THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Jan 30 2026

S.C. SUPREME COURT

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

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

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

v.

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

LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC…….Defendants,

And

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

v.

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

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

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AMICUS CURIAE BRIEF OF NEW-INDY CONTAINERBOARD LLC

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STATEMENT OF INTEREST

New-Indy Containerboard LLC ("New-Indy") is a major manufacturer that employs hundreds of South Carolinians and contributes substantial payroll, property, and income taxes statewide. New-Indy also makes a significant economic impact through its in-state procurement of raw materials: in 2025 alone, New-Indy spent approximately $65 million to procure more than two million tons of forestry products from South Carolina producers. New-Indy plans to invest an additional $4 million to procure approximately 120,000 more tons of in-state products in 2026.

For years, New-Indy has been a defendant in South Carolina's asbestos litigation. In those cases, New-Indy has actively defended itself on the merits—responding to discovery, producing witnesses, participating in depositions, filing and opposing dispositive motions, and otherwise complying fully with South Carolina law and procedure.

New-Indy's presence in asbestos litigation arises primarily from its acquisition of property in South Carolina—not the operation of facilities where asbestos was present, the manufacture of asbestos-containing products, or the distribution of asbestos-containing materials. As an entity that invests in South Carolina and submits to this State's jurisdiction despite having no role in the manufacture, distribution, or supply of asbestos, New-Indy has a unique perspective on the circuit court's appointment of a receiver to address systemic efforts by Cape plc, the dominant amosite asbestos supplier in the world, to avoid participation in South Carolina proceedings.

Through that experience, New-Indy has borne significant and unanticipated costs arising from other companies' longstanding efforts to avoid responsibility for asbestos-related injuries to South Carolinians. When such parties resist meaningful participation in South Carolina courts, the burden of defending and resolving legacy claims shifts disproportionately to companies like New-Indy. Over time, those distortions have increased New-Indy's defense and settlement costs,

raised the cost of obtaining insurance in the State, and discouraged insurers from issuing coverage—resulting in substantial economic harm to New-Indy.

The circuit court's use of targeted prejudgment receiverships has materially improved the administration of these cases. By reducing congestion in asbestos dockets, facilitating the equitable resolution of legacy claims, and promoting procedural predictability, the receiverships have produced efficiencies that benefit not only New-Indy, but also other South Carolina employers, suppliers, insurers, and taxpayers. In doing so, they have reduced the cost of doing business in the State, supported economic stability, and enhanced businesses' ability to obtain essential insurance coverage.

New-Indy respectfully submits this brief to address the public interests that targeted receiverships protect when, as here, they operate within the limits this Court imposed in *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (2025), and the Court's June 26, 2025 order in *Tibbs v. 3M Co.*, Appellate Case Nos. 2024-001423 *et al*. (S.C. June 26, 2025) (order), as authorized by S.C. Code Ann. §§ 15-65-10, -50, -60.

STATEMENT OF ISSUES ON APPEAL AND STANDARD OF REVIEW

New-Indy adopts the Statement of Issues on Appeal and the Standard of Review set forth in the Amended Brief of Respondent Cape plc, individually and as successor in interest to Cape Asbestos Company Limited (n/k/a Cape Intermediate Holdings Ltd.), through its duly appointed Receiver, Peter D. Protopapas (the "Receiver").

SUMMARY OF THE ARGUMENT

As a threshold matter, Appellants waived any objection to personal jurisdiction by litigating the merits of this case. South Carolina law does not permit a party to preserve a jurisdictional objection while simultaneously invoking substantive defenses. *See Smalls v. Weed*, 291 S.C. 258, 260-61, 353 S.E.2d 154, 156 (Ct. App. 1987). By relying on a decision from a

foreign court to argue that the Receiver's alter ego and amalgamation theories are categorically barred—and by asserting that same theory to challenge the Receiver's appointment below—Appellants went well beyond an appearance limited to contesting jurisdiction. Their jurisdictional objection is therefore waived.

