

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

RECEIVED

Feb 13 2026

S.C. 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.

**BRIEF OF COURT-APPOINTED RECEIVER PETER D. PROTOPAPAS IN
RESPONSE TO NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH, PA'S
AMICUS BRIEF**

John T. Lay, Jr., SC Bar No. 64526
Lindsay A. Joyner, SC Bar No. 77437
Olesya V. Bracey, SC Bar No. 101409
Eleanor L. Jones, SC Bar No. 104678
GALLIVAN, WHITE & BOYD, P.A.
1201 Main Street, Suite 1200
PO Box 7368 (29202)
Columbia, SC 29201
jlay@gwblawfirm.com
gculbreath@gwblawfirm.com
ljoyner@gwblawfirm.com
ejones@gwblawfirm.com
(803) 779-1833

Jonathan M. Robinson
SMITH ROBINSON, LLC
3200 Devine Street
Columbia, SC 29205
803-254-5445
jon.robinson@smithrobinsonlaw.com

Lauren McCulloch Semlinger
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002
lauren.semlinger@morganlewis.com
(713) 890-5467

Paul A. Scudato
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
paul.scudato@morganlewis.com
(212) 309-6000

***Attorneys for Respondent Cape PLC, individually
and as successor in interest to Cape Asbestos
Company Limited, n/k/a Cape Intermediate
Holdings Ltd. by and through its duly appointed
Receiver Peter D. Protopapas***

February 13, 2026

I. National Union’s amicus brief is an improper attempt to raise arguments outside of the issues on appeal and expand this Court’s review to a receivership not on appeal.

a. The Payne & Keller receivership is not before the Court.

This is the fourth time National Union has attempted to challenge the propriety of the Payne & Keller receivership and, broadly, all receiverships in the South Carolina asbestos docket without following the normal appellate procedure. In 2023, National Union and Travelers filed an interlocutory appeal from the circuit court’s order denying their motions to dismiss a third-party claim brought by the Payne & Keller Receiver and to dissolve the Payne & Keller receivership. *See Childers*, Appellate Case No. 2023-000727. On January 3, 2024, National Union filed a Motion to Certify, requesting this Court take the unusual step of certifying the appeal to “protect against improper receiverships” in the asbestos docket that put “insurers unfairly and unlawfully at risk.” Motion to Certify, *Childers*, Appellate Case No. 2023-000727 at pp. 6, 16 (filed Jan. 3, 2024). Travelers joined in the motion, urging the Court to certify the appeal to speak to all receiverships in the asbestos docket. Joinder, *Childers*, Appellate Case No. 2023-000727 (filed Jan. 11, 2024). This Court certified the appeal and dismissed it, noting the order was not immediately appealable. Order, *Childers*, Appellate Case No. 2023-000727 (filed March 27, 2024).

After this Court issued the *Welch*¹ decision, National Union filed a new motion reasserting its interlocutory arguments that the circuit court should dissolve the Payne & Keller receivership.²

¹ *Welch v. Advance Auto Parts, et al.*, 445 S.C. 640, 916 S.E.2d 320 (2025).

² Despite its motion to dismiss the third-party complaint and to dissolve the Payne & Keller receivership being denied by the circuit court in 2023, National Union has re-filed a similar motion in the *Childers* case, arguing *Welch* now requires the dissolution of the receivership. *See* Motion to Dissolve or Discontinue the Payne & Keller Receivership, Deem Certain Conduct of the Receiver Void *Ab Initio*, and Dismiss Second Amended Complaint; or, in the Strict Alternative, to Modify the Receivership, *Childers v. Davis Mechanical, et al.*, C/A No. 2021-CP-40-03484 (filed

That motion is pending before the circuit court. It has not been fully briefed, has not been heard, and has not been decided.

Less than two years after this Court confirmed National Union must follow the traditional appellate process to receive appellate review of the Payne & Keller receivership, National Union attempted to insert itself into an appeal involving the Starr Davis receivership—in which it has no involvement—in order to utilize the *Welch* decision to collaterally attack the propriety of the Starr Davis receivership with arguments that were not raised in the circuit court in that case. National Union further attempted to use its proposed amicus brief to obtain a ruling from this Court on the propriety of the Payne & Keller receivership. This Court rejected that attempt, denying National Union’s Motion for Leave to File an Amicus Brief. *See Order, Protopapas v. Travelers*, Appellate Case No. 2025-001456 (filed Aug. 21, 2025).

