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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2025-002104

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

v.

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

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

of which

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

And

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

v.

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

of which

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

CHARTER APPELLANTS'¹ RESPONSE TO PLAINTIFFS' LAW FIRMS' AMICUS BRIEF

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

February 9, 2026

¹ “Charter Appellants” is defined herein as Charter Consolidated Ltd., ESAB Corporation, and Central Mining and Investment Corporation Ltd.

INTRODUCTION²

Motley Rice, LLC, Rogers, Patrick, Westbrook, and Brickman, Meiorowitz and Wasserberg, LLP, and Maune, Raichle, Hartley, French, and Mudd, LLC (“Plaintiffs’ Law Firms”) have filed an *amicus curiae* brief (“Amicus Brief”) without identifying any clients on whose behalf it was submitted. Instead, Plaintiffs’ Law Firms assert that they “are law firms that represent plaintiffs with mesothelioma and other asbestos-related diseases in South Carolina and in other states throughout the country.”³ The Amicus Brief does not disclose any clients that Plaintiffs’ Law Firms are representing for purposes of the Amicus Brief, nor does it indicate that Plaintiffs’ Law Firms represent any plaintiff in any case against Cape Intermediate Holdings Limited (“CIHL”) or any other Cape entity. Rather, Plaintiffs’ Law Firms simply state that they believe CIHL is “the source for a large percentage of the amosite and crocidolite asbestos sold to and ultimately used in the United States” and they are “interested” in seeing CIHL “being held accountable...”⁴

However, whether Plaintiffs’ Law Firms “prefer” to have a prejudgment receiver appointed over CIHL for their use in future cases they may file on behalf of future clients cannot justify the receivership appointment that is under review by this Court. Likewise, neither CIHL’s status as a foreign United Kingdom corporation repeatedly deemed not to be subject to personal jurisdiction in the United States nor its choice not to appear in United States asbestos matters (instead exercising its right to be sued in its home jurisdiction rather than elsewhere) warrant the drastic remedy of prejudgment receivership.

² By filing this brief, Charter Appellants specifically preserve (and do not waive) all defenses, including personal jurisdiction.

³ Amicus Brief at p. 1.

⁴ *Id.*

Additionally, the Amicus Brief ignores the numerous dispositive threshold issues raised by the appellants on this appeal that mandate a ruling in the appellants' favor. These include, but are not limited to, the following:

- The *Tibbs* plaintiffs never moved to appoint a receiver in *Tibbs*;
- The purported Receiver is acting in *Tibbs* pursuant to a defective order issued in another case, *Park*;
- CIHL is not a party to *Tibbs*;
- No jurisdiction exists over CIHL in *Tibbs*;
- No service was made on CIHL in *Tibbs* or *Park*;
- No demonstration was made in *Tibbs* or *Park* of any property of CIHL that is in danger of "being lost, materially injured or impaired," nor has any such property, in South Carolina or otherwise, been identified or valued in any order in *Tibbs*;
- No judgment exists against CIHL in *Tibbs* or *Park*; and
- The mandatory statutory property valuation provision required in any prejudgment receiver appointment order has not been complied with.

Further, if the October 13 Order is allowed to stand, it will unlawfully permit the unprecedented expansion of the purported Receiver's authority, allowing (among other things) the purported Receiver to waive CIHL's personal jurisdiction defenses; accept service of future complaints "on behalf of" CIHL; and distribute CIHL's funds in his possession to Plaintiffs' Law Firms, including the settlement of future claims brought against CIHL in South Carolina by Plaintiffs' Law Firms' future clients without court supervision. It would also allow the purported Receiver to bring a third-party action in the name of CIHL in *Tibbs*, over CIHL's objections, even though CIHL is not a *Tibbs* defendant; sue CIHL's foreign corporate shareholders in the name of

CIHL; and self-pierce CIHL's corporate veil even though there is no judgment against CIHL and even though prior decisions from the United Kingdom have already found no bases for such self-piercing. All of this would be in violation of *Welch*,⁵ South Carolina law, and fundamental principles of due process relating to the appointment of prejudgment receivers.

The Amicus Brief also misconstrues and misunderstands the purpose of the appointment of a prejudgment receiver (receiver *pendente lite*), the strict statutory requirements for appointment, the due process protections that must be afforded those whose property is sought to be placed into the hands of a prejudgment receiver, and the limited authority that may be given to a prejudgment receiver. In its June 26 Order,⁶ this Court confirmed, recognized and upheld those principles, and it is those principles that mandate a ruling in Charter Appellants' favor on this appeal.

