

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2026-002112
Circuit Court Case No. 2025-CP-40-04961

Roger D. Stiwwinter and Phyllis G. Stiwwinter, Respondents,

v.

3M Company, A. Lynn Thomas Company, Incorporated, A.O. Smith Corporation, ABB Inc., Air & Liquid Systems Corporation, Alfa Laval Inc., Alfol Inc., Amentum Environment & Energy, Inc. Anchor/Darling Valve Company, Armstrong International, Inc., ASCO, L.P., Atlas Turner, Inc., B & D Marine and Industrial Boilers, Inc., Badham Insulation Company, Badham Insulation Company, Inc., Badham Insulation Company, Inc., Bahnson, Inc., Beaty Investments, Inc., Bechtel Corporation, The Bonitz Company, BW/IP Inc., CIL, Inc., Canvas CT, LLC, Canvas MW, LLC, Canvas SX, LLC, Cape Intermediate Holdings Limited, Carboline Company, Carrier Corporation, Carver Pump Company, CB&I Laurens, Inc., Clarkson Brothers, Incorporated, Clyde Union Inc., Compudyne, LLC, Cooper Industries, LLC, Copeland Corporation LLC, Copes-Vulcan, Inc., Covil Corporation, Crane Instrumentation & Sampling PFT Corp., Crosby Valve, LLC, Daniel International Corporation, Davis Mechanical Contractors, Inc., Duke Energy Carolinas, LLC, Ecodyne Corporation, Electrolux Home Products, Company, Inc., ESAB Corporation, Fisher Controls International LLC, Flowserve Corporation, Flowserve US Company, Flowserve US Inc., Fluor Constructors International, Inc., Fluor Constructors International, Inc., Fluor Daniel Services Corporation, Fluor Corporation, G. Denver and Co., LLC, Gardner Denver Nash, LLC, General Dynamics Corporation, General Electric Company, Gould Electronics Inc., Goulds Pumps LLC, Great Barrier Insulation Co., Grinnell LLC, Henry Pratt Company, LLC, Howden North America Inc., IMO Industries Inc., Industrial and Commercial Insulation, Inc., International Paper Company, ITT LLC, J.D. Shields Corporation, Metropolitan Life Insurance Company, MP Supply, Inc., MRC Global (US) Inc., NIBCO Inc., Occidental Chemical Corporation, Paramount Global, Payne & Keller Company, PECW Holding Company, Plastics Engineering Company, Redco Corporation, Rentavla LLC, Riley Power Inc., Rockwell Automation, Inc., Spirax Sarco, Inc., Starr Davis Company, Inc., Starr Davis Company of S.C., Inc., Sterling Fluid

Systems (USA) LLC, Sterling Wander LLLP, Taco, Inc., Teachey Mechanical, Inc., Teachey Service Company, Inc., Union Carbide Corporation, Valves and Controls US, Inc., Velen Valve Corp., Viking Pump, Inc., Vistra Intermediate Company LLC, The Walworth Company, Warren Pumps LLC, Watts Regulator Co., The William Powell Company, Wind Up, Ltd., York International Corporation, Zurn Industries, LLC, and Zurick International, Inc., Defendants,

of which ESAB Corporation is the Appellant.

**RESPONDENTS' ROGER AND PHYLLIS STIWINTER MEMORANDUM ON
APPEALABILITY**

Respondents Roger and Phyllis Stiwinter submits the following memorandum on the issue of appealability as permitted by the Court's September 25, 2026 correspondence. Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the Stiwinthers respectfully request this Court dismiss the Notice of Appeal filed by Appellant ESAB Corporation regarding the Trial Court's August 11, 2026 and September 18, 2026 Orders (these Order are substantively identical) denying ESAB's motion to dismiss for lack of jurisdiction and pursuant to South Carolina's "Door Closing Statute."

Under well-settled South Carolina law, Justice Toal's Orders denying ESAB's motion is interlocutory and not immediately appealable. As such, this appeal is premature, the Court lacks jurisdiction, and the appeal should be immediately dismissed.

BACKGROUND AND PROCEDURAL POSTURE

This lawsuit seeks, in part, to hold ESAB and its predecessors and successors in interest responsible for Cape Intermediate Holdings Limited's, the successor to Cape PLC which is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates (collectively, "Cape") liability arising from Cape's sale of massive amounts of asbestos in the United States, including in South Carolina.

