Judge Steger's approach demonstrated, in my opinion, that he was not considering the individual cases and how much the respective individuals were entitled to recover against Cape and Capasco.
>
> . . .
>
> In my judgment, the procedure adopted by Judge Steger offended against English principles of substantial justice. The defendants were entitled to a judicial assessment of their liability. They did not have one.[36]

Justice Scott concluded: "I do not accept that English law recognizes any obligation on Cape or Capasco of obedience to a judgment so obtained, and I decline to enforce it."[37] To Justice Scott, Cape was treated unfairly in Texas and needed protection in its home country.[38]

C. *Adams* applied the strict U.K. standard for alter ego and was based on a small, closed record and different parties.

A striking dissimilarity between *Adams* and this action in South Carolina now becomes obvious: the issue in *Adams* was whether – in an action filed **in England** to enforce a Texas default judgment pursuant **to English law** such that a company domiciled **in England** should be compelled to pay the Texas judgment. The issue in this appeal is whether the law of England (as purportedly reflected in *Adams*) should <u>also</u> apply to a case filed **in South Carolina** pursuant to **South Carolina law** and arising from injuries sustained from tortious conduct **in South Carolina**.

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[36] R. p. 2656-57.
[37] R. p. 2657.
[38] *See supra* note 31.

Appellants invoke *Adams* as if it supplies the governing veil-piercing framework here.[39] As described more fully in Section V(A)(i), English courts abide by an extreme view of corporate law that treats corporate separateness as sacrosanct, even if fraud is present. South Carolina law is the opposite—it provides equitable relief when justice requires. Under *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 817 S.E.2d 273, 281-82 (2018), South Carolina courts can pierce the corporate veil to prevent "fraud, wrongdoing, or injustice." Because *Adams* rejects the very tools South Carolina uses to protect consumers, it is not relevant to how South Carolina should handle the Cape-related entities.

Consistent with the *Pertuis* framework, the Receiver also presented expert and documentary evidence showing that the Oppenheimer Group System of which Cape and Charter were a part functioned as a single integrated enterprise in the asbestos business, and that corporate separateness was manipulated to externalize liability while the broader enterprise continued to profit—at the expense of South Carolinians.[40] As described in more detail in Section V(A)(i)(c), the Receiver benefitted from a much broader base of documents instead of the narrow set of materials available in *Adams*, in part because of modern research technology, in part because of the recent declassification of government documents, and in part because of the dedicated scholarly research of experts like Dr. Steven Press, the Stanford historian who offered expert testimony in this case.

III. Statement of the Case

A. The Receiver filed this third-party action against Appellants and other entities because they were or are part of an amalgamated scheme to avoid U.S. liability for Cape's sale of raw asbestos fibers into the U.S. market.

i. The circuit court appointed a receiver over Cape, an asbestos mining

[39] *See* Revised Final Brief of Appellants Charter, ESAB, and Central Mining at 44-50, *Tibbs v. 3M Co., et al.*, Appellate Case No. 2025-002104 (S.C. Dec. 10, 2025) (hereinafter "ESAB Brief").
[40] *See, e.g.*, R. p. 6534.

company that evaded U.S. courts for decades.

The circuit court appointed the Receiver for Cape under S.C. Code § 15-65-10(5) based on the facts presented in Plaintiffs' Motion to Appoint Receiver. Plaintiffs recounted Cape's historical decisions first to enter the U.S. market and sell thousands of tons of raw asbestos fibers "to the most dominant manufacturers of asbestos-containing products in the United States," and later to "concoct[] a scheme to avoid its legal responsibilities to persons injured from using those end products."[41] The Motion to Appoint relied on 31 of Cape's own documents to demonstrate Cape's concerted effort to appear to abandon the United States—a strategy that Cape's executives deemed warranted "because they 'really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of [a] US product liability cult.'"[42] Ultimately, Cape closed its U.S. subsidiary, NAAC. Plaintiffs explained, "NAAC's liquidation was central to Cape's litigation-avoidance strategy, based on legal advice that no British or South African court would enforce a judgment against a Cape entity if it never appeared again in the United States."[43]

Cape initiated its scheme to evade U.S. liability in the late 1970s and has not strayed from it. It did not answer in *Park*, and Cape has no incentive to change its behavior now. Based on Plaintiffs' presentation, the circuit court appointed the Receiver on March 17, 2023.[44]

ii. The Receiver instituted a third-party action against Appellants based on their responsibility for Cape and other entities with which it was amalgamated.

Once appointed, the Receiver began a detailed investigation into the history of Cape,

[41] R. p. 3114-15, Motion to Appoint Receiver at 1-2, *Park v. Armstrong International, Inc., et al.*, No. 2021-CP-40-02727 (Ct. Com. Pl. Richland Cnty. March 6, 2023) (hereinafter "Park").

[42] R. p. 3118, quoting Tweedale and Flynn, *Piercing the Corporate Veil: Cape Industries and Multinational Corporate Liability for a Toxic Hazard*, 1950-2004; 8 *Enterprise & Society* 2, 268-96 (June 2007) (1977 letter from Cape's counsel).

[43] *Id.*.

[44] R. p. 3057-58.

including the insurance its subsidiary, NAAC, had in the United States. The Receiver learned that the NAAC's insurance was exhausted by about the same time that it was dissolved in 1978. 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.[45]

In the ongoing investigation, however, the Receiver identified another asset—claims against entities that acted in an amalgamated scheme with Cape to sell asbestos fiber in the U.S. market but evade U.S. liabilities—as a source of funds for payment of valid claims brought by South Carolina asbestos plaintiffs. Specifically, Cape was the asbestos mining and sales arm of a corporate structure unique to South Africa: the Oppenheimer Group System. The complete control by the Oppenheimer Group of all the entities involved here has been documented by a U.S. federal court, historians, contemporary press, and Ernest and Harry Oppenheimer themselves.[46]

B. Appellants actively participated in the Receiver's third-party action both before and after the circuit court denied their personal jurisdiction motions.

Appellants' extensive, yet selective, participation in motion practice, filings, and oral argument weighs in favor of finding that the Appellants waived their personal jurisdiction defense. From the beginning, Appellants urged the circuit court to look to England to resolve the Receiver's action – first by reference to an English scheme of arrangement that Appellants argued governed the resolution of asbestos claims against Cape by its employees, and then by use of a series of English court decisions to argue the Receiver's case should be dismissed, or that the Receiver

[45] R. p. 4650, 5728-31.

[46] *See, e.g., Consolidated Gold Fields, PLC v. Anglo American Corp. of South Africa, Ltd.*, 698 F. Supp. 487, 502 (S.D.N.Y. 1988) (rejecting Minorco's attempt to treat Anglo/De Beers production as non-imputable where "plaintiffs have presented substantial affidavits and other evidence demonstrating that the entire group is controlled by Harry Oppenheimer through Central Holdings")

should be barred from making certain arguments. Appellants relied on *Adams* and rulings obtained in the injunction proceedings in England during the pendency of this action to enjoin the circuit court from hearing the merits of the Receiver's third-party case.

i. Appellants sought relief from the circuit court that necessarily would require personal jurisdiction before the circuit court ruled on their personal jurisdiction arguments.

Appellants moved to dissolve the Cape receivership in *Tibbs* and argued the merits of dissolving the receivership under South Carolina law in oral argument before the circuit court issued any decision on personal jurisdiction. Altrad's counsel argued at the hearing on both its Motion to Dismiss the Third Party Action and its Motion to Dissolve the Receivership that "the only legitimate resolution to this motion is to grant it and dissolve the receivership."[47]

ii. Appellants engaged in gamesmanship to stop the Receiver's action from proceeding on the merits.

After the circuit court denied their motions to dissolve the receivership and to dismiss the Receiver's third-party action, Appellants attempted to preserve their objections to personal jurisdiction in each of their submissions to the circuit court by referencing the objection in a footnote to the introduction of each filing. At the same time, however, Appellants consistently sought relief that would necessarily require personal jurisdiction for the circuit court to grant. Because of this behavior, the Receiver believed Appellants would defend the case on its merits. Appellants further exhibited their gamesmanship through their inundation of the South Carolina appellate courts with more than 20 interlocutory notices of appeal in this action.

a. Appellants substantively opposed the Receiver's motion for summary judgment, leading the Receiver to believe that Appellants would substantively oppose its trial presentation.

The Receiver moved for summary judgment on its alter ego theory of liability as to

[47] R. p. 0987.

Appellants on November 12, 2024. Less than two weeks later, on November 22, 2024, Appellants, attempting to leverage the injunction Altrad's subsidiaries obtained in England, filed oppositions to the Receiver's motion for summary judgment. Appellants' detailed filings made clear they were prepared to oppose the Receiver's merits-based arguments before the circuit court.

In its 63-page opposition, ESAB opposed specific facts from the Receiver's brief, summarized as follows: "the documents [cited in the Receiver's motion] themselves actually demonstrate that Charter and Cape maintained appropriate corporate separations and formalities."[48] It devoted entire sections of its brief to refuting the Receiver's facts, with titles including "Cape was adequately capitalized," "All corporate formalities were observed," "Cape paid dividends to Charter," "Charter did not siphon funds from Cape," and "Cape had independent officers and directors."[49] ESAB also included a *Daubert*-style attack on the Receiver's expert, Dr. Steven Press, arguing his report was "incompetent evidence"[50]

Although Altrad styled its brief as a "legal and procedural objection," it also rebutted the Receiver's personal jurisdiction facts by referencing its own prior briefing, concluding, "[t]here are exactly zero facts in the record that could possibly support a finding of personal jurisdiction over either Mr. Altrad or AIA—and there aren't any in reality, either."[51] Similarly, Altrad relied on the ruling in its subsidiary's UK injunction action—in which those parties argued specific facts in support of the UK court's injunction—to further oppose the Receiver's motion. Altrad referred to the November 2024 UK order as "binding," noting that the order "specifically declared that the purported Receiver has had no power of authority to bring the Third-Party Complaint ("TPC")

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[48] R. p. 3798-99.
[49] R. p. 3835-42.
[50] R. p. 3808-12.
[51] R. p. 3257.

against the Altrad Defendants or anyone else and that Mr. Protopapas is enjoined from continuing to prosecute the TPC."[52] Altrad further argued that based on the UK order, the Receiver's "actions are ***tortious*** and, accordingly, he is subject to liability as an '***impostor***.'"[53]

Altrad argued that *Adams* was dispositive of the Receiver's claims.[54] Altrad presented a defense to the Receiver's motion for summary judgment that led the Receiver to believe that Altrad would refute the Receiver's declaratory judgment action against it at trial. Appellants engaged in motion practice related to discovery and appealed the circuit court's decisions on those motions.

