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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 "ASBESTOS VICTIMS'" BRIEF

Respectfully submitted,

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RESPONSE TO "ASBESTOS VICTIMS'" BRIEF

"The entire concept behind the Constitution and the rule of law is that the end cannot justify the means."

Eidson v. S.C. DOE, 444 S.C. 166, 199 (2024).

This appeal is governed by law, not one side's desire to have another potential defendant to sue in unidentified future cases. The brief filed by the "Asbestos Victims" asks that the Court leave in place a prejudgment receivership model for which there is no basis in the law. And, indeed, no legal grounds for continuing this model appear anywhere in the "Asbestos Victims'" filing.

Silence on the controlling law is not unique to the "Asbestos Victims'" brief. ***No one*** exhorting this Court to keep the present prejudgment receivership model in place—not the putative Receiver, not the Tibbs Plaintiffs, none of the amicus filings, and not even the circuit court—has identified ***anything*** in the law that would allow a state court in South Carolina to vest a local attorney, prior to any judgment in a case, with authority to seize corporate decision-making authority from and take litigation actions on behalf of an active and solvent English company that has no contacts with this State, that has no property in this State, and that is not even named as a party to the very case in which all of this litigation activity is occurring.[1] They all simply assume power they cannot locate in the law.

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[1] In various filings, the putative Receiver seeks to distance himself from the notion that he is engaging in "boardroom" activity, as the Court clearly prohibited that in, among other cases, *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (2025). Yet, ***in the name of CIHL***, he is attempting to sue various third parties, pierce CIHL's own corporate veil, appoint himself a receiver for CIHL, waive jurisdictional arguments, unwind decades-old jurisprudence that protects CIHL, respond to litigation, agree to contracts with the plaintiffs, set up a "settlement fund," sue law firms who represent CIHL, waive service requirements, and resolve claims. All of this is quintessential "boardroom" activity. *See generally* S.C. Code Ann. § 33-3-102 (describing all litigation activity and contracting as decisions that can only be made by a corporation's directors).

But the law controls; it doesn't allow anything that has been happening below, ***and never has***.

Receiverships are creatures of statute. The U.S. Constitution and federalism define the boundaries of a state legislature and do not permit one state to reach beyond its borders. The South Carolina General Assembly has defined the boundaries of prejudgment receiverships in Title 15. Personal jurisdiction is bounded by Due Process. The internal affairs of foreign corporations are governed by the law of their jurisdiction of incorporation. And so on.

It appears that at no point in the history of South Carolina jurisprudence have Title 15 or its statutory predecessors been used to appoint a prejudgment receiver for anything other than holding property in a matter where the specific plaintiff seeks specific property or collection of a specific debt owed under a contract with that specific plaintiff. Nor has any South Carolina corporate receivership statute (now in Title 33) been used to assist with dividing up property for anything other than South Carolina entities. But there is certainly nothing in South Carolina jurisprudence allowing receiverships to be appointed prejudgment in a tort case—where the liability is unproven, the damages (if any) are unknown, and the plaintiffs are unidentified.

To counsel's awareness—prior to the putative receiverships currently arising from the Asbestos Docket—the South Carolina Code has ***never*** allowed a "receiver" to soak up a foreign company's assets, keep a huge portion for himself, and then run a claims program in South Carolina for unknown future tort claimants. Title 15 itself even includes safeguards from such a thing happening, including the requirement that any appointment must include a clause fixing the value of the property subject to the receivership so that a litigant can post a bond and vacate the appointment. S.C. Code Ann. § 15-65-60. There is no way to achieve the result below without ignoring the actual statutory language and extensive jurisprudence enforcing it.

Consider the chronology of case law following the receivership statute's passage (1870) and amendment (1897):

1. *Ex parte Williams*, 17 S.C. 396 (1882): rejecting claims by a receiver over assets of an ***insolvent South Carolina railroad*** that a company-to-company promissory note created certain priorities over other liens.

2. *Pelzer v. Hughes*, 27 S.C. 408 (1887): reversing a prejudgment receivership involving an individual where he allegedly owed creditors ***unsecured debts***.

3. *Seignious v. Pate*, 32 S.C. 134 (1890): affirming rejection of a receivership request to assist in collecting rents and profits under a ***mortgage***.

4. *Hardin v. Hardin*, 34 S.C. 77, 83 (1891): reversing a receivership when it was sought to collect the rents and profits under a ***mortgage*** from an insolvent individual's real estate, holding that "we are unable to perceive by what authority the property of one against whom no debt has even been established, can be seized and impounded, pending an effort on the part of an alleged creditor to establish a claim against the acknowledged owner of such property."