Plaintiffs' Complaint alleges ESAB is part of a single business enterprise/business amalgamation with Cape. The touchstone for the exercise of single business enterprise/business amalgamation/alter ego jurisdiction under South Carolina jurisprudence is that the entities operations are intertwined and there is evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions. *See Wallbeck v. l'On co.*, 439 S.C. 568, 591, 889 S.C. 537, 549 (2023). The Complaint, together with evidence submitted in opposition to ESAB's motion, alleges and provides evidence that the manner in which ESAB and its predecessors and successors, among others, exercised dominion and control over Cape to execute a scheme pursuant to which Cape would create an instrumentality (*i.e.*, the North American Asbestos Corporation ("NAAC")) to enable it to pump asbestos into the United States (including into South Carolina), siphon the funds from those sales to co-conspirators located outside of the United States, and avoid liability for the known harm that Cape's asbestos would—and did—cause, and continues to cause, in the United States broadly, and in South Carolina specifically.

Despite these allegations and evidence, ESAB moved to dismiss by claiming a lack of personal jurisdiction and pursuant to South Carolina's "Door Closing Statute." In denying the motion, Justice Toal repeatedly stated her Order was based upon the *prima facie* showings made by the Stiwinters and were based upon the standard applicable "at this preliminary stage," and "[a]t the pretrial stage."

Further, as Justice Toal explained, the South Carolina Supreme Court has already ruled upon this exact issue. As stated in Justice Toal's order:

In precisely the same context applicable here, the South Carolina Supreme Court concluded:

[W]e have received the trial court's order denying the Appellants' [M]otion to [D]ismiss for lack of personal jurisdiction and the Confirmation Order, and there is ample prima facie evidence of personal jurisdiction over each of the Appellants and Cape.

August 11, 2026 Order, p. 1-2, *citing Tibbs v. 3M Company*, 2025-002104 (May 27, 2026) order of the Supreme Court. The Trial Court noted that the order being reviewed by the South Carolina Supreme Court explicitly determined, "jurisdiction over ESAB is . . . proper under both the alter ego and single business enterprise theories." August 11, 2026 Order, p. 2, *citing, Tibbs v. 3M et al.* C/A No. 2023-CP-40-01759, dated December 6, 2023.

DISCUSSION

I. Justice Toal's Order is an interlocutory order that is not immediately appealable.

Appellant's attempt to appeal to this Court is improper because this Court lacks jurisdiction to decide an interlocutory jurisdictional order. Appeals from the Circuit Court are governed by South Carolina Appellate Court Rule 201 which is clear that "[a]ppeal[s] may be taken . . . from any *final* judgment, appealable order or decision." SCACR 201(a) (emphasis added). A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution." *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017). "An order reserving an issue, or leaving open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory." *Id.*

Only "final" judgments and a narrow set of enumerated interlocutory orders are appealable. *Brunson v. American Koyo Bearings*, 367 S.C. 161, 165, 623 S.E.2d 870, 872 (Ct. App. 2005) (holding that South Carolina adheres to the final judgment rule which provides that, "with certain exceptions, an appeal lies only from a final judgment") (*abrogated in part on other grounds by Hilton v. Flakeboard America Limited*, 418 S.C. 245, 791 S.E.2d 719 (2016)); *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993) (explaining that an

order is interlocutory if some further act must be done by the court prior to a determination of the rights of the parties). “An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.” *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005).

“The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. Section 14-3-330.” *Id.* at 195, 708. Section 14-3-330 states that a court shall have appellate jurisdiction to review:

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action[.]

S.C. Ann. §14-3-330. In *Woodward v. Westvaco Corp.*, 319 S.C. 240, 242-43, 460 S.E.2d 392, 394 (1995) (*overruled on other grounds by Sabb v. South Carolina State University*, 350 S.C. 416, 567 S.E.2d 231 (2002)), the Supreme Court of South Carolina held that “[a]bsent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in S.C. Code Ann. § 14-3-330.” Section 14-3-330 is construed “narrowly” with the goal of avoiding “circuitous litigation and needless appeals.” *Tillman*, 420 S.C. at 250, 801 S.E.2d at 760. “Piecemeal appeals should be avoided.” *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709.

The South Carolina Supreme Court has determined jurisdictional orders are not final and are not immediately appealable.