On September 23, 2023, Altrad moved for a protective order from the Receiver's Interrogatories, Requests for Production, and deposition notice.[55] Appellants also opposed the Receiver's motions to compel discovery. Each time the circuit court ruled on discovery matters, Appellants immediately appealed the circuit court's orders.[56] Appellants have, in fact, never provided substantive discovery responses in this case.

iii. Appellants relied on *Adams* and an injunction from a UK court to enjoin further action of the circuit court.

Appellants relied on *Adams* in an attempt to enjoin the circuit court from acting in the Receiver's third-party action. These actions are entirely beyond a mere challenge to personal jurisdiction. Appellants fail to acknowledge (1) the Receiver brought its case under an entirely different legal theory than the *Adams* court analyzed: South Carolina alter ego and single business

[52] R. p. 3249.
[53] *Id.* (emphasis in original).
[54] R. p. 3264-72.
[55] R. p. 3244-47.
[56] *See, e.g.*, Notices of Appeal of Order Granting the Receiver's Motions to Compel Discovery, *Tibbs v. 3M Co., et al.*, Appellate Case No. 2024-000524 (S.C. Ct. App. Mar. 19, 2024); Notice of Appeal of Order Granting Motion to Pre-Admit Exhibits and Order Granting Motion for Sanctions, *Tibbs v. 3M Co., et al.*, Appellate Case No. 2024-001063 (S.C. Ct. App. June 21, 2024); Notice of Appeal of Order Granting Motion to Pre-Admit Exhibits and Order Granting Motion for Sanctions, *Tibbs v. 3M Co., et al.*, Appellate Case No. 2024-001065 (S.C. Ct. App. June 24, 2024).

enterprise liability, not the English theory of alter ego; (2) the Receiver was aware of a more complete record of facts than was available to the U.S. Government and the Tyler 2 plaintiffs; and (3) the Receiver's South Carolina case was not muddied by an English court's consideration of whether a Texas default judgment against an English company offended "natural justice."[57]

a. Appellants relied on *Adams* in their oppositions to the Receiver's motion for summary judgment.

In their oppositions to the Receiver's Motion for Summary Judgment, both ESAB and Altrad argued that "*Adams* is dispositive of both the Motion and this case and is binding or otherwise should be enforced. And, the Receiver is barred or otherwise estopped from taking any action inconsistent with and inapposite to *Adams* and from seeking to undermine and overturn its conclusive findings made in favor of the entity over which the Receiver should—and is required, by appointment mandate and South Carolina law, to—be protecting."[58] ESAB further argued that whether Cape was present in the United States, whether NAAC and Cape were part of a single business enterprise, whether NAAC was Cape's agent or alter ego, and whether the corporate veil between Cape and NAAC should be pierced "were fully addressed as part of a complete and comprehensive factual record that was subject to thorough challenge and appellate review."[59]

b. Altrad relied on *Adams* in its July 18, 2025 Notice of Recent Supreme Court Authority Voiding Third-Party Litigation, Renewed Motion to Dismiss, and Motion to Strike All Filings and Orders in the Third-Party Case.

On July 18, 2025, Altrad filed a motion in the circuit court seeking dismissal of the Receiver's third-party action because of this Court's opinion in *Welch*, and incorporating all of its previous arguments as to the invalidity of the Cape receivership.[60] Altrad included a section

[57] *See infra* Part V(A).
[58] R. p . 3814.
[59] R. p. 3815.
[60] R. p. 1691-1709.

entitled "the Receiver is pushing a false narrative," in which it recycled its argument from its opposition to the Receiver's motion for summary judgment, again pointing to eight conclusions that it believed *Adams* reached to support its position that all relevant issues in this case had been decided by a court in England in 1990.[61]

c. Appellants relied on *Adams* in two filings on August 4, 2025.

Altrad doubled down on its *Adams* position in an August 4, 2025 filing where it asserted, "it is a settled point of law that no 'Cape' entity was present in the United States, and the Receiver's arguments to the contrary are precisely the same arguments that were flatly rejected at all levels in *Adams*. For the Receiver to try to argue around the thorough findings and conclusions of *Adams* (which fully protect CIHL from proceedings like this case)—and to pretend to do so on behalf of CIHL—is corporate sabotage that this Court should reject."[62] ESAB's arguments parroted those of Altrad.[63]

d. Altrad relied on *Adams* at the August 12, 2025 hearing in *Park* and *Tibbs* as a proxy for establishing facts despite its non-participation in the case.

Altrad argued at an August 12, 2025 hearing in *Park* and *Tibbs* that *Adams* disposes of the moral fraud issue and invalidates the receivership order, and used *Adams* as a proxy to refute the facts the Plaintiffs and the Receiver established at the hearing.[64] Altrad argued, for instance, that *Adams* refuted the argument that Cape controlled NAAC's finances: "Well, the English Court of Appeals issued—they had—they issued a lengthy order rejecting all these arguments, but they also had opinions with their order that addressed these exact same factual allegations. And in point 5 in the appendix, the English Court of Appeals explained that NAAC carried on its own business.

[61] R. p. 1706-08.
[62] R. p. 1927.
[63] R. p. 1960.
[64] R. p. 2012-14.

It was its own thing. It wasn't this puppet of Cape. NAAC ran its own business."[65] Altrad admitted to presenting a factual argument at the hearing: "I've said what I need to say on the merits."[66]

e. Altrad relied on *Adams* in its October 19, 2025 Response to the Receiver's Numerous Filings.

Altrad continued to argue that under *Adams*, there was no personal jurisdiction over Cape and the Receiver's third-party action must fail in its October 19, 2025 Response to the Receiver's Numerous Filings.[67] In so arguing, Altrad made the sweeping statement that "[t]he putative Receiver's suggestion that the Court can ignore *Adams*—which controls the exact issue the putative Receiver wants this Court to address—is patently absurd,"[68] and argued, "South Carolina law has nothing to do with the question."[69] Altrad then argued that the Receiver's reliance on its experts "to circumvent *Adams* is obviously improper"—making a *Daubert* motion as to each of the Receiver's three experts under the guise of not engaging on the merits of the Receiver's case.[70]

f. Altrad improperly relied on *Adams* in day 1 of the trial of this matter.

On the first day of trial, Altrad argued that *Adams* served as a proxy for any opposition that Altrad could make as to a trial on the merits: "I'm saying that the Adams case from England in 1990 specifically debunks this whole notion of amalgamation or single-business enterprise. So, of course, the Altrad defendants, in addition to all of our jurisdictional objections, don't consent to

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[65] R. p. 2013.
[66] R. p. 2016.
[67] R. p. 6627-29.
[68] R. p. 6627.
[69] *Id.*
[70] R. p. 6628 ("An 'expert' witness cannot testify to facts contrary to reality, an 'expert' witness cannot provide legal opinions, and an 'expert' especially cannot rewrite history and then slap a legal label on his or her preferred outcome. . . . Yet, that is all that the putative Receiver's so-called 'experts' purport to do.").

trial on an issue that's already been resolved."[71] ESAB joined in Altrad's objections.[72]

iv. Altrad and its UK subsidiaries instituted actions in England to avoid participation in US litigation.

Rather than participate in the Receiver's third-party action, the Altrad Group, including Altrad and its U.K. subsidiary, Cape, instituted two actions in England designed to enjoin the circuit court from proceeding further in this action, but ostensibly to preserve its defense as to personal jurisdiction. This forum shopping provided the dual advantages of (1) securing a decision in a jurisdiction with law more protective of corporate separateness and (2) arguing the merits of the case without the danger of waiving the personal jurisdiction defense in South Carolina.

In September 2024, Altrad, through its U.K. subsidiary, Cape,[73] moved for an English injunction to stop the Receiver's U.S. activity. In the first action, Cape argued in part that the Receiver could not advance its third-party case because *Adams* had already rejected the Receiver's arguments. Cape also argued that the Receiver should be enjoined from proceeding in the first instance because Cape was an active U.K. company with a board that could make its own decisions, and it did not need a foreign receiver to make U.S. litigation decisions for it. After obtaining the English injunction against the Receiver, Altrad argued in the circuit court that the Receiver should be enjoined from making any decision on the Receiver's third-party action, because the English action decided the case.

In June 2025, Altrad sought a second injunction from an English court, this time seeking

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[71] R. p. 6856.
[72] *Id.*
[73] Altrad will argue that Cape, and not Altrad, moved for the injunction. However, Cape's U.K. counsel, Signature Litigation, later appeared in France in an action against the Receiver, this time representing Altrad. Further evidencing the unified nature of this enterprise, Altrad identifies Cape as its subsidiary in the same series of Group annual reports in which Altrad refers to its sprawling international operation as "One Altrad" – a single enterprise under many names. *See e.g.,* R. p. 7593-95.

ratification of a release among all the Altrad entities (including all Cape entities owned by Altrad) in which all the Altrad entities, including Cape, sought to release one another from any claims of alter ego or single business enterprise that the Receiver may assert in South Carolina.[74]

In a June 4, 2025 Notice of Release of Claims, Altrad informed the circuit court, "the actual 'boardrooms' of Cape PLC and CIHL have released all such claims against various third parties. That release aligns these entities consistent with *Adams*'s findings. The corporate authority to execute that release resides exclusively with these companies as a matter of English law; it was reinforced by Justice Mann's ruling that the directors, not the Receiver, control these companies."[75]

IV. Standard of Review

"An abuse of discretion arises where the circuit court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support." *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 307, 811 S.E.2d 758, 766 (2018) (internal quotation marks omitted).