Undeterred by this Court’s direction that it must abide by the traditional process to obtain appellate review of its request to dissolve the Payne & Keller receivership, National Union attempted to insert the Payne & Keller receivership into another unrelated receivership: Atlas Turner, Inc. On September 22, 2025, National Union filed an amicus brief with the United States Supreme Court in the *Welch* case, arguing the US Supreme Court should step in to dissolve the

June 25, 2025). While numerous carriers and other litigants have joined National Union’s pleas that the Court’s opinion in *Welch*, which involved a receivership over an ongoing entity, requires mass dissolution of receiverships established over defunct companies, this Court affirmed the appointment of a receiver over the insurance assets of a viable Atlas Turner in *Welch*. This Court also recently denied a Petition for Writ of Certiorari of an appeal involving a Court of Appeals’ decision affirming the trial court’s grant of summary judgment in a declaratory judgment action brought by the dissolved and defunct Starr Davis Company’s appointed receiver, Peter Protopapas, against two of Starr Davis’s former insurers, Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company (Aetna) and Standard Fire Insurance Company. *See Order, Protopapas v. Travelers*, Appellate Case No. 2025-001456 (filed February 11, 2025). In that case, National Union attempted (unsuccessfully) to present its case via amicus brief against the legitimacy of asbestos receiverships.

South Carolina receivership over Payne & Keller and reverse this Court’s “boundless approach” to jurisdiction in the *Welch* decision.³ See Brief of amicus curiae National Union, *Atlas Turner, Inc. v. Donna B. Welch, et al.*, No. 25-213 (filed Sept. 22, 2025). The US Supreme Court denied certiorari of the *Welch* decision on January 12, 2026.

Now, National Union attempts for a fourth time to prevent the insurance policies it wrote and sold from responding to covered claims in the Payne & Keller receivership by inviting this Court to rule on the propriety of the Payne & Keller receivership while that issue is under consideration by the circuit court (and not before this Court in the instant appeal).⁴ This Court has continually ruled that the arguments raised in National Union’s amicus brief—National Union’s request to dissolve the Payne & Keller receivership—do not merit premature appellate review and are required to be raised in the circuit court in the traditional way.⁵ Nevertheless, National Union

³ National Union’s characterization of the *Welch* decision in its amicus brief to this Court versus its amicus brief to the US Supreme Court is interesting. In this Court, National Union argues the Receiver incorrectly interprets *Welch* to “suggest that the location of a defendant’s property is irrelevant to whether a receiver can be appointed over that property.” (Am. Br. at 14.) However, in the US Supreme Court, National Union argued this Court’s decision in *Welch* was a “borderless approach to in rem jurisdiction.” See Brief of amicus curiae National Union at p. 17, *Atlas Turner, Inc. v. Donna B. Welch, et al.*, No. 25-213 (filed Sept. 22, 2025). In reality, neither of these exaggerations are true. As this Court recognized in *Welch*, and as remains true in the Cape receivership, the Receiver is not attempting to take over the boardroom of a foreign entity; South Carolina courts have jurisdiction over intangible assets, such as insurance policies and choses in action, that may respond to asbestos claims in South Carolina; South Carolina has jurisdiction to direct a person or entity within the court’s personal jurisdiction to convey and produce its assets; and these assets are property that may be marshalled by a receiver in South Carolina. See *Welch v. Advance Auto Parts, et al.*, 445 S.C. 640, 662–66, 916 S.E.2d 320, 332–34 (2025).

⁴ National Union is also simultaneously attempting to have a Texas court step in to rule on the propriety of the South Carolina Payne & Keller receivership. On February 3, 2026, the Texas Court of Appeals dismissed National Union’s appeal as interlocutory. *Nat’l Union Fire Ins. Co. of Pittsburgh, PA v. Payne & Keller Co. by & Through Protopapas*, No. 14-23-00899-CV, ___ S.W.3d ___, 2026 WL 272448, at *2 (Tex. App. Feb. 3, 2026).

⁵ In the *Tibbs* order, this Court reiterated its “intention to reach and address the merits of issues properly before us.” Order, *Tibbs v. 3M Company, et al.*, Appellate Case No. 2024-002116 (filed June 26, 2025).

again seeks to raise these Payne & Keller grievances as a stranger to the Cape case. While the Cape Receiver has not concluded his search for assets, National Union has not acknowledged that it wrote responsive insurance coverage in the Cape case and, as such, does not have any interest in this appeal. It seeks to obtain pronouncements that will effectively rule on its re-filed, and currently pending, Motion to Dismiss and Dissolve or Discontinue the Payne & Keller Receivership, without giving the circuit court a chance to consider the motion in due course.