An order *denying* a motion to dismiss for lack of subject matter jurisdiction does not *finally* determine anything. See *McLendon v. South Carolina Dep’t of Highways and Pub. Transp.*, 313 S.C. 525, 443 S.E.2d 539 (1994) (like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again

at a later stage in the proceedings). Consequently, while such orders may involve a substantial right, they do not fall under § 14-3-330(2)(a) because they do not in effect determine the action and prevent a judgment from which an appeal might be taken or discontinue the action. For the same reason, such orders do not “involve the merits” under § 14-3-330(1). *See Mid-State Distributors v. Century Importers*, 310 S.C. 330, 426 S.E.2d 777 (1993) (for an order to “involve the merits” as that term is used in § 14-3-330, it must *finally determine* some substantial matter forming the whole or a part of some cause of action or defense).

Woodward at 242.

Mid-State Distributors v. Century Importers, Inc., 310 S.C. 330 (1993) definitively determined that orders denying personal jurisdiction motions are interlocutory and not immediately appealable. Recognizing that “at the pre-trial stage of the proceedings, the plaintiff need only make a prima facie showing by pleadings and affidavits,” and that there are no “other evidence” requirement for personal jurisdiction where the complaint itself demonstrates jurisdiction, the Supreme Court overruled prior cases suggesting motions to dismiss might automatically be instantly appealable, and determined “the appeal of the personal jurisdiction issue prior to a full development of the facts serves no useful function.” *Id.* at 334-335. **“The denial of [defendant’s] motion to dismiss has no real finality, and any defense to personal jurisdiction can still be maintained at trial. We, therefore, hold that the denial of a motion to dismiss under Rule 12(b)(2), SCRPC, is interlocutory and not directly appealable.”** *Id.* at 336, emphasis added.

The same reasoning applies to ESAB’s arguments regarding the Door Closing Statute and the Stiwwinters’ alter-ego theories of liability. These issues are not final, can be reconsidered or reargued, and do not serve as a final determination of any essential element of the Stiwwinters’ claims.

A. The Circuit Court’s Order does not involve the merits.

“An interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right.” *Richardson v. Halcyon Real Est. Servs., LLP*, 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023). The August 21, 2026 Order does neither. “An order ‘involves the merits,’ as that term is used in Section 14-3-330(1) and is immediately appealable when it *finally* determines some substantial matter forming the whole or part of some cause of action or defense.” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 7, 630 S.E.2d 464, 467 (2006) (internal citations omitted, emphasis added); *see also Tillman*, 420 S.C. at 249, 801 S.E.2d at 759. “The phrase ‘involving the merits’ is narrowly construed in modern precedent. An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties’ rights.” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 7, 630 S.E.2d at 467 (internal citations omitted).

Justice Toal might modify her ruling based upon discovery and has not ordered any fact essential to Respondent’s case has been established as a matter of law. She expressly noted her Order was based upon the *prima facie* evidence made at the “preliminary” and “pretrial” stage of trial.

ESAB may appeal once a final order has been issued in the case, if necessary. *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709 (“most errors can be corrected by the remedy of a new trial”); *Baldwin Constr. Co., Inc. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004) (“Petitioners have not ‘arrived at the end of the road’ and will be able to appeal the decision after the trial is finished.”) (internal citations omitted).

B. The Circuit Court’s Order does not affect a substantial right.

Subsection 14-3-330(2) allows for immediate appeal of an interlocutory order when it affects a “substantial right” that determines the action, grants or refuses a new trial, or strikes part

of a pleading. S.C. Code § 14-3-330(2). To be immediately appealable under section 14-3-330(2)(a), “an order must not only involve a right, but it must also ‘prevent[] a judgment from which an appeal might be taken.’” *Cobb v. Maccaro*, 310 S.C. 303, 305, 423 S.E.2d 156, 157 (Ct. App. 1992). *See also Du Pont v. Du Bos*, 33 S.C. 389, 394, 11 S.E. 1073, 1074-75 (1890) (“It is quite clear that the order here under review is not appealable . . . ; for even granting that it affects a substantial right, that is not sufficient, for it must also, in effect, determine the action and prevent a judgment from which an appeal might be taken; and this it certainly does not do.”). Judicial economy is best served by waiting until after final judgment to consider all issues that may be raised on appeal by any party.