"[T]he appointment of a receiver is within the discretion of the circuit judge." *Midlands Utility, Inc. v. S.C. Dep't of Health*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989); *see also Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 648, 916 S.E.2d 320, 325 (2025) (concluding circuit court's "appointment of the Receiver was . . . within the circuit court's discretion"). A circuit court's decision whether to appoint a receiver is reviewed for "abuse of discretion." *Richland County*, 422 S.C. at 312, 811 S.E.2d at 769. This Court recently reaffirmed that it has "upheld the appointment of a Receiver before judgment where the plaintiff has made a prima facie showing

[74] Altrad refers to this as the *Smith* proceeding. *See* Altrad Brief at 26. On December 22, 2025, Altrad served the Receiver with a new action to enforce the *Smith* order in France. *See* R. p. 6633-6766.
[75] R. p. 4606.

that the defendant intends to fraudulently avoid or defeat the plaintiff's recovery," including where "a debtor is trying to defeat his creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts." *Welch*, 445 S.C. at 659-60, 662, 916 S.E.2d at 330, 332 (upholding receiver appointment over Atlas Turner under S.C. Code § 15-65-10(5) and finding that "Atlas Turner engaged in moral fraud against the circuit court, the state of South Carolina, and Respondent").

"The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005); *see also Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 539, 783 S.E.2d 839, 842 (Ct. App. 2016). "The decision of the circuit court should be affirmed unless unsupported by the evidence or influenced by an error of law." *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Engineered Prods. v. Cleveland Crane & Eng'g*, 262 S.C. 1, 201 S.E.2d 921 (1974)). A "circuit court's determination regarding a waiver of a personal jurisdiction defense [is reviewed] under an abuse of discretion standard." *Abdulla v. S. Bank*, 439 S.C. 391, 400, 887 S.E.2d 138, 143 (Ct. App. 2023) (citing *Maybank v. BB&T Corp.*, 416 S.C. 541, 566, 787 S.E.2d 498, 511 (2016)). "At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits." *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. "When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Hidria, USA*, 415 S.C. at 539, 783 S.E.2d at 842.

V. Argument

A. *Adams* does not control the outcome of this case.

Appellants' briefs identify four reasons why *Adams* should be recognized by the South

Carolina Court. The first three (judicial estoppel, collateral estoppel and res judicata, and the Reception Statute[76]) are more related to this Court's first *Adams* jurisdictional question directed to the parties. The Court's second question on international law relates more to Appellants' argument that *Adams* should be applied here pursuant to general principles of comity. Respondents will first address the related theories of res judicata and collateral estoppel, and then discuss, *seriatim*, judicial estoppel, the Reception Statute and, finally, comity.

i. Collateral estoppel and res judicata

The issue in *Adams* was whether a default judgment against Cape entered in Texas could be enforced against Cape in England.[77] Justice Scott determined that the question of whether Cape was subject to the jurisdiction of the Texas court must be answered by applying the law of England,[78] and that pursuant to English law, Cape was not subject to the jurisdiction of the Texas court because Cape was not "present within the territory of the foreign court."[79] *Adams* decided that there was no jurisdiction to enforce the defaults because Cape had no physical presence in the United States, and also that NAAC was not the alter ego of Cape such that its presence in the United States could be imputed to Cape.[80]

Adams stands on two pillars: (1) what constitutes "presence within the territory of the foreign court,"[81] and (2) what are the standards for determining whether entities are alter egos of one another such that the corporate veil separating those entities can be lifted (for jurisdictional purposes).[82] The answers to both questions *in terms of English law* have absolutely nothing to do

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[76] *See infra* at Section V(A)(iii).
[77] *See* R. p 2590.
[78] *Id.*
[79] *Id.* at 2591.
[80] *Id.*
[81] *Id.*
[82] R. p. 2592.

with this case. First, "presence within the territory" is a uniquely English principle of law that has no analogy to South Carolina law. Second, the test for determining whether one company is an alter ego of another company is substantially different between England and the United States.

Res judicata precludes a party from relitigating claims that were litigated in a prior lawsuit. Collateral estoppel prevents a party from relitigating in a subsequent action specific issues that were "necessarily litigated and determined in a prior action." The facts and issues in the first and second actions, naturally, need to be the same. *See Duckett v. Goforth*, 374 S.C. 446, 451-52, 649 S.E.2d 72, 75-83 (Ct. App. 2007) (refusing to apply res judicata or collateral estoppel based on a foreign tribunal's finding because it was not identical to the issues before the South Carolina court).

Other courts addressing foreign or cross-system preclusion likewise reject estoppel where the purported "same issue" is governed by materially different legal standards. *See SAS Inst., Inc. v. World Programming Ltd.*, 874 F.3d 370, 381 (4th Cir. 2017) (applying North Carolina law) ("[i]ssue preclusion applies only when 'the issues in each action [are] identical, and issues are not identical when the legal standards governing their resolution are significantly different'" (citation omitted)).

a. South Carolina personal jurisdiction law is substantially different from English law.

Justice Scott framed the question of Cape's "presence in the territory" as not relating to the economic realities of whether Cape was "doing business" in the United States such that it could reasonably expect to be haled into Court here, but to whether it had "a fixed place of business in the jurisdiction for more than a minimal period of time," or where it carried on business through an agent with the "power to bind the foreign corporation by contracts made within the jurisdiction."[83] *Adams* determined that Cape had no presence here because Cape itself had no

[83] R. p. 2687-88.

physical office in the United States, and NAAC was not an agent because it had no authority to bind Cape.[84]

Jurisdiction in the United States, and in South Carolina in particular, turns on due process: (1) "minimum contacts" and (2) whether jurisdiction is "reasonable" or "fair."[85] South Carolina likewise makes clear that physical "presence" in the English sense is not required: even where a foreign defendant "has no office" and no in-state personnel, "physical presence in the State is not required to establish personal jurisdiction," and the dispositive question remains whether the defendant's conduct shows purposeful availment such that it should "reasonably anticipate being haled into court" here.[86] Cape has purposefully availed itself of the benefits of South Carolina by virtue of selling asbestos to South Carolina customers.

The threshold issue of what constitutes jurisdiction alone makes *Adams* inapplicable here.

b. South Carolina alter ego law is substantially different from English law.

It is not only that *Adams* is not a "fit" for this case because the jurisdictional inquiry in each Nation is so different, but also the alter ego question that *Adams* confronted—and disposed of in favor of Cape—did not apply law that is remotely compatible with how South Carolina (or any other U.S. State, for that matter) analyzes alter ego and veil piercing.

In *Adams*, the U.S. government had to overcome a "sacrosanct" and "unyielding rock"[87]

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[84] R. p. 2632.

[85] *Compare Adams*, R. p. 2686 (no jurisdiction over Cape it lacked a fixed place of business or a representative with authority bind Cape), *with NV Sumatra Tobacco Trading CoState v. NV Sumatra Tobacco Trading Co.*, 379 S.C. 81, 666 S.E.2d 218, 222-24 (2008) ("While it is true Sumatra is not registered to do business in South Carolina, has no office in South Carolina, and no person representing Sumatra has been in South Carolina, physical presence in the State is not required to establish personal jurisdiction. The dispositive issue is whether Sumatra possesses minimum contacts with South Carolina.")

[86] *NV Sumatra Tobacco Trading Co.*, 379 S.C. 81, 666 S.E.2d at 222.

[87] Phillip Lipton (Senior Lecturer), *The Mythology of Salomon's Case and the Law Dealing with the Tort Liabilities of Corporate Groups*, 40 MONASH UNIV. L.R. 2, 480 (2015) ("Since the 1970s,

of English corporate jurisprudence—the *Salomon v. A. Salomon & Co.* decision (1896)[88]—that separates subsidiaries from parent companies with a wall that a court "is not free to disregard... merely because it considers that justice so requires."[89] This "unyielding rock" of English law infected the *Adams* determination as to whether NAAC—Cape's Illinois subsidiary—was an alter ego of Cape such that the corporate veil between both companies could be lifted.

Neither fraud nor injustice matter for veil piercing under English law. *Adams* expressly refused to pierce the veil between NAAC and Cape merely to achieve fairness or redress injustice.[90] The *Adams* court treated evidence of moral culpability or other injustice as irrelevant to corporate personality:

> [T]he right to use a corporate structure in [Cape's] manner is inherent in our corporate law. Mr. Morrison [counsel for the U.S. Government] urged on U.S. that the purpose of the operation was in substance that Cape would have the practical benefit of group's asbestos trade in the United States of America without the risk of tortious liability. This may be so. However, in our judgment, Cape was in law entitled to organize the group's affairs in that manner and . . . to expect that the court would apply the principle of *Salomon* . . . in the ordinary way.[91]

South Carolina law on veil piercing is different from the law in England. Fraud, equities,

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the approach of the English courts has been to see the *Salomon* principle as sacrosanct . . ."); *Prest v. Petrodel Resources Ltd*, [2013] UKSC 34, 2 AC ("*Salomon* [is] the "unyielding rock" on which [English] company law is constructed."); R. p. 2692 (the English court stated that it was "not free to disregard the principle of *Salomon* . . . merely because we consider that justice so requires."). In a 1956 Harvard Law Review, British corporate scholar L.C. Gower noted that the *Salomon* veil piercing case "laid down the corporate entity principle with such rigor that English judges have found much greater difficulty than their American colleagues in piercing the corporate veil when public policy so demands." L.C.B Gower, *Some Contrasts between British and American Corporation Law*, 69 HARV. L. REV. 1369, 1379 (1956). And more recently in 2024, Harvard Professor M. Pargendler wrote, in connection with the United Kingdom's "aversion to veil piercing," that England "is famous in the comparative literature" for its "formalism and conceptualism in upholding an 'extreme entity view of corporate groups.'" M. Pargendler, *The New Corporate Law of Corporate Groups*, 14 Harv. Bus. L. Rev. 339, 365 n.106, 366 (2024).

