

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Feb 17 2026

S.C. SUPREME COURT

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

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

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

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

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**CHARTER APPELLANTS’<sup>1</sup> RESPONSE TO NEW-INDY  
CONTAINERBOARD LLC’S AMICUS BRIEF**

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

**ATTORNEYS FOR CHARTER APPELLANTS  
CORPORATION LTD.**

February 17, 2026

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

Charter Appellants respectfully submit this response to the *Amicus Curiae* Brief of New-Indy Containerboard LLC (the “New-Indy Amicus Brief”).<sup>2</sup> Because the arguments made by New-Indy are duplicative of arguments previously made by Respondent and the Tibbs Plaintiffs, Charter Appellants reply in summary fashion herein and refer the Court to the previous arguments they submitted in prior briefs.<sup>3</sup>

*New-Indy’s preclusion arguments fail.*

New-Indy’s amicus brief incorrectly urges this Court to disregard the *Adams*<sup>4</sup> decision—a final adjudication that United States courts lack personal jurisdiction over Cape Intermediate Holding Ltd. (“CIHL”), that CIHL has no contacts with the United States (or South Carolina), and that CIHL has no property or assets in the United States. In doing so, New-Indy misunderstands the scope and purpose of the appointment of a prejudgment receiver. A prejudgment receiver’s sole purpose is to hold and preserve (until judgment in the underlying specific case) specifically identified property: 1) of a defendant in the specific case, 2) that has been identified and valued in the appointment order issued in the specific case, 3) that, for a foreign corporation, is located in South Carolina, and 4) that the plaintiff in the specific case has demonstrated either a) he has a right to, is the subject of the underlying case, and is in danger of being lost, or b) is in danger of being lost because of fraudulent activity by the defendant in the underlying case.<sup>5</sup> A prejudgment

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

<sup>3</sup> Charter Appellants have addressed New-Indy’s contentions in detail in their opening and reply briefs and incorporate those arguments here by reference. Furthermore, Charter Appellants have fully addressed South Carolina’s historical practices with respect to receiverships in their Response to Plaintiffs’ Law Firms’ Amicus Brief, dated February 9, 2026, which is also incorporated herein. *See* Rule 208(b)(6), SCACR. Nothing in New-Indy’s submission alters the analysis or provides a basis to depart from the conclusions previously explained.

<sup>4</sup> *Adams v. Cape Indus. Plc* [1990] 1 Ch. 433 (“*Adams*”).

<sup>5</sup> *See* Charter Appellants Response to Plaintiffs’ Law Firms’ Amicus Brief, dated February 9, 2026.

receiver's actions are limited to the case in which he was appointed, and he has no authority to sue in the name of the entity whose property he is holding.

Even if a South Carolina Court could appoint a receiver over a foreign corporation (as opposed to placing identified South Carolina property of the foreign corporation in the hands of a receiver)—which it could not because it would violate the United States Constitution and longstanding South Carolina law—that receiver (just like all receivers) would be limited to asserting only the rights that entity possessed, subject to the same defenses, limitations, and prior adjudications.<sup>6</sup> Here, that prevents the Receiver from re-litigating the factual determinations that Cape previously litigated to judgment in *Adams* or asserting claims inconsistent with those determinations. In other words, if CIHL itself would be precluded from asserting a legal claim, the Receiver certainly cannot do so by asserting claims in CIHL's name.<sup>7</sup>

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<sup>6</sup> See *Van Metre Holding Co. v. Dixon*, 23 F. Supp. 315, 316 (E.D.S.C. 1938) (with respect to a receiver appointed over a closed bank, court held that “the receiver steps into the shoes of the [underlying company] and takes its assets subject to all claims and defenses that might have been interposed as against the [underlying company]”); *Davis v. Brown*, 94 U.S. 423 (1876) (after a bank failed and a receiver was appointed, the court held that “[t]he receiver has, with reference to the notes, no greater right than the bank has: he stands in its shoes. If the bank could not have enforced a liability upon the defendants against its agreement that they should not be held liable, the receiver cannot enforce it.”); *Deitrick v. Standard Sur. & Cas. Co. of N.Y.*, 303 U.S. 471 (1938) (with respect to a receiver appointed over an insolvent bank to take “charge of its affairs,” court adhered to the doctrine that a receiver “stands no better than the” company in receivership, such that if the company in receivership could not have sued, neither could the receiver).