Nor do Appellants' foreign-law and preclusion defenses bar the Receiver's theories. *Adams v. Cape Indus.* [1990] Ch. 433 (CA) is a United Kingdom opinion considering whether an English parent company could be deemed to be present in a foreign (Texas) jurisdiction under English law such that an English court would recognize and enforce a foreign (Texan) judgment against it. *Adams,* Ch. 433 at 530-31, 552-54 (refusing to enforce a Texas judgment on English jurisdictional grounds). The United Kingdom opinion did not involve South Carolina's long-arm statute or its equitable veil-piercing or other principles. Comity is discretionary and cannot override this State's sovereign interest in adjudicating South Carolina tort claims. Collateral estoppel and res judicata principles do not apply because the issues, parties, procedures, and governing legal standards in *Adams* differ from those now before this Court, and the Receiver had no opportunity to litigate these issues abroad. *See* S.C. Code Ann. § 36-2-803*; Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611 S.E.2d 505 (2005); *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 817 S.E.2d 273 (2018). South Carolina law, not foreign judgments, governs South Carolina's jurisdiction and the equitable authority exercised in this domestic receivership.

South Carolina law authorizes receiverships in specified circumstances and, more broadly, "in such other cases as are provided by law or may be in accordance with the existing practice." S.C. Code Ann. § 15-65-10(5). Courts sitting in equity have long treated receivership as an extraordinary remedy to preserve specific property interests and prevent dissipation, ensuring claims may be adjudicated on the merits and any resulting judgment enforced. *See First Carolinas*

Joint Stock Land Bank of Columbia v. Knotts, 191 S.C. 384, 1 S.E.2d 797, 805–06 (1939); *Va.-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177, 179 (1909).

Consistent with that tradition, the circuit court found this docket presents the type of exceptional circumstances that justify a targeted prejudgment receivership: a demonstrated course of conduct that indicates a "conscious intent to defeat, delay, or hinder" enforcement of obligations and to frustrate the court's ability to ensure effective relief remains available. *See Va-Carlina Chem. Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177, 179 (1909); *see also* R. 34–38, Oct. 13, 2025 Order (finding moral fraud and explaining why the record supports extraordinary equitable relief). Acting within that equitable authority, the circuit court established a careful, limited receivership designed to preserve and marshal identified, litigation-relevant property interests pending adjudication—rather than to displace corporate management. *See* R. 47–48, Oct. 13, 2025 Order (limiting the receiver's charge and replacing overbroad language).

This Court's recent decisions confirm both the availability of a receivership remedy and its limits. In *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (2025), the Court reaffirmed that a prejudgment receivership is permissible in the "most extraordinary" cases and only when tethered to identified property interests necessary to preserve effective relief; while rejecting governance-level control and overbroad authority untethered to the defined *res*. *See Welch*, 445 S.C. 640, 658-68, 916 S.E.2d 320, 330-35.

In its June 26, 2025 order addressing issues across multiple related appeals, this Court reinforced those guardrails, directing that any receivership work must be authorized by a case-specific appointment order, supported by findings sufficient under *Welch*, and limited to the scope approved in *Welch* absent additional specific findings. (R. 1645–1647).

That framework was left undisturbed when petitioners sought review in the United States

Supreme Court and certiorari was denied. *Atlas Turner, Inc. v. Welch*, No. 25-213 (U.S. Jan. 12, 2026) (cert. denied).

The receivership challenged here—particularly as clarified in response to this Court's guidance—fits squarely within those limits. *See* R. 44–48, Oct. 13, 2025 Order. The record also shows why a targeted receivership is equitable and necessary for this docket. Judicial findings confirm Cape Asbestos Company Limited supplied approximately 90% of the world's amosite asbestos and was virtually the sole supplier of longer-fiber grades widely used in industrial applications. *See Hammond v. N. Am. Asbestos Corp.*, 97 Ill. 2d 195, 200-01, 454 N.E.2d 210, 213–14 (1983); *see also* R. 10–12, Oct. 13, 2025 Order. Litigating legacy asbestos claims without the world's dominant (practically the only) supplier of amosite asbestos, including asbestos imported and used in South Carolina, fundamentally undermines the fair and equitable resolution of such claims. *See* R. 10–12, Oct. 13, 2025 Order. New-Indy, a major South Carolina manufacturer and employer, has experienced that unfairness and inequity firsthand while defending legacy asbestos claims arising from alleged exposures predating its ownership of a forest products facility. *See* R. 47, Oct. 13, 2025 Order (limiting receivership scope to assets responsive to South Carolina asbestos claims and clarifying the remedy's purpose).