[88] *Salomon v A Salomon & Co. Ltd.*, [1896] UKHL 1, [1897] AC 22.

[89] R. p. 2692.

[90] *Id.*

[91] *See* R. p. 2700.

and injustice matter here. Under *Pertuis*, South Carolina courts can pierce the corporate veil to prevent "fraud, wrongdoing, or injustice."[92]

The evidence stands out on the foregoing point: NAAC was Cape's tool in the United States. The NAAC President himself testified that he didn't run NAAC, Cape did,[93] although that admission does not appear in *Adams*. The Receiver has amassed substantial evidence showing that the President was right.[94] Cape's plan was to insulate itself from claims by American workers by forming an undercapitalized, controlled "subsidiary" corporation in the United States and, lacking assets in the USA, planned for the *Salomon* wall to protect it from American plaintiffs.[95] And given England's rigid adherence to corporate form, it could even be a "subsidiary corporation" that was staffed by <u>one salesman</u> and a few secretaries, which was the case here.[96]

Cape took advantage of NAAC for reasons that scream "bad faith, abuse, fraud, wrongdoing [and] injustice," as this Court wrote in *Pertuis*.[97] Cape knew from its own factories and research that amosite exposure caused fatal cancer, yet falsely assured U.S. customers that there were no cases of mesothelioma linked to amosite and specifically misled a major U.S. customer (Pittsburgh Corning, which has provided compensation to 400 South Carolinians in the

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[92] *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 817 S.E.2d 273, 281-82 (2018); *see also Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. IMK Dev. Co., LLC*, 425 S.C. 276, 298-99, 821 S.E.2d 509, 520-21 (Ct. App. 2018) (quoting *Pertuis*'s SBE formulation and explaining amalgamation is appropriate upon "evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions"); *Walbeck v. I'On Co., LLC*, 439 S.C. 568, 592, 889 S.E.2d 537, 550 (2023) (noting SBE is governed by equitable principles) (citation omitted); *Smith v. Harr*, No. 2:21-cv-02659-RMG, 2022 WL 1229019, at *5 (D.S.C. Apr. 26, 2022) (applying *Pertuis* and reiterating SBE requires "evidence of bad faith, abuse, fraud, wrongdoing, or injustice").

[93] R. p. 7592.

[94] *See, e.g.*, R. p. 6767-7475.

[95] R. p. 7541.

[96] R. p. 6556.

[97] 817 S.E.2d at 281-82.

last 8 years arising from exposure to Cape amosite in South Carolina) on that point.[98] Cape funded a South African study that discovered 100 mesothelioma cases near Cape mines, then cut off funding for the study and declared that it would support no further mineworker research.[99] Cape then buried the mesothelioma study, and it stayed buried for 25 years.[100] Cape later blatantly lied to customers and even the U.S. government that the South Africa study actually showed no mesothelioma cases.[101] Cape executives threatened economic ruin to a village doctor treating mesothelioma patients if he did not remain quiet.[102] *Adams* did not mention any of this evidence.

The Cape General Counsel wrote in a telex that Cape had no "moral responsibility" to American workers, and he meant it.[103] And when Cape created a fake Liechtenstein entity that did not appear to be Cape, but was Cape in disguise, the General Counsel admitted that this was done specifically to "camouflage" from U.S. plaintiffs that the fake entity was, in reality, Cape.[104]

c. The Receiver's amalgamation claim is based on wholly different law and facts than the "economic unity" claim *Adams* rejected.

Adams rejected the "economic unity" of Cape's asbestos business as not being consistent with the "presence in the territory" requirement:

> The question in the present case is not whether the economic reality of the activities of the Cape group justifies the conclusion that Cape, the parent, was trading in the United States. Perhaps it was. But [that] is insufficient, by the standards of English law, to entitle the courts of the country to take in personam jurisdiction . . . The trading must be reinforced by some residential feature, be it a branch office or a resident agent with the ability to contract.[105]

South Carolina's amalgamated enterprise doctrine under *Pertuis* is an equitable remedy

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[98] R. p. 6564-65.
[99] R. p. 6568-74.
[100] *Id.*
[101] *Id.*
[102] R. p. 6571-73.
[103] R. p. 7541.
[104] R. p. 5113.
[105] R. p. 2632.

that allows veil piercing when (1) the entities' operations are intertwined and (2) there is further evidence of "bad faith, abuse, fraud, wrongdoing, or injustice" from blurring the entities' distinctions.[106] *Adams* held that English courts are not free to disregard separateness "merely because . . . justice so requires" and rejects "economic reality" as a basis for jurisdiction; *Pertuis* held that SBE exists precisely because equity may require disregarding separateness when entities are "intertwined" and used to perpetrate abuse or injustice.[107]

There is a mountain of evidence in this case that was <u>not offered in *Adams*</u> that Cape, NAAC, and other affiliated entities in this case were fully intertwined with one another and controlled by the Oppenheimer family and the corporation atop the empire, Anglo American Corporation of South Africa (Anglo American's successor, Anglo American Plc, has resolved this case with the Receiver, as noted).[108] Dr. Steven Press, a tenured Professor of History at Stanford University and an expert on the South African mining industry, testified that Cape, NAAC, Charter, Anglo American, and other affiliated entities functioned as a single, integrated enterprise within the Oppenheimer "group system," engineered to preserve top-down control by Harry Oppenheimer and the group's apex corporation, Anglo American South Africa.[109]

Dr. Press explained that control within this system was exercised through recognized "hallmarks of control," rather than majority shareholding.[110] He further testified that Anglo controlled Cape and NAAC through its holding company, Charter Consolidated, Cape's parent and an Anglo subsidiary.[111] Dr. Press testified that, remarkably, the three core corporations at the

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[106] *Pertuis*, 423 S.C. at 655, 817 S.E.2d at 280-81.
[107] *Compare Adams*, R. p. 2632, 2692-93, *with Pertuis*, 423 S.C. at 655, 817 S.E.2d at 281.
[108] *See generally* R. p. 6517-6621.
[109] Anglo American plc was a third-party defendant in this action but was voluntarily dismissed after resolving its claims with the Receiver.
[110] R. p. 7115-7261.
[111] R. p. 7142, 7163.

top of the Oppenheimer empire (Anglo American South Africa, Charter and De Beers, which controlled hundreds of subsidiaries in a wide array of South African mineral businesses) had 60 slots on their collective Boards of Directors; Dr. Press testified that of the 60, 58 were Oppenheimer insiders and loyalists and many of these insiders served on multiple Boards.[112]

For collateral estoppel or res judicata to apply, the facts and law in both matters must be the same. The Receiver's amalgamation claim under South Carolina law was not argued in *Adams*, and the evidence of amalgamation that the receiver has presented in this case was not put forth in *Adams*.

ii. Judicial estoppel does not apply because the Receiver litigates in a different capacity than Cape-as-private-litigant and, regardless, judicial estoppel's other elements are not met.

Appellants argue that the Receiver is stuck with whatever positions Cape took in *Adams* decades ago. *See* ESAB's Brief at 43-44. Judicial estoppel is a narrow, discretionary doctrine aimed at protecting the integrity of the judicial process—not giving a foreign decision automatic, case-ending force in a different forum, posture, and legal capacity. *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251-52, 489 S.E.2d 472, 476-77 (1997).

More fundamentally, the "same party, same position" premise does not fit a receivership. Judicial estoppel does not serve as a bar to the Receiver's court-appointed functions. The Receiver is charged with marshaling and administering Cape assets to pay viable historical liabilities.[113] The Receiver must address the company's liabilities in a way that serves those court-appointed interests—regardless of whether doing so serves the interests of Cape's past litigation "defenses." The Receiver's role is to evaluate all information available to him to discharge his obligations to marshal the company's assets. The Receiver's responsibility, acting as a court officer, is to

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[112] R. p. 7231.
[113] *See* R. p. 001-049; R. p. 2312-15; R. p. 3057-60.

independently evaluate Cape's prior legal positions in the context of marshalling assets to pay viable claims. Accordingly, judicial estoppel does not apply because the Receiver's positions here are not taken for Cape's "unfair advantage,"[114] but rather to pay viable historical liabilities.

Nor have Appellants alleged that the Receiver engaged in an intentional effort to mislead the court. Intentional deception is an element of judicial estoppel in South Carolina. *See Carrigg v. Cannon*, 347 S.C. 75, 83-84, 552 S.E.2d 767, 772 (Ct. App. 2001).

iii. The Reception Statute does not make English decisions binding; it is a law passed by the colony of South Carolina in 1712 as a gap-filler.

Appellants also argue that South Carolina's Reception Statute makes *Adams* "in full force and effect" because § 14-1-50 continues "the common law of England" in South Carolina. But § 14-1-50 is a limited gap-filler: it continues centuries-old English common-law principles only where they have not been altered by South Carolina law and are not inconsistent with South Carolina's Constitution or statutes. S.C. Code Ann. § 14-1-50; *State ex rel. McLeod v. Sloan Constr. Co.*, 284 S.C. 491, 328 S.E.2d 84 (Ct. App. 1985).