ARGUMENT

I. The Amicus Brief Incorrectly Characterizes the Purpose of a Prejudgment Receiver

A. South Carolina Recognizes Different Types of Receivers

Aside from offering the deficient arguments discussed above, Plaintiffs' Law Firms appear to conflate prejudgment receivers with the other types of receivers allowed under South Carolina law. In addition to the prejudgment/*pendente lite* receivers at issue here, South Carolina recognizes post-judgment receivers⁷ and receivers for specific, enumerated statutory scenarios: dissolution of

⁵ *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 32 (2025) (“*Welch*”).

⁶ *Tibbs v. 3M Co.*, Appellate Case No. 2024-001423 (S.C. June 26, 2025) (“June 26 Order”).

⁷ *See, e.g.*, S.C. Code Ann. § 15-65-10 (2) and (3); S.C. Code Ann. § 15-39-430.

South Carolina corporations,⁸ dissolution of insurance companies,⁹ banks/financial institutions,¹⁰ and public utilities.¹¹

Certain statutory provisions provide greater authority to receivers in certain situations. For example, “in a judicial proceeding brought to dissolve a corporation,” a court 1) may appoint “receivers to wind up and liquidate” who “may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and may sue and defend in his own name as receiver of the corporation in all courts of this State” or 2) may appoint “custodians to manage, the business and affairs of the corporation” who “may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.”¹² Further, prior to a full hearing/judicial proceeding to dissolve the corporation, a court may “appoint a receiver or custodian ... to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.”¹³ Only Title 33 allows for the appointment of custodians.

⁸ S.C. Code § 33-14-320. Note that Title 33 only applies to domestic corporations. *See* S.C. Code § 33-1-400(4) (defining “[c]orporation” as “a corporation for profit, which is not a foreign corporation, incorporated pursuant or subject to the provisions of Chapters 1 through 20 of this Title”).

⁹ S.C. Code § 38-27-910. Note that Title 38, Chapter 27 provides the exclusive right to allow a receivership with regard to insurance companies. S.C. Code § 38-27-60 (“no court of this State has jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of an insurer...other than in accordance with this chapter”).

¹⁰ S.C. Code § 34-28-730.

¹¹ S.C. Code § 58-5-730.

¹² S.C. Code §§ 33-14-320 (a); 33-14-320 (c)(1); 33-14-320 (c)(2).

¹³ S.C. Code § 33-14-310(c).

Additionally, the burden of proof varies among receiver types. For example, post-judgment receivers face a substantially lower burden for appointment and are very common, reflecting the remedial nature of post-judgment receiverships as opposed to the preventive nature of prejudgment receivers. This Court explained that a post-judgment receiver appointment "is commonly made almost as a matter of course where it appears that the judgment debtor has property which ought to be applied to the satisfaction of the judgment."¹⁴ Unlike post-judgment receiver appointments, prejudgment receiver appointments face the highest burden, requiring extraordinary circumstances as was reinforced by this Court's holding in *Welch*.

Lastly, different receiver types have different purposes. Under Title 33, a receiver's purpose may be to wind up and liquidate. A post-judgment receiver may be appointed to locate and marshal assets. However, as explained further below, the sole role of a prejudgment receiver is to hold and preserve the property of a party to the case pending judgment.¹⁵

B. Purpose of Prejudgment Receiver Appointed under Title 15

In 1870, the General Assembly adopted the Code of Procedure, itself adapted from the New York Code of Civil Procedure of 1848–49.¹⁶ Chapter V of that Act, titled "Provisional

¹⁴ *Ag-Chem Equipment Co. v. Daggerhart*, 281 S.C. 380, 383, 315 S.E.2d 379, 381 (Ct. App. 1984).

¹⁵ *Porter v. Brown*, 149 S.C. 151, 146 S.E. 810 (1929); *Ex parte Williams*, 17 S.C. 396, 403 (1882) ("A receiver is an indifferent person between the parties to a cause, appointed by the Court to receive and preserve the property in litigation *pendente lite*."); *see also Vasiliades v. Vasiliades*, 231 S.C. 366, 376, 98 S.E.2d 810, 815 (1957) ("The appointment of a receiver *pendente lite* by the court was purely a provisional remedy—to preserve the assets...").

¹⁶ 1870 S.C. Acts 423, *et seq.*; Kellen Funk, *Equity Without Chancery: The Fusion of Law and Equity in the Field Code of Civil Procedure, New York 1846-76*, 36 J. Legal Hist. 152, 167 n.99 (2015) (listing South Carolina as among more than 25 states and territories that had adopted a version of the 1848 New York Code by the end of the 19th century).

