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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2025-002104

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

v.

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

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

of which

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

and

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

v.

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

of which

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

CHARTER APPELLANTS' PETITION FOR REHEARING

Respectfully submitted,

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June 11, 2026

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The Charter Appellants ("Appellants") respectfully petition for rehearing because the Court's Opinion ("the Opinion") overlooks and misapprehends controlling South Carolina law and/or the record on appeal.

ARGUMENT

I. The Opinion Misapprehended The Confirmation Order As Having Ruled That CIHL Is The Correct Defendant In Tibbs, When The Order Purported Only To "Clarify" The Identity Of The Entity Placed In Receivership In Park.

The Opinion rests on a misapprehension of what the order on appeal "Confirmation Order" decided. The Opinion treats the Confirmation Order as having corrected the named defendant in *Tibbs* and as having ruled that Cape Intermediate Holdings Limited ("CIHL"), rather than Cape plc, is the "defendant" and "proper party in interest" in the *Tibbs* litigation. The Confirmation Order did no such thing. It purported only to "clarify" the identity of the entity in receivership in *Park* and contained no discussion of proper defendants in *Tibbs*. Further, the record — the Confirmation Order itself, the *Park* and *Tibbs* pleadings, the Park Motion to Appoint and Appointment Order, and an affidavit from the Park Plaintiffs' own English solicitors — confirms that Cape plc and CIHL were treated throughout by Park Plaintiffs, Tibbs Plaintiffs, and the Receiver as two distinct, active and existing entities, and that the Park Plaintiffs and Tibbs Plaintiffs intentionally chose to sue the active entity bearing the name "Cape plc" and not CIHL. Because the Opinion's reasoning and holding on misnomer, cure, party identity, and entity whose property is under control of the Receiver flow from contrary premises, rehearing is warranted under Rule 221(a).

A. The Confirmation Order Did Not Cure a Party "Misnomer" in Tibbs.

The Opinion states that the Confirmation Order "corrected this matter and ruled the proper party is CIHL"; that "everyone agrees the correct entity is CIHL" and the Order "reflects this

change"; and concludes that "the trial court has cured any misnomer that has occurred," dismissing Appellants' party-identity arguments as "name games." Each statement assumes the trial court (1) adjudicated *who the defendant in Tibbs is* and (2) substituted CIHL for Cape plc as the real party in interest in *Tibbs*. That assumption is the analytical foundation for the Opinion's disposition of several of Appellants' challenges to a prejudgment receiver appointed over Cape plc in *Park* yet acting in *Tibbs*, where no party ever moved for the appointment of a prejudgment receiver.

However, the Confirmation Order's operative, decretal language says something materially different: "The Court clarifies that the entity in receivership is 'Cape Intermediate Holdings Limited, formerly known as Cape plc from 1989-2011 …and Cape Asbestos Company Ltd. from 1893 to 1974.'" [R. p. 046] The Confirmation Order does not state or find that CIHL is a defendant in *Tibbs* or that CIHL has been substituted for Cape plc in *Tibbs* (or that such relief was ever requested.)

The Confirmation Order's expressly stated that the *Park* Second Amended Complaint named *both* Cape plc *and* CIHL as separate defendants, that Park Plaintiffs served *both* Cape plc *and* CIHL with the First Amended Complaint, and that *neither* Cape plc *nor* CIHL responded to the First Amended Complaint.[1] [R. pp. 2-3] The trial court thus acknowledged the two as distinct, active entities. Accordingly, there was no basis for the Opinion to make CIHL a defendant in the Tibbs case (especially as the Tibbs Plaintiffs have neither named nor served CIHL).

B. Park Plaintiffs' Intentionally Sought A Receiver Over Cape Plc (and Not CIHL).

Seven categories of record evidence — none addressed by the Opinion — establish that Park Plaintiffs' counsel knowingly pursued Cape plc, and not CIHL. As the Opinion

[1] The Park Second Amended Complaint was filed one week after alleged service of the Park First Amended Complaint.

acknowledged, the current and active entity "Cape plc … was incorporated in the Bailiwick of Jersey in 2011 (Cape Jersey) and is a current parent company of CIHL." [Op. at 5.]