South Carolina courts are not bound by "every decision made by the courts of England." 284 S.C. 491, 328 S.E.2d at 87-88. The Reception Statute does not transform a modern English judgment like *Adams* into binding South Carolina precedent. *Id.* Where South Carolina has its own doctrines (including its own standards governing alter ego/single business enterprise, equity, and

[114] The Altrad Appellants' citation to *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001), and *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 598, 748 S.W.2d 781, 788 (2013), confirms that judicial estoppel is inapplicable here. In *New Hampshire*, the U.S. Supreme Court made clear that judicial estoppel does not apply where the party seeking to assert an allegedly inconsistent position would not "derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *Id*. at 751 (citations omitted). Here, the Receiver is not seeking an "unfair advantage" in the interest of Cape. *Id*. (noting that judicial estoppel only "forbids use of intentional self-contradiction . . . as a means of obtaining unfair advantage") (citation omitted). Likewise, in *Auto-Owners*, this Court made clear that for judicial estoppel to apply, the alleged "inconsistency must be part of an intentional effort to mislead the court." 405 S.C. at 598. There is no legitimate argument that the Receiver, acting as a court officer, seeks to mislead the court in this case.

fairness considerations), those South Carolina rules control—not modern English corporate-law and jurisdiction concepts imported through *Adams*.

iv. Comity does not estop the Receiver from pursuing its alter ego/amalgamation claims.

This Court's second question directed to the parties is "whether the *Adams* case estops the Receiver, as a matter of *international law*, from pursuing its alter ego/amalgamation claims against Appellants."[115]

Appellants argue that comity "obligates" this Court to apply *Adams* to this case and dismiss the Receiver's claims.[116] This is an ironic request of *this* Court, given that Justice Scott stated in *Adams* that "there is apparently clear authority . . . that comity or reciprocity is an inadequate ground for enforcement in England of the judgment of a foreign court."[117] The *Adams* court declined to enforce a Texas default judgment based solely on the fact that, pursuant to English law, Cape had no presence in the United States.[118] Comity had nothing to do with it: *Adams* applied English substantive law.[119] And here, Appellants argue that comity obligates *this Court* to apply English law in a South Carolina lawsuit involving torts committed in South Carolina.[120] If *Adams* rejected comity as a reason to enforce the Texas judgment in England, so too should this Court reject comity as a reason to import *Adams* to South Carolina.

The foregoing aside, the United States is not a signatory to any treaty or convention on the recognition of foreign-country judgments, and therefore, state common law applies. Foreign-

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[115] R. p. 3109-13.
[116] ESAB Brief at 46.
[117] R. p. 2611-12.
[118] *Id.*
[119] *Id.*
[120] ESAB Brief at 46.

country judgments are—first and foremost—not binding precedent in American courts.[121] Comity is not a principle of international law that makes a foreign judgment "binding" or "obligatory" in South Carolina.[122] It is a discretionary doctrine under which a South Carolina court may—out of respect, convenience, and practicality—give effect to a foreign sovereign's acts or judgments when doing so would not be inconsistent with South Carolina law, due process, and public policy.

In *Hilton v. Guyot*, 159 U.S. 113, 202-03 (1895), the Supreme Court set forth a test for recognition of foreign judgm*ents* to avoid trying matters "afresh" in the United States that had already been litigated to conclusion abroad, provided there is no "special reason why the comity of this nation should not allow it full effect."[123] There is nothing about this case that is a retrial of *Adams*. The law here is different. The claims here are different. There is documentary evidence here that was not presented in *Adams*, and there is testimony from expert witnesses that was not presented in *Adams*. Comity does not compel the application of a 35-year-old English judgment to a case that is based on different claims and facts and applicable law.[124] To the extent there is a "special reason" to disregard *Adams*, the answer could be found in the overwhelming and unrebutted evidence of the moral fraud and injustice that Cape has perpetuated on South Carolinians—considerations embraced by this Court in *Pertuis* and *Welch*.[125]

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[121] *See, e.g.*, *Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, 585 U.S. 33 (2018) (even a foreign court's interpretation of its own country's law is not binding on American courts).
[122] *Hilton*, 159 U.S. at 202-03.
[123] *See also Mast, Foos & Co. v. Stover Mfg. Co.*, 177 U.S. 489, 488-89 (1900) ("Comity persuades; but it does not command . . . [and] applies only to questions which have been actually decided, and which arose under the same facts.").
[124] *See, e.g.*, *SAS Inst., Inc. v. World Programming Ltd.*, 874 F.3d 370, 381 (4th Cir. 2017) (applying North Carolina law) (discussing the preclusive effect of a foreign judgment on its merits—not blindly deferring to the judgment based on a roving comity principle of deference).
[125] *Welch v. Advance Auto Parts, Inc.*, 916 S.E.2d at 338-44 (embracing "moral fraud" as a key underpinning justifying a prejudgment receiver where a foreign defendant sold asbestos-containing products into South Carolina, refused to engage in discovery, and engaged in dilatory tactics to avoid the circuit court's authority).

If South Carolina must recognize any foreign judgment here, its obligation runs to the recognition and enforcement of the *Texas* judgment under the full faith and credit clause. *See* U.S. Const. art. IV, § 1 ("Full Faith and Credit shall be given in each State to the…judicial Proceedings of every other State"). "No such right, privilege, or immunity, however, is conferred by the Constitution or by any statute of the United States in respect to the judgments of foreign states or nations." *Aetna Life Ins. Co. v. Tremblay*, 223 U.S. 185, 190 (1912). *Adams* cannot override full faith and credit owed to the Texas judgment, or the judgment of any other U.S. court considering whether Charter and Cape acted as the alter ego of NAAC.[126] *Widenhouse v. Colson*, 405 S.C. 55, 747 S.E.2d 188, 191 (2013).

B. Appellants waived their personal jurisdiction defense.

i. Reliance on a foreign decision to enjoin a circuit court from proceeding amounts to apparent waiver of the defense of personal jurisdiction.

This Court previously has found that a party's use of a foreign order to argue that an action is barred from proceeding amounts to implicit acknowledgement of a circuit court's jurisdiction. In *Smalls v. Weed*, 291 S.C. 258 (1987), this Court found that a defendant's claim that a Tennessee court enjoined a plaintiff from asserting an action in South Carolina "is an effort to have the court afford full faith and credit to a Tennessee order which cannot be raised by special appearance." *Id.* at 261. "By asserting these claims, [the defendant] implicitly acknowledges jurisdiction of the

[126] *See, e.g.,* R. p. 7500-02, *McDaniels v. Carey Canada*, No. 83-1412, at 25 (D.N.J. Nov. 11, 1985) (unpublished) (fact issue whether Charter's domination of Cape was "exercised to achieve injustice"); R. p. 7506, *Brown v. Lac D'Amiante Du Quebec, Ltd.*, No. 84-357, at 4 (E.D. Pa. June 12, 1985) (unpublished) ("[t]here is sufficient evidence to find that [Charter, Cape, and their affiliates] were intentionally manipulated effectively" to "perpetrate a fraud or injustice, or otherwise to circumvent the law"); *Parker v. Bell Asbestos Mines, Ltd.*, 607 F. Supp. 1397, 1404 (E.D. Pa. 1985) (veil piercing would be appropriate if plaintiff proves "that Charter controls Cape, and that Cape has deliberately avoided liability to American plaintiffs."); R. p. 7525-28, *Figueroa v. Charter Consolidated P.L.C.*, No. 4351 (2123) (Ct. Comm. Pl. Phil. Cnty. June 24, 1985) (unpublished) (fact issue that Charter, Cape, and NAAC were alter egos of each other).

court because the court has no authority to dispose of these issues without jurisdiction of the person of [the defendant].” *Id., see also Connell v. Connell*, 249 S.C. 162, 153 S.E.2d 396 (1967) (holding that a defendant who files an answer raising defenses going to the merits, including res judicata, makes a general appearance and thereby waives any objection to personal jurisdiction).

Appellants’ reliance on *Adams* and the U.K. injunction order is an effort to have the circuit court afford full faith and credit to an English order which the circuit court has no authority to do without jurisdiction over Appellants. By attempting to have the circuit court afford full faith and credit to *Adams* and Justice Mann’s November 2024 injunction, Appellants have acknowledged jurisdiction of the circuit court and waived their personal jurisdiction defenses.

ii. By engaging in gamesmanship at the circuit court, Appellants have waived their personal jurisdiction defense by their conduct.

As explained at length above, in the two years since the circuit court denied Appellants’ initial motion to dismiss, Appellants engaged with the circuit court on numerous occasions, using *Adams* as a proxy for arguing to dismiss the Receiver’s third-party action, opposing the Receiver’s motion for summary judgment in such detailed fashion as to appear to be prepared to oppose the Receiver’s trial presentation, and even employing *Adams* to make a *Daubert*-style attack on the Receiver’s experts.[127] At the same time, Appellants have appealed every order of the circuit court, knowing that the orders they appeal all are interlocutory, to delay the circuit court’s proceedings. By engaging in gamesmanship in the circuit court and the appellate courts, Appellants have violated the spirit of preserving their personal jurisdiction challenge.

Federal courts interpreting Civil Procedural Rule 12(h), which South Carolina has adopted, recognize that “[t]he actions of the defendant may amount to a legal submission to the jurisdiction of the court, whether voluntary or not.” *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites*

[127] *See supra* section III (B)(ii)(a).

de Guinee, 456 U.S. 694, 704-705 (1982). "The law is clear that words alone are insufficient to preserve a personal jurisdiction defense where conduct indicates waiver." *In re Asbestos Products Liability Litigation (No. VI)*, 921 F.3d 98, 104 (3rd Cir. 2019). "This aligns with the original purpose of Rule 12, which is to prevent 'dilatory tactics' and 'to expedite and simplify the pretrial phase of federal litigation' to facilitate adjudication on the merits." *Id.* at 105, *quoting* 5B C. Wright & A. Miller, Fed. Prac. and Proc. § 1342 (3d ed. 2004). "A party's actions must also be consistent with the spirit of Rule 12 by diligently advancing its procedural objections." *Id.*; *see also Yeldell v. Tutt*, 913 F.2d 533, 539 (8th Cir. 1990) (noting defendants "did not comply with the spirit of the rule, which is to expedite and simplify proceedings" (internal quotation marks omitted)). In analyzing whether a defendant's conduct serves as a constructive consent to personal jurisdiction, "courts must ask whether a defendant's conduct has given the plaintiff a reasonable expectation that the defendant will defend the suit on the merits or whether the defendant has caused the court to go to some effort that would be wasted if personal jurisdiction is later found lacking." *Boulger v. Woods*, 917 F.3d 471, 477 (6th Cir. 2019).