Remedies,” included Section 267 on receivers, containing provisions now codified at S.C. Code Ann. § 15-65-10, *et seq.*

Since 1870, the only statutory ground/purpose that specifically references prejudgment appointments is what is now S.C. Code § 15-65-10(1), and it requires a party, to an existing action, the subject of which is specific property, to first establish an apparent right to the specific property, and then to establish that the specific property is in danger.¹⁷ None of these elements can be found in the instant case. Further, the last clause in subsection 15-65-10(1) specifically excludes the appointment of a prejudgment receiver where the defendant is in default.

Thus, if certain conditions precedent have been met (as discussed in Section II.A below), a prejudgment receiver’s sole purpose would be to preserve the property pending judgment in that case. But this remedy is not to be granted lightly. South Carolina courts have emphasized demanding standards for prejudgment receiver appointments, characterizing it as a "drastic remedy" that "should be granted only with reluctance and caution."¹⁸ Indeed, as this Court explained, "[t]he taking of property from the hands of owners and placing it in the hands of a [prejudgment] receiver has been always regarded by the courts a severe remedy to be applied with great caution..."¹⁹ And importantly, as this Court explained shortly after adoption of the

¹⁷ S.C. Code Ann. § 15-65-10(1) (“A receiver may be appointed...[b]efore judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action, and which is in the possession of an adverse party, and the property, or its rents and profits, are in danger of being lost or materially injured or impaired, except in cases where judgment upon failure to answer may be had without application to the court.”)

¹⁸ *Richland Cnty. v. S. C. Dep’t of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (“[A]s a rule, a [prejudgment] receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined”) (citation omitted).

¹⁹ *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 220, 66 S.E. 1977, 179 (1909); *see also* 1 John Norton Pomeroy, Jr., *A Treatise on Equitable Remedies* § 67 at 113-114 (1905) (“Property

receivership statutes, a [prejudgment] “receiver is an indifferent person between the parties to a cause, appointed by the Court to receive and preserve the property in litigation *pendente lite*.”²⁰

S.C. Code Ann. § 15-65-10(2) and (3) specifically apply only to appointing a receiver after judgment. It appears that subsections (4) and (5) apply to appointing a receiver either pre- or post-judgment. To the extent S.C. Code Ann. § 15-65-10(4) and (5) apply to the appointment of a receiver before judgment, they would not change the purpose of a prejudgment receiver, which is to preserve property. Additionally, to the extent S.C. Code Ann. § 15-65-10(4) applies to prejudgment appointments (and therefore to this case), it limits access to the identifiable “property within this this State of a foreign corporation.” Further, subsection 4 suggests that if a foreign corporation “has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights” and has identifiable property in South Carolina, then the South Carolina property may be put into the hands of a prejudgment receiver to hold and preserve pending judgment in the case – but only if there is some additional equitable necessity. This Court, more than 30 years after the adoption of subsection 4, noted that “insolvency alone is not ground for appointment of a [prejudgment] receiver” and additional factors, such as showing fraudulent intent, are required.²¹

S.C. Code Ann. § 15-65-10(5), if intended to apply to prejudgment appointments, is a statutory reference to the practice of courts of equity regarding appointment of receivers (including

is not taken from a party in possession [and put into the hands of a prejudgment receiver]...before judgment in actions at law,” because such action “is a serious interference, without the verdict of a jury and without a regular hearing, with the prima facie rights of the citizen, and should only be granted to prevent manifest wrong.”)

²⁰ *Ex parte Williams*, 17 S.C. at 403 (citation omitted).

²¹ *Virginia-Carolina Chem. Co.*, 84 S.C. at 220; *see also Welch*, 445 S.C. at 660, 662 (appointment of a receiver over the assets of a corporation is not proper without a finding by the trial court of active moral fraud occurring in the underlying cause/case).

all limitations and proscriptions recognized by those courts) prior to the enactment of the statute in 1870 – so long as the prior practice does not conflict with the statute.²² Importantly, subsection 5 does not allow the appointment of a prejudgment receiver over property of a defendant that is in default, as such would not be allowed per subsection 1.²³ This Court in *Welch* confirmed that an appointment of a receiver over the assets of a corporation is not proper in the traditional default situation (which is the situation here) and further confirmed that a finding by the trial court of active moral fraud occurring in the underlying cause/case is required.²⁴

II. The Appointment of the “Cape” Receiver Was Improper

Although the Amicus Brief argues that the appointment of the purported Receiver over the “Cape Defendants”²⁵ is or was proper, it does not address the appointment’s failure to meet the conditions precedent to receivership under South Carolina law.