In addition to the Payne & Keller receivership, National Union attaches a chart of receivership appointments within the asbestos docket, referencing dozens of orders that are not under review by this Court and omitting the jurisdictional findings upon which those appointment orders rest; none of which are included on the Record on Appeal.⁶ National Union invites this Court to make broad, sweeping (and advisory) pronouncements on each receivership within the asbestos docket based on self-serving, one-sided assertions without a review of the orders nor the factual bases for the receivership appointments. However, as elucidated by this Court in March 2024 when it dismissed the *Childers* appeal and rejected National Union's first invitation to speak to the entire asbestos docket, under well-established South Carolina rules and procedures, arguments as to the dissolution of receiverships must be raised to the circuit court and appealed once a final, appealable order is issued. The Court should not consider National Union's arguments to broaden its review to other receiverships in the asbestos docket.

b. National Union's amicus brief goes beyond the issues raised by the parties.

⁶ If the Court wishes to consider National Union's arguments related to receiverships within the asbestos docket as a whole, attached is a chart discussing South Carolina receiverships in the asbestos docket, including the number of South Carolina claims filed, settlements, dismissals, South Carolina presence of each company, and the identity of insurance approved defense counsel.

In addition to attempting to expand this Court’s review to a different receivership, National Union raises issues related to the Cape receivership that were not raised by the parties on appeal. Pursuant to Rule 213 of the South Carolina Appellate Court Rules, a brief of an amicus curiae “shall be limited to argument of the issues on appeal as presented by the parties.” In its amicus brief, National Union argues the Cape receivership is a broad receivership appointment under Title 33 instead of a limited receivership appointment under Title 15. (Am. Br. pp. 7–12.) Appellants did not argue Title 33 in their principal briefs. Instead, the Altrad Appellants attempted to insert Title 33 arguments in their reply brief for the first time on appeal, and both the Altrad Appellants and the Charter Appellants attempted to insert Title 33 arguments into their responses to an amicus brief filed by various law firms. Attempting to assert new issues and arguments in reply and amicus briefing is improper.

II. The Cape receivership is an appropriate Title 15 receivership consistent with South Carolina law.

As affirmed by this Court in *Welch*, the circuit court does not abuse its discretion in appointing a prejudgment receiver pursuant to section 15-65-10(5) of the South Carolina Code where an entity (foreign or domestic) has engaged in moral fraud. The moral fraud committed by Cape is far beyond what this Court found to be sufficient in *Welch* and supports the appointment of the receiver in *Park* and the confirmation of his authority in *Tibbs*. Further, as discussed in the Receiver’s brief, the circuit court properly appointed a receiver prejudgment under section 15-65-10(4) of the South Carolina Code.

The Receiver is not acting as a general receiver or custodian for the company under Title 33. Section 33-14-320 of the South Carolina Code sets forth the parameters of a receiver or custodian’s responsibilities in the context of receivership in which a defunct company’s entire corpus of assets may be managed under receivership or custodianship for the purpose of

dissolution. Because a Title 33 receivership or custodianship is over the whole company, and because it is winding up, the statute grants the receiver or custodian broad powers to “dispose of all or any part of the assets of the corporation,” “sue and defend in his own name as receiver of the corporation, or, as a custodian, “exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.” S.C. Code Ann. § 33-14-320(c)(2). Here, the Receiver has not been appointed as a general receiver or a custodian over Cape. He is not running the company. He is not winding up or managing the business or affairs of the company. Here, there remain assets of the company that are outside the purview of the South Carolina receivership, and the company is ongoing.

Contrary to National Union’s arguments, the Receiver is not managing boardroom decisions or the internal affairs of the company in receivership. “Boardroom activities” and “internal affairs” are terms of art, which include very specific, discrete actions that may only be taken by a corporation.

The internal affairs doctrine is a conflict of laws principle which recognizes that only one State should have the authority to regulate a corporation’s internal affairs—matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders—because otherwise a corporation could be faced with conflicting demands.

Edgar v. Mite, 457 U.S. 624 (1982). “It is essential to distinguish between acts which can be performed by both corporations and individuals, and those activities which are peculiar to the corporate entity.” *McDermott Inc. v. Lewis*, 531 A.2d 206, 214 (Del. 1987). As explained by the California Court of Appeal for the Fourth District,

Matters falling within the scope of the [internal affairs doctrine] . . . include steps taken in the course of the original incorporation, the election or appointment of directors and officers, the adoption of by-laws, the issuance of corporate shares, preemptive rights, the holding of directors’ and shareholders’ meetings, methods of

voting including any requirement for cumulative voting, shareholders' rights to examine corporate records, charter and by-law amendments, mergers, consolidations and reorganizations and the reclassification of shares.

Colaco v. Cavotec SA, 25 Cal.App.5th 1172, 1189 (Cal. App. 4 Dist. 2018). This Court in *Welch* recognized that a similar receivership order over Atlas Turner did not “give the Receiver entry into the Atlas Turner boardroom or some vague right to ‘take over’ operation of the company.” *Welch*, 445 S.C. at 667, 916 S.E.2d at 335.⁷ The Cape receivership order does not interfere with the company’s boardroom. 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.