Consistent with that focus on conduct, this Court has held that Rule 12(h) "sets only the outer limits of waiver, and does not preclude waiver by implication." *Maybank v. BB&T Corp.*, 416 S.C. 541, 565-66, 787 S.E.2d 498, 511 (2016). *Maybank* found waiver where the defendant "actively participat[ed] in the litigation and discovery process for two and a half years" and then "gambled that it could argue personal jurisdiction on the eve of trial if it so chose." *Id*. at 567, 787 S.E.2d at 512. A party's conduct need not be so extreme to warrant a finding of implied waiver. Indeed, South Carolina has long treated engagement on the merits as the kind of conduct that "impliedly acknowledges the jurisdiction of the court" and waives the objection. *Smalls v. Weed*, 291 S.C. 258, 260, 353 S.E.2d 149, 150 (1987) (*quoting Isthmian S.S. Co. v. United States*, 210

S.C. 408, 416, 43 S.E.2d 132, 135 (1947)); *see also id*. (holding the defendant's request for merits relief "constituted a plea to the merits of the suit" waiving the right to contest jurisdiction).

Appellants' conduct demonstrated a clear intent to advance merits-based arguments rather than bolster jurisdictional ones. Despite Appellants' attempts to preserve an objection to personal jurisdiction, when presented with an opportunity to establish jurisdictional facts via discovery (and ordered to do so), Appellants refused to provide any evidence to support a personal jurisdiction defense.[128] Instead, in September 2024 (and later in June 2025), Appellants opted to pursue adjudication of the actual merits of the Receiver's claims in England, and use those decisions and *Adams* as a proxy for a defense in the circuit court.[129] Appellants have used the U.K. injunction as a sword and a shield at every opportunity to substantively defeat claims in South Carolina.[130] All the while, Appellants have repeatedly lodged an empty personal jurisdiction objection and refused to provide any responsive discovery to support it.

iii. Appellants are bound by the jurisdictional adverse inferences the circuit court imposed, and have therefore waived their personal jurisdiction arguments.

Even if Appellants had not waived objections to personal jurisdiction through their conduct, personal jurisdiction would still exist pursuant to binding factual inferences ordered by the circuit court. "A court always has jurisdiction to determine its own jurisdiction[]" and when jurisdiction is challenged, "the court may compel discovery in aid of its decision … and impose sanctions for a discovery violation." *Bailey v. Owen Elec. Steel Co. of S.C.*, 301 S.C. 399, 401–02, 392 S.E.2d 186, 187 (1990) (citations omitted). When a party fails to comply with court-ordered

[128] *See* R. p. 3061-74.
[129] *See, e.g.*, R. p. 2769-2845.
[130] The U.K. injunction has not been an independent action; rather, review of U.K. counsel's statement of costs shows coordination between Appellants' South Carolina counsel and counsel in the U.K. *See Motion for Sanctions as to Mohed Altrad and Altrad Investment Authority S.A.S. Appx. 009,* Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916 (filed June 3, 2025).

jurisdictional discovery, a court may impose discovery sanctions that allow the court to presume that it has jurisdiction. *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 694, 102 S. Ct. 2099, 2100, 72 L. Ed. 2d 492 (1982) (interpreting FRCP 37(b)(2)(A), which is substantially similar to Rule 37(b)(2)(A), SCRCP). This action comports with due process and should not be overturned absent an abuse of discretion by the circuit court. *Id.* at 695, 2100; *see also Glenn v. 3M Co.*, 440 S.C. 34, 90, 890 S.E.2d 569, 598–99 (Ct. App. 2023), *reh'g denied* (Aug. 10, 2023), *cert. denied* (Aug. 13, 2024) ("an appellate court will not interfere with a circuit court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters unless the court abuses its discretion" (internal quotation marks omitted)).

In May 2024, after Appellants refused to comply with a court order compelling discovery, the circuit court granted sanctions against Appellants which included adverse factual inferences.[131] Those included findings that overwhelmingly confirm that Appellants are subject to personal jurisdiction in South Carolina. The order included adverse 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.[132] They also included inferences that conclusively establish that Appellants have acted as Cape's alter ego and is part of a single business enterprise with Cape.[133] With these inferences in place, personal jurisdiction over Appellants is essentially automatic.

Appellants are bound by these adverse inferences. To date, Appellants have not even attempted to rebut them. This is a proper discovery sanction that the circuit court issued in response

[131] *See* R. p. 3075-3108.
[132] R. p. 3096-97.
[133] R. p. 3099-3104.

to Appellants' failure to obey a court order to participate in discovery as well as Appellants' repeated filing of frivolous appeals to stall the Receiver's discovery efforts.[134] The circuit court did not abuse its discretion in issuing them. *See* Rule 37(b)(2), SCRCP. As a result, regardless of whether Appellants waived personal jurisdiction, they are subject to personal jurisdiction pursuant to the circuit court's adverse inferences.

C. The Circuit Court properly appointed the Receiver in *Park* and confirmed his appointment in *Tibbs*.

i. The Receiver's appointment in *Park* has always been, and remains, valid.

Appellants argue the appointment of the Receiver in *Park*, and therefore the Receiver's third-party action in *Tibbs*, were void *ab initio* because of alleged defects in the *Park* case. This is not true. The circuit court properly rejected Appellants' arguments.

As to the *Park* estate, counsel for the *Park* plaintiffs corrected any issue involving the estate once they were made aware of it in *Tibbs*.[135] The *Park* estate was duly re-opened with the approval of the probate court.[136] Section 62-3-701 of the South Carolina Code states: "The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter." When the personal representative's appointment lapses, South Carolina law provides the appointment relates back to any acts done in the interim as long as those acts are beneficial to the estate.

Appellants' reliance on *McCullar* is misplaced. In *McCullar v. Estate of Campbell*, 381 S.C. 205, 207, 672 S.E.2d 784, 785 (2009), a plaintiff brought an action directly against an estate that had been closed, specifically naming "The Estate of Dr. William Cox Campbell" as the defendant. Because there was no estate at the time the action was commenced, the action was not

[134] R. p. 3084-87.
[135] R. p. 001-049; R. p. 6262 n.2.
[136] R. p. 6260-6511; R. p. 6512-16.

properly commenced. *Id.* In *Park*, the case was commenced by Isabella Park on June 4, 2021.[137] After her death, Keith Park was appointed as the personal representative and amended the complaint to bring the action in the name of Keith Park, individually and as the personal representative of the Estate of Isabella Park.[138] Thus, unlike *McCullar*, the *Park* action was validly commenced by Isabella Park and, after her death, validly brought in the name of Keith Park, both individually and as the duly-appointed personal representative of the estate of Isabella Park. Even though the estate was later closed in August 2022, the action, which was properly commenced, remained valid. In other words, because the Park estate existed at the time of its formation, there was a legal entity when the action was commenced properly. Therefore, there is no support for the proposition that the Park estate was a nullity under *McCullar*. Further, there are two plaintiffs in the *Park* action—Mr. Park in his individual capacity and Mr. Park in his capacity as personal representative. Mr. Park, in his individual capacity, remained a named plaintiff in the case through the period of time the estate was closed and at the time he moved for the appointment of a receiver.

As to the claimed resolution of the *Park* case, as the circuit court found, the *Park* case remains open on the court's docket.[139] Appellants cite to an email communication from counsel for the *Park* plaintiffs to the circuit court that the *Park* case was "fully resolved." Both the circuit court and counsel for the *Park* plaintiffs have explained the context behind the communication—counsel was informing the circuit court that she had reached a resolution with the participating defendants in the case so the trial that was imminently scheduled did not need to proceed.[140]

The Receiver has not conceded that the March 2023 *Park* appointment order does not

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[137] R. p. 002-003.
[138] *Id.*
[139] First Report to the Supreme Court of South Carolina Pursuant to its Order Dated June 26, 2025, Appellate Case No. 2024-001499 (July 27, 2025).
[140] R. p. 1766.

satisfy *Welch*. Quite the opposite, the Receiver has at all times maintained that the *Park* appointment was proper and moved to confirm such in *Tibbs*. The Altrad Appellants cite a sentence out of context from the July 22, 2025 hearing transcript.[141] A review of the context shows that the Receiver stated the circuit court made the factual findings necessary to appoint the Receiver based on the *Park* motion to appoint the receiver and exhibits but did not include a fulsome discussion of the factual findings in the appointment order.[142] In the October 13, 2025 Order, the circuit court discussed the evidence before it when it appointed the Receiver.

ii. The Court has personal jurisdiction over Cape.

Appellants claim Cape does not have any contacts with South Carolina nor any property in South Carolina. However, Appellants' unsupported arguments are not evidence. *See S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("Arguments made by counsel are not evidence."). Appellants have refused to provide discovery to the Receiver, and Cape has not appeared in this case to raise objections as to the circuit court's jurisdiction to proceed.

The circuit court has conducted a detailed analysis of South Carolina's jurisdiction over Cape.[143] In the December 6, 2023 Order, the circuit court found:

> [T]he Third-Party Complaint alleges in meticulous detail Cape's contacts and conduct—including its efforts to market massive quantities of asbestos throughout to the lucrative U.S. market over a period of decades, despite its knowledge that those efforts would injure and kill thousands of people, including in South Carolina—and easily satisfies the requirements of South Carolina's long-arm statute. . . .
>
> Specifically, this Court finds it has jurisdiction over Cape as "a person who act[ed] directly or by an agent as to a cause of action arising from" Cape's and NAAC's (i) "causing tortious injury or death in this State by an act or omission outside this

[141] Altrad Brief at 25.
[142] R. p. 1774.
[143] *See* R. p. 001-049; R. p. 1118-25 (service on Cape); R. p. 1138-39 (personal jurisdiction over Cape).