ESAB’s attempts to further delay this case and avoid trial on the merits of the underlying claims do not constitute a substantial right. *See Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991) (holding that the avoidance of trial is not a substantial right); *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 14 (2000) (noting “the avoidance of a trial is not a sufficient reason to justify immediate appellate review”).

C. Justice Toal’s Order does not have the effect of “striking ‘an answer or any part thereof, or any pleading’” in the action.

In determining whether an order is appealable under section 14-3-330(2)(c), “an appellate court should look to the effect of an interlocutory order,” not the label attached to it. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011). An order affects a substantial right by striking a pleading only “if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial.” *Id.* at 304, 479. Section 14-3-330(2) is “narrowly construed,” and the use of the word “strike” does not make an order automatically immediately appealable. *Id.* at 302-03, 478.

The reason a true order striking a pleading is immediately appealable illustrates why this Order is not. When a court strikes “material allegations of a good cause of action or good defense, it is impossible to remedy it in the course of the trial, because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading . . .” *Id.* at 303-04, 479 (internal citations omitted).

The Order which ESAB appeals meets none of these requirements. ESAB is free to reargue the issue to the Trial Court and/or jury. Justice Toal explicitly made her rulings based upon the Stiwater’s *prima facie* allegations and evidence, and explicitly noted the rulings were made in the context of this being a “preliminary” and “pretrial” hearing. The Order does not strike any portion of ESAB’s answer, nor does it preclude it from arguing any affirmative defense before a final judgment is entered. The Stiwinters still have the burden of proving each essential element of their case. Subsection (2)(c) is satisfied only by an order that actually strikes a pleading; where the court “does not strike the answer,” the order “is not appealable under subsection (2)(c).” *Jefferson by Johnson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988).

II. Asbestos defendants have repeatedly pursued improper appeals from nonfinal, non-appealable orders.

The posture at issue here is not new to asbestos cases, and the South Carolina Supreme Court has repeatedly warned asbestos Defendants that the continued filing of improper appeals can and will result in sanctions. *See, e.g., Tibbs v. 3M Co. et al.*, 448 S.C. 182, 193, 933 S.E.2d 254, 260 (2026) (“The [Supreme Court’s prior] order also warned the parties against filing future improper petitions or interlocutory appeals (Appellants have filed over a dozen related to this case) or engaging in other inappropriate behavior, and it held several motions for sanctions in abeyance.”) (citing *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (2025)). The referenced motions for sanctions are still under consideration by the Supreme Court. See Ex. 1,

August 25, 2026 Order Denying Appellants’ Motion to Stay or Recall the Remittitur, *Tibbs v. 3M Company*, South Carolina Appellate Case No. 2025-002104 (recognizing defendants’ “troubling previous conduct,” “[t]ime and time again, Appellants have wasted the scarce judicial resources of this Court, the Court of Appeals, and the trial court,” “[i]t should be remembered that these Appellants have collectively filed over a dozen appeals from rulings of the trial court, at least seven of which we have dismissed as interlocutory and not immediately appealable. (There are eight more appeals the Court of Appeals has dismissed as interlocutory”).

The South Carolina asbestos dockets “have seen a radical increase in appeals by asbestos defendants. Almost all of these appeals were properly dismissed as premature and obviously interlocutory.” *Welch*, 445 S.C. at 668, 916 S.E.2d at 335. In *Tibbs v. 3M Co.*, 448 S.C. 182, 193, 933 S.E.2d 254, 260 (2026), arising from the Richland County asbestos coordinated docket before Justice Toal, the Supreme Court noted that the appellants’ prior interlocutory appeals “were dismissed as interlocutory” and that the court’s order “warned the parties against filing future improper petitions or interlocutory appeals.”

As a final matter, this Court should note that appealing counsel in this case, Gordon Rees Scully Mansukhani LLP, also represented the appealing parties in the above-cited South Carolina Supreme Court cases. Signing attorney A. Victor Rawl is an attorney of record in those appeals, and is one the counsel personally responsible for the conduct which the Supreme Court has repeatedly declared improper, and a “[waste of] the scarce judicial resources of this Court, the Court of Appeals, and the trial court.” **Ex. 1.** Appellant’s counsel continues to flout South Carolina’s appellate rules by filing improper interlocutory appeals, even in the face of a pending sanctions order from the South Carolina Supreme Court concerning exactly the same type of conduct and same type of appeals. The instant appeal is part of a pattern and practice of this

particular firm and this particular attorney deliberately violating the Appellate Rules in an effort to cause delay and increase the costs to dying plaintiffs seeking only to have their day in court. This appeal should be dismissed.