1. Park Plaintiffs' English Solicitors Affirmed Cape Asbestos Company is Now Know As CIHL (and not Cape plc).

The March 8, 2022 affidavit of the Park Plaintiffs' English solicitor, Andrew Geraint Morgan of Fieldfisher LLP, "instructed by Dobbs Legal," states as "a matter of public record" "that the company that carries Companies House Reference Number 00040203," formerly known as Cape Asbestos Company Ltd., "now bears the name 'Cape Intermediate Holdings Limited.'" and was formerly "known as Cape PLC between 1 August 1989 and 27 June 2011." [3] And it states that the *Park* claim was "brought against various named Defendants including Cape PLC and Cape Intermediate Holdings Limited" — two separate entities — and that service of "the First Amended Summons" was effected on each separately.[5] Thus, a full year before the receivership motion, Park counsel knew the *active and current* successor to Cape Asbestos Company was CIHL — yet chose to move for a receiver over Cape plc, and to sue only Cape plc in *Tibbs*.

2. The *Park* Complaints Named both Cape Plc And CIHL As Active Entities.

The first and second amended complaints in *Park* described CIHL and Cape plc as presently existing — in parallel paragraphs naming each as a separate defendant sued in its individual capacity[6] — thus pleading Cape plc and CIHL as two distinct, currently existing companies.

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[3] Affirmation of Andrew Geraint Morgan (English Affidavit) ¶¶ 4–5. [R. pp. 443–45]
[5] Id. ¶¶ 3.2, 6, 9. [R. pp. 444–45]
[6] "Defendant, CAPE INTERMEDIATE HOLDINGS LIMITED, f/k/a CAPE INTERMEDIATE HOLDINGS PLC, individually and as successor-in-interest to CAPE ASBESTOS COMPANY, was and is a private limited company organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland, with its principal place of business in England." "Defendant, <u>CAPE PLC</u>, <u>individually</u> and as successor-in-interest to CAPE ASBESTOS COMPANY, was and <u>is a private limited company organized</u> and existing under the laws of the United Kingdom of

3. Park's Motion To Appoint And The Park Appointment Order Named Cape Plc Only — Never CIHL.

The Motion to Appoint Receiver sought appointment "over Cape PLC" and identified "Cape PLC" as "a defendant in the above-captioned action."[9] The Park Appointment Order likewise recites that "Plaintiffs have moved this Court to appoint a Receiver over Cape PLC."[10] Neither document mentions CIHL. Further, the record is devoid of any argument the Park Plaintiffs intended CIHL.

4. The *Tibbs* Chose To Sue Cape Plc and not CIHL.

The First Amended Complaint in *Tibbs*, filed May 3, 2023 — after the affidavit and after the *Park* appointment — named Cape plc, not CIHL, and described it as presently existing and with the Receiver appointed: "Defendant, CAPE PLC, individually and as successor-in-interest to CAPE INDUSTRIES LTD f/k/a CAPE ASBESTOS COMPANY LTD., and its subsidiaries and global affiliates, was and is a private liability company organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland with its court appointed Receiver maintaining its principal place of business in South Carolina."[11]

5. The Receiver's Third-Party Complaint Pleads Cape Plc is An Existing Entity.

The Receiver's Third-Party Complaint filed in *Tibbs* on June 30, 2023, states Cape plc is presently existing: "Cape PLC is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates (collectively, 'Cape'), which was

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Great Britain and Northern Ireland, with its principal place of business in England." First Amended Complaint, Park v. Armstrong Int'l, Inc., No. 2021-CP-40-02727 (Nov. 17, 2021) (emphasis added), ¶¶ 26-27 [R. p. 638]; see also Second Amended Complaint, Park (Dec. 23, 2021) (naming both entities in identical terms). [R. p. 708]