> State," and by "regularly . . . engag[ing] in [a] persistent course of conduct, or deriv[ing] substantial revenue from goods used or consumed or services rendered in this State," and/or (ii) "production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed." S.C. Code §§ 36-2-803(4), (8).
>
> In addition, and as the South Carolina Court of Common Pleas for the County of Barnwell ruled more than 40 years ago, the exercise of personal jurisdiction in South Carolina over Cape's American subsidiary, NAAC, is proper. . . . Accordingly, independent of Cape's own connection with this State (including facilitating the sale and distribution of Cape asbestos from South African mines to locations in South Carolina), the allegations regarding Cape's effective domination of NAAC, including pursuant to alter ego, veilpiercing, and/or business-enterprise doctrines, as well as the allegation that NAAC acted as Cape's agent, separately provide a proper basis to exercise personal jurisdiction over Cape.[144]

The circuit court confirmed South Carolina's jurisdiction in the October 13, 2025 Order. The circuit court properly rejected Appellants' claims that Cape was not properly served, finding the *Park* plaintiffs properly served Cape with the first amended summons and complaint.[145]

Although filing serial appeals of interlocutory orders and arguing substantive motions practice, Appellants have refused to participate in discovery and the trial of this case entirely. Appellants have not submitted any evidence to the circuit court to support any of their arguments that the circuit court's rulings should be reversed. Instead, they have simply recycled their rejected arguments at every opportunity. The circuit court's rulings as to South Carolina's personal jurisdiction over Cape are sound, and there is no colorable argument that the circuit court erred in finding the third-party complaint and evidence presented a prima facie showing of jurisdiction over Cape. *See Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005) ("At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.").

iii. The Court has personal jurisdiction over Appellants.

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[144] R. p. 1138-39.
[145] The circuit court addressed service in the December 6 Order. *See* R. p. 1119-25.

Appellants have misused their personal jurisdiction arguments to absolve themselves from participating in South Carolina courts, except where they deem participation beneficial to themselves (such as for appeals or requesting the circuit court dissolve the receivership). Appellants have repeatedly stated they have no obligation to, and therefore will not, participate in this litigation because they do not agree with the court's jurisdictional rulings. However, their refusal to participate in jurisdictional discovery along with their intermittent objections at the trial and appellate court level on issues, illustrate they have been actively, albeit selectively, participating. They cannot have it both ways.

The circuit court conducted a detailed analysis of South Carolina's jurisdiction over Appellants in the December 6, 2023 Order.[146] It considered the arguments raised by Appellants in the motions to dismiss and the supporting affidavits and rejected them, holding that it has personal jurisdiction over Appellants under well-settled South Carolina law.[147] Further, Appellants have direct connections to South Carolina, including (1) the Altrad Appellants' own website that lists a location at 301 Webb Road Williamston, South Carolina at www.rmdkwikform.com/us/contact-us/ and South Carolina contact information at rmdksouthcarolinarentaladmins@altrad.com[148] and (2) ESAB maintaining its principal place of business in Florence, South Carolina through at least 2012.[149] The circuit court correctly found there was a prima facie showing of jurisdiction over Appellants. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (2005) ("At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.").

iv. The circuit court properly confirmed the appointment of the receiver in

[146] R. p. 1109-18, 1140-50, 1168-76.
[147] R. p. 1106.
[148] R. p. 7596-97; R. p. 7613-15; R. p. 7616-17; R. p. 7623.
[149] *See* R. p. 3075-3108.

Tibbs.

The October 13 Order is not a new appointment order. It is a confirmation, in accordance with this Court's instructions contained in the June Remand Order, that the Receiver has been authorized to conduct his work in *Tibbs*. In fact, as the circuit court explained: "I intend to repeat my ruling confirming the ongoing validity of the Park Estate as well as the ongoing validity of the appointment of the Receiver for Cape and its authority to bring the third-party action in Tibbs."[150] The Receiver and the *Tibbs* plaintiffs requested the circuit court make this confirmation in *Tibbs*.

As the circuit court confirmed, Cape meets the "moral fraud" standard set in *Welch*; it did when the circuit court appointed the Receiver in *Park* and it still meets that standard today.[151] The facts demonstrate Cape's morally fraudulent conduct was far more damaging and more morally culpable than Atlas Turner, and the circuit court outlined its specific factual findings and conclusions of law in a factually detailed, well-reasoned 48-page order.[152]

Unlike Atlas Turner, Cape makes no pretense at following the rules—it simply refuses to show up. In fact, Cape, the company in receivership, has not appeared in South Carolina to this day to contest the receivership appointment or attempt to set it aside. The evidence shows that Cape (1) knew very early that even small doses of asbestos could cause mesothelioma, and covered up that knowledge for decades; (2) affirmatively lied about the amosite asbestos fiber's propensity to cause mesothelioma (it knew that it did, but said publicly and to its customers it did not); (3) threatened to economically ruin a South African village doctor who was caring for ten mesothelioma patients who worked at Cape asbestos mines if he did not remain quiet about the dangers of asbestos exposure, and (4) when faced with liability for flooding the American market

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[150] Attachment to Second Report to the Supreme Court of South Carolina Pursuant to its Order of Remand Dated June 26, 2025, Appellate Case No. 2024-001423 (Aug. 25, 2025).
[151] *See generally* R. p. 3057-60; R. p. 001-049.
[152] *See id*.

with its asbestos, closed its U.S. subsidiary and absconded back to England.[153] And then, in a truly remarkable act of defiance and fraud on U.S. workers and the U.S. judicial system itself, Cape—which supposedly exited the U.S. domestic market for asbestos when it closed its Chicago sales subsidiary—hatched a scheme to continue to sell asbestos to U.S. customers through what it described as a camouflaged shell entity formed in secrecy in Lichtenstein designed to disguise from "plaintiffs in future US asbestos litigation" (Cape's words) the fact that the company was still selling asbestos in this country, including into South Carolina.[154] Cape, like Atlas Turner, followed the same playbook to avoid participation in U.S. litigation, except Cape took it a step further by not participating at all, betting that U.K. courts were unlikely to enforce American default judgments.[155] This is moral fraud, far beyond what this Court found to be sufficient in *Welch*, to support the appointment of the receiver in *Park* and confirm his authority in *Tibbs*.

In addition to extensive facts supporting moral fraud under South Carolina Code Section 15-65-10(5), the circuit court also noted the appointment of the Receiver was also appropriate under section 15-65-10(4) because Cape is a non-operating shell company in a corporate structure subject to the full control of an ultimate parent that could eliminate, shift, or move the company at any time, making it unclear whether Cape holds any funds at all at any given moment—let alone sufficient funds to pay a judgment in the *Park* or *Tibbs* claims.[156] Appellants have not submitted any evidence to contradict this finding.

This Court should further reject the Appellants' attacks on the receivership based on the

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[153] *See, e.g.*, R. p. 4979-80 (warning Cape personnel about asbestos hazards); R. p. 4981-83 (Cape controlling NAAC's customer relationships); R. p. 4984-86 (detailing Cape's liability-avoidance scheme post- NAAC dissolution).
[154] R. p. 009-029. *See, e.g.*, R. p. 4987-90 (detailing Cape's liability-avoidance scheme); R. p. 4984-86.
[155] *See* R. p. at 004.
[156] R. p. 001-049.

incorrect and unsupported assertion that Cape is an ongoing foreign corporation with no assets in South Carolina. Cape's status as a foreign corporation or as an ongoing concern is beside the point, and that status certainly does not empower Cape to defy South Carolina law. This Court has confirmed insurance assets are proper assets for a South Carolina receivership, and the Receiver is investigating whether there are any potentially responsive insurance assets.[157] *See Welch*, 445 S.C. at 666, 916 S.E.2d at 334. Additionally, causes of action, like the ones asserted in this case against the third-party defendants, are a form of property the Receiver can pursue. *See* S.C. Code Ann. § 15-1-40 ("Personal property includes 'things in action.'"); *Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 77–78, 856 S.E.2d 550, 555 (2021) ("A 'chose in action' is a type of property interest or a proprietary right to a claim or debt," and the parties "agree 'chose in action' generally means 'cause of action.'"). Once a receiver is appointed, Rule 66(a) of the South Carolina Rules of Civil Procedure contemplates that receivers may be required to defend and/or *bring other actions* to fulfill their court-appointed duties. Rule 66(a), SCRCP (referencing actions "brought by or against a receiver"). Under long-standing South Carolina law, receivers maintain the power to (1) initiate litigation, (2) compromise and settle litigation, and (3) defend litigation on behalf of the entity in receivership, barring an order of the receivership court otherwise.

As this Court found in *Welch*,

> The Receiver stands in the companies' shoes. He may do whatever the corporation could do in relation to its property, for it is in his possession subject to the control of the court. We doubt a company or individual would claim it had no right to funds it owned on deposit at a bank simply because the bank is located in another jurisdiction. No one would dispute a holder of an asset such as an insurance policy has the power and the right to invoke the policy's benefits, regardless of where the

[157] Appellants' abject refusal to participate in discovery has hindered the Receiver's ability to investigate potentially responsive insurance assets. Further, Ran Oren, the sole director of CIHL, has written—on Altrad letterhead—to insurance companies who have received duly served South Carolina subpoenas from the Receiver directing those insurance companies not to respond to these subpoenas. *See* R. p. 7608-12.