<sup>7</sup> See *Atlas Turner, Inc. v. Welch*, No. 25-213, 2026 WL 79875 (U.S.S.C. Jan. 12, 2026) (“the Receiver stands in the corporation's shoes”); see also *Feinstein v. Long*, No. 11-C-57, 2011 WL 5588811 (E.D. Wis. Nov. 16, 2011) (after pre-judgment receiver appointed to manage the business affairs of defendants pending litigation regarding defendants' purported securities law violations, court held that “a receiver stands in the shoes of the debtor and may bring only those claims that the debtor himself could have brought”); *Javitch v. First Union Sec., Inc.*, 315 F.3d 619, 625 (6th Cir. 2003) (with respect to a prejudgment receiver appointed to take charge of assets and, where appropriate, sell those assets for distribution to creditors, the court found that the “general rule is that a receiver acquires no greater rights in property than the debtor had . . . [and b]ecause they stand in the shoes of the entity in receivership, receivers have been found to lack standing to bring suit unless the receivership entity could have brought the same action”); *White v. Ewing*, 159 U.S. 36, 39 (1895) (after receiver was appointed over an insolvent company and ordered to take

New-Indy’s arguments concerning comity, collateral estoppel, and res judicata ignore the limitations of a prejudgment receiver and also rest largely on reframing the prior proceedings and the Receiver’s role rather than on governing law. The appointment of a prejudgment receiver does not allow the receiver to make boardroom decisions for the entity or alter its jurisdictional contacts and defenses.

New-Indy’s amicus brief attempts to minimize the significance of the *Adams* decisions by recasting them as narrow “foreign judgment enforcement” decisions that have no bearing on South Carolina law. That characterization is inaccurate. *Adams* was not a peripheral procedural ruling. It was a fully litigated adjudication where CIHL (a UK entity) argued and prevailed on issues of corporate structure, operational control and separateness of Cape and NAAC—the same structural questions the Receiver now seeks to relitigate in South Carolina.

*New-Indy Merely Rehashes The Receiver’s Failed Personal Jurisdiction Waiver Arguments.*

Nothing in New-Indy’s amicus brief alters the analysis that the Charter Appellants did not waive personal jurisdiction. To the contrary, the amicus brief advances the exact same arguments previously made by the Receiver and the Tibbs Plaintiffs—arguments the Charter Appellants have already addressed fully and incorporate herein by reference. Indeed, New-Indy solely relies on *Smalls v. Weed*<sup>8</sup> to argue that Charter Appellants waived personal jurisdiction; however, the *Smalls* decision reflects nothing more than the unremarkable proposition that a party may waive a personal

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possession of the company’s assets for the benefit of the creditors, the court reiterated that where a receiver attempts to bring a claim to recover assets allegedly owed to the insolvent company, “the receiver stands in the shoes of the company, and has no higher rights than the corporation”).

<sup>8</sup> 291 S.C. 258, 260-62, 353 S.E.2d 154, 156 (Ct. App. 1987).

jurisdiction objection by seeking dispositive relief on the merits before obtaining a ruling on the threshold jurisdiction issue.<sup>9</sup> This scenario is the exact opposite of what happened here.

From the outset of the Tibbs case (after the purported receiver for CIHL, an entity that is not a named defendant in Tibbs, improperly filed a “third-party complaint” against Charter Appellants), Charter Appellants consistently and expressly maintained that the court lacked personal jurisdiction over them and requested that no merits issues be decided unless and until that threshold question was resolved.<sup>10</sup> Indeed, during oral arguments on the motion to dismiss for lack of personal jurisdiction in October 2023, both the court and the Receiver expressly acknowledged in open court that Appellants’ arguments in the alternative to their personal jurisdiction arguments would not constitute a waiver of personal jurisdiction.<sup>11</sup> After the court denied the motion to dismiss for lack of personal jurisdiction, every filing, argument, and procedural step taken by Charter Appellants was undertaken on the express condition—repeated throughout the proceedings— that Charter Appellants preserved and did not waive their defense of lack of personal jurisdiction (which issue, along with the issue of the appointment of the Receiver, was also on appeal and which divested the circuit court of subject matter jurisdiction—the appeal that

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<sup>9</sup> *Id.*; see also *Abdulla v. S. Bank*, 439 S.C. 391, 405, 887 S.E.2d 138, 145 (Ct. App. 2023) (holding no waiver existed when defendant “stated in its answer the facts and allegations pertinent to its lack of personal jurisdiction defense and timely brought the issue before the circuit court by filing a motion to dismiss after raising the defense.”).

<sup>10</sup> See, e.g., (R. p. 412) (By filing this motion, [Appellants] do not waive, but instead specifically preserve, their objection to personal jurisdiction in South Carolina . . . specifically request that the Court rule on their motions to dismiss for lack of personal jurisdiction *before* addressing any of the arguments raised in the present motion to dissolve the receivership, all of which are asserted in the *strict alternative* to [Appellants’] personal jurisdiction objections.) (emphasis added).