²² *Virginia-Carolina Chem. Co.*, 84 S.C. at 220 (this section “gives the old practice the force of a statute by the enactment that a receiver may be appointed ‘in such other cases as are now provided by law, or may be in accordance with the existing practice, except as otherwise provided in this Code of Procedure.’ The first inquiry is whether the record shows a case warranting the appointment of a receiver under the general jurisdiction and practice of the court of equity, aside from the special provisions of the Code of Procedure...” (citation omitted).

²³ Subsection 5 allows receiver appointments “in such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.” S.C. Code Ann. § 15-65-10(5). The critical phrase “except as otherwise provided in this Code” creates a limitation that should prevent subsection (5) from being used to evade the specific exclusion found in subsection (1). Since the default case exclusion is “otherwise provided in this Code” within the same statutory section, it should constrain the application of subsection (5). The South Carolina Supreme Court has emphasized that “the appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.” *Richland Cnty.*, 422 S.C. at 313 (supporting a restrictive interpretation that honors legislative exclusions rather than circumventing them through alternative statutory provisions).

²⁴ *Welch*, 445 S.C. at 660, 662.

²⁵ The Amicus Brief defines “Cape Defendants” as “Cape and its subsidiaries, holding companies, successors, and other related entities,” a definition far more expansive than any used by the circuit court in *Park* or *Tibbs*, and seems to suggest that the invalid Cape receivership should not only be

A. Conditions Precedent to the Appointment of Prejudgment Receiver

Because of the drastic nature of the remedy of appointing a prejudgment receiver, South Carolina law establishes extensive mandatory procedural safeguards and conditions precedent before appointing a receiver over a defendant's property prior to final judgment:

1. A prejudgment receiver may not be appointed unless the court has personal jurisdiction over the person/entity whose assets are to be put into the hands of a prejudgment receiver.²⁶ The person/entity must likewise be a party to the case,²⁷ and the motion to appoint a prejudgment receiver must be made by another party to that case.²⁸
2. Prejudgment receivers may only be appointed in pending litigation seeking substantive relief beyond the mere appointment of a receiver.²⁹

allowed to proceed but also be extended to encompass any other entity that falls under the Amicus Brief's definition. Amicus Brief at p. 1.

²⁶ *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977) (all assertions of in-rem or quasi-in-rem jurisdiction are subject to the same minimum-contacts test as in-personam jurisdiction). It would invert the hierarchy of remedies to insist on a jurisdictional showing for default but allow a plaintiff to obtain a prejudgment receiver over a foreign corporation's property with no showing of personal jurisdiction; *Fin. Fed. Credit. Inc. v. Brown*, 384 S.C. 555, 562, 683 S.E.2d 486, 490 (2009) ("A judgment is void if a court acts without personal jurisdiction...A judgment of a court without jurisdiction of the person or of the subject matter is not entitled to recognition or enforcement in another state, or to the full faith and credit provided in the federal Constitution.") (citations omitted). It would invert the hierarchy of remedies to insist on a jurisdictional showing for default but allow a plaintiff to obtain a prejudgment receiver over a foreign corporation's property with no showing of personal jurisdiction.

²⁷ *Porter*, 149 S.C. at 814 fn. 1 ("The remedy [of a receivership] is a provisional or auxiliary one invoked as an adjunct or aid of the principal relief sought by the action and never as the ultimate object of the action").

²⁸ S.C. Code Ann. § 15-65-10(1) ("A receiver may be appointed ...[b]efore judgment, on the application of either party..."); *White v. Britton*, 72 S.C. 175, 51 S.E. 547, 548 (1905) (finding multiple defects in receivership appointment, and reversing appointment because motion to appoint was not made by a party to the case).

²⁹ *Porter*, 149 S.C. at 814, fn. 1 ("A receiver may only be appointed in a pending case. A suit does not lie for the sole purpose of appointing a receiver, but the Court must have jurisdiction of the suit on some other ground before it can make the appointment" of a prejudgment receiver, and "[t]here is, of course, no such thing as an action brought distinctively for the mere appointment of a receiver. Such an appointment, when made, is ancillary to or in aid of the action brought. Its purpose is to preserve the property pending the litigation so that relief awarded by the judgment, if any, may be effective"); see also *Vasiliades*, 231 S.C. at 376 ("The appointment of a receiver *pendente lite* by the court was purely a provisional remedy—to preserve the assets...").