Finally, affirming the circuit court serves compelling state interests. Properly constrained by *Welch* and the *Tibbs* Order—and implemented through the circuit court's October 13 clarifications—the targeted receivership here promotes fairness, judicial efficiency, and economic stability. Under these extraordinary circumstances, the circuit court's order should be affirmed.

ARGUMENTS AND ANALYSIS

I. Appellants waived the defense of lack of personal jurisdiction.

As a preliminary matter, the Court should find Appellants waived the defense of lack of personal jurisdiction.

In South Carolina, a party generally cannot preserve a personal jurisdiction objection by simply raising the issue and then litigating multiple issues on the merits. *See Smalls v. Weed*, 291 S.C. 258, 260-61, 353 S.E.2d 154, 156 (Ct. App. 1987). In *Smalls*, the court held the defendant waived the right to assert his jurisdictional objection because he appeared before the Court and asserted two arguments that went to the merits, in addition to his jurisdictional objections. *Id.* Specifically, the defendant asserted the plaintiff was enjoined from filing a claim outside of Tennessee by a prior Tennessee court decision. *Id.* The *Smalls* court held that by advancing merits-based arguments grounded in the prior Tennessee proceedings, the defendant exceeded a limited appearance to contest jurisdiction and thereby actively participated in the litigation, waiving its jurisdictional objections. *Id.*

Similar to the defendant in *Smalls*, Appellants argue the opinion from the United Kingdom in *Adams* precludes the Receiver's claims of alter ego and amalgamation. *See* Altrad Appellants' Brief p. 4. In addition to addressing this issue in the submissions to this Court, Appellants invoked *Adams* to challenge the Cape receivership. *See* R. 1711, Appellants' memoranda in opposition to the motion to confirm the Receiver's appointment; R. 1691, 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. By relying on *Adams* to attack the Receiver's claims and contest the appointment, Appellants waived any objection to personal jurisdiction, foreclosing their present jurisdictional challenge.

II. *Adams* Does Not Preclude the Receiver's Alter ego and Amalgamation Theories on Behalf of Cape plc.

Comity, collateral estoppel, and res judicata do not bar the Receiver from pursuing its alter ego and amalgamation theories on behalf of Cape plc against Appellants.

A. Comity

Comity is discretionary and cannot override South Carolina's sovereign interest in adjudicating South Carolina tort claims and preserving effective relief. *See Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895).

Appellants' reliance on *Adams* is misplaced. In *Adams*, Cape resisted enforcement of a Texas judgment obtained by Texas plaintiffs under the English "presence" doctrine; the English Court of Appeal did not address South Carolina's exercise of original jurisdiction, its long-arm statute, or its alter ego and amalgamation law. *See* S.C. Code Ann. § 36-2-803; *Cockrell*, 363 S.C. at 491,611 S.E.2d at 508 (2005); *Pertuis*, 423 S.C. at 654-55, 817 S.E.2d at 280-81.

B. Collateral Estoppel

Collateral estoppel does not bar the Receiver from pursuing alter ego and amalgamation theories on behalf of Cape plc.

Under South Carolina law, collateral estoppel is a narrow doctrine. It applies only when (1) the identical issue was actually litigated and necessarily decided in a prior action, (2) the prior action resulted in a valid and final judgment, and (3) the party against whom estoppel is asserted was a party to, or in privity with a party to, the prior action and (4) the party had a full and fair opportunity to litigate the issue. *Judy v. Judy*, 393 S.C. 160, 167-68, 712 S.E.2d 408, 412 (2011); *Nelson v. QHG of S.C., Inc.*, 362 S.C. 421, 424-25, 608 S.E.2d 855, 857 (2005); *Pye v. Aycock*, 325 S.C. 426, 435–37, 480 S.E.2d 455, 459–60 (Ct. App. 1997). The burden rests with the party

asserting estoppel. *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554–56, 684 S.E.2d 779, 782–83 (Ct. App. 2009). Appellants cannot meet that burden.