<sup>11</sup> See (R. p. 0986) (both the circuit court and the Receiver expressly agreed that there would be no waiver of personal jurisdiction “by any presentations made today by defendants”); (R. p. 0990) (“If you join the dissolution, you will not waive any rights.”).

resulted in the June 26 Order).<sup>12</sup> A defendant cannot be forced to choose between abandoning its jurisdictional objection and forfeiting the ability to defend itself if that objection is rejected.<sup>13</sup>

Because Charter Appellants never invoked the circuit court’s authority except under protest and after an adverse ruling on personal jurisdiction, and because the record reflects a continuous and explicit reservation of rights, personal jurisdiction was not and cannot be waived.

*The October 13 Order Does Not Comply With This Court’s Directives.*

New-Indy’s arguments that the October 13 Order complies with the Court’s directives are likewise defective. Indeed, the October 13 Order does not fulfill *any* of the three mandated tasks set forth in the June 26 Order, instead improperly transplanting an already-void receiver appointment from *Park* to *Tibbs* based on a recitation of inadmissible hearsay rather than the case-

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<sup>12</sup> See, e.g., (R. pp. 362, n.1); (R. p. 379, n.1); (R. p. 396, n.1); (R. p. 807); (R. p. 813); (R. p. 819); (R. 0986, lines 9:8 –16); (R. p. 1712, n.1).

<sup>13</sup> See *Williams v. Williams*, 436 S.C. 550, 559–60, 873 S.E.2d 785, 789–90 (Ct. App. 2022) (finding no consent to personal jurisdiction even though defendant litigated because he raised the jurisdictional objection “at his earliest opportunity and before he took any further action . . . [and] reasserted his objection at every stage of the proceeding, including in his answer and counterclaim”); *Williams*, 436 S.C. at 561, 873 S.E.2d at 791 (finding it was an error for the court to not have ruled on defendant’s personal jurisdiction motion first because it would have improperly placed the defendant “in the position of either not answering [plaintiff’s] complaint or potentially waiving his jurisdictional issue”); *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 781 (1993) (describing how a denial of a motion to dismiss for lack of personal jurisdiction is interlocutory because a defendant “may show that there is a lack of personal jurisdiction at trial”; in other words, once a motion to dismiss has been denied, a defendant can participate freely in the litigation even up through trial and still maintain the ability to assert a personal jurisdiction defense at trial); see also *Vermeer Mfg. Co. v. Aerocine Ventures Inc.*, No. 3:24-cv-00699, 2024 WL 5125134, at \*8 (M.D. Tenn. Dec. 16, 2024) (rejecting waiver where defendant’s personal jurisdiction arguments “precedes and predominates over its merits challenge” such that it was an “argument in the alternative and a request for relief in the alternative”); *Cruson v. Jackson Nat’l Life Ins. Co.*, 954 F.3d 240, 252–53 (5th Cir. 2020) (holding no waiver where defendant filed summary-judgment motion after jurisdictional objection had been preserved, emphasizing that contemporaneous litigation conduct reflected a continuing objection to personal jurisdiction); *Wausau Underwriters Ins. Co. v. State Auto Mut. Ins. Co.*, 557 F. Supp. 2d 502, 509–10 (D.N.J. 2008); *Brunson v. Capital Cmg, Inc.*, No. 3:20-cv-01056, 2021 WL 3081327, at \*2 (M.D. Tenn. July 21, 2021).

specific findings of fact required by *Welch*.

Although New-Indy argues otherwise, the October 13 Order does not comply with the June 26 Order or *Welch*. In the June 26 Order, this Court did not ask the circuit court to “confirm the receiver’s work is authorized within [*Tibbs*],” resulting in a “case-specific and record-supported” receivership.<sup>14</sup> It directed the circuit court in *Tibbs* to complete a very limited task: to determine whether there was a receiver appointment order entered in the *Tibbs* case that authorized the Receiver to conduct work. Because no party in *Tibbs* ever made a motion to appoint a prejudgment receiver with regard to any Cape entity in *Tibbs*, the answer to that question was NO – and the circuit court lacked jurisdiction to continue. Had the answer to the question been YES, then the June 26 Order required additional tasks: to ensure that the identified receiver appointment order issued in *Tibbs* was (a) based on findings of fact meeting *Welch*’s standards and (b) contained the appropriate limited receiver scope of authority as required by *Welch*. Lastly, the June 26 Order provided instructions on a new motion to appoint a receiver, and stated that to the extent a party in the case made a motion to appoint a prejudgment receiver and the circuit court wished to proceed with appointing a receiver in *Tibbs* whose mandate differs from the receiver’s mandate in *Welch*, the circuit court must make specific findings of fact and conclusions of law in the order of appointment that it believes justifies its actions.<sup>15</sup>

The circuit court did none of these things. Instead, it improperly transported the *Park* appointment order (which itself was defective) to *Tibbs*. *No party to the Tibbs case made a motion to appoint a receiver over any Cape entity*, and the court did not make the requisite findings of fact or limit the purported Receiver’s powers as required by *Welch*. Indeed, rather than follow this

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<sup>14</sup> New-Indy Amicus Brief, § IV, p. 11.