5. *Allen v. Cooley*, 53 S.C. 414 (1898): approving a receivership to assist in collecting on a ***promissory note*** owed by an insolvent South Carolina company in Greenville County.

6. *Roberts v. Pipkin*, 63 S.C. 252 (1902): reversing the circuit court's appointment order when the circuit court refused to accept payment of a bond that would have dissolved a receivership appointed to assist in the recovery under "***chattel mortgages***" held by two South Carolina companies.

7. *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214 (1909): approving the appointment of a prejudgment receiver to hold property in a case where plaintiffs sought to collect on several ***promissory notes*** owed by an individual who had apparently engaged in numerous fraudulent transactions with his sister.

8. *Peurifoy v. Gamble*, 145 S.C. 1 (1927): receivers for ***two insolvent South Carolina banks*** litigated how to credit monies deposited by one bank into the other when both banks became insolvent.

9. *Truesdell v. Johnson*, 144 S.C. 188 (1928): vacating (and deeming void) the appointment of a prejudgment receiver related to the dissolution of a ***South Carolina partnership*** because the appointment order failed to identify or fix the value of the property subject to the receivership for bonding purposes, as this was a statutory protection against misuse of a receivership to wrongfully seize property.

10. *Porter v. Brown*, 149 S.C. 151 (1929): vacating (and deeming void) the appointment of a prejudgment receiver aimed at preserving box office receipts in South Carolina pursuant to ***employment contracts with opera singers*** because the receivership order identified the wrong entity with whom they had contracted.

11. *Southern Trust Co. v. Cudd*, 166 S.C. 108 (1932): rejecting appointment of prejudgment receiver requested regarding the property of an individual to assist in recovery under ***promissory notes***.

12. *Montgomery & Crawford, Inc. v. Arcadia Mills*, 173 S.C. 464 (1934): ruling that receivers could sell the entirety of ***an insolvent South Carolina company*** as a going concern in order to pay ***judgment creditors***, but reiterating that receivers could not be allowed to operate a company and criticizing the influx of "friendly" suits that misused the receivership laws.

13. *Cudd v. Hannon*, 187 S.C. 424, 428 (1938): rejecting the theory that a receiver for an insolvent individual can pay ***contract claims*** that may arise in the future, as "claims which are not in existence at the date of the Receiver's appointment, and which are therefore unascertainable and nonactionable at such date, cannot be proved."

14. *First Carolinas Joint Stock Land Bank of Columbia v. Knotts*, 191 S.C. 384 (1939): "general receiver" approved to address collecting "***mortgages and certain default judgments***" owed by an individual who had apparently engaged in numerous fraudulent transactions with his sister.

15. *Wrenn v. Wrenn*, 228 S.C. 588 (1956): receivership appointment of neutral third-party approved to assist in dividing assets among partners of a ***dissolving South Carolina partnership*** because of a conflict inherent in allowing one partner to wind up the partnership's affairs.

The amici's desire to authorize the Asbestos Docket's expansion of prejudgment receiverships beyond preserving specific assets at issue in a contract dispute and into the undefined boundaries of tort claims is directly rejected by a century's worth of this Court's jurisprudence, including a battery of cases decided around the time of the receivership statute's passage in 1870 and amendment in 1897. And what a century's worth of case law suggests, the Rules confirm.

Rule 66(b), SCRCP, limits a receiver's ability to engage in litigation activity only "in the name of the debtor," ***not*** "defendant." This same limitation was included in former Circuit Court Rule 69 (and Circuit Court Rule 70 before that) and then carried forward into the current Rule

66(b). *See* Rule 66, SCRCP, notes ("Rule 66(b) is added to preserve present Circuit Court Rule 69."). And Rule 66(b) specifies "debtor" because South Carolina law cabins receivers exclusively to preserving specific assets needed to repay known debts (whether evidenced by contract or a judgment), not to accumulate unidentified assets to hold indefinitely for unknown, unalleged, potential future tort claims of unknown value.

* * * * *

The law controlling this situation unmistakably terminates these proceedings and the putative receivership at issue. Amici do not identify any authority permitting those structural constraints to be set aside in the name of convenience, preference, or policy. In the end, the "Asbestos Victims'" brief substitutes narrative for doctrine. However rhetorically framed, that is not a substitute for the rule of law. The result amici advocate finds no support in the Constitution or South Carolina statutes, and their brief should be given no weight.

Respectfully submitted,

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