STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY *et al.*,

Defendants.

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C/A No. 2023-CP-40-01759

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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,

v.

ANGLO AMERICAN PLC, individually and as successor in interest to ANGLO AMERICAN CORPORATION OF SOUTH AFRICA LTD.; DE BEERS PLC, individually and as successor in interest to DE BEERS S.A.; DE BEERS CENTENARY AG; DE BEERS CONSOLIDATED MINES LTD., n/k/a DE BEERS CONSOLIDATED MINES PROPRIETARY LTD.; DE BEERS UK LTD.; DE BEERS JEWELLERS LTD.; DE BEERS JEWELLERS US, INC.; ANGLO AMERICAN US HOLDINGS INC.; ELEMENT SIX US CORP.; ELEMENT SIX TECHNOLOGIES US CORP.; ELEMENT SIX TECHNOLOGIES (OR) CORP.; FIRST MODE HOLDINGS, INC.; PLATINUM GUILD INTERNATIONAL (U.S.A.) JEWELRY INC.; LIGHTBOX JEWELRY INC.; FOREVERMARK US INC.; ANGLO AMERICAN CROP NUTRIENTS (U.S.A.), LLC; CHARTER CONSOLIDATED LTD.; ESAB CORPORATION; CENTRAL MINING & INVESTMENT CORPORATION LTD.; CAPE HOLDCO LTD.; THE LAW

ORDER DENYING CERTAIN THIRD-PARTY DEFENDANTS' MOTIONS TO DISSOLVE RECEIVERSHIP AND THIRD-PARTY DEFENDANTS' MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION

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.

This matter came before the Court on the (i) Motions to Dissolve the Receivership contained in various motions filed by Mohed Altrad, Altrad Investment Authority S.A.S. ("AIA"), Hawk BidCo US Inc., Arranco US, LLC, and Sparrows Offshore, LLC, Charter Consolidated Ltd. ("Charter"), Central Mining & Investment Corporation Ltd. ("Central Mining"), and ESAB Corporation ("ESAB") (together, the "Dissolution Motions")[1]; and (ii) the Motions to Dismiss the Third-Party Complaint for lack of personal jurisdiction filed by Anglo American PLC, De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd. (n/k/a De Beers Consolidated Mines Proprietary Ltd.), De Beers UK Ltd., De Beers Jewellers Ltd., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.), LLC, Charter, ESAB, Central

[1] At the October 25, 2023 hearing in this matter, certain of the Third-Party Defendants (and specifically, the ten U.S. subsidiaries among the Oppenheimer Third-Party Defendants) advised of their intention to join the Dissolution Motions. On October 26, 2023, those entities each filed a Motion to Join the Dissolution Motions; because each of those ten entities has since been dismissed without prejudice, those Motions to Join the Dissolution Motions are moot.

Mining, Mohed Altrad, AIA, Hawk BidCo US Inc., Arranco US, LLC, and Sparrows Offshore, LLC (together, the "Personal Jurisdiction Motions"). Having considered the Dissolution Motions and the Personal Jurisdiction Motions and related memoranda and supporting affidavits, along with the Third-Party Plaintiff's Omnibus Oppositions to those motions, the Affidavit of James T.H. Buxton, Esq. ("Buxton Affidavit"), the Affidavit of Eric L. Talley, Ph.D., J.D. ("Talley Affidavit"), and the supporting materials submitted to the Court, the Court denies the Dissolution Motions and denies the Personal Jurisdiction Motions for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND OF ORDERS

I. Cape Failed to Respond to Asbestos Claims Asserted by South Carolina Residents.

This action, and the appointment of the Receiver, stem from an underlying asbestos lawsuit in which Cape was named but failed to participate. On June 4, 2021, Isabella Park filed a lawsuit asserting personal injury claims arising from asbestos exposure against (among others) Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd. *See* Compl., *Park v. Armstrong Int'l, Inc. et al.*, No. 2021-CP-4002727 (June 4, 2021), at 1, 7. Ms. Park sought relief after being "diagnosed with mesothelioma caused by exposure to asbestos dust and fibers" unintentionally "brought home" for years "as a result of her husband's work with and around asbestos-containing products." *Id.* at ¶ 4.

On June 9, 2021, less than five months from her diagnosis, and only five days after filing her lawsuit, Ms. Park passed away. On November 17, 2021, Ms. Park's son, Keith, amended the complaint, appearing individually and as personal representative to Ms. Park's estate (the "*Park* Plaintiffs"), to assert a wrongful death action. *See* First Amended Compl., *Park et al. v. Armstrong Int'l, Inc., et al.*, No. 2021-CP-4002727 (Nov. 17, 2021). The amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) (together with all predecessors in interest, "Cape") as a defendant. Cape Intermediate Holdings Limited and Cape

PLC were identified as successors in interest to Cape Asbestos Company Ltd. *Id.* at 9; *see also id.* at ¶¶ 26–27. In December 2021, the *Park* Plaintiffs served the named Cape entities, which (as has been their practice for decades) never answered, moved, or otherwise responded.

II. The Court Appointed a Receiver to Identify, Preserve, and Marshal Cape's Assets.

On March 6, 2023, the *Park* Plaintiffs filed a motion for "this Court to appoint a receiver over Cape PLC and its subsidiaries, affiliates, successors, and assigns." Motion to Appoint Receiver, *Park et al. v. Armstrong Int'l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 6, 2023) ("Appointment Motion"), at 1. The Appointment Motion was made under S.C. Code §§ 15-65-10(4) and (5),[2] on the basis that a named defendant, Cape PLC, "is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)" and, with "its subsidiaries and global affiliates[,] . . . were and are private companies organized and existing under the laws of the United Kingdom, with its principal place of business in England." *Id.* at 1. The Appointment Motion described Cape PLC's longstanding litigation-avoidance strategy—starting nearly a half century earlier, in the late 1970s—by which Cape (with its subsidiaries, affiliates, successors, and assigns) "decided to simply accept default judgments in asbestos lawsuits [that] could not be enforced." *Id.* at 2.

On March 17, 2023, this Court granted the request pursuant to S.C. Code § 15-65-10(5), as well as § 15-65-10(4) in the alternative, and appointed a receiver for Cape PLC, as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.). Order, *Park et al. v. Armstrong Int'l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) ("Appointment Order"), at 1.

[2] Section 10-65-10(4) and (5) authorize the appointment of a receiver where (i) a corporation has been dissolved, is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights; and (ii) "[i]n such other cases as are provided by law or may be in accordance with the existing practice," respectively.