First, there is no identity of issues. *Adams* addressed a fundamentally different question—whether England would enforce a Texas judgment. That is different from the Receiver's claims here. This case arises under South Carolina law and concerns the application of state law alter ego and amalgamation doctrines in a court-supervised receivership. This case asks how South Carolina law allocates responsibility and property interests in equity. Because *Adams* resolved a foreign jurisdictional issue—not the merits of South Carolina alter ego or amalgamation liability—there is no overlap, let alone identity, of issues.

Second, collateral estoppel fails for lack of party identity or privity and, independently, for lack of any full and fair opportunity to litigate. The Receiver was not a party to *Adams* and was not in privity with any party that litigated—much less fully litigated—South Carolina alter ego or amalgamation issues in that foreign proceeding. Under settled South Carolina law, a party may not assert estoppel against a stranger to a prior judgment who lacked a full and fair opportunity to litigate the issue now raised. *Richburg v. Baughman*, 290 S.C. 431, 434–36, 351 S.E.2d 164, 166–67 (1986); *Judy*, 393 S.C. at 167–68, 712 S.E.2d at 412. Although strict mutuality is no longer required, estoppel still applies only where the party to be bound previously had a full and fair opportunity to litigate the identical issue—a requirement unmet here, where the Receiver had no opportunity, fair or otherwise, to litigate the issues addressed in the U.K. decision. *Carolina Renewal*, 385 S.C. at 554–56, 684 S.E.2d at 782-83; *Snavely v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008).

In short, *Adams*—a foreign decision applying foreign law to different parties and different issues—cannot bar a South Carolina receiver from asserting alter ego and amalgamation theories

in a domestic equity proceeding. Accepting Appellants' position would extend collateral estoppel beyond its doctrinal limits and allow a foreign jurisdictional ruling to displace South Carolina law governing receiverships and equitable remedies.

C. Res Judicata

Res judicata does not bar the Receiver from pursuing alter ego and amalgamation theories on behalf of Cape plc. Res judicata applies only when there is (1) identity of parties, (2) identity of subject matter, and (3) a prior adjudication of the same claim or issue. *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999); *Venture Eng'g, Inc. v. Tishman Constr. Corp.*, 360 S.C. 156, 162, 600 S.E.2d 547, 550 (Ct. App. 2004).

No element is satisfied here. *Adams v. Cape Industries plc* was a foreign judgment enforcement decision addressing English "presence" doctrine for jurisdictional purposes. It did not adjudicate alter ego or amalgamation claims on their merits, and the Receiver was not a party to that proceeding. Where, as here, the parties, issues, and governing legal standards differ materially, South Carolina courts do not afford foreign decisions res judicata effect. *Duckett v. Goforth*, 374 S.C. 446, 464–66, 649 S.E.2d 72, 81-82 (Ct. App. 2007). That principle applies with particular force when the foreign tribunal applied a distinct and narrower legal framework. *See SAS Inst., Inc. v. World Programming Ltd.*, 874 F.3d 370, 381 (4th Cir. 2017).

Applying res judicata in these circumstances would permit parties to litigate selective issues in foreign forums under foreign law, without all necessary parties, and then use those decisions to avoid adjudication in South Carolina courts—an outcome South Carolina law does not permit.[1]

[1] The technical objections concerning estate timing, party designations, or service formalities do not warrant dismantling a narrowly tailored equitable remedy. South Carolina law supplies relation-back and representative-capacity doctrines to prevent technicalities from defeating jurisdiction or frustrating equitable relief where notice and substance are satisfied. See S.C. Code

III. Title 15 Codifies South Carolina's Historical Equity Authority to Appoint Receivers.

South Carolina courts possess long-standing equitable authority—now codified in Title 15—to appoint receivers where necessary to preserve property pending adjudication. *See* S.C. Code Ann. §§ 15-65-10, -50, -60. Prejudgment receiverships protect the integrity of the judicial process by ensuring that claims are resolved on the merits rather than defeated through asset concealment, dissipation, or strategic nonparticipation.