CONCLUSION

For the foregoing reasons, ESAB's improper interlocutory appeal should be dismissed. The Trial Court's Order is explicitly preliminary in nature, is not final, does not preclude ESAB from defending this action, and is not appeal on an interlocutory basis. On the other hand, the appeal is of the exact nature that the South Carolina Supreme Court has deemed to be a "[waste of] the scarce judicial resources of this Court, the Court of Appeals, and the trial court." The Stiwaters therefore respectfully request the appeal be dismissed, they be awarded their costs and attorney fees in having to respond to the appeal, and for any such further relief this Court may determine appropriate in light of the Supreme Court's repeated warnings, made directly to appellant's counsel, about such conduct.

October 1, 2026

Respectfully submitted,

s/ Theile B. McVey

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COUNSEL FOR RESPONDENTS

EXHIBIT 1

The Supreme Court of South Carolina

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

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, 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; 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, Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa, Ltd.; DeBeers, PLC, individually and as successor in interest to DeBeers S.A.; DeBeers Centenary AG; DeBeers Consolidated Mines, Ltd., n/k/a DeBeers Consolidated Mines Proprietary, Ltd.; DeBeers UK, Ltd.; DeBeers Jewelers, Ltd.; DeBeers Jewelers 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 (USA) Jewelry, Inc.;

Lightbox 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 S.A.S.; 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 S.A.S., are the Appellants.

Appellate Case No. 2025-002104

ORDER DENYING APPELLANTS' MOTION TO
STAY OR RECALL THE REMITTITUR

Appellants' motion to stay or recall the remittitur is denied. We are troubled by Appellants' motion, and we will explain why we are concerned. But first, we want to make clear what this case—and related cases—are about. These asbestos-related claims seek damages arising from workers suffering from mesothelioma as a result of working decades ago in a South Carolina facility or plant containing asbestos materials. The worker or the worker's estate attempts to identify those responsible for the manufacture and placement of the asbestos materials in the specific South Carolina facility or plant. Given the latent nature of the carcinogen, the manifestation of the disease and resulting injuries are often delayed many years. The claims present a host of factual and legal challenges, including the proximate cause element of linking the exposure to asbestos years ago to the manifestation of the disease. It is an unchallenged principle of law that an injured party may seek to recover damages in tort from the party responsible for causing the injury. With that

brief description of the typical asbestos-related claim, we now turn to the regrettable saga of this case, which has been mired in obfuscation and delay tactics.

For over 130 years, it has been settled law—law that Appellants fail to cite or mention—that the remittitur may only be recalled upon a very strong showing that the remittitur was sent down through some mistake or inadvertence by the appellate court. *State v. Keels*, 39 S.C. 553, 17 S.E. 802, 802–03 (1893); *see also State v. Barnes*, 413 S.C. 1, 4, 774 S.E.2d 454, 456 (2015).

Because Appellants cannot meet this legal standard governing remittitur recall, they have ignored it outright. Still, they proclaim that "[a]ll of the requirements for a stay or recall are met here." Either Appellants do not grasp the elementary procedural effect of our issuance of the remittitur, or this is yet another of their seemingly endless attempts at delay.

Once this Court issues the remittitur to the trial court, we no longer have jurisdiction. *Pringle v. Sizer*, 3 S.C. 335, 337 (1872) ("Strictly speaking, after a cause has been once remitted, this Court loses all jurisdiction over it"). That includes jurisdiction to grant a motion to stay. Our reservation of any sanctions issues does not change this status.

This Court respects Appellants' right to seek United States Supreme Court certiorari review. We will not sit idly by, however, and allow Appellants to manipulate court rules and governing laws and recharacterize our decisions in a brazen attempt to manufacture a split of decisional authority or some far-fetched international crisis. We therefore take this opportunity to note several things about Appellants' motion and their troubling previous conduct in this case.