Pursuant to the Appointment Order and South Carolina law, the Receiver has "power and authority [to] fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape"—in proper satisfaction of claims against Cape —"whatever they may be." *Id.* The Appointment Order further vested the Receiver with "rights, authority and powers with respect to" Cape's property, including to "obtain from any . . . third party, any financial records belonging to or pertaining to" Cape. *Id.* at 2.

III. The Receiver Asserts Equitable Claims Against the Third-Party Defendants.

On June 30, 2023, the Receiver filed the Third-Party Complaint, asserting claims against the Third-Party Defendants for (i) unjust enrichment (first cause of action), (ii) constructive trust (second cause of action), (iii) alter ego and veil-piercing liability (third cause of action), and (iv) accounting (fourth cause of action).[3] Each of the Third-Party Defendants named in the Third-Party Complaint are alleged to have facilitated, caused, or directed Cape's U.S.-based asbestos sales and liability-avoidance scheme, or otherwise acted as successors in interest to or beneficiaries of entities involved in that scheme, and are therefore responsible for the bodily injury underlying the claims against Cape, including specifically those claims asserted by South Carolinians.[4]

[3] Seven of the Third-Party Defendants named in the Third-Party Complaint have not acknowledged service or otherwise participated in this action. The Receiver has filed motions for entry of default as to those entities that have not responded, and the Court has requested from the Receiver an order granting the same.

[4] On November 17, 2023, the Receiver dismissed, without prejudice, 11 entities identified as Oppenheimer Third-Party Defendants, including Anglo American Crop Nutrients (U.S.A.), LLC; Anglo American US Holdings Inc.; De Beers Jewellers Ltd.; De Beers Jewellers US, Inc.; Element Six Technologies (OR) Corp.; Element Six Technologies US Corp.; Element Six US Corp.; First Mode Holdings, Inc.; Forevermark US Inc.; Lightbox Jewelry Inc.; and Platinum Guild International (U.S.A.) Jewelry Inc.

IV. Summary of the Third-Party Complaint's Allegations.

The 65-page Third-Party Complaint alleges a remarkable system of avoiding responsibility for the harm caused by Cape's asbestos over a period of decades. In doing so, it categorizes the Third-Party Defendants into three groups: the Altrad Third-Party Defendants (Third-Party Compl. ¶ 119); the Oppenheimer Third-Party Defendants (*id.* ¶ 122); and the Charter Third-Party Defendants (*id.* ¶ 124). The Third-Party Complaint (along with other publicly available information and the affidavits filed in support of the Omnibus Oppositions to the Personal Jurisdiction Motions and the Dissolution Motions) comprehensively describe the alleged interconnected history of Cape and certain of these entities, their alleged dominion over the South African commodity mining industry, and their alleged role in controlling, continuing, and/or benefiting from Cape's strategic exploitation of the U.S. asbestos market as well as its accompanying alleged scheme to insulate itself, and its foreign affiliates and agents, from the resulting litigation exposure, with the allegations summarized below—which pursuant to the applicable standard are assumed to be true for the purpose of deciding the Personal Jurisdiction Motions.

A. Cape

Cape PLC (as it was known from 1989 to 2011, and as is now known as Cape Intermediate Holdings Ltd.) is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates. At all relevant times, Cape was deeply involved in all aspects of the global asbestos industry, "mining hundreds of thousands of tons of raw asbestos in Apartheid-era South Africa and then selling asbestos fiber to scores of manufacturers of asbestos-containing products in the United States," including into South Carolina. Third-Party Compl. ¶ 40; *see also id.* ¶ 71 (Cape marketed its asbestos directly to U.S.-based customers dating back to the 1930s).

In 1953, Cape established North American Asbestos Corporation ("NAAC") "to operate as [its] wholly controlled instrumentality for the 'purpose of expediting and facilitating the movement' of asbestos from South African mines into the United States (including in South Carolina)." *Id.* ¶¶ 70, 72. The two decades following Cape's formation of NAAC were Cape's "most bountiful years." *Id.* ¶ 70. Cape effectively enjoyed an asbestos monopoly, controlling 90% of the global supply of amosite asbestos and dominating the distribution of other types of asbestos. *Id.* ¶ 69.

The Third-Party Complaint alleges that, at the direction of the amalgamated global Cape/Oppenheimer network, Cape and NAAC implemented a "conscious pattern of product distribution [of asbestos] nationally," resulting in NAAC selling massive amounts of asbestos to customers in the United States, which used or distributed those asbestos products in South Carolina. *Id.* ¶¶ 73–75. ("NAAC's own records show that Cape sold asbestos to companies in South Carolina[.]"). As a result, by 1970, NAAC was the "largest U.S. importer of Amphibole Fibers," which it then redistributed throughout the United States. *Id.* ¶¶ 72–73, 75, 77. NAAC's operations and decision-making were "wholly dominated by Cape and its owners, including Charter and other affiliated mining/investment interests in South Africa," with NAAC not permitted to borrow money without Cape's approval and routinely forced to pay dividends to Cape, thereby depleting the assets that could be reached by NAAC's creditors in the United States. *Id.* ¶¶ 77–79. In other words, Cape and NAAC were alleged to be mere extensions of the Oppenheimer South African mining empire. *Id.* ¶¶ 78–79.

At Cape's direction and consistent with its company-wide policy, NAAC purchased "wholly inadequate" insurance coverage to address its massive future products liability exposure. *Id.* ¶ 80. In addition to allegedly maintaining egregious and inhumane labor practices for its

indigenous workers in its South African mines, Cape—as supported by other members of the broader Oppenheimer business empire—also is alleged to have actively suppressed information about the known risks of asbestos in the United States and used misinformation to influence public opinions about asbestos. *See id.* ¶¶ 81–88.

By the early 1970s, asbestos-related products liability lawsuits were being initiated, prompting Cape and its affiliated entities to devise and implement a litigation-avoidance scheme that involved, among other things, (i) taking steps to make it appear—falsely—that Cape was reducing oversight of NAAC, (ii) disclaiming any "moral responsibility" to respond to products liability lawsuits in the United States, (iii) strategically declining to reserve funds in the United States to address those liabilities, and (iv) refusing to accept process or appear in any U.S. judicial proceedings (including in the Park lawsuit pending here). *Id.* ¶¶ 89–102. These allegations are substantiated by Cape's own records, including for example its communications with its former counsel, which reveal a focus on avoiding exposure to U.S. litigation or assets that could be garnished in the United States in light of the strategy of accepting default judgments:

> If Cape in the future should set up or acquire any U.S. Company or business, then such Company or business would be deemed to be an asset of Cape, even though acquired after entry of any default judgments. Such new Company or business would be considered an asset of Cape in the U.S. and subject to garnishment to satisfy the default judgments.