Instead, the Receiver has been appointed to marshal specific intangible assets located within South Carolina in accordance with *Welch* that may be responsive to South Carolina asbestos personal injury cases, including the *Park* case and the *Tibbs* case. (R. p. 47.)⁸ The Receiver was appointed to investigate and marshal this narrow set of assets—namely insurance coverage and choses in action required to pursue available assets that could be responsive to South Carolina asbestos claims like those asserted by the *Park* or *Tibbs* plaintiffs. (R. p. 47.) The indivisible nature of the assets the circuit court appointed the Receiver to marshal requires the Receiver to act

⁷ The Altrad Appellants misconstrue this line in the *Welch* decision as a reversal of the Atlas Turner receivership order. See Altrad Resp. to Law Firms Am. Br. at 2 (“This Court emphasized this limitation when it **reversed** the circuit court on **this exact point**. See *Welch*, 445 S.C. at 666–67, 916 S.E.2d at 334–35 (holding an appointment may not give a receiver “boardroom” access, or “some vague right to ‘take over’ operation of the company,” or control over the entirety of the defendant’s assets).). This is not true. It was not a point of reversal. This statement in the *Welch* decision is a confirmation that the Atlas Turner receivership order did not grant the Atlas Receiver entry into the boardroom, as argued by Atlas Turner. The Court rejected Atlas Turner’s arguments, finding the order “does not” grant the receiver entry into the boardroom.

⁸ Already, the Receiver has been able to successfully marshal assets for asbestos claims in South Carolina through settlements with litigants who, unlike Appellants, complied with court orders and discovery obligations and participated in the litigation pursuant to South Carolina’s governing rules, precedent, and statutes.

outside of the *Park* case to protect those assets, necessitating the power to accept service of South Carolina complaints related to asbestos personal injury cases and prevent future cases from unfairly eroding the corpus of assets under receivership. *See Palmer v. State of Texas*, 212 U.S. 118, 125 (1909) (“If a court of competent jurisdiction, Federal or state, has taken possession of property, or by its procedure has obtained jurisdiction over the same, such property is withdrawn from the jurisdiction of the courts of the other authority as effectually as if the property had been entirely removed to the territory of another sovereignty.”) Here, the receiver was appointed over specific property and claims within South Carolina in accordance with Title 15, not over the company generally under Title 33.

Defending and initiating litigation are not activities that are unique to a corporation, and the ability of a receiver to initiate or defend actions in the name of the company in receivership is consistent with and contemplated by South Carolina law. Pursuant to Rule 66(a) of the South Carolina Rules of Civil Procedure, “an action in which a receiver has been appointed *shall not be dismissed* except by order of a court.” Thus, the appointment case may not be closed or ended while a receivership order is in place unless the receivership court approves. Once the initial appointment case has been resolved, the receivership may continue if indivisible assets have been marshaled and other claims exist which impact those assets, or the receiver, with oversight and direction by the circuit court, can work towards relinquishing the assets and closing the receivership.

Contrary to National Union’s arguments, the *Welch* decision did not find the Receiver’s authority was limited to only the cause involving a plaintiff who has sought his appointment. (Am. Br. p. 11.) Instead, the *Welch* decision found the assets that were to be marshaled by the Atlas Turner receivership—insurance policies—must be potentially responsive to Mr. Welch’s injuries.

Welch, 445 S.C. at 667, 445 S.E.2d at 334 (“We find equity only allows insurance policies that have the potential to cover Mr. Welch’s injuries to be included in this definition[.]”). Thus, if an insurance policy does not have the potential to respond to the South Carolina plaintiff’s injury, it was not appropriate to be marshalled in the South Carolina receivership. However, because an insurance policy is not divisible, the entire asset must be marshalled under the receivership, and the receiver has the authority to act in other cases that could impact those assets.

Further, Rule 66(b) of the South Carolina Rules of Civil Procedure provides:

every receiver of the property and effects of a debtor shall, unless restricted by order of the court, have general power and authority to sue for and collect the debts, demands and rents belonging to the debtor, and to compromise and settle such as are of a doubtful value[, and] sue and defend in the name of the debtor where it is necessary or proper for him to do so.

Rule 66 clearly allows a receiver to do exactly what the Receiver has done here.⁹ In fact, the circuit court has confirmed that the Receiver’s actions have been taken within the scope of the appointment order. (R. p. 48.)