We can start with Appellants' revisionist history of the Third Circuit decision in *In re Whittaker, Clark & Daniels, Inc.*, 176 F.4th 241 (3d Cir. 2026). We have already had to address Appellants' attempted distortion of *Whittaker*. *Tibbs v. 3M Co.*, Op. No. 28337 (S.C. Sup. Ct. filed May 27, 2026) (Howard Adv. Sh. No. 20 at 19, 37–38). By any rational and objective reading, the *Whittaker* decision rests largely on the undisputed fact that the South Carolina Receiver appointed in that case over a New Jersey corporation had failed to seek an ancillary appointment by a New Jersey court. *Whittaker*, 176 F.4th at 257. Therefore, the Third Circuit, in a thoughtful opinion by Judge Ambro, reached the unremarkable conclusion that the South Carolina Receivership Order could not prevent the corporation from filing bankruptcy because an out-of-state receiver that had not been appointed as an ancillary receiver by the state court of the corporation's domicile could not control

the internal affairs of a foreign corporation. *Id.* No one would quarrel with this general principle (although a related general principle recognizes that a receivership order can authorize a receiver to control the decision to file bankruptcy on behalf of a domestic corporation. McNeill & Ehrmann, *What Whittaker Clark & Daniels Says About Receivership Proceedings and Authority to File*, 45 Am. Bankr. Inst. J. 20, 20 (2026) ("A receivership order can divest corporate management of its authority to file for bankruptcy in two primary ways: explicitly or implicitly.")).

Appellants, however, proceed to misrepresent this principle and stretch it beyond recognition. In Appellants' view, the Third Circuit held in *Whittaker* that the Constitution forbids state or federal court receivers from making or interfering with any litigation decisions of a foreign corporation, even if an ancillary appointment order has been obtained in the corporation's "home" state. Appellants may believe this argument, but no one else would.

Lost amidst Appellants' arguments is the immutable fact that this Court has narrowed the scope of the Receivership. The initial grant of authority to the Receiver in other asbestos litigation was challenged as overly broad, and we agreed. *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 666–67, 916 S.E.2d 320, 334–35 (2025). When that same challenge was made in this case, we adhered to our precedent limiting the scope of the Receivership. We limited the scope of the Receivership to cover just two matters: the pursuit of any insurance coverage and the pursuit of alter ego/amalgamation and other equitable claims that may benefit the corporation. Specifically:

[W]e modif[ied] the Confirmation Order and h[e]ld the pre-judgment receiver may only operate to collect insurance assets and pursue such legal and equitable claims the corporation may have that can result in the receipt of assets responsive to the Tibbs' pending claims.

Allowing the pre-judgment receiver to operate in this limited scope does not impair Cape's right as a foreign corporation to conduct its internal affairs free from interference by a foreign court. The internal affairs of Cape—its relations between its officers, directors, shareholders, and agents—are not affected by the Confirmation Order as we have modified it. *See Pertuis [v. Front Roe Rests., Inc.]*, 423 S.C. [640,] 649–50, 817 S.E.2d [273,] 278 [(2018)] (defining internal affairs).

We have held that an action to pierce the corporate veil or determine if a single business enterprise/amalgamation exists does not implicate the internal affairs doctrine. *See id.* at 650, 817 S.E.2d at 278 (the "threshold amalgamation issue is not as much a question of the inner-workings of foreign corporations as it is an assessment of whether these entities actually operate as a single business enterprise, and thus should be treated as a single entity"). Other jurisdictions agree. *See, e.g., Kaiser-Francis Oil Co. v. Deutsche Oel & Gas, S.A.*, 566 P.3d 252, 264–66 (Alaska 2025) (citing *Pertuis* and collecting cases). We leave it to the trial court to consider *Pertuis* and determine whether the receiver's third-party claims should be controlled by South Carolina law or the law of the jurisdiction of Cape's incorporation or some other jurisdiction.

Tibbs, Op. No. 28337, at 36–37. Notwithstanding our clear limitation on the Receiver's authority, Appellants persist in advancing the patently false narrative that this Court has sanctioned a rogue Receivership with unlimited authority.

The "internal affairs" doctrine is a choice of law principle. Our decision does not address much less conflict with the Third Circuit's ruling that a corporation's decision to file bankruptcy involves the internal affairs doctrine. We acknowledged in *Tibbs* the general principle that certain corporate litigation decisions belong exclusively to the corporation's board, subject to certain exceptions, such as when the board is operating under a conflict of interest. *Whittaker* acknowledged another implicit exception: a state court receiver may divest a domestic corporation of its management authority and even dissolve the corporation. *Whittaker*, 176 F.4th at 256 ("Thus, on our reading, New Jersey law permits its courts to recognize foreign receivership orders and appoint an ancillary receiver to aid in the execution of foreign judgments, including by enjoining the corporation and its board from taking specific actions and exercising specific powers.").