Ex. 70 to Omnibus Opp. to Personal Jurisdiction Motions (Dec. 23, 1975 Correspondence from S. Milwid (Lord, Bissell & Brook) to A. J. Penna, Esq. (Cape Industries Ltd.)), at CAPE000142.[5]

[5] Except where specifically stated otherwise, all citations to exhibit numbers herein are in reference to exhibits that were submitted with the Receiver's Omnibus Opposition to Motions to Dismiss for Lack of Personal Jurisdiction on October 18, 2023.

Effective January 31, 1978, Cape liquidated NAAC, siphoning any remaining assets out of the United States to Cape Industries Overseas Ltd., an entity wholly owned by Cape Industries Ltd., in an effort to reduce the assets available to creditors. Third-Party Compl. ¶¶ 94–96. This strategy was allegedly taken directly from the Oppenheimer playbook, *i.e.*, distributing commodities mined in South Africa in the United States at great profits, draining those domestic profits for the benefit of foreign affiliates, and liquidating (at least formally) any U.S. presence when liability was imminent. *Id.* ¶ 97. Despite the dissolution of NAAC, the Third-Party Complaint alleges that Cape "contemplated ways to continue the flow of asbestos to U.S. customers and asbestos profits out of the United States." *Id.* ¶ 98. For example, through NAAC's final President, Cape allegedly facilitated the formation of Continental Products Corporation to act as a commission agent for the future sales of South African asbestos in the United States. *Id.* ¶¶ 94–96, 99. The stated purpose for doing so was to "eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to [product liability] lawsuits." *Id.* ¶ 101.

Although Cape entered into certain agreements to address a fraction of the bodily harm caused by its asbestos around the world, including through a 2006 Scheme of Agreement with former employees in the United Kingdom, Cape has allegedly "done ***nothing*** about its massive unpaid responsibility for the death and illness caused by its asbestos products in South Carolina and elsewhere in the United States." *Id.* ¶ 114.

B. The Altrad Third-Party Defendants.

Since 2017, Cape has been part of the Altrad Group, of which various entities, along with Mohed Altrad,[6] its French–Syrian founder and President (who is alleged to have been recently

[6] As of 2017, Mohed Altrad "h[e]ld 77.78% of the [company's] shares." Ex. 88 (Altrad 2017 Annual Report), at 20. As of August 31, 2022, Mr. Altrad held 77.45% of the company's shares.

convicted on bribery charges, and is currently serving a suspended sentence in France), have been named as Third-Party Defendants. Third-Party Compl. ¶¶ 113, 116–119 & nn. 39–40. Specifically, the "Altrad Third-Party Defendants" include:

- Cape subsidiaries or affiliates based in the United Kingdom: Cape Holdco Ltd., Cape UK Holdings NewCo Ltd., Cape Industrial Services Group, Ltd., and Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.);[7]
- Cape owners based in the United Kingdom and France: The foreign Altrad Group entities that now own and control Cape, *i.e.*, AIA and Altrad UK Ltd., with their majority shareholder and founder, Mohed Altrad (*id.* ¶ 116); and
- Cape U.S. affiliates: Certain Altrad Group U.S. subsidiaries, including Hawk Bidco US Inc., Arranco US, LLC, Sparrows Offshore, LLC, and the Sparrows Group, LLC, as were part of Sparrows Offshore Group, Ltd. d/b/a the "Sparrows Group" (n/k/a "Altrad Sparrows") based in Aberdeen, Scotland.[8] *Id.* ¶¶ 117, 119

Ex. 89 (Altrad 2022 Annual Report), at 71. Just one month later, Mr. Altrad held 97.6% of the company's shares. *Id.*

[7] The Receiver originally named The Law Debenture Corporation PLC ("Law Debenture") as an Altrad Third-Party Defendant, based on public information suggesting that it was a "Person with Significant Control" of Cape as of 2016. Third-Party Compl. ¶ 113. After receiving additional information from Law Debenture's counsel regarding the nature of its "control," which was based on representing the interests of certain persons in the United Kingdom also injured by Cape asbestos, the Receiver dismissed Law Debenture on August 21, 2023, without prejudice.

[8] On July 11, 2022, Altrad completed the acquisition of "the Sparrows Group." Press Release, *Altrad Completes Acquisition of Engineering and Maintenance Specialist Sparrows Group* (July 11, 2022), https://www.altrad.com/en/newsreader/altrad-completes-acquisition-of-engineering-and-maintenance-specialist-sparrows-group.html. Within two weeks of being served with the Third-Party Complaint on July 14, 2023, Sparrows Offshore Group Ltd. passed a resolution to liquidate on July 27, 2023 (while other Sparrows entities continue to operate at the same registered address, including Sparrows Offshore International Group Ltd.). As of October 2, 2023, Altrad announced the rebranding of the "Sparrows Group" to "Altrad Sparrows." Aberdeen Business

The Third-Party Complaint alleges that each of these entities are either successors in interest to Cape and its subsidiary and affiliated entities, or beneficiaries from—and continuing participants in—Cape's liability avoidance scheme. *Id.* ¶ 119. Notably, seven of the 12 Altrad Third-Party Defendants have failed to respond to the Third-Party Complaint, including Altrad UK Ltd.; Cape Industrial Services Ltd., n/k/a Altrad Services Ltd. (since June 1, 2021); Cape Holdco Ltd.; Cape Industrial Services Group Ltd.; Cape UK Holdings Newco Ltd.; Sparrows Offshore Group Ltd.; and The Sparrows Group LLC.[9]

The Altrad Group's publicly available annual report for fiscal year 2017 touted the acquisition of Cape as an "exceptional opportunity" to acquire "one of the world's leading providers of services to industry."[10] Ex. 88 (Altrad 2017 Annual Report), at 40. In its annual report for the year ended August 31, 2022, Altrad Services Ltd.—which is named as a Third-Party

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News, *Altrad Spreads Its Wings as Altrad Sparrows* (Oct. 2, 2023), https://aberdeenbusinessnews.co.uk/sparrows-spreads-its-wings-as-altrad-sparrows/.