[9] Motion to Appoint Receiver, Park (Mar. 6, 2023) at 1 [R. p. 462]

[10] Order Appointing Receiver, Park (Mar. 16, 2023) at 1 [R. pp. 780–82]

[11] First Amended Complaint, ¶ 48, Tibbs v. 3M Co., No. 2023-CP-40-01759 (May 3, 2023) (emphasis added). [R. p. 175]

and is a private company organized and existing under the laws of the United Kingdom, with its principal place of business in England."[12]

6. The Park Plaintiffs Have Never Sought To Change The Receivership Entity

The receivership was sought by, and exists for the benefit of, the Park Plaintiffs; any modification of the entity placed in receivership would have to be requested by them. They have never moved (and the record is devoid of any evidence) to change the appointment from Cape plc to CIHL, and the trial court therefore had no request from Park Plaintiffs to substitute CIHL as the receivership entity, much less to add CIHL as a *Tibbs* defendant.

The record is clear that Counsel for Park and Tibbs knew that CIHL is the present name of the entity formally known as Cape Asbestos Company and that Cape plc was formed in 2011 and is a parent company of CIHL. These facts further establish that the repeated decision to pursue Cape plc and not CIHL was deliberate. Accordingly, not only was there no basis for the Opinion to add CIHL as a defendant in *Tibbs*, there was also no basis for the Opinion (or the *Tibbs* trial court) to change the entity in the Park Receivership from Cape PLC to CIHL.

D. The Distinction Is Dispositive, Not Semantic.

The difference between (i) clarifying which entity is in receivership in *Park* and (ii) ruling that CIHL is the correct *Tibbs* defendant is not a quibble. *First*, identifying the receivership res is a function of the appointing court's authority in *Park*; determining the proper defendant in *Tibbs* implicates SCRCP 17(a), misnomer doctrine, and questions of service and personal jurisdiction. The Opinion's invocation of Rule 17(a) and *Griffin v. Capital Cash* to excuse any alleged misnaming of a defendant in *Tibbs* presupposes a real-party-in-interest determination in *Tibbs* that the trial court never made.

[12] Third-Party Complaint, Tibbs, ¶ 40 (June 30, 2023) (emphasis added). [R. p. 265]

Second, the misapprehension led the Opinion to treat Appellants' challenges as resolved by a "cure" the trial court never performed. There is no trial-court cure of a *Tibbs* party misnomer to which this Court can defer, and Appellants' proper-party, service, and jurisdictional arguments remain live.

Third, even if the Tibbs Plaintiffs claimed misnomer of named defendant Cape plc (they have not), the misnomer rationale assumes an "honest mistake or difficulty in ascertaining identity." The record refutes that assumption: counsel's own solicitor identified CIHL by name and Companies House number a year before the receivership motion, and the pleadings repeatedly named Cape plc as an existing entity. A party who knows the correct entity and deliberately names another has not committed a curable misnomer.

Because the Opinion's treatment of misnomer, cure, and the proper Tibbs defendant rests on the mistaken premise that the Confirmation Order ruled CIHL the correct defendant in *Tibbs* — when it only purported to (incorrectly) "clarify" the identity of the entity placed in receivership in *Park* — this Court should grant rehearing, withdraw the portions of the Opinion premised on that misapprehension, and reconsider Appellants' party-identity, service, and jurisdictional arguments on their merits.

II. The Opinion Analyzed The Wrong Bond And Disregarded The Mandatory Valuation Clause And Statutory Right To Vacate A Prejudgment Receivership.