In *Welch v. Advance Auto Parts, Inc.*, this Court reaffirmed the availability of prejudgment receiverships in extraordinary circumstances. *Welch* confirmed extraordinary circumstances exist where equity requires preservation to prevent evasion, moral fraud, or frustration of effective relief. *Id.* at 659–62, 916 S.E.2d at 330–33. *Welch* does not, however, allow entry into the boardroom or a "take over" operation of the company. 445 S.C. 640, 916 S.E.2d 320 (2025).

This Court's June 26, 2025 order, (R. 1645–1647) likewise recognizes that a receivership is a sometimes necessary tool to preserve the court's ability to render effective relief. Like *Welch*, *Tibbs* emphasizes that the remedy exists to protect property interests relevant to the litigation, not to manage corporate affairs.

Together, Title 15, *Welch*, and *Tibbs* establish a clear line: a prejudgment receivership is lawful when it (1) targets identified property; (2) remains case-specific; and (3) preserves the court's ability to render effective relief—while it becomes unlawful when it strays into corporate governance or untethered asset control.

Ann. § 62-3-701; S.C. R. Civ. P. 17. Appellants' critiques cannot justify invalidating a narrow receivership imposed to preserve identified property interests and ensure that any resulting judgment remains enforceable.

Consistent with that settled framework, the United States Supreme Court recently denied certiorari in a petition seeking review of this Court's receivership decision, leaving *Welch* undisturbed. *See Atlas Turner, Inc. v. Welch*, No. 25-213 (U.S. Jan. 12, 2026) (cert. denied).

IV. In Accordance with *Welch* and *Tibbs'* Directives, the October 13, 2025 Order Confirms a Lawful Receivership While Reinforcing Limits that Prevent Governance-level Control.

Measured against this Court's *Welch* and *Tibbs* directives, the circuit court's October 13, 2025 Order lands squarely on the lawful side of the line. Title 15 authorizes receivership to secure specific property and preserve the court's ability to render effective relief, not to manage corporate affairs. The October 13, 2025 Order implements that property-focused design by narrowing the receivership to identified assets—"assets responsive to asbestos personal injury claims properly brought in South Carolina." *See* R. 47–48*,* Oct. 13, 2025 Order.

The October 13, 2025 Order also satisfies the Supreme Court's explicit instruction that receivership authority must be case-specific and record-supported. It confirms the receiver's work is authorized within this action and supported by detailed findings demonstrating the extraordinary necessity that *Welch* requires. And it does what *Welch* demands most directly: it eliminates open-ended scope. The court strikes and replaces overbroad language and limits record access to materials "belonging or pertaining to" the defined responsive assets, preventing the receiver from ranging across miscellaneous corporate property or asserting worldwide, untethered control. *See* R. 47–48, Oct. 13, 2025 Order.

In practical terms, the October 13, 2025 Order preserves and marshals a defined *res*; it does not run the company. By expressly modifying and narrowing the original Cape Appointment Order, the circuit court confirms a lawful receivership that protects effective relief while reinforcing guardrails that prevent governance-level control—the balance that *Welch* and *Tibbs* require.

V. October 13, 2025 Order Protects South Carolina's Interests in Fairness, Docket Administration, and Economic Stability.

Affirming the circuit court's order promotes South Carolina's interest in the fair and efficient administration of an exceptionally complex asbestos docket. The circuit court oversees consolidated litigation involving numerous parties, decades-old exposures, multi-jurisdictional insurance disputes, and recurring efforts to delay or evade enforcement. In that environment, narrowly tailored receiverships like the one at issue have produced concrete case-management benefits: preservation of identified property interests needed to satisfy judgments; streamlined administration across parties and jurisdictions; and a reduction in duplicative discovery, repetitive motion practice, and collateral enforcement disputes. *See* R. 47–48, Oct. 13, 2025 Order.