It appears Appellants are relying on *Whittaker* to claim the receivership order here violates the Dormant Commerce Clause and Due Process. Even if these arguments were preserved, we do not understand how the Dormant Commerce Clause applies to a state court order regarding a company incorporated and existing under the laws of another country. As to Appellants' Due Process arguments, we are puzzled how they can press them at this late stage and on behalf of a third party.

We note further that Appellants' argument that the receivership order violates what they contend is the federal government's exclusive jurisdiction over foreign relations has never been presented to us before and cannot be raised now. Nevertheless, we take a moment to recognize how surreal Appellants' position is. Appellants maintain that only the federal government can conduct foreign affairs and regulate foreign commerce. Therefore, no state court has jurisdiction to affect the internal affairs of a corporation located outside the United States. Likewise, according to Appellants' logic, the decisions of the English courts regarding the scope of a corporation's liability, the legal effect of corporate transactions, and a corporation's presence for jurisdictional purposes are final and must be followed by all courts of this country. The United States Supreme Court has made clear that corporations organized under the law of another country cannot always use the internal affairs doctrine as a shield:

As a general matter, the law of the state of incorporation normally determines issues relating to the *internal* affairs of a corporation. . . . Different conflicts principles apply, however, where the rights of third parties *external* to the corporation are at issue. . . . To give conclusive effect to the law of the chartering state in determining whether the separate juridical status of its instrumentality should be respected would permit the state to violate with impunity the rights of third parties under international law while effectively insulating itself from liability in foreign courts. We decline to permit such a result.

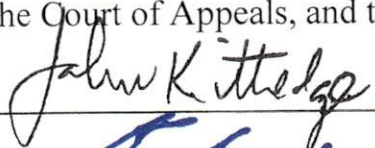
First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba, 462 U.S. 611, 621–22 (1983) (footnotes omitted); *see also VantagePoint Venture Partners 1996 v. Examen, Inc.*, 871 A.2d 1108, 1113 n. 14 (Del. 2005) ("The internal affairs doctrine does not apply where the rights of third parties external to the corporation are at issue, *e.g.*, contracts and torts."); 19 C.J.S. *Corporations* § 965 (2026).

It should be remembered that Appellants make these unmoored arguments not for themselves, but for Cape Intermediate Holdings Limited (CIHL)—an active English corporation that has never bothered to appear in our courts and whose tactics to avoid legal accountability have risen to the level of moral fraud. It should be remembered that these Appellants—who claim they have no legally relevant relationship with CIHL or any Cape entity—have refused to participate in even the most rudimentary jurisdictional discovery to explore their insistence that they have no minimum contacts with South Carolina. It should be remembered that despite maintaining that

the South Carolina trial court has no personal jurisdiction over them, these Appellants routinely file objections and motions to dismiss and appear at hearings to make extended arguments against the court's rulings. It should be remembered that these Appellants have collectively filed over a dozen appeals from rulings of the trial court, at least seven of which we have dismissed as interlocutory and not immediately appealable. (There are eight more appeals the Court of Appeals has dismissed as interlocutory). Among the rulings Appellants have prematurely appealed include a scheduling order and an order regarding the pre-marking of trial exhibits, rulings that lawyers of even the briefest experience would know are not immediately appealable.

Appellants do not stop with misrepresenting and misapplying our decision and the decision of the Third Circuit. They make the stunning claim that they have been victims of an "illegitimate proceeding" that has caused them constitutional injury and irreparable harm just like that in *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175, 182 (2023). *Axon* involved claims that certain federal agency enforcement action proceedings violated the constitutional separation of powers doctrine. *Id.* at 180. The Court held only that the federal district court had jurisdiction to hear these claims. *Id.* In deciding that Congress did not intend for the agencies' statutory review scheme to oust federal district courts of jurisdiction to hear the claimant's constitutional claims, the Court reasoned that the separation of powers argument could not be meaningfully reviewed by the agency even though the claimant could seek review of the agency ruling in the federal court of appeals. *Id.* at 190–92. The Court explained this was because the claimants were alleging a core constitutional injury—being subjected to "an illegitimate proceeding" conducted by "an illegitimate decisionmaker." *Id.* at 191.