> policy "resides." And nothing would prevent a state court that has personal jurisdiction over the company from compelling the company to do whatever was necessary to bring the benefits of the policy to litigation in this state. *See* Rule 66(b), SCRCP (stating a Receiver "shall ... have general power and authority to sue for and collect the debts, demands and rent belonging to the debtor ..."); Restatement (Second) of Conflict of Laws § 53 cmt. a (1971) ("A state which has judicial jurisdiction over a person is not limited to the issuance through its courts of a money judgment against him. The state may likewise order the person to do, or to refrain from doing, one or more acts. And the power of the state to make such an order is not affected by the fact that the acts called for are to be done in another state."). In one well-known case, a Receiver appointed by a New York court for a California defendant, over whom it had personal jurisdiction, was authorized to retrieve a thoroughbred racehorse from California and ship it to Kentucky. *Madden v. Rosseter*, 114 Misc. 416, 187 N.Y.S. 462, 462–63 (N.Y. 1921).

Welch, 445 S.C. at 663–64, 916 S.E.2d at 333.

The Receiver was appointed for the purpose of investigating and marshaling Cape's assets here in South Carolina, and he has *successfully* marshaled those assets and established a court-approved fund that will be available to satisfy any liabilities Cape may have in South Carolina related to asbestos bodily injuries, including in the *Park* and *Tibbs* matters.[158]

Appellants incorrectly argue the appointment of a receiver over Cape violates the internal affairs doctrine and interferes with the receivership entity's boardroom.[159] The *Welch* case correctly notes that the receivership order for the insurance assets of Atlas Turner "does not give the Receiver entry into the Atlas Turner boardroom or some vague right to 'take over' operation of the company." Nor does the receivership order in Cape. The Receiver has no such intention (as his course of conduct has reflected), nor is any boardroom "take over" necessary for the Receiver to fulfill his court-appointed obligations.[160] Foreign companies are not immune from suit in this

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[158] R. p. 2172-2186.

[159] Again, unlike Atlas in *Welch*, Appellants are not in receivership and, instead, are making these arguments on behalf of the receivership entity.

[160] CIHL is the receivership entity. CIHL is a U.K.-registered holding company with no employees, no physical assets, no customer contracts, and no operational footprint. Ran Oren is the sole officer

State under the dormant Commerce Clause, comity principles, or otherwise—as this Court made clear in *Welch* by approving the receivership over a foreign corporation and explaining that jurisdiction includes power to order that corporation to bring property (like causes of action and other intangible property) within the state. *See Welch*.

v. The purported foreign release does not require dismissal or dissolution of the receivership.

The circuit court properly refused to accept the Altrad Appellants' arguments that a release entered into between it and its subsidiaries in the UK did not require dismissal of the Receiver's third-party claims. Specifically, the circuit court found:

> [S]ince 1978, Cape has avoided liability to U.S. litigants by refusing to appear in U.S. courts. As demonstrated above, Cape has gone to great lengths to protect itself against these liabilities, including creating a Liechtenstein offshore company. Faced with the possibility that U.S. litigants may now be able to access funds to pay future claims, and given that Cape is not a stand-alone company, but instead is a holding company within a large corporate structure, one should expect that Altrad will do anything to avoid its historical liabilities, including rendering the company fully insolvent. Indeed, Altrad already has informed the Receiver that it has entered into a "settlement agreement" with itself (between two Altrad entities) to release Mohed Altrad from any liabilities not only in *Park* and *Tibbs* but also in every other future U.S. personal injury action against any Cape entity.

The circuit court rejected this argument because the supposed "release" was part of a circular overseas arrangement that did not involve the South Carolina plaintiffs or the Receiver. The "agreement" was not an arm's-length settlement with outside claimants; it was an intra-group release papered under English law and funneled to English courts, executed for Cape by Ran Oren—CIHL's sole director and, simultaneously, the CEO of Altrad Investment Authority

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and director of CIHL, and the CEO of Altrad. The English High Court issued a worldwide injunction after the Altrad Appellants' lawyers misled the court to believe that CIHL operates a live business in danger of being taken over by the receiver. Any CIHL revenue-generating operations, staff, and contractual obligations reside in different concerns and, since the Receiver's appointment have, and will continue to, function without disruption (or any action by the Receiver affecting their operations).

S.A.S.—while other Altrad entities signed through Altrad executives.

The Agreement cannot be valid under U.S. law because the deal lacked consideration. The Agreement identifies no payment, assignment, or other tangible value flowing to CIHL; its "consideration" is only mutual promises and reciprocal releases—while the Cape Parties explicitly "acknowledge and declare" that the Altrad/Sparrows Parties "have, and at no material time have had, any liability" on the very claims purportedly released. In other words, the release trades away nothing for nothing. *See Ecclesiastes Prod. v. Smith*, 432 S.C. 123, 135, 850 S.E.2d 794, 801 (Ct. App. 2020) ("[A] release is a contract and contract principles of law should be used . . . ."). The document then weaponizes that internal release to seek dismissals—including "compromising any judgments in the *Tibbs* claim . . . whether such judgments were validly obtained or not"—again without any independent value conferred on CIHL.

Regardless, whether a claim is barred by a prior settlement or release is a substantive affirmative defense. The defendant bears the burden of pleading and proving it. Rule 8(c), SCRCP (requiring defendants to plead "release" as an affirmative defense). The circuit court is empowered to evaluate the validity and scope of the alleged release and its effect on the claims before it.

The attempts by the Altrad Appellants to request the circuit court dismiss the Receiver's third-party claims based on a release they entered in April 2025 further illustrate the selective participation of the Altrad Appellants. While maintaining that South Carolina does not have jurisdiction over them, they simultaneously have attempted to obtain favorable rulings from the circuit court on matters that would require the court to exercise jurisdiction, including recognizing the release. It is clear the Altrad Appellants wish to participate when it suits them and excuse themselves from participating when it does not, in hopes of avoiding a trial on the merits.

vi. The receivership order does not fail for lack of a bond.

Appellants attempt to collaterally challenge the receivership order on the basis that the

circuit court did not include "a clause fixing the value of the property" sought to be placed in the hands of a receiver, as purportedly required by South Carolina Code Section 15-65-60. This section, which is related to posting bonds by a party claiming rights to property, did not apply here because the liabilities at issue and amount of assets that may be available could not be valued.

Appellants rely on *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343 (1928), but this case is not applicable. The value of the property at the center of the *Truesdell* case—an action brought to liquidate the affairs of a partnership—was easily measurable by the court. There, the receiver took possession of the tangible property of the company, except its book and records. *Id*. at 192, 142 S.E. at 343. As such, the property received should have been inventoried and valued.

The statutory language *Truesdell* relies on requires the posting of a bond "in the penalty of double the value of the property." SC Code § 15-65-50 (2023). As this Court has reasoned, "[h]owever plain the ordinary meaning of the words used in a statute may be, the courts will reject the meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intent." *Kirkiakides v. United Artists Comms., Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

When Section 15-65-50 is applied here, it leads to an absurd result that could not have been the legislature's intent. The Receiver holds title to choses in action, as referenced in the Receivership order. *See, e.g.*, *Hirson v. United Stores Corp.* 263 A.D. 646, 34 N.Y.S.2d 122 (App. Div. 1st Dep. 1942), *aff'd* 43 N.E.2d 712 (N.Y. App. Ct. 1942) (holding title to choses in action held by a Delaware-appointed receiver appointed would be afforded "full faith and credit"). It is impossible to ascertain the value of choses in action for purposes of posting a bond.

Appellants do not have standing to raise arguments related to any alleged failures of the circuit court to set a bond involving a receivership over Cape and its assets. *See Ex parte Rowley*,

200 S.C. 174, 20 S.E.2d 383, 387 (1942) (finding appellants could not invalidate receiver's appointment where order failed to "contain a fixation of the value of the property involved" because "the requirement is for the benefit of . . . [those who are] in possession of the property"). The receivership relates to Cape's property, not Appellants' property. Appellants cite *Welch*; however, in *Welch*, the entity in receivership (Atlas Turner) was the party appealing the receivership order. The Court noted that entity (Atlas Turner) had the ability to post a bond. *Welch*, 445 S.C. at 667, 916 S.E.2d at 335 ("Finally, we note Atlas Turner retains the right to post a bond to lift the Receiver appointment order.").[161] Cape—whose property is in receivership—has not appeared to challenge the receivership order, has made no effort to post a bond for the return of property, and has not set forth any arguments that a bond was required.

vii. The circuit court did not exceed the mandate in the June 26 Order.

Contrary to Appellants' assertions, the circuit court did not exceed the mandate on remand. This Court remanded the case on June 26 "to the circuit court *for all purposes, specifically including*" the directives outlined by the Court. *See* Order, Appellate Case No. 2024-001423 (June 26, 2025) (emphasis added). The Court's mandate was not limited to the directives. Instead, the remand was for all purposes. The Court asked the circuit court to make findings of fact and conclusions of law, and it did.[162] The cases cited by the Charter Appellants are inapplicable because those cases included limiting language in the remand. *See, e.g.*, *S.C. Dep't of Soc. Servs. v. Basnight*, 346 S.C. 241, 251, 551 S.E.2d 274, 279 (Ct. App. 2001) (explaining the appellate

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[161] The *Welch* appointment order did not set a bond. *See Welch* ROA pp. 11–18, Appellate Case No. 2023-001096 (filed Dec. 28, 2023). This Court affirmed the appointment and found that Atlas had the right to post a bond to lift the receivership appointment if it wished. *Welch*, 445 S.C. at 667, 916 S.E.2d at 335. It has not done so.

[162] Contrary to Appellants' arguments, the October 13 Order does not run afoul of *Welch*. Assuming arguendo the order authorizes work not discussed in *Welch*, this Court gave the circuit court the power to do that and directed the circuit court to "make specific findings of fact and conclusions of law [to] justify its action." R. p. 1643-48.

court "remanded the action for dismissal" in accordance with the opinion of the court). The circuit court has complied with this Court's directives and kept the Court regularly apprised of the status in accordance with the June Remand Order.

VI. Conclusion

For the foregoing reasons, the Receiver respectfully requests that this Court uphold the circuit court's October 13, 2025, order, find that *Adams* is not binding in this case, and find that Appellants have waived their personal jurisdiction defenses.

Respectfully submitted,

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January 9, 2026