Part III.C of the Opinion, which reframes the statutory defects Appellants raised as a failure to "set a bond," states: "It is true § 15-65-60 states that a bond must be set….A bond is designed to cover the owner's loss if it turns out the receivership wrongfully deprived the owner of the use (and sometimes the literal fruits) of his property," and concludes there was "no rational need for a bond." [Op. at 20–21.] But § 15-65-60 does not require the court to "set a bond," nor does it concern a bond posted by the Receiver to protect the property owner. The Opinion conflates two

distinct bonds. Appellants invoked § 15-65-60, which requires the "court" in order to "appoint a receiver before final judgment in the cause" to insert "in the order of appointment a clause fixing the value of the property for which the bond may be given" to *vacate* the receivership under § 15-65-50 — a bond running *from the owner of or entity claiming the property put into the possession of the receiver* ("owner") The Opinion analyzed a different bond — the security protecting the owner against the receiver's wrongful deprivation: "A bond is designed to cover the owner's loss if it turns out the receivership wrongfully deprived the owner of the use (and sometimes the literal fruits) of his property." [Op. at 20–21.] Having identified the purpose of the wrong bond, the Opinion concluded there is "no rational need for a bond" because the assets are "worthless to anyone but Cape" and any third-party recovery "will benefit Cape" — reasoning about whether the *owner* needs protection from loss, an issue § 15-65-60 does not address. The valuation clause exists to enable the owner to compute and post the bond that vacates the receivership. Because the "reason for [the] rule" the Court invoked is the reason for a *different* bond, the maxim of *James C. Greene* cannot support dispensing with the valuation clause § 15-65-60 makes mandatory. *S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 188, 348 S.E.2d 617, 626 (Ct. App. 1986).

Section 15-65-60 makes the value clause mandatory, and *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343, 348 (1928), held that "the provision for inserting a clause fixing the value of the property in the order appointing a receiver is mandatory, and without such clause the order is void." The statutory bond gives a party the right to post security and *vacate* the receivership and retain/control over its property pending judgment (as opposed to losing control to a receiver

pending judgment in the cause.)[13] As the Opinion misapprehended the valuation clause required by § 15-65-60, reconsideration is appropriate.

III. Sections 15-65-50 And 15-65-60 Are Substantive Limitations On The Court's Power, Not Procedural Guidance; Disregarding Them Is An Exercise Of Authority The General Assembly Did Not Grant.

Sections 15-65-50 and 15-65-60 impose substantive limitations on the court's power, not procedural guidance. Section 15-65-50 provides that "[n]o receiver … shall be appointed before final judgment" if the owner or possessor offers a bond in double the value of the property — a direct withholding of the court's power. Section 15-65-60 provides that whenever a pre-judgment receiver is appointed, "there shall be inserted in the order of appointment a clause fixing the value of the property," and that upon the filing of the bond the court "shall vacate" the appointment and return the property. Each "shall" is mandatory, running directly to the court's authority.

Together, these provisions create a substantive statutory right to substitute security for possession. Without a fixed value, the owner cannot determine the bond amount, and the mandatory right § 15-65-50 confers is destroyed. This Court's own precedent establishes the limitation is jurisdictional: *Truesdell* held that the omission renders the order *void*, and only a defect going to a court's *power* renders an order void rather than merely erroneous. The Opinion's "clarification" recasting *Truesdell*'s "void" as "voidable" is therefore not a minor gloss; it is the very move that strips the statutory condition of its jurisdictional character.

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[13] The statute's mandatory character confirms the prejudgment receiver's role is limited to preserving identified property pending judgment. See *Vasiliades v. Vasiliades*, 231 S.C. 366, 376, 98 S.E.2d 810, 815 (1957) (the pendente lite receivership is "purely a provisional remedy—to preserve the assets"). The Court's own rationale proves the point: a receivership with no identified property to preserve is a reason to doubt a pre-judgment receivership lies at all — not to dispense with the statute's protection. See *Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 293, 185 S.E. 731, 737 (1936) (reversing for "total failure of any proof" of property in the State).