<sup>15</sup> (R. p. 1646, Section A); *see also* Charter Appellants’ Final Brief, pp. 9-11.

Court’s mandate requiring the circuit court to determine whether an appointment order existed in Tibbs that created a narrow, case-specific receiver appointment to preserve assets to potentially cover any ultimate judgment to the *Tibbs* plaintiffs, the October 13 Order empowers the purported Receiver (not appointed in Tibbs) to act for CIHL both in and outside of *Tibbs* and South Carolina, and control the defense of CIHL, waive all defenses (including jurisdictional ) of CIHL, admit massive wrongdoing and liabilities on CIHL’s behalf, and then create “legal claims” against Charter Appellants and others that CIHL itself has made clear it does not wish to assert.<sup>16</sup> This is not the preservation of a defined *res*, as New-Indy urges the Court believe. This is an explicit violation of this Court’s directives, South Carolina Law, and the United States Constitution—and must be reversed.

*Public Policy And Equity Arguments Cannot Override Well Established South Carolina Law And Constitutional Limits.*

Despite the above glaring deficiencies, New-Indy asks the Court to overlook the due process violations that have occurred and value hypothetical efficiency, economic stability, and taxpayer impact over the constitutional rights of Charter Appellants (and CIHL). But whether New-Indy thinks the purported CIHL receiver appointment would make litigation easier and cheaper has no bearing on the threshold inquiries here: did the circuit court follow this Court’s directives as stated in the June 26 Order, did the circuit court have jurisdiction to act, and did the circuit court issue a prejudgment receiver appointment order that complied with Title 15 and South Carolina law? The answer to each of these questions is no. As a result, the Court need not consider New-Indy’s opinion about the potential benefits of the purported CIHL receiver appointment, because no such valid appointment exists.

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<sup>16</sup> See also Charter Appellants’ Final Brief, pp.18-38; 40-42.

Indeed, New-Indy argues that “equity” requires the Court to rubber-stamp the purported Cape receivership to promote “efficient administration” of the asbestos docket, downplaying Charter Appellants’ arguments as to lack of jurisdiction and the circuit court’s failure to abide by the crystal-clear mandate from this Court as mere “rigid procedural objections.” But equity does not and can never prioritize efficiency over constitutional rights and due process. If there is no jurisdiction over CIHL or Charter Appellants – which there is not – and if the circuit court disobeyed *Welch*, the Court’s June 26 Order, and decades old South Carolina prejudgment receivership law (and statutes)– which it did – the Court’s inquiry should stop there. These are serious, significant deficiencies that cannot be ignored. Nevertheless, New-Indy asks the Court to simply look the other way and allow the circuit court, prior to judgment, to appoint a receiver “over” CIHL (an active UK corporation that is not a party to the Tibbs case and has no property in South Carolina) because New-Indy thinks it would make asbestos litigation easier and faster. This does not promote equity but rather flies in its face.

Moreover, although New-Indy tries to invoke *Welch*, *Welch* does not support its position. Instead, *Welch* requires a case-specific prejudgment receiver appointment order tied to a particular plaintiff’s claim for damages. It does not allow for the multi-jurisdictional, multi-plaintiff, all-powerful receiver charged with “administration across parties and jurisdictions” envisioned by New-Indy.<sup>17</sup>

New-Indy’s arguments as to “economic stability” likewise cannot override the result required by South Carolina receivership law, *Welch*, the June 26 Order, and principles of due process and jurisdiction. “Taxpayer impact” does not allow a South Carolina court to ignore 150 years of South Carolina statutory and judicial precedent in order to appoint a prejudgment receiver

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<sup>17</sup> New-Indy Amicus Brief, § V, p. 12.

“over” an active foreign entity not subject to jurisdiction in South Carolina, and empower him to take over the decision making role of the board of the foreign corporation, bring claims in that foreign corporation’s name (over its board’s protest) against other entities over whom there is no jurisdiction.

### CONCLUSION

New-Indy’s amicus brief provides no basis to depart from settled law governing prejudgment receiver appointment and authority. The Court should therefore reject the positions advanced by New-Indy and resolve the issues presented based on the governing legal principles as outlined in Charter Appellants prior briefs.

Respectfully submitted,

/s/ A. Victor Rawl, Jr.

A. Victor Rawl, Jr. (S.C. Bar No. 09261)

Email: vrawl@grsm.com

Gordon Rees Scully Mansukhani, LLP

677 King Street, Suite 450

Charleston, South Carolina 29403

Tel.: (843-714-2501)

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

Dated: February 17, 2026