3. A prejudgment receiver may not be appointed where the defendant (whose property is sought to be placed in the hand of a prejudgment receiver) is in default.³⁰
4. A prejudgment receiver may not be appointed where plaintiff has an alternate remedy that can adequately protect the interests at stake.³¹ (Such as default as set forth above.)
5. A prejudgment receiver shall not be appointed if the defendant (or another party with an interest in the property) posts a bond.³²
6. A prejudgment receiver shall not be appointed unless the appointment order contains “a clause fixing the value of the property” to be placed in the hands of the prejudgment receiver.³³ Violation of the mandatory statutory provision voids the appointment.
7. A prejudgment receiver may not be appointed unless the property to be placed into the hands of the prejudgment receiver is specifically identified.³⁴
8. A prejudgment receiver may not be appointed unless the parties who are in possession of or claim an interest in the property to be put into the hands of a prejudgment receiver are provided statutory notice.³⁵
9. Any prejudgment receiver appointment must be limited to the case in which the appointment is made.³⁶

³⁰ S.C. Code Ann. § 15-65-10(1) (“A receiver may be appointed ...[b]efore judgment, on the application of either party... except in cases when judgment upon failure to answer may be had without application to the court”).

³¹ *Richland Cnty.*, 422 S.C. at 313 (affirming denial of a receiver appointment where injunctive relief and potential restitution orders provided adequate protection for the disputed funds and noting that “the trial court can order the repayment of any improper expenditures” as a basis for denying the receiver appointment); *see also* 1 John Norton Pomeroy, Jr., *A Treatise on Equitable Remedies* § 69 at 116 (1905) (“It is one of the fundamental principles on which receivers are granted that the applicant shall have no plain, adequate, and complete remedy at law.”) (citation omitted).

³² S.C. Code Ann. § 15-65-50 (“No receiver of the property of any ... corporation shall be appointed before final judgment in the cause if ... a bond [is offered]”).

³³ S.C. Code Ann. § 15-65-60 (“*Whenever* the court ... shall appoint a receiver before final judgment in the cause there *shall* be inserted in the order of appointment a clause fixing the value of the property...”) (emphasis added).

³⁴ *Id.*

³⁵ S.C. Code Ann. §§ 15-65-20—15-65-30.

³⁶ June 26 Order at A.1; S.C. Code Ann. § 15-65-10 *et. seq.*

10. A prejudgment receiver may not be appointed to “search” for assets.³⁷

11. A prejudgment receiver may not be appointed to act in the name of or sue and defend in the name of a foreign corporation simply because the corporation’s property has been placed in the hands of a prejudgment receiver.

Several of the conditions precedent warrant further discussion. For instance, under condition precedent 6, the mandatory property valuation clause requirement under S.C. Code Ann. § 15-65-60 applies universally to *all prejudgment receiver appointments* without exception: “*Whenever* the court ... shall appoint a receiver before final judgment in the cause there *shall* be inserted in the order of appointment a clause fixing the value of the property...”³⁸ The word “whenever” creates a universal trigger with no categorical exemptions in the statutory text. This mandatory, 150-year-old procedural safeguard is in place to allow the vacatur of an appointed prejudgment receiver upon posting a bond two times the amount of the property value as stated on the appointment order.³⁹

Moreover, this Court has already explicitly mandated that this longstanding statutory requirement is so crucial that without it, an appointment order is void *ab initio*. In *Truesdell v. Johnson*,⁴⁰ the court quoted Subdivisions 8 and 9 of Section 524 of the Code of Civil Procedure

³⁷ Granting a prejudgment receiver authority to search for/and or “marshal” unidentified property of a defendant (before judgment) runs afoul of the 150-year-old statutory scheme. *See Truesdell, supra* (prejudgment receiver appointments are “drastic measure[s]” and the Legislature provided the mandatory statutory framework for “protecting the interests of the person claiming or in possession of the property.”); S.C. Code Ann. §§ 15-65-50 and 15-65-60 (bond provisions create an interconnected system where mandatory pre-appointment property valuation enables the statutory right to vacate the appointment of a receiver and retain possession of property subject to the receiver appointment order). Accordingly, it would clearly be impossible to value property that is not identified with specificity and or unknown – indicating the intent to limit prejudgment receivers to identified property.

³⁸ *Id.* (emphasis added).

³⁹ *Id.* (“upon the due execution and filing of such bond thereafter before final judgment in the cause the court or judge shall vacate the appointment of such receiver...”).

⁴⁰ *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343 (1928).