National Union’s reliance on the word “debtor” to argue against the applicability of Rule 66 is misplaced. The *Welch* Court considered similar arguments. In *Tibbs*—which was

⁹ *Protopapas v. Travelers* also involved an action where the Receiver initiated a suit against third parties which were alleged to have assets responsive to the Receiver. 446 S.C. 39, 916 S.E.2d 844 (2025). In a recent opinion involving the Covil receivership, this Court affirmed the circuit court’s grant of summary judgment to a receiver over “a South Carolina corporation that has been defunct since the early 1990s” in a coverage dispute with an insurer. *Covil Corp. v. Pa. Nat’l Mut. Cas. Ins. Co.*, 444 S.C. 117, 906 S.E.2d 558 (2024). This opinion contradicts National Union’s arguments and reiterates that a receiver may tender suits, initiate litigation, access responsive policies, and act in place of a defunct entity in receivership. Similarly, this Court denied certiorari in another coverage case brought by the Covil receiver over an insurer, United States Fidelity & Guaranty Company. *See Covil v. U.S. Fid. & Guar. Co.*, S.C. Sup. Ct. Order dated Feb. 12, 2025 (Appellate Case No. 2024-000623). Affirming summary judgment, the Court of Appeals recognized “the Receiver clearly has an interest in determining whether Covil is subject to future claims as it seeks to fulfill” its duties because “Covil’s potential future liability and proper available defenses relates concretely to the management of Covil’s assets.” *Protopapas v. Wall, Templeton & Haldrup, P.A. et al.*, 442 S.C. 217, 226–27, 898 S.E.2d 150, 155 (Ct. App. 2023).

consolidated with *Welch* for the purpose of oral argument—, amici curiae argued that the moral fraud standard set forth in *Virginia-Carolina Chemical Company v. Hunter*¹⁰ did not support the appointment of a receiver because the entities were not “debtors” as no judgment had been entered against the entities. *See* Lloyds’ Amici Brief at 12, *Tibbs*, Appellate Case No. 2023-001461; *see also* Oral Argument, *Welch*, Appellate Case No. 2023-001096. The Court did not agree that Atlas Turner was not a “debtor.” Instead, it affirmed the appointment of a receiver over Atlas pursuant to the *Virginia-Carolina Chemical* standard. Further, pursuant to South Carolina law “the term ‘creditor’ has been held sufficiently comprehensive to include those holding claims arising out of tort. *Moultis v. Degen*, 279 S.C. 1, 6, 301 S.E.2d 554, 557 (1983). Rule 66(b) is clearly applicable here and contemplates receivers¹¹ bringing and defending suits in furtherance of their duties, unless restricted by order of the receivership court.

It is not true that the Cape appointment order and confirmation order do not specify whether the Receiver has been appointed over property within South Carolina. (Am. Br. p. 13.) The circuit court orders are clear that the property in receivership is property in South Carolina. In the October 13, 2025 confirmation order, the circuit court states: “The Court limits the authority of the Receiver to administer the assets of Cape responsive to asbestos personal injury claims properly brought in South Carolina, as is appropriate given Cape’s moral fraud in making the conscious decision not to participate in asbestos personal injury litigation in South Carolina despite having made direct

¹⁰ 84 S.C. 214, 66 S.E.2d 177 (1909) (“[W]hen 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—then a court of equity will grant any relief within its jurisdiction appropriate and effective to protect creditors against the fraud without requiring the creditor to run the risk of losing his debt from the delay of obtaining judgment and a return of nulla bona on the execution.”).

¹¹ There is no limitation in Rule 66 to so-called “general receivers,” as National Union suggests. (Am. Br. p. 12.) Instead, Rule 66 clearly states it applies to “every receiver.” Rule 66(b), SCRCF.

sales of asbestos fiber into South Carolina.” (R. p. 47.) As confirmed in *Welch*, insurance policies and other intangible assets that may be responsive to claims in South Carolina are appropriate property within this state for inclusion in a receivership. *Welch*, 445 S.C. at 666, 916 S.E.2d at 334 (“We hold any Insurance Assets owned by Atlas Turner that may cover Mr. Welch's injuries are properly within the Receivership estate, meaning those Insurance Assets are within South Carolina's exclusive jurisdiction. Further, it is well established that a Receiver has the right and duty to collect and accumulate the property and assets of the defendant specified in the appointment order, including its rights and claims.” (internal citations omitted)). National Union’s argument that insurance “policies would not be ‘property within this State’ over which a receiver could be appointed” was flatly rejected by, and is in direct contradiction to the holding in, *Welch*. (Am. Br. at 13.) In an effort to prevent its insurance policies from responding to the types of lawsuits that they were designed to insure, National Union urges this Court to adopt a restrictive interpretation of the applicable law that would eviscerate the purpose of the receivership statute and effectively overturn the decision the Court issued less than a year ago in *Welch*.