So framed, the defect is not procedural error: by appointing a receiver without fixing the value of the property — preventing exercise of the bond-substitution right — the court exercised a power broader than the General Assembly authorized. The maxim that "the reason for a rule must control the application of the rule" cannot rescue that result: a court may apply that interpretive principle to a judge-made procedural rule, but not to dispense with a mandatory statutory condition the legislature placed on the court's own authority. To hold there is "no rational need for a bond" is to substitute the court's judgment of necessity for the legislature's — a separation-of-powers inversion. Because the defect goes to the court's power, it may be challenged by any party subject to the resulting order, regardless of who holds the bond right.

South Carolina law gives primacy to statutory text. *S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 809 S.E.2d 223 (2018). Stare decisis applies with particular strength in statutory interpretation, because the General Assembly may amend the statute if it disagrees with the Court's construction. *McLeod v. Starnes*, 396 S.C. 647, 723 S.E.2d 198 (2012). *Truesdell* construed the statutory predecessor to § 15-65-60 and held the valuation clause mandatory; the General Assembly has not removed the requirement, and the current statute still mandates "a clause fixing the value of the property for which the bond may be given." If the Opinion is read to permit courts to omit the valuation clause whenever they perceive no rational need for a bond, it alters the statutory meaning *Truesdell* recognized. That should not occur without an express stare decisis analysis explaining why the prior construction is unworkable, clearly wrong, or otherwise no longer justified. As the prior construction is correct, Appellants respectfully request that the Court modify Part III.C to clarify that: Section 15-65-60 requires a valuation clause in every prejudgment receiver appointment order fixing the value of the property for which the § 15-65-50 substitution

bond may be given; *Truesdell* remains controlling as to the mandatory nature of the valuation clause; and there are no judicial exceptions to §§ 15-65-50 and 15-65-60.

IV. Appellants Have Standing As To The Third-Party Claims Because Those Claims Seek To Recover Money Or Property From Appellants.

The Opinion cites *Ex Parte Rowley* for the proposition that a person not in possession of receivership property may not challenge the lack of bond. *Ex parte Rowley*, 200 S.C. 174, 186, 20 S.E.2d 383, 384, 387 (1942). *Rowley* may support a standing limitation; it does not make the statutory valuation clause optional.

The Opinion holds Appellants lack standing because they do not possess "Cape's insurance assets and third-party claims". But the Receiver's third-party claims are not abstract choses in action: the Receiver sued Appellants purporting to prosecute Cape's alleged claims for unjust enrichment, constructive trust, and accounting, seeking to compel Appellants to transfer money or assets in their possession to the Receiver. If the "third-party claims" are part of the receivership property (Appellants contend they are not), Appellants are not strangers to the res: they are the alleged possessors of, and adverse claimants to, the very money or property the Receiver seeks to collect. Section 15-65-50 protects "the party claiming the property" and "the party in possession thereof." The receivership statutes do not require the possessor to admit a prejudgment receiver's theory of liability/ownership before invoking the statutory protection.

The Opinion should not treat the alleged third-party claims as broad enough to support receivership authority and/or legal action against Appellants yet too abstract to give the targets of those claims standing to invoke the statutory safeguard. Rehearing is appropriate here, and the Court should hold that Appellants have standing to challenge omission of the valuation clause.

V. The Court Overlooked Or Misapprehended Rule 205 And *Lancaster v. Georgia-Pacific* In Upholding The May 23, 2024 Sanctions Order.

The Opinion acknowledges that Appellants raised on appeal that the May 23, 2024 order (granting the Receiver's sanctions motion and imposing adverse inferences against Appellants)("sanctions order") is void because it was entered while three appeals were pending in the appellate courts: two from the December 6, 2023 order denying Appellants' motions to dismiss for lack of personal jurisdiction and to dissolve the receivership, and one from the March 12, 2024 order. The Court nonetheless held the trial court retained jurisdiction — a holding that overlooks and misapprehends controlling precedent in two independent respects.

A. The Opinion's Holding That The Trial Court Was Never Divested Of Jurisdiction Because Appeal Was Later Dismissed Conflicts With Lancaster.