(1922), which is substantively identical to S.C Code Ann. §§ 15-65-50 and 15-65-60 and was originally adopted in 1897, and explained:

The appellant urges that these subdivisions are applicable in all cases where a receiver is appointed before final judgment in the cause, that they are intended to assure to the person claiming or in possession of the property sought to be placed in the hands of a receiver the right to retain or to replevy the same, and that the provision in Subdivision 9 for the insertion in the order appointing the receiver of a clause fixing the value of the property is mandatory. The respondent contends that it was a condition precedent to the insertion in the order of a clause fixing the value of the property that the person in possession should "offer" the bond before the order appointing the receiver was granted, and that, as the appellant did not "offer" the bond at the hearing on the application for appointment of a receiver, he cannot now complain of the omission of the clause fixing the value of the property.

We do not agree with the respondent's position. The appointment of a receiver, as we have said, is a drastic measure, and the Legislature has made provision for protecting the interests of the person claiming or in possession of the property for which a receiver is sought....

Nor do we agree with the respondent that the order of the Judge directing the receiver to make an inventory of the assets of the company was equivalent to a clause fixing the value of the property. All other considerations aside, the law does not provide for vacating the appointment of the receiver upon the filing of a bond with penalty fixed according to the inventory value of the property, and the appointment of the receiver would not be vacated upon a bond with penalty so fixed--the penalty must be double the value of the property as *fixed in the order appointing the receiver*. The provision for inserting a clause fixing the value of the property in the order appointing a receiver is mandatory, and without such clause the order is void.⁴¹

Accordingly, the valuation provision of the property to be placed in the hands of the prejudgment receiver is a mandatory prerequisite to the appointment. There is no valid basis to argue against this longstanding precedent. Arguments that this provision does not "fit" the circumstances of a motion to appoint a prejudgment receiver appointment simply demonstrates that requested prejudgment receiver appointment does not comply with South Carolina law and should be denied.

⁴¹ *Truesdell*, 144 S.C. at 203-204 (emphasis in original).

Additionally, under condition precedent 7, detailed property identification is the practical effect of the mandatory valuation requirement, necessitating property identification to enable meaningful valuation.⁴² Property must be specifically identified to enable the mandatory valuation required by § 15-65-60, and unknown property cannot be valued. This creates an insurmountable procedural barrier that effectively prohibits receivership appointments when plaintiffs cannot identify specific defendant property, reinforcing the principle that prejudgment receivership is reserved for extraordinary cases involving identified assets at risk of dissipation. Further, S.C. Code Ann. § 15-65-10 requires plaintiffs to "establish an apparent right to property which is the subject of the action and which is in the possession of an adverse party," meaning specific property must be identified before appointment.

Under condition precedent 9, the language utilized in S.C. Code Ann. § 15-65-10, *et seq.*, makes clear that any prejudgment receiver may only be appointed in a single existing case/"cause," "before judgment" in that case, by "application of either party", regarding "property" of "an adverse party."⁴³ As set forth above, a prejudgment receiver appointment is an ancillary remedy

⁴² *Id.*; *Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 293, 185 S.E. 731, 737 (1936) (reversing appointment of a receiver because there was a "total failure of any proof" that the foreign company "has property in this state").

⁴³ S.C. Code Ann. § 15-65-10(1) (a receiver may be appointed "[b]efore judgment, on the application of either party..."); S.C. Code Ann. § 15-65-50 ("No receiver of the property of any ...corporation shall be appointed *before final judgment in the cause* if the party claiming the property so sought to be placed in the hands of a receiver ...shall offer a bond...to meet and satisfy any decree or *judgment* or order that may be made *in the cause*."); S.C. Code Ann. § 15-65-60 ("Whenever the court ... shall appoint a receiver *before final judgment in the cause* there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-50. And upon the due execution and filing of such bond thereafter *before final judgment in the cause* the court or judge shall vacate the appointment of such receiver..."); S.C. Code Ann. § 15-65-90 (where receiver "improperly appointed, the costs, charges and expenses of such receivership shall [be charged upon] the party procuring the appointment."); see also *Montgomery & Crawford v. Arcadia Mills*, 173 S.C. 464, 176 S.E. 589,

in a case. In a *pendente lite* receivership, “the sole object of the Receivership is to preserve the property, to answer the purposes of a decree, as between the parties to *the suit*, without affecting the interest of third persons not parties.”⁴⁴ This long-established principle was underscored by this Court in its June 26, 2025 granting writs of certiorari filed in this case and mandating that a receiver may not act in a case other than the one in which he was appointed (pursuant to a filed order granting a motion to appoint a receiver).⁴⁵ In other words, regardless of the bases for, findings of fact in, or scope of an order appointing a prejudgment receiver, the receiver may not act in a case other than the one in which he was appointed.