Those efficiencies are not incidental. They reflect precisely what equity permits—and what Title 15 authorizes—when the preservation of the *res* and the enforceability of judgments are at genuine risk. *See* S.C. Code Ann. §§ 15-65-10, -50, -60; *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (2025). The supply-chain record in this docket underscores why targeted relief is both equitable and necessary. Judicial findings confirm that Cape Asbestos Company Limited supplied approximately 90% of the world's amosite asbestos and was virtually the sole supplier of longer-fiber grades widely used in industrial applications. *Hammond v. N. Am. Asbestos Corp.*, 97 Ill. 2d 195, 454 N.E.2d 210, 213–14 (1983); *see also* R. 10–12, Oct. 13, 2025 Order (reciting Cape's dominant role as part of the moral fraud record). Much of that asbestos entered markets supplying materials used in South Carolina. *See* R. 10–15.

Allowing a dominant upstream supplier to obstruct a narrowly confined receivership through rigid procedural objections—while defendants with far more attenuated historical connections remain subject to litigation—skews equitable allocation and undermines the State's interest in fair adjudication. *See Welch*, 445 S.C. at 640, 916 S.E.2d at 320 (recognizing

prejudgment receivership in extraordinary circumstances while rejecting untethered scope). The order below corrects that distortion by preserving and marshalling litigation-relevant property interests, so that those most directly tied to the asbestos supply participate meaningfully in resolving claims arising in this State. *See* R. 44–48, Oct. 13, 2025 Order.

Affirming the circuit court also promotes economic stability. When key actors evade participation, the costs of legacy claims are externalized onto solvent South Carolina employers, suppliers, insurers, and taxpayers. *See* R. 9–41, Oct. 13, 2025 Order (finding moral fraud and evasion conduct); *Welch*, 445 S.C. 640, 916 S.E.2d 320. Targeted receiverships reduce that distortion, promote predictable merits-based resolutions, and lessen the uncertainty that drives up insurance costs and chills business confidence. *See* S.C. Code Ann. §§ 15-65-10, -50, -60; R. 47–48, Oct. 13, 2025 Order; R. 1645–47, *Tibbs v. 3M Co.*, Appellate Case Nos. 2024-001423 et al. (S.C. June 26, 2025).

Under these circumstances, affirming the circuit court preserves the narrow, property-specific guardrails this Court has required while protecting South Carolina's interests in fairness, efficient docket administration, and economic stability. *See Welch*, 445 S.C. 640, 916 S.E.2d 320; R. 48, Oct. 13, 2025 Order.

CONCLUSION

The circuit court acted within South Carolina's long-recognized equitable authority—as constrained by Title 15 and this Court's guidance in *Welch*—in appointing a narrowly tailored prejudgment receivership to preserve identified property and prevent dissipation in extraordinary circumstances. Appellants' attempt to invalidate that order fails at the threshold because, by invoking *Adams* to challenge the Receiver's claims and appointment, they waived any objection to personal jurisdiction and may not now revive it. Nor do Appellants' foreign-law and preclusion defenses carry the day: *Adams* resolved a distinct English "presence" question for jurisdictional

purposes, did not adjudicate the Receiver's alter ego and amalgamation theories on the merits, and involved different parties applying different legal standards. Accordingly, neither collateral estoppel nor res judicata bars the Receiver's claims, and technical objections concerning estate timing, party designations, or service formalities provide no basis to dismantle a narrowly tailored equitable remedy.

The receivership also serves important fairness and judicial-administration functions in complex, multiparty asbestos litigation. For employers such as New-Indy, a major South Carolina manufacturer occasionally drawn into asbestos litigation based on alleged pre-ownership conditions, receiverships help ensure that entities responsible for historical asbestos work and supplies appear, participate, and bear their proportionate share of responsibility as co-defendants. Absent such relief, solvent South Carolina businesses, insurers, and taxpayers face the prospect of shouldering settlement and judgment burdens attributable to absent parties, distorting comparative responsibility and undermining equitable outcomes.

For these reasons, the Court should affirm the circuit court's order.

Respectfully submitted,

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S.C. SUPREME COURT

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

v.

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

LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC…….Defendants,

And

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

v.

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

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

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CERTIFICATE OF COMPLIANCE

This *Amicus Curiae* Brief complies with Rules 208(b) and 211, SCACR, as required by Rule 213, SCACR.

/s/ Jenna K. McGee
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