The Opinion held that the sanctions order was a matter affected by the appeal of the March 12, 2024 order. Under Rule 205's plain text – "[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal" the trial court should not have had jurisdiction to entertain sanctions. The Opinion avoided that conclusion by holding that, "because Appellants' appeal from the March 12, 2024 order was [later] dismissed as interlocutory, the appeal did not divest the trial court of jurisdiction," relying on a line of federal decisions that neither reference nor interpret SCRAP 205 (for which there is no equivalent federal rule). *See United States v. Green*, 882 F.2d 999 (5th Cir. 1989); *Euziere v. United States*, 266 F.2d 88 (10th Cir. 1959); *Hodgson v. Mahoney*, 460 F.2d 326 (1st Cir. 1972).

That holding cannot be reconciled with this Court's controlling construction of Rule 205. In *Lancaster v. Georgia-Pacific Corp.*, Appellate Case No. 2013-000175 (S.C. Sup. Ct. Order filed Apr. 24, 2013), this Court held:

> "Pursuant to Rule 205, SCACR, upon the service of a notice of appeal, the appellate Court has exclusive jurisdiction over the appeal, with the exception of matters not affected by the appeal. *The appellate court retains jurisdiction until the remittitur is sent to the lower court.*"

Further, *Lancaster* applied Rule 205 in precisely the same procedural posture as we have here. There, the Court of Appeals had *dismissed* the underlying appeals as interlocutory and this Court was considering petitioner petition for certiorari. The Court further published *Lancaster* and specifically "remind[ed] the bench and bar" that the lower court "may not" act on affected matters "while the matter is pending before this Court," and before remittitur is returned to the lower court."

This Court established in *Lancaster* that the dismissal of an appeal does not restore the trial court's jurisdiction over affected matters; only the remittitur does. The May 23, 2024 sanctions order here was entered while the March 12, 2024 appeal was still *pending* — the Court of Appeals did not dismiss that appeal until *after* the sanctions order had been entered. Appellants then petitioned for certiorari, exactly as in *Lancaster*; and the petitions were not denied until June 26, 2025, and the remittitur was returned thereafter. At the time the sanctions order was entered — indeed, throughout the appellate process until remittitur — the trial court was divested of jurisdiction over the matters this Court held was "the same issue" as on appeal.

The Opinion's contrary rule — that a later dismissal as interlocutory means the trial court was never divested of jurisdiction — directly conflicts with *Lancaster*, which tied divestiture to the remittitur, not to the appeal's ultimate disposition. The Opinion's ruling that the trial court retains jurisdiction over an affected matter until an appeal is adjudged to be non-interlocutory conflicts with *Lancaster* and the clear text of Rule 205 — a matter overlooked or misapprehended under Rule 221(a), and a matter that will cause substantial confusion to the bench and bar.

B. All Actions By The Receiver Against Appellants Were Matters Affected By The December 6, 2023 Appeals.

The Opinion held that Appellants' appeals from the December 6, 2023 order did divest the trial court of jurisdiction (for some issues), but that the appeal "did not affect the matters inherent

in the motion for sanctions." That characterization cannot be sustained. The critical Rule 205 inquiry is whether the appeal will have any effect on the action being taken below. *See, e.g.*, *Arnal v. Fraser*, 371 S.C. 512, 519, 641 S.E.2d 419 (2007) (issue-by-issue analysis of whether lower-court action was "affected by a matter on appeal"); *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012) ("Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal, but is specifically allowed to proceed with matters not affected by the appeal."). "Affect" is read broadly: "to produce an effect on" or to "influence in some way." *See Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 532, 787 S.E.2d 485, 493 (2016) (relying on Black's Law Dictionary's definition of "affect," which is "to produce an effect on; to influence in some way").