Pursuant to condition precedent 10, the failure to identify specific property to be placed in the hands of the prejudgment receiver violates the required procedural framework because it prevents proper implementation of the statutory safeguards.⁴⁶ The appointment of a receiver "is a drastic measure, and the Legislature has made provision for protecting the interests of the person claiming or in possession of the property for which a receiver is sought."⁴⁷ This establishes that property identification and valuation are not merely procedural formalities but essential safeguards protecting defendants' due process rights in prejudgment receivership proceedings. Granting a prejudgment receiver authority to search for/and or “marshal” unidentified property of a defendant (before judgment) runs afoul of the 150-year-old statutory scheme. S.C. Code Ann. §§ 15-65-50

599 (1934) (“There is no known authority or power in a court of equity to take possession of the property not for the purpose of granting and decreeing some definite relief, but for the purpose simply indefinitely, for no fixed purpose, of operating the property...”).

⁴⁴ *Clinkscapes v. Pendleton Mfg. Co.*, 9 S.C. 318, 323 (1878) (emphasis added).

⁴⁵ June 26 Order at A.1.

⁴⁶ *Truesdell, supra.*

⁴⁷ *Truesdell*, 144 S.C. at 204 (treating both the bond requirements and valuation clause as mandatory protections that must be strictly followed).

and 15-65-60 create an interconnected system where mandatory pre-appointment property valuation enables a statutory right to vacate the appointment of a receiver and retain possession of property subject to the receiver appointment order. It would be impossible to value property that is not identified with specificity, indicating a legislative intent to limit prejudgment receivers to identified property.

As for condition precedent 11, the prejudgment receiver language in S.C. Code § 15-65-10 *et seq.*, focuses exclusively on property preservation, not entity representation.⁴⁸ A prejudgment receiver's authority is limited to preservation of the property put into their hands.⁴⁹ Further, in the June 26 Order, this Court stated that a receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.⁵⁰ Further, a receiver has no general authority as a receiver to sue or be sued or defend.⁵¹

Additionally, Rule 66, SCRCP does not give a prejudgment receiver authority to litigate in the name of the company whose property he is preserving. Instead, Rule 66(b) is specifically limited to scenarios where there is a debtor/creditor relationship.⁵² Before judgment, no legal determination has been made that the foreign corporation is a "debtor" to anyone – it remains merely a defendant in pending litigation. Rule 66's repeated use of "debtor" terminology indicates

⁴⁸ Compare S.C. Code Ann. § 33-14-320 (allowing custodian appointed in judicial dissolution to act for company).

⁴⁹ *Bates v. S.C. Nat. Bank*, 280 S.C. 599, 601, 313 S.E.2d 361, 362 (Ct. App. 1984) (“property in the hands of the receiver is *in custodia legis*; possession of the property by receiver is the possession of court which appointed him”).

⁵⁰ June 26 Order at A.1.

⁵¹ *In re Fiftv-Four First Mortg. Bonds*, 15 S.C. 304 (1881); *see also Gadsden v. Whaley*, 14 S.C. 210, 215 (1880) (“A receiver cannot interfere in [another case] until he has been made a party to the action by order of the court.”)

⁵² Rule 66(b), SCRCP (recognizing the power of “every receiver of the property and effects of a *debtor*” to “collect the debts, demands and rents belonging to *the debtor*” and authorizes him to “sue and defend in the name of *the debtor*...”) (emphasis added).

it was designed for post-judgment enforcement scenarios where a legal obligation to pay has been established.

It is these longstanding principles and procedural safeguards which govern the appointment of a prejudgment receiver and which the Amicus Brief omits, further demonstrating why a ruling in Appellants' favor is the correct result on this appeal.

B. The June 26 Order Confirms These Procedural Safeguards

In the June 26 Order, the Court granted the Charter Appellants' and Altrad Appellants' Petitions for Writ of Certiorari ("Cert Petitions") in *Tibbs*. The petitions challenged the propriety of the Cape PLC receivership appointment order entered in *Park* and argued that the South Carolina receivership statutes (S.C. Code Ann. 15-65-10, *et seq.*) limit a prejudgment receiver to acting in the case in which he is appointed. The petitions specifically argued that South Carolina law does not allow a receiver appointed in one case (*Park*) to act in another case (*Tibbs*). The Petitions also highlighted certain of the statutory safeguards of S.C. Code Ann. § 15-65-10, *et seq.*, set forth above.