There is no separation of powers claim here, nor any notion that South Carolina courts are "illegitimate." Yet, that does not keep Appellants from ginning up another reckless distortion of a court decision. Time and time again, Appellants have wasted the scarce judicial resources of this Court, the Court of Appeals, and the trial court.

	C.J.
	J.
	A. J.

Columbia, South Carolina
August 25, 2026

cc:

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The Honorable Jeanette W. McBride

Oct 01 2026**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2026-002112
Circuit Court Case No. 2025-CP-40-04961

Roger D. Stiwinter and Phyllis G. Stiwinter, Respondents,

v.

3M Company, A. Lynn thomas Company, Incorporated, A.O. Smith Corporation, ABB Inc., Air & Liquid Systems Corporation, Alfa Laval Inc., Alfol Inc., Amentum Environment & Energy, Inc. Anchor/Darling Valve Company, Armstrong International, Inc., ASCO, L.P., Atlas Turner, Inc., B & D Marine and Industrial Boilers, Inc., Badham Insulation Company, Badham Insulation Company, Inc., Badham Insulation Company, Inc., Bahnson, Inc., Beaty Investments, Inc., Bechtel Corporation, The Bonitz Company, BW/IP Inc., CIL, Inc., Canvas CT, LLC, Canvas MW, LLC, Canvas SX, LLC, Cape Intermediate Holdings Limited, Carboline Company, Carrier Corporation, Carver Pump Company, CB&I Laurens, Inc., Clarkson Brothers, Incorporated, Clyde Union Inc., Compudyne, LLC, Cooper Industries, LLC, Copeland Corporation LLC, Copes-Vulcan, Inc., Covil Corporation, Crane Instrumentation & Sampling PFT Corp., Crosby Valve, LLC, Daniel International Corporation, Davis Mechanical Contractors, Inc., Duke Endergy Carolinas, LLC, Ecodyne Corporation, Electrolux Home Products, Company, Inc., ESAB Corporation, Fisher Controls International LLC, Flowserve Corporation, Flowserve US Company, Flowserve US Inc., Fluor Constructors International, Inc., Fluor Constructors International, Inc., Fluor Daniel Services Corporation, Fluor Corporation, G. Denver and Co., LLC, Gardner Denver Nash, LLC, General Dynamics Corporation, General Electric Company, Gould Electronics Inc., Goulds Pumps LLC, Great Barrier Insulation Co., Grinnell LLC, Henry Pratt Company, LLC, Howden North America Inc., IMO Industries Inc., Industrial and Commercial Insulation, Inc., International Paper Company, Itt LLC, J.D. Shields Corporation, Metropolitan Life Insurance Company, MP Supply, Inc., MRC Global (US) Inc., NIBCO Inc., Occidental Chemical Corporation, Paramount Global, Payne & Keller Company, PECW Holding Company, Plastics Engineering Company, Redco Corporation, Rentavla LLC, Riley Power Inc., Rockwell Automation, Inc., Spirax Sarco, Inc., Starr Davis Company, Inc., Starr Davis Company of S.C., Inc., Sterling Fluid Systems (USA) LLC, Sterling Wander LLLP, Taco, Inc., Teachey Mechanical, Inc., Teachey Service Company, Inc., Union Carbide Corporation, Valves and

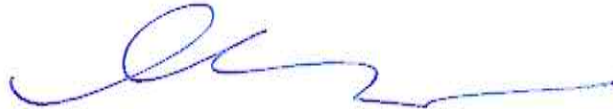
Controls US, Inc., Velen Valve Corp., Viking Pump, Inc., Vistra Intermediate Company LLC, The Walworth Company, Warren Pumps LLC, Watts Regulator Co., The William Powell Company, Wind Up, Ltd., York International Corporation, Zurn Industries, LLC, and Zuuk International, Inc., Defendants,

of which ESAB Corporation is the Appellant.

PROOF OF SERVICE

I, Elizabeth Moultrie, of Kassel McVey, hereby certify that **RESPONDENTS' ROGER AND PHYLLIS STIWINTER MEMORANDUM ON APPEALABILITY**, were served on all parties to this appeal on October 1, 2026, via email to their counsel of record:

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