[9] Due to those failures to appear, the Receiver filed default motions against those seven entities, with supporting proof of service, from August 18 through 29, 2023, and the Court intends to enter default as to those entities by separate order. The five responding Altrad Third-Party Defendants—Mr. Altrad, Altrad Investment Authority S.A.S., Hawk Bidco US Inc., Arranco US, LLC, and Sparrows Offshore, LLC—filed motions to dismiss the Third-Party Complaint and motions to dissolve the Receivership.

[10] At this stage in the proceeding, the Court can properly take notice of certain facts that are "not subject to reasonable dispute," including certain public statements or reports consistent with the alleged corporate history and relationships of the Third-Party Defendants presented to the Court by the Receiver in connection the Omnibus Oppositions to the Personal Jurisdiction Motions and the Dissolution Motions. *See* Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are "not subject to reasonable dispute"); *id.* 201(f) ("Judicial notice may be taken at any stage of the proceeding"). Consideration of these published facts, as have been submitted to the Court, is also consistent with the Court's obligation to "[v]iew[] the complaint's allegations, and the inferences from them, in the light most favorable to" the non-movant, and to construe pleadings liberally "so that substantial justice is done between the parties." *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 632–33, 699 S.E.2d 699, 703–04 (Ct. App. 2010).

Defendant but has not responded to the Third-Party Complaint—acknowledged Cape's responsibility for harm from asbestos exposure, reporting that the Altrad Group had set aside £118 million to address certain ***non-U.S.*** historical claims relating to asbestos exposure. Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 50 n.23 ("The Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. Where claims are determined to have merit, the costs are provided for and claims are settled in the ordinary course, otherwise claims are defended."); *see also* Joshua Stein, *Altrad Makes £118m Provision for Asbestos Claims*, Construction News (Apr. 14, 2023).[11]

C. The Oppenheimer Third-Party Defendants.

The five Oppenheimer Third-Party Defendants that remain in this action include Anglo American PLC, De Beers PLC (individually and as successor in interest to De Beers S.A.), De Beers Centenary AG, De Beers Consolidated Mines Ltd. (n/k/a De Beers Consolidated Mines Proprietary Ltd.), and De Beers UK Ltd.[12] Anglo American PLC is alleged to be the ultimate parent company for each of the Oppenheimer Third-Party Defendants, as well as successor in interest to Anglo American Corporation of South Africa Ltd. Third-Party Compl. ¶ 121.

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[11] *Available at* https://www.constructionnews.co.uk/health-and-safety/altrad-makes-118m-provision-for-asbestos-claims-14-04-2023/#:~:text=Altrad%20has%20set%20aside%20%C2%A3,historic%20alleged%20exposure%20to%20asbestos.

[12] Those entities currently have presence, operations, and business in the United States, including in South Carolina, through Oppenheimer Third-Party Defendants Anglo American Crop Nutrients (U.S.A.), LLC, Anglo American US Holdings Inc., De Beers Jewellers US, Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Forevermark US Inc., Lightbox Jewelry Inc., and Platinum Guild International (U.S.A.) Jewelry Inc. Those U.S. based entities were dismissed from the case, without prejudice, on November 17, 2023.

Certain Oppenheimer Third-Party Defendants, including as successors in interest, were allegedly instrumental in the initial formation of Cape in 1893 and its significant international expansion in the 1940s through 1970s, and have since reaped the financial benefits of its dominance of the asbestos trade. As alleged, an asbestos-mining syndicate was established in 1891 to act in coordination with powerful commodity mining interests in South Africa, with Francis Oats—a director and the eventual chairman of De Beers Consolidated Mines Ltd.—forming the Cape Mineral Syndicate "to exploit asbestos reserves" in South Africa. *Id.* ¶ 45. By late 1893, the Cape Asbestos Company Ltd. was organized in the United Kingdom to (i) take over the Cape Mineral Syndicate's mining operations, and (ii) manufacture asbestos products in England. From the outset, Cape was a De Beers-affiliated project, with its leadership drawn from the DeBeers ranks. *Id.* As alleged in the Third-Party Complaint, Cape was managed, funded, and controlled by members of the key leadership of De Beers. *Id.* at ¶ 47. In fact, Ludwig Breitmeyer, Cape's first long term Chairman (from 1894 until 1930), managed Cape while serving, with associates, as part of the Corner House Group that "domina[ted] mining in South Africa into the 1920s," when Sir Ernest Oppenheimer displaced him and effected the takeover of De Beers and various other mining interests (which eventually included Cape). *Id.* ¶¶ 48–49.

Around 1925, Sir Ernest Oppenheimer allegedly took control of the De Beers mining empire and became its chairman by 1930. *Id.* ¶ 49. That control was aided by the fact that Oppenheimer also controlled the Anglo American Corporation of South Africa Ltd., which he formed to "bring about an 'amalgamation between' various mines and other business interests." *Id*. By the middle of the twentieth century, Oppenheimer allegedly had aligned these interests such that Cape was the asbestos-mining leg of an amalgamated mining empire based out of South Africa that included the De Beers diamond monopoly and the mining powerhouse of Anglo associated

with the Oppenheimer business dynasty. *Id.* ¶ 51. These affiliations were alleged to be essential to Cape's success, including because Anglo dominated the mining industry and was the core of South Africa's economy. *Id.* ¶¶ 52–53, 62 (detailing Oppenheimer family's modus operandi to "structure[] and coordinate[] 'a web of secret companies' to avoid financial liabilities" and decline to acknowledge the overlapping and connecting control within that web).

D. The Charter Third-Party Defendants.

The Charter Third-Party Defendants include Charter, its subsidiary, Central Mining, and ESAB, the parent company, as well as allegedly successor in interest to, Charter and Central Mining (beginning in or around 2022). *See* Third-Party Compl. ¶ 124. Like Cape, Central Mining and Charter were critical parts of the international growth of the Oppenheimer family's business interests. Central Mining, as an Anglo-controlled entity, was the majority shareholder in Cape and controlled its board and directed its operations. *Id.* ¶¶ 50–52. When the Oppenheimer family created Charter in 1965 by merging Central Mining with two other mining companies, the combined entity served as Anglo's "international investment arm." *Id.* ¶ 54. While Charter had direct and indirect interests in Cape from its founding, by 1969 Charter had acquired majority ownership of Cape. *Id.* ¶ 55. Cape was Charter's primary operating company and principal industrial subsidiary, and, by extension, Cape and its subsidiaries were part of the Anglo American Group of companies that dominated the South African mining economy. *Id.* ¶¶ 55–56, 61–62.