The matters on appeal were personal jurisdiction over Appellants and the validity of the receivership and the Receiver's authority to act in *Tibbs*. Both are antecedents of — not collateral to — the sanctions order: the power to sanction presupposes personal jurisdiction, and the sanctions motion was the *Receiver's*, whose authority to seek relief presupposes a valid receivership and authority to act in *Tibbs* — the very questions on appeal. A possible outcome of the appeal was a ruling that the Receiver had no authority to bring the third-party complaint (or as held by the Remand Order – a Receiver may only act in the case in which he is appointed), or that the court lacked personal jurisdiction over Appellants. When actions in the underlying proceeding are taken by someone whose very grant of authority is on appeal, those actions are a matter "affected by the appeal" such that the lower court does not have jurisdiction under Rule 205, SCACR. *See In re Est. v. Connor*, No. 2009-UP-502, 2009 WL 9530097 (S.C. Ct. App. Oct. 29, 2009) (per curiam) (appeal of a special administrator's appointment necessarily affected his ability to pursue claims below); *see also Ditech Fin., LLC v. Snyder*, No. 2019-000575, 2022 WL

2826359, at *9 (S.C. Ct. App. July 20, 2022) (Rule 205 divested jurisdiction over a foreclosure where the pending appeal, if reversed, would have prevented the foreclosure); *Stokes-Craven Holding Corp.*, 416 S.C. at 532, 787 S.E.2d at 493 (malpractice claim "necessarily" affected by appeal of the underlying case). The appeal "necessarily" affects all aspects of the Receiver's claims against Appellants as well as the trial court's jurisdiction over Appellants. Accordingly, the Court should reconsider this issue and hold that the trial court lacked jurisdiction over Appellants until June 26, 2025 (at the earliest), the date of the Remand Order.

IV. Additional Issues Overlooked Or Misapprehended.

Each of the following was likewise overlooked or misapprehended and warrants rehearing.

A. The Remand Order's Letter Was Not Met. The June 26, 2025 remand required an appointment order entered "in the specific case." The Opinion states the cross-filing of the *Park* order "met the spirit of our instructions" — a recognition that the letter of the Order was not: the order was entered in *Park*. The Tibbs Plaintiffs never moved for the appointment of a prejudgment receiver, and the trial Court never entered an order appointing a prejudgment receiver over any Cape entity. The Opinion itself announces that "[i]n future cases, a pre-judgment receiver should not be authorized to … act in lawsuits outside the case in which he is appointed" — the very limitation that the receivership statutes have mandated for over 150 years and that the Court declined to apply here.

B. The Opinion Confers The Receiver Retroactive Authority *in Tibbs* . The Opinion makes a "legal exception" for this case allowing the Receiver authority to act in *Tibbs* based on the 2025 Confirmation Order and the filing of the Park Appointment Order in *Tibbs.* However, this Court overlooks that the Receiver's foundational acts — accepting service "on behalf of Cape plc," answering in the name of Cape plc, and filing suit against Appellants — occurred in 2023 –

long before the Park Appointment Order was filed in *Tibbs*. A receiver's authority to act in a case should not arise *nunc pro tunc*.

C. The Opinion Relied On Alleged Moral Fraud Occurring After The Appointment Of The Receiver. In sustaining the appointment under § 15-65-10(5), the Opinion finds evidence of moral fraud and states "[t]wo episodes bear this out": the letter CIHL's director sent to Lloyd's of London, and the mutual release among CIHL and the Altrad Appellants. Both postdate the March 17, 2023 appointment. The propriety of a prejudgment appointment is measured at the time it is made; the evidence the Opinion cited as "moral fraud" did not exist when the Receiver was appointed.

CONCLUSION

Appellants respectfully request that the Court grant rehearing, withdraw the Opinion, rehear argument in the case if necessary, and vacate all rulings below.[14]

Respectfully submitted,

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[14] Nothing in this submission should be deemed a waiver of the Charter Appellants' personal jurisdiction arguments. Also, to the extent not inconsistent with the arguments presented herein, the Charter Appellants adopt and incorporate the arguments presented by the Altrad Appellants in any post-Opinion filing.