As to National Union’s bond argument, it is an argument that must be raised by Cape itself, not National Union as a complete stranger to this case. *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’ or National Union’s property. 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.”).¹² 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.

The *Vasiliades* case is inapplicable here. In *Vasiliades*, the circuit court appointed a receiver over property related to the estate of Alexander Achilles Vasiliades and set a bond in an amount of \$4,000. *Vasiliades v. Vasiliades*, 231 S.C. 366, 370, 98 S.E.2d 810, 812 (1957). “Achilles W. Vasiliades filed bond for \$4000, as permitted by order of November 2, 1951, in lieu of surrendering to the receiver property of the decedent in his hands.” *Id.* The Receiver did not “actually obtain possession of any property” due to the payment of the bond. *Id.* at 816. Achilles W. Vasiliades was the acting as the *administrator de son tort* of the estate of Alexander Achilles Vasiliades, the entity in receivership. *Id.* *Vasiliades* does not stand for the proposition that a third-party may collaterally attack a receivership order for failure to set a bond. Instead, that case finds that if the order of appointment allows a party to pay a bond and that party pays the bond then the receivership may be avoided entirely. National Union’s reliance on *Vasiliades* is immaterial because no other entity here has requested the ability to post a bond in lieu of surrendering receiver property. This is unsurprising because doing so would require the entity that has refused to appear in US courts for almost half a century to do just that – appear.

CONCLUSUION

For the foregoing reasons and those included in the Receiver’s brief, the Court should reject National Union’s attempt to have this Court make sweeping advisory pronouncements on other

¹² The *Welch* appointment order did not set a bond. See *Welch* R. 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. Like Cape here, Atlas has not done so.

receivership appointments within the asbestos docket, uphold the circuit court's October 13, 2025 order, and confirm the Cape receivership is consistent with South Carolina law.

Respectfully submitted,

By: /s/ Jonathan M. Robinson

Jonathan M. Robinson
SMITH ROBINSON, LLC
3200 Devine Street
Columbia, SC 29205
803-254-5445
jon.robinson@smithrobinsonlaw.com

John T. Lay, Jr., SC Bar No. 64526
Lindsay A. Joyner, SC Bar No. 77437
Olesya V. Bracey, SC Bar No. 101409
Eleanor L. Jones, SC Bar No. 104678
GALLIVAN, WHITE & BOYD, P.A.
1201 Main Street, Suite 1200
PO Box 7368 (29202)
Columbia, SC 29201
jlay@gwblawfirm.com
gculbreath@gwblawfirm.com
ljoyner@gwblawfirm.com
ejones@gwblawfirm.com
(803) 779-1833

Lauren McCulloch Semlinger
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002
lauren.semlinger@morganlewis.com
(713) 890-5467

Paul A. Scrudato
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
paul.scrudato@morganlewis.com
(212) 309-6000

***Attorneys for Respondent Cape PLC, individually
and as successor in interest to Cape Asbestos
Company Limited, n/k/a Cape Intermediate***

*Holdings Ltd. by and through its duly appointed
Receiver Peter D. Protopapas*

February 13, 2026

There have been 1,501 South Carolina claims filed against the companies in receivership listed below, of which 436 have settled, 479 have been dismissed, and \$104,505,784.00 has been paid to asbestos related cancer victims to settle these claims.

Receivership¹	South Carolina Presence	Amount in Settlements to verified SC claims as of Feb. 10, 2026²	Insurance Approved Defense Counsel Who Work With The Receiver
Beaty Investments, Inc. f/k/a Guy M. Beaty & Co., Inc.	Registered to do business in South Carolina on Sept. 17, 1963 Office location in Travelers Rest, S.C. Alleged or Confirmed jobsites in South Carolina, including but not limited to: 3M Plant – Greenville, SC; Abney Mills – including but not limited to Greenville/Anderson/Greenwood Alice Manufacturing – Easley, SC (multiple Plants); Allied Chemical – Irmo, SC; Hoescht Celanese – Rock Hill/Spartanburg/Greer;	\$21,760,000.00	Ellis & Winters, LLP

¹ Not included are: (1) Atlas Turner, Inc. f/k/a Atas Asbestos Company, Ltd., (2) Asbestos Corporation Ltd., and (3) Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings, Ltd.

² Figures provided by listed defense counsel. In some instances, these figures do not account for pending settlements.

