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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.

APPELLANTS' JOINT RESPONSE TO MR. ASHMORE'S BRIEF

Respectfully submitted,

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TABLE OF AUTHORITIES

Cases

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RESPONSE TO MR. ASHMORE'S BRIEF

Mr. Ashmore's brief describes his excellent work as a federal receiver and notes the open field in which he is allowed to run when performing that work in the federal courts in conjunction with federal criminal prosecutions. His brief shines a bright spotlight on a point the Appellants have repeatedly argued and for which the putative Receiver has never had any answer:

South Carolina has no jurisdiction to authorize a receiver to exceed the boundaries of the State, including attempting to seize assets of, make litigation decisions on behalf of, and speak for an English company.

This limitation is a function of the U.S. Constitution: Due Process, the Commerce Clause, and the basics of federalism that form the structure of the "more perfect Union" among the states. *See, e.g., Carolina Trucks & Equip., Inc. v. Volvo Trucks of N. Am., Inc.*, 492 F.3d 484, 489–90 (4th Cir. 2007) ("The principle that state laws may not generally operate extraterritorially is one of constitutional magnitude. One state may not 'project its legislation' into another, as the Commerce Clause 'precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State.'").

This constitutional limitation on a state's jurisdictional reach has long been recognized in South Carolina:

- legislatively, *see, e.g.*, S.C. Code Ann. § 15-65-10(4) (authorizing a receivership only as to "property within this state" of a dissolved foreign business); *id.* § 33-1-400(4) (excluding "foreign corporations" from the definition of "corporation" for purposes of the South Carolina Business Corporation Act);
- by the federal courts, *see, e.g., Johnson v. Aeropure Acquisition, Inc.*, Case No. 2:23-cv-3898-BHH, 2024 U.S. Dist. LEXIS 125009, at *10 (D.S.C. July 16, 2024) ("In sum, the Court holds that the South Carolina attachment statute does not apply extraterritorially to out-of-state property or to an out-of-state bank account. This interpretation is consistent with the questions of due process and comity that might arise if this Court were to issue extraterritorial writs of attachment.");
- and by this Court, *see, e.g., Ex parte First Penn. Banking & Tr. Co.*, 247 S.C. 506, 508, 148 S.E.2d 373, 374 (1966) ("[T]he jurisdiction of a state is restricted to its own

territorial limits.”); *Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 293–94, 185 S.E. 731, 737 (1936) (holding that a circuit court was “without authority to appoint a Receiver” when there was “a total failure of any proof that [the foreign corporation] has property in this State”); *Frink v. Nat’l Mut. Fire Ins. Co.*, 90 S.C. 544, 549, 74 S.E. 33, 35 (1912) (“That a receiver has no extra territorial authority is too well settled to require the citation of authority.”); *Pollock v. Carolina Interstate B&L Ass’n*, 48 S.C. 65, 74, 25 S.E.977, 980 (1896) (reiterating that “courts of equity cannot acquire extra territorial jurisdiction over property by appointing receivers” and “[t]he power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him” (quoting 20 Am. & Eng. Enc. Law at 65–66, and Gluck & Becker on Receivers at 3))).

This same constitutional limitation on a state’s jurisdictional reach has been recognized as to the putative Receiver in particular. *See Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, 152 F.4th 432, 446–47 (3d Cir. 2025) (“So it is no surprise that the Constitution limits the authority a state court can exercise over a corporation incorporated in a sister state [or another country]. Those limitations are as intuitive as they make good sense.” (citing the Due Process Clause and the Commerce Clause)).

At bottom, Congress alone, and not the legislature or judiciary of any individual state, can vest a receiver with multijurisdictional authority. Mr. Ashmore’s brief highlights this point.

Mr. Ashmore suggests that the Court’s enforcement of Title 15 as explained in *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (2025), and *Tibbs v. 3M Co.*, Appellate Case Nos. 2024-001423 *et al.* (2025), is “unworkable in practice.” (Amicus at 2.) He further suggests that this Court’s instructions “would materially impede” a receivership. (*Id.*)

This Court’s instructions in *Welch* and *Tibbs*—namely, any appointment of a receiver under Title 15 must be limited to the specific plaintiff, in the specific case, for the specific property, regarding the specific claim that formed the basis appointment—all derive straight from the express language of South Carolina Code §§ 15-65-10 *et seq.*, which must be limited to in-state activity and in-state property as a constitutional matter.

By stark contrast, the receivership work Mr. Ashmore details in his amicus filing and upon which he bases his suggestions to this Court all arise under *federal* statutes. Congress has exercised its interstate authority by passing the very legislation upon which the appointments discussed in Mr. Ashmore’s brief are based. His experiences as a *federal* receiver are necessarily different than those that could ever be constitutionally authorized by the South Carolina legislature or a South Carolina court because the legislation underlying his appointments is based on interstate activity:

<u>Receivership Discussed in Mr. Ashmore’s Brief</u>	<u>Statutory Basis for Each of Mr. Ashmore’s Appointments</u>	<u>Citation to Appointment Order in Case</u>
<i>Ron Wilson</i>	18 U.S.C. § 1956(b)(4)(A) (federal receiver for criminal money laundering), which incorporates 28 U.S.C. § 754 (giving multidistrict jurisdiction to federal receivers)	Case No. 8:12-cv-2078-JMC (D.S.C.) (Dkt. No. 1, July 25, 2012).
<i>Three Hebrew Boys</i>	21 U.S.C. § 853(g) (federal receiver available to aid with forfeiture of property associated with crimes); <i>id.</i> § 853(l) (nationwide jurisdiction)	Case No. 3:10-cv-3141-MGL/MBS (D.S.C.) (Dkt. No. 43, Sept. 5, 2007).
<i>Womack</i>	21 U.S.C. § 853(g) (federal receiver available to aid with forfeiture of property associated with crimes); <i>id.</i> § 853(l) (nationwide jurisdiction)	Case No. 6:00-cv-236-GRA-WMC (D.S.C.) (Dkt. No. 8, Jan. 12, 2000).
<i>Kohn/Future Income Payments</i>	18 U.S.C. § 1956(b)(4)(A) (federal receiver for criminal money laundering), which incorporates 28 U.S.C. § 754 (giving multidistrict jurisdiction to federal receivers)	Case No. 6:19-cv-1112-BHH (D.S.C.) (Dkt. No. 1, Apr. 15, 2019).

Mr. Ashmore’s receivership experience—arising under *federal* statutes, and in support of *federal* criminal investigations—stands in vivid contrast to the limited role a receiver can play under Title 15, both as a matter of the plain language of the South Carolina Code and of the jurisdictional constraints of state laws under the U.S. Constitution.

In short, as a matter of constitutional law, this case cannot and will not impact any of Mr. Ashmore's work as a federal receiver assisting with federal criminal laws. His amicus filing, however, highlights and confirms the jurisdictional overreach of the circuit court.

Respectfully submitted,

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