In granting the Cert Petitions, the Court specifically reiterated "that appointing a receiver before judgment is permissible only in the rarest and most extraordinary cases" and required that before a receiver undertakes any work in a case, there must be an order appointing the receiver in that specific case.⁵³ The June 26 Order confirmed the protections referenced above and directly addressed condition precedent 9: a prejudgment receiver appointment must be limited to the case in which the appointment is made.⁵⁴ The Court remanded the *Tibbs* case to the trial court and specifically "direct[ed] ... that [Mr. Protopapas] is not to be authorized to conduct work as to a

⁵³ June 26 Order at A.

⁵⁴ *Id.* at A.1.

case in which no receiver appointment order has been filed” and that the order be issued “in the specific case as to which the work is to take place.”⁵⁵ This directive was mandatory and absolute. The Court used imperative language—“is not to be authorized”—that forbids, rather than permits, judicial discretion. This mandate conforms with the purpose of a prejudgment receiver: to hold and preserve property of a party to the case pending judgment in the case. The Court’s mandate rightly rejects the notion advanced by the Receiver—and accepted by the circuit court—that an appointment of a prejudgment receiver at the request of a plaintiff in one asbestos case may authorize that receiver to act in other cases.

C. The Procedural Safeguards Have Not Been Satisfied in *Tibbs*

The *Tibbs* plaintiffs never made a motion to appoint a prejudgment receiver related to any Cape entity, and accordingly, the circuit court has never granted such a motion. Additionally, it is undisputed that CIHL was not sued as a defendant in the *Tibbs* case. Accordingly, the circuit court in *Tibbs* never obtained personal jurisdiction over CIHL. Accordingly, condition precedent 1 above has not been satisfied. Further, as CIHL is not a party to *Tibbs*, the *Tibbs* plaintiffs are not seeking substantive relief from CIHL, and thus condition precedent 2 has not been satisfied. Likewise, as CIHL is not a party to *Tibbs*, conditions precedent 3 (default) and 4 (no alternate remedy) do not apply. Finally, as the *Tibbs* plaintiffs have not made a motion to appoint a prejudgment receiver, condition precedent 5 (bond before appointment) does not apply.

As to condition precedent 6 (mandatory valuation provision), there is no prejudgment receiver appointment order in *Tibbs* with the mandatory valuation provision. Likewise, there is no prejudgment receiver appointment order related to any Cape entity in any other case that contains the mandatory property valuation provision. Moreover, neither the *Tibbs* plaintiffs nor any other

⁵⁵ *Id.*

party in *Tibbs* or *Park* have ever identified any South Carolina property of CIHL (or any other Cape entity), much less any specific South Carolina property that should be put into the hands of a prejudgment receiver (to hold/preserve *pendente lite*). Condition precedent 7 is therefore not satisfied. Accordingly, there has been no specifically identified property of any Cape entity put into the hands of any prejudgment receiver (condition precedent 8).

With regard to condition precedent 9 (a prejudgment receiver appointment limited to the case in which the appointment was made), there has been no motion to appoint a prejudgment receiver, nor order granting motion to appoint prejudgment receiver in *Tibbs*. To the extent Mr. Protopapas seeks to extend the prejudgment receiver appointment order from *Park* (which itself is void for countless reasons), such would violate South Carolina law.

Conditions precedent 10 and 11 relate to the scope of an appointment order/authority provided to a prejudgment receiver. Again, no motion to appoint a prejudgment receiver has been granted in *Tibbs*. As to the *Park* appointment order (again, that is void), the scope of authority does not comply with South Carolina law.

Accordingly, there is no order appointing a prejudgment receiver related to CIHL in *Tibbs* (or any other case) that satisfies the above requirements. Thus, any purported order appointing Mr. Protopapas as a prejudgment receiver related to CIHL (or any other Cape entity) is void *ab initio*. As recognized in *Porter v. Brown*, a void receivership order "may be attacked or disregarded whenever it comes collaterally in question" and that "[i]f it appears upon the face of the proceedings that a Court's order appointing a receiver was without authority of law, and, therefore, void, the order may be assailed collaterally and with impunity by anybody."⁵⁶

⁵⁶ *Porter*, 149 S.C. at 814, fn. 1.

CONCLUSION

As set forth more fully herein, the Amicus Brief, submitted by Plaintiffs' Law Firms on behalf of hypothetical future clients (as opposed to actual, existing clients with an interest in this matter), misstates the purpose of South Carolina prejudgment receiver appointments and incorrectly characterizes the "Cape" receivership as valid. Like the submissions by the purported Receiver and the *Tibbs* plaintiffs on this appeal, it provides no grounds to find in the Respondents' favor. The Court should vacate the putative receivership and all activity below involving the purported Receiver, and it should dismiss this case.

Dated: February 9, 2026

Respectfully submitted,

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