Receivership ¹	South Carolina Presence	Amount in Settlements to verified SC claims as of Feb. 10, 2026 ²	Insurance Approved Defense Counsel Who Work With The Receiver
Beaty Investments, Inc. f/k/a Guy M. Beaty & Co., Inc. (cont.)	<p>Bishopville Finishing Co. – Bishopville, SC;</p> <p>Buffalo Mills – Union (Buffalo), SC</p> <p>Bowater – Catawba, SC;</p> <p>DuPont – throughout SC, including but not limited to Aiken/Greenville/Lugoff/Dunbarton/Camden;</p> <p>J.P. Stevens – throughout the state, including but not limited to Anderson/Clemson/Greenville/Greer/Rock Hill;</p> <p>Kendall Company – including but not limited to Bethune/Pelzer/Edgefield;</p> <p>McCormick Mills – McCormick and Spartanburg;</p> <p>Milliken – Inman/McCormick/Spartanburg;</p> <p>Mills Mill – Greenville/Woodruff</p> <p>Monarch Mills – Union, SC;</p> <p>Springs Cotton Mill – including but not limited to</p>		

Receivership ¹	South Carolina Presence	Amount in Settlements to verified SC claims as of Feb. 10, 2026 ²	Insurance Approved Defense Counsel Who Work With The Receiver
	<p>York/Chester/Fort Lawn/Fort Mill/Lancaster/Kershaw;</p> <p>Carolina Light & Power – all locations throughout South Carolina</p> <p>Cryovac – Simpsonville, SC</p>		
Covil Corporation	Domestic South Carolina Corporation	\$37,848,945.00	Ellis & Winters, LLP
Davis Mechanical Contractors, Inc.	Domestic South Carolina Corporation	\$6,980,000.00	Pierce, Sloan, Kenndy & Early, LLC
Flame Refractories Inc.	<p>Registered to do business in South Carolina on July 24, 1974</p> <p>Alleged or Confirmed jobsites in South Carolina, including but not limited to:</p> <p>Hoescht Celanese – Rock Hill, SC;</p>	\$1,935,000.00	Pierce, Sloan, Kenndy & Early, LLC

Receivership ¹	South Carolina Presence	Amount in Settlements to verified SC claims as of Feb. 10, 2026 ²	Insurance Approved Defense Counsel Who Work With The Receiver
United Construction Co. of Rome, Inc.	<p>Santee Cooper (Jeffries Generating Station) – Moncks Corner, SC;</p> <p>Bowater – Catawba, SC;</p> <p>WestVaCo – Charleston, SC;</p> <p>Duke Power – Pelzer, SC</p> <p>SCE&G – Canadys (Conway) / Columbia</p> <p>Stone Container – Florence, SC</p>		
<p>General Boiler Casing Company, Inc.</p> <p>General Boiler (cont.)</p>	<p>Registered to do business in South Carolina on March 10, 1965</p> <p>Alleged or Confirmed jobsites in South Carolina, including but not limited to:</p> <p>Carolina Light & Power – Hartsville, SC;</p> <p>Duke – Robinson Plant – Hartsville, SC</p> <p>Santee Cooper – Grainger Generating Plant – Conway, SC</p>	\$830,000.00	Maynard Nexsen PC
	Registered to do business in South Carolina on July 21, 1977		

Receivership ¹	South Carolina Presence	Amount in Settlements to verified SC claims as of Feb. 10, 2026 ²	Insurance Approved Defense Counsel Who Work With The Receiver
Great Barrier Insulation, Co.	<p>Alleged or Confirmed jobsites in South Carolina, including but not limited to:</p> <p>Celanese – Greenville / Rock Hill;</p> <p>Monsanto – Greenwood, SC;</p> <p>Southern Insulation, Inc. – sold insulation to Southern, a South Carolina Corporation;</p> <p>DuPont – Dunbarton, SC;</p> <p>Davis Mechanical – sold insulation to Davis, a South Carolina Corporation;</p> <p>Yeargin Construction – sold insulation materials to Yeargin, a South Carolina Corporation;</p> <p>Allied Chemicals – Columbia, SC;</p> <p>Duke Power – General – all locations in SC;</p> <p>Carolina Eastman – Columbia, SC;</p> <p>SCE&G – Beech Island, SC;</p>	\$5,880,000.00	Pierce, Sloan, Kenndy & Early, LLC

Receivership ¹	South Carolina Presence	Amount in Settlements to verified SC claims as of Feb. 10, 2026 ²	Insurance Approved Defense Counsel Who Work With The Receiver
Great Barrier Insulation, Co. (Cont.)	Santee Cooper – Georgetown, SC		
Heat & Frost Insulation Company, Inc. ³	Registered to do business in South Carolina on Jan. 24, 1989 Office Location in Rock Hill, S.C. at Celanese Corp. Alleged or Confirmed jobsites in South Carolina, including but not limited to: Bowater – Catawba, SC; Springs Mills – Fort Mill / Lancaster / Walhalla; Grace Bleachery - Walhalla, SC; Hoescht Celanese – Rock Hill / Spartanburg; BASF – Rock Hill, SC Essex Wire – Chester, SC Fort Jackson – Columbia, SC Georgia Pacific – Dillon, SC	\$4,287,500.00	Parker Poe Adams & Bernstein LLP

³ The Heat & Frost receivership is in the process of winding up.