The Third-Party Complaint further alleges the purported corporate separation between Charter and Anglo was superficial, with the entities sharing office space, personnel, and board members and with the Oppenheimers consistently dominating Charter's board and ownership. *Id.* ¶¶ 57, 59. As alleged, Charter operated such that "every move was made in the interest of De Beers and Anglo," and in particular to "further[] the amalgamated Oppenheimer empire's effort to extend its grasp to North America." *Id.* ¶ 58 (brackets and internal quotation marks omitted). Or

as alleged, Charter was designed to serve as a corporate cushion for Anglo that could quickly purge cash to other Oppenheimer-affiliated entities and add a level of separation between Anglo and Cape in an attempt to insulate Anglo from the liability associated with a profitable asbestos business. *Id.* ¶ 65. The Oppenheimer family's control of Central Mining, Charter, Cape, and its other enterprises was allegedly central to the management of its businesses and the domination of the South African mining economy. *Id*. ¶¶ 67–68.

By 1993, the Oppenheimer dynasty allegedly chose to demote the role of Charter in its portfolio of businesses, with Charter re-registering as a public company (renamed Charter PLC). *Id*. ¶ 123. Three years later, Charter sold its interest in Cape for approximately £48 million. *Id*. In 2008, Charter PLC became Charter International PLC, and was acquired by Colfax Corporation ("Colfax") in 2012 at a valuation of $2.4 billion. *Id.* (disclosing Charter's exposure to asbestos-related lawsuits in the United States but assessing that exposure as not "material" and making no reserves). In 2022, Colfax spun off ESAB, allegedly continuing as the parent company of Charter and Central Mining and their successor in interest. *Id*. ¶ 124.

ORDER DENYING CERTAIN THIRD-PARTY DEFENDANTS' MOTIONS TO DISSOLVE THE RECEIVERSHIP

For the reasons set forth below, and as also stated on the record on October 25, 2023, and in consideration of the filings in this matter and oral arguments by all parties, the Court denies Third-Party Defendants' Dissolution Motions.

I. Cape Was Properly Served in *Park*.

Third-Party Defendants argue the Receivership should be dissolved because Cape was not properly served with the *Park* summons and complaint. Based upon the showings by the Receiver, this contention is incorrect. The Court finds Cape was properly served in the *Park* case with the First Amended Summons and First Amended Complaint, which pleaded claims against an entity

existing in the United Kingdom since 1893, Cape PLC, n/k/a Cape Intermediate Holdings Ltd., for the wrongful death allegedly caused by the company's historical asbestos business.

The Court is disturbed by evidence in the record indicating a decades-long practice by Cape of ignoring asbestos lawsuits filed against it in the United States—simply accepting defaults ostensibly because it believes defaults entered by this Court cannot be enforced. Cape's own disclosures are before the Court, and they reveal Cape never intends to respond to litigation pending in the United States in the future, because that would purportedly "have a materially adverse effect on the financial status of the Group and almost certainly result in insolvency proceedings." It is against that backdrop that the Court examines Third-Party Defendants' arguments regarding service and ultimately rejects them as unfounded.

A. <u>The Proper Entity Was Served.</u>

As confirmed by the Proof of Service presented by the Receiver as well as the other service-related paperwork submitted for the Court's consideration—including the e-mail offered by the *Park* Plaintiffs at the October 25, 2023 hearing and admitted as a Court exhibit—the *Park* Plaintiffs properly served Cape PLC in the United Kingdom, *i.e.*, the Cape entity for which the Receiver has been appointed, with the First Amended Complaint.

Third-Party Defendants argue there are two entities with the name "Cape PLC." The first one is the original Cape PLC, which has existed for approximately 130 years in the United Kingdom in various iterations. This 130-year-old entity is alleged to have sold most of the blue (crocidolite) and brown (amosite) asbestos in the United States and in South Carolina, including by and through its American subsidiary, NAAC. As the liability associated with asbestos became known to this entity, it allegedly fled the jurisdiction and began implementing a sophisticated liability-avoidance scheme.

The second Cape PLC, on the other hand, is a new entity allegedly created in the Bailiwick of Jersey in April 2011 and identified for the first time in this litigation—not by the Receiver or by the *Park* Plaintiffs, but by Third-Party Defendants in their responsive pleadings to the Receiver's Third-Party Complaint. Cape's own materials indicate this new Bailiwick of Jersey entity was formed recently to act as a "holding company of the Cape Group" for tax purposes, with the new entity being a "Singapore and Jersey tax resident."

Despite this clear distinction between two entities that may have borne the same name but nevertheless exist in different jurisdictions with different backgrounds, Third-Party Defendants point to this new Bailiwick of Jersey entity as the reason why they claim service by the *Park* Plaintiffs was ineffective. According to Third-Party Defendants, the *Park* Plaintiffs actually meant to sue, and therefore should have served, this new Cape PLC entity and not the Cape PLC entity with the 130-year pedigree of selling or otherwise profiting from asbestos (including through "asbestos removal" services). The Court finds no merit in this argument. Other than the common name, there is no evidence the *Park* Plaintiffs meant to sue the new Bailiwick of Jersey entity as a defendant in their asbestos exposure lawsuit. The new entity was not organized in the United Kingdom; the new entity has existed for less than 20 years; and there is no indication in the record the new entity was the same entity that historically sold asbestos in the United States (nor could there be given its relative infancy). Indeed, the Altrad Third-Party Defendants' own briefing takes the position that no one can "legitimately claim that [the Jersey entity] has any liability . . . for an obvious reason: the Tibbs family alleges that their exposure to asbestos ended in the 'early 1980s,' but Cape PLC did not even exist until 2011." Counsel for AIA, Mr. Altrad, and Altrad UK Ltd. likewise acknowledged at the October 25 hearing that the Jersey entity "[o]bviously . . . has nothing to do with" the UK entity's historic asbestos sales. Hearing Tr. 66:20-67:1 (Oct. 25, 2023).

It therefore strains credulity for Third-Party Defendants to premise their ineffective service argument on a foundational assumption the *Park* Plaintiffs meant to sue a different entity, and one that had "nothing to do with" the underlying claims.