Receivership ¹	South Carolina Presence	Amount in Settlements to verified SC claims as of Feb. 10, 2026 ²	Insurance Approved Defense Counsel Who Work With The Receiver
	Kendall Company – Bethune, SC		
HEFCO, Inc.	Domestic South Carolina Corporation	No Settlements	Burr & Forman
J&L Insulation, Inc.	<p>Alleged or Confirmed jobsites in South Carolina, including but not limited to:</p> <p>Cryovac – Greenville, SC</p> <p>Daniel Building – Greenville, SC</p>	\$50,000.00	Cosmich Simmons & Brown PLLC
J.R. Deans Company, Inc.	<p>Domestic South Carolina Corporation</p> <p>*The J.R. Deans Receivership is closed*</p>	\$680,839.00	Pierce, Sloan, Kenndy & Early, LLC
Payne & Keller	<p>Registered to do business in South Carolina on July 17, 1967</p> <p>Alleged or Confirmed jobsites in South Carolina, including but not limited to:</p> <p>3M Plant – Laurnes, SC;</p>	\$1,025,000.00	Nelson Mullins Riley & Scarborough LLP

Receivership ¹	South Carolina Presence	Amount in Settlements to verified SC claims as of Feb. 10, 2026 ²	Insurance Approved Defense Counsel Who Work With The Receiver
Payne & Keller (cont.)	<p>Alice Manufacturing – Easley, SC;</p> <p>Allendale Mill – Allendale, SC;</p> <p>AT&T Plant – Greenville, SC;</p> <p>Bowater – Catawba, SC</p> <p>Buffalo Mill – Buffalo, SC</p> <p>Greenwood Mills – Greenwood, SC;</p> <p>Hoescht Celanese - Greer / Spartanburg</p> <p>JP Stevens – Greenville, SC;</p>		(national coordinating counsel)
Piedmont Insulation, Inc.	<p>Registered to do business in South Carolina on Jan. 17, 1973</p> <p>Alleged or Confirmed jobsites in South Carolina, including but not limited to:</p> <p>Bowater – Catawba, SC;</p> <p>Westinghouse – Greenwood, SC;</p>	\$3,267,500.00	Maynard Nexsen PC

Receivership ¹	South Carolina Presence	Amount in Settlements to verified SC claims as of Feb. 10, 2026 ²	Insurance Approved Defense Counsel Who Work With The Receiver
	<p>Guy M. Beaty – sold insulation materials to Guy M. Beaty that worked throughout SC;</p> <p>Fiber Industries – Darlington, SC;</p> <p>Hoescht Celanese – Spartanburg, SC;</p>		
Presnell Insulation Co., Inc.	<p>Alleged or Confirmed jobsites in South Carolina, including but not limited to:</p> <p>Supplied materials to Covil;</p> <p>Bowater – Catawba, SC;</p>	\$430,000.00	Nelson Mullins Riley & Scarborough LLP and Cosmich Simmons & Brown PLLC jointly
Southern Insulation, Inc. ⁴	Domestic South Carolina Corporation	\$641,000.00	Pierce, Sloan, Kenndy & Early, LLC
Stafford Insulation Company	Domestic South Carolina Corporation	\$1,300,000.00	Burr & Forman
	Registered to do business in South Carolina on April 10, 1981		

⁴ The Southern Insulation receivership is in the process of winding up.

Receivership ¹	South Carolina Presence	Amount in Settlements to verified SC claims as of Feb. 10, 2026 ²	Insurance Approved Defense Counsel Who Work With The Receiver
<p data-bbox="131 663 448 737">Starr Davis Company of S.C., Inc.</p> <p data-bbox="131 1003 472 1035">Starr Davis Company, Inc.</p>	<p data-bbox="500 663 829 737">Domestic South Carolina Corporation</p> <p data-bbox="500 1003 927 1077">Registered to do business in South Carolina on Sept. 12, 1963</p>	<p data-bbox="954 789 1154 821">\$21,215,000.00</p>	<p data-bbox="1214 789 1438 905">Pierce, Sloan, Kennedy & Early, LLC</p>
<p data-bbox="131 1304 448 1377">Wind Up, Ltd. f/k/a Pipe & Boiler Insulation, Inc.</p>	<p data-bbox="500 1304 829 1377">Domestic South Carolina Corporation</p>	<p data-bbox="954 1304 1138 1335">\$3,080,000.00</p>	<p data-bbox="1214 1304 1446 1419">Nelson Mullins Riley & Scarborough LLP</p>