Having disposed of Third-Party Defendants' red herring argument related to the new Cape PLC entity, the salient question is whether the *Park* Plaintiffs effectively served the 130-year old Cape PLC entity organized under the laws of the United Kingdom. The record reveals service was effectuated in December 2021. Specifically, as reflected in an affidavit signed March 8, 2022, by an English process server, he mailed[13] a copy of the complaint and summons addressed to Cape PLC and Cape Intermediate Holdings Ltd.—identifying both "individually and as successors to Cape Asbestos Company Limited." *See* Ex. A to Notice of Filing of *Ommitted* [sic.] Exhibit, *Park et al. v. Armstrong Int'l, Inc. et al.*, No. 2021-CP-4002727 (Aug. 28, 2023) ("Cape POS Exhibit"), at 1–6, 12–13. The affidavit explains why two named entities were served: "Cape PLC" was the name of the company between August 1, 1989 and June 27, 2011, while "Cape Intermediate Holdings Ltd." was the company's current name at the time of service. *Id.* at 2. More specifically, the English process server swore that on December 14, 2021, he served "copies of the First Amended Summons in this action on Cape PLC and Cape Intermediate Holdings Limited" at their registered address, with cover letters explaining that the claims were brought against them as successors in interest to Cape Asbestos Company Limited. *Id.* at 2, 5–6. Pursuant to procedural rules in England, the "proceedings [were] deemed to have been served" two days after mailing, *i.e.*, on December 16, 2021. *Id.* at 3. The process server also indicated that he emailed materials to an official address affiliated with Altrad and designated for the receipt of asbestos-related claims

[13] The affidavit indicates that the service copies were contained in an oversize envelope, with a large-letter stamp, indicating sizeable contents, rather than just a couple sheets of paper.

against Cape (elclaimsaltraduk@altrad.com). This evidence reveals the *Park* Plaintiffs intended to serve the older Cape PLC entity using (perhaps out of an abundance of caution) both formerly-known-as and currently-known-as nomenclature.

To the extent it was error for the service paperwork to include the "formerly known as" name of the entity, the Court finds that misnomer does not render service of process ineffective. South Carolina law is clear that a misnomer does not render service ineffective. *See Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992) ("A suit at law is not a children's game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court. If it names them in such terms that every intelligent person understands who is meant, as is the case here, it has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else. As a general rule the misnomer of a corporation in a notice, summons, or other step in a judicial proceeding in immaterial if it appears the corporation could not have been, or was not, misled." (internal citations omitted)).

The Court finds no evidence in the record or presented by Third-Party Defendants to suggest the *Park* lawsuit was brought or intended to be brought against the newly created Bailiwick of Jersey entity as opposed to against the 130-year-old entity responsible for bringing asbestos to the United States, such that the former and not the latter should have been served. The record unambiguously points to the conduct of the 130-year-old Cape PLC entity, not the newly formed Bailiwick of Jersey entity, which is at issue in these cases, and service on that entity was effectuated in December 2021. To the extent the "Cape PLC" name should not have been included in the service of process paperwork because it was a "formerly known as" name rather than a current name, that misnomer does not render service ineffective.

B. Both the Summons and Complaint Were Served on Cape.

Third-Party Defendants next argue service of process by the *Park* Plaintiffs was defective because only the summons was served without the accompanying complaint. This argument appears to be based solely on the process server's use of the term "summons" in reference to the documents he served. Regardless of what the process server titled the service paperwork, the other record evidence reveals *both* the summons and the complaint documents were served on Cape: An email from counsel for the *Park* Plaintiffs to the process server (made a Court exhibit at the hearing) indicates counsel provided the process server with a single PDF document containing *both* the summons and the complaint, and in the *Park* lawsuit, the "First Amended Summons" and "First Amended Complaint" refer to two parts of the same document filed on November 17, 2021 (the summons is found in the first 4 pages while the complaint comprises the remaining 66 pages). Although individuals involved in the service may have referred to the combined document as "the summons," it is clear from the contents that a combined document containing both the summons and the complaint was served on Cape. Moreover, as previously noted, the record indicates the process server emailed the same materials to an Altrad-affiliated official address designated for the receipt of asbestos-related claims against Cape (elclaimsaltraduk@altrad.com); no Altrad entity has provided a response or other indication that only the summons had been sent to that email address. For all of these reasons, the Court finds evidence in the record to indicate both the summons and the complaint were served on Cape.

C. The Amendment of the Complaint Does Not Render Service Ineffective.

Third-Party Defendants argue that even if the proper Cape entity was served with both the summons and complaint—which both commenced the action pursuant to Rule 3, SCRCP, and S.C. Code § 15-3-20(B) and effectuated service of process pursuant to Rules 4 and 4.1, SCRCP—that

service of process somehow was later voided by the filing one week later of a Second Amended Complaint, which was never served on Cape by the *Park* Plaintiffs.

The Court finds this argument flawed for several reasons. First, filing an amended complaint without serving it does not abrogate effective service of process of a prior complaint. The *Park* lawsuit was commenced as to Cape once service of the prior complaint occurred, giving this Court the foundation to exercise jurisdiction over those served defendants to include Cape. As S.C. Code § 15-3-20(B) provides, "A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing." That occurred in this case, and it cannot be undone or abrogated by the filing of a later amended complaint.

Nor does the filing of an amended complaint under Rule 15 automatically supersede a prior complaint—abrogation only occurs ***after service*** of the amended complaint. *See e.g.*, *Doe v. Unocal Corp*., 27 F. Supp. 2d 1174, 1180 (C.D. Cal 1998) (denying motion to dismiss for "insufficiency of service of process," when an operative complaint rather than an amended complaint was served, because "[a]n original complaint is only superseded . . . when the amended complaint is properly served, not when it is filed."); *Thompson v. Victoria Fire & Cas*. Co., 32 F. Supp. 2d 847, 848 (D.S.C. 1999) (assessing the originally served complaint for purposes of removal, rather than an amended complaint that was not served). Indeed, as Rule 5(a), SCRCP, makes clear, the *Park* Plaintiffs were not required to serve Cape again with the Second Amended Complaint. There were no new or additional claims for relief asserted against Cape in the Second Amended Complaint. South Carolina "courts have long held that in order to establish that service has been properly perfected, the plaintiff need only show compliance with the civil rules on service of process," and when rules of service of process "are followed, there is a presumption of proper

service." *See McClurg v. Deaton*, 380 S.C. 563, 579, 671 S.E.2d 87, 96 (Ct. App. 2008). Here, they were followed, and service of process occurred.

Voiding prior effective service on a named defendant because the complaint was amended one week later (but asserts no new claims against that defendant) would not serve the "principal object of service of process," *i.e.*, "to give notice to the defendant corporation of the proceedings against it" and to allow the Court to exercise jurisdiction. *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010) (emphasis added) (finding service complied with the law, despite allegations of a technical defect). When, as here, rules on service of process "are followed, there is a presumption of proper service." *McClurg*, 380 S.C. at 579, 671 S.E.2d at 96.

Accordingly, the Court finds the evidence of records shows the proper Cape entity was served with process of both the summons and complaint in the *Park* lawsuit, forming the foundation for this Court to exercise jurisdiction over Cape and institute the Receivership that certain Third-Party Defendants now seek to dissolve.

II. The Receiver Was Properly Appointed.

A. Proper Notice of the Appointment Motion was Provided to Cape.

Third-Party Defendants argue the *Park* Plaintiffs were required to serve the Motion for Appointment. That too is incorrect. The law does not require formal service of process when the Court is considering appointing a receiver over a defendant that has been served but not appeared; only ***notice*** of the application for a receivership is required. *See* S.C. Code Ann. §§ 15-65-20, -30; Rule 4.1, SCRCP.

The record evidence indicates notice was given: The *Park* Plaintiffs provided notice of the appointment by DHL mailing to the same address at which Cape was served, with the Motion for Appointment identifying Cape PLC as "the successor in interest to Cape Industries Ltd. (f/k/a Cape

Asbestos Company Ltd.)" that is "organized and existing under the laws of the United Kingdom, with its principal place of business in England."[14] The Court further rejects any argument the Receivership is void because the paperwork included a "formerly known as" name for the Cape entity; the Court finds—as it did before—that any such misnomer does not void the notice under *Griffin*.[15] South Carolina rules "do not turn on parsing strict technicalities or debating murky legal abstractions," *McCall v. IKON*, 363 S.C. 646, 651, 611 S.E.2d 315, 317 (Ct. App. 2005), and when—as here— a party is identified "in such terms that every intelligent person understands who is meant, as is the case here, [process] has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else." *Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 (citation omitted). The law does not require this Court to exalt technical form over substance, and the substance of proper notice of the receivership motion was provided to Cape.

B. <u>This Court Had Authority to Appoint the Receiver.</u>

Third-Party Defendants attack the Court by claiming it failed to take what they erroneously claim are "necessary steps" prior to instituting the Receivership, including holding Cape in default

[14] Although the motion for appointment of the receiver as originally filed omitted proof of service as an attachment to the filing due to a clerical error, that omission was corrected on August 28, 2023. This Court has no reason to disbelieve representations by counsel for the *Park* Plaintiffs—as officers of this Court—that service had been made and that they intended to include that documentation, and regardless, such omission does not negate that Cape was properly served. *See* Rule 4.1(c)(2), SCRCP (noting the unintentional "[f]ailure to make proof of service does not affect the validity of the service.").

[15] Although the Third-Party Defendants also point to technical errors in the motion for appointment of the receiver (conflating the March 8, 2022 supporting affidavit date with the December 16, 2021 effective date of service and referencing the Second Amended Complaint rather than the First Amended Complaint), all of which the Receiver acknowledged, those technicalities do not abrogate service of process, invalidate the Receivership, or otherwise require dissolution.

and entering a judgment reflecting a liquidated sum due to the *Park* Plaintiffs. This argument reads requirements into the statute that do not exist, completely misconstruing what is required for appointment of a receiver under South Carolina law—especially in the context of a company like Cape, for which a receiver was appointed under subsection (5) of S.C. Code § 15-65-10.

Subsection (5) does not require entry of default or much less entry of a judgment; instead, it authorizes the Court to appoint a receiver "either in or out of court . . . [i]n such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code." In turn, appointment of a Receiver over Cape was proper under subsection (5) based on evidence of Cape's long-running, intentional scheme to evade its tort creditors by refusing to appear in the United States, including in South Carolina. Subsection (5) reflects an "old practice" of equity and "important principle of law" to correct injustice which is particularly applicable to Cape given its efforts "to defeat [its] creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts." *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177, 179 (1909) (citing *Miller v. Hughes*, 33 S.C. 530, 12 S.E. 419 (1890)). Because Cape set its numerous tort creditors, including the *Park* Plaintiffs, "at arm's length by refusing . . . to take any interest in the satisfaction of their claims," there was a "prima facie case . . . warranting the appointment of a receiver." *Id.* at 180. Accordingly, these so-called procedural prerequisites to which Third-Party Defendants point and then claim were violated are simply more red herrings; those processes are *irrelevant* to the grounds on which the Receiver for Cape was appointed.

South Carolina jurisprudence, particularly in recent years, provides widespread evidence of an "existing practice" of appointing a receiver—even in the absence of a judgment—where the Court is concerned that the party at issue may move assets and avoid litigation. This Court has

appointed numerous receivers for this reason in the context of the asbestos docket, and one need look no further than other dockets in this State, such as the appointment of co-receivers for defendant Richard Alexander Murdaugh, for additional evidence of an "existing practice" in this State. Here, given Cape's stated litigation-avoidance strategy, which the Court has no reason to believe Cape would abandon in order to respond to the *Park* lawsuit, there were ample legal, equitable, and/or public policy concerns to warrant the appointment of a receiver over Cape.

Accordingly, the Court finds no valid grounds to dissolve the Cape Receivership, which was proper when imposed, and, as such, Third-Party Defendants' Motions to Dissolve are denied.[16]

[16] Although the Order appointing the Receiver incorrectly described Cape as "dissolved," even though Cape is still a going concern in the United Kingdom, that does not impact the legality of the Receivership, as dissolution of the entity placed in receivership is not required under subsection (5). Additionally, the Court notes certain arguments by Third-Party Defendants that the Receiver for Cape exceeded his authority by taking certain actions, including filing the Third-Party Complaint against them; those are not arguments to dissolve the Receivership, however, and therefore will be taken up by the Court, if necessary, to consider arguments under Rule 12, SCRCP.

ORDER DENYING THIRD-PARTY DEFENDANTS' MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION

For the reasons set forth below, and in consideration of the filings in this matter and oral arguments by all parties, the Court denies the Third-Party Defendants' Personal Jurisdiction Motions.

I. Standard for Ruling on Motions to Dismiss for Lack of Personal Jurisdiction.

In evaluating a motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure, the plaintiff has the burden of making a *prima facie* showing that jurisdiction is properly asserted. *Brown v. Inv. Mgmt. & Res., Inc.*, 323 S.C. 395, 475 S.E.2d 754, 756 (1996); *see also Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005) ("At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a *prima facie* showing of jurisdiction either in the complaint or in affidavits."). To require more of the plaintiff than a *prima facie* showing of personal jurisdiction at the pretrial stage "would require a much greater degree of specificity in the pleadings than is currently mandated by the South Carolina Rules of Civil Procedure." *Brown*, 323 S.C. at 399, 475 S.E.2d at 756; *Duncan v. Orthosc, LLC*, 2023 WL 2731496, at *1–2 (S.C. Ct. Com. Pl. Mar. 31, 2023). Affidavits may be submitted to show jurisdiction, but it is often sufficient for the Court to rely on a complaint's allegations to exercise of jurisdiction. *Brown*, 475 S.E.2d at 756.

When assessing whether a plaintiff has made a *prima facie* showing of jurisdiction, this Court must take as true the allegations of the non-moving party and resolve all factual disputes in its favor. *HHHunt Corp.*, 699 S.E.2d at 704 (factual disputes should be resolved in favor of the non-moving party even if the "court doubts the plaintiff will prevail in the future"). If there are any factual disputes based on what is submitted in affidavits, those too are resolved in favor of the non-movant plaintiff. *Id.* South Carolina courts recognize that, in complex cases, it may be

desirable to delay a decision on personal jurisdiction to allow the parties to conduct discovery, "which might lead to a more accurate judgment than one made solely on the basis of affidavits." *Brown*, 323 S.C. at 400 (quoting 5A Charles A Wright & Arthur R. Miller, Federal Practice & Procedure § 1351 (Supp. 1995)); *cf. Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982) (where the jurisdictional facts are intertwined with the facts central to the merits of the dispute, deferring resolution of that factual dispute to a proceeding on the merits "is the better view").

In determining whether personal jurisdiction exists over a non-resident defendant, the court must perform a two-step analysis. First, the court determines whether the South Carolina long-arm statute provides a basis for asserting jurisdiction over the defendant. *See Young v. FDIC*, 103 F.3d 1180, 1191 (4th Cir. 1997). Second, the court determines whether the exercise of personal jurisdiction violates the Due Process Clause of the Fourteenth Amendment. *Anita's N.M. Style Mexican Food, Inc. v. Anita's Mexican Foods Corp.*, 201 F.3d 314, 317 (4th Cir. 2000). The South Carolina long-arm statute has been construed to be coextensive with the limits of the Due Process Clause of the U.S. Constitution. *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 130 (1992). As a result, the dual jurisdictional requirements collapse into a single inquiry as to whether the defendant has "certain minimum contacts" with the forum, such that "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal citations omitted).

Personal jurisdiction is exercised as either general jurisdiction or specific jurisdiction. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).[17] A court may exercise specific jurisdiction over a defendant, including a non-resident

[17] General jurisdiction exists where a defendant has "continuous and systematic" contacts with the forum state, the defendant "may be sued in [the forum] state for any reason, regardless of where the relevant conduct occurred." *CFA Inst. v. Inst. of Chartered Fin. Analysts of India*, 551 F.3d

defendant, if the litigation results from alleged injuries arising out of or relating to that defendant's contacts with South Carolina. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). When determining whether specific jurisdiction exists, a court considers:

> (1) the extent to which the defendant has purposefully availed himself of the privilege of conducting activities in the state;
>
> (2) whether the plaintiff's claims arise out of those activities directed at the state; and
>
> (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.

Charleston Equities, Inc. v. Winslett, 2017 WL 10504748, at *2 (D.S.C. Aug. 8, 2017) (brackets omitted) (quoting *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 397 (4th Cir. 2003)).

II. Other Equitable Grounds for Exercising Personal Jurisdiction.

A. The Alter Ego Theory of Personal Jurisdiction.

South Carolina's long arm statute vests a court with jurisdiction over "a person who acts directly ***or by an agent*** as to a cause of action arising from" that person's (i) "causing tortious injury or death in this State by an act or omission outside this State," and by "regularly . . . engag[ing] in [a] persistent course of conduct, or deriv[ing] substantial revenue from goods used

285, 292 n.15 (4th Cir. 2009) (citations omitted). When the defendant is a corporation, "general jurisdiction requires affiliations 'so continuous and systematic as to render [the foreign corporation] essentially at home in the forum State,' *i.e.*, comparable to a domestic enterprise in that State." *Daimler AG v. Bauman*, 571 U.S. 117, 133 n.11 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). "General jurisdiction attaches even when the nonresident defendant's contacts with the forum state are not directly related to the cause of action, if the defendant's contacts are both continuous and systematic." *Leggett v. Smith*, 386 S.C. 63, 73, 686 S.E.2d 699, 704 (Ct. App. 2009). Because the Receiver's response to the Personal Jurisdiction Motions focused on establishing specific jurisdiction, the Court likewise focuses its discussion on specific jurisdiction.

or consumed or services rendered in this State," and/or (ii) "production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed." S.C. Code §§ 36-2-803(4), (8) (emphasis added).

A court can exercise personal jurisdiction over a foreign corporation if the non-resident corporation has a subsidiary or affiliate that is subject to the court's personal jurisdiction and if the subsidiary or affiliate functions as its agent or mere department in a manner that justifies treating it as an alter ego and/or piercing the corporate veil. *Wright v. Waste Pro USA, Inc.*, 2019 WL 3344040, at *5 (D.S.C. July 25, 2019).[18] Indeed, personal jurisdiction "can properly be asserted over a corporation not physically present in the forum state if another with sufficient minimum contacts is acting as its alter ego."[19] *Hagan v. Armstrong Int'l*, 2020 S.C. C.P. LEXIS 649, at *5–6 (Richland Cnty. Ct. Com. Pl. June 29, 2020) (quoting *Trans Pac. Ins. Co. v. Trans-Pac. Ins. Co.*, 1991 WL 152300, at *2 (E.D. Pa. July 31, 1991)); *accord In re North Dakota Personal Injury Asbestos Litig.*, 737 F. Supp. 1087, 1094–95 (D.N.D. 1990) (citing *Lakota Girl Scout Council, Inc.*

[18] Traditionally, South Carolina courts have recognized at least two tests that will subject a corporation to the court's personal jurisdiction through its affiliate—alter ego and piercing the corporate veil. *Wright*, 2019 WL 3344040, at *5; *Builder Mart of Am., Inc., v. First Union Corp.*, 349 S.C. 500, 511, 563 S.E.2d 352, 358 (Ct. App. 2002), *overruled on other grounds by Farmer v. Monsanto Corp.*, 353 S.C. 553, 579 S.E.2d 325 (2003); *Afa Polytek (N. Am.) Inc. v. Clorox Co.*, 2014 WL 12608562, at *6 (D.S.C. Jan. 17, 2014). These theories have overlapping considerations. *Wright*, 2019 WL 3344040, at *8 (describing overlapping corporate veil and alter ego analyses); *see generally Sturkie v. Sifly*, 280 S.C. 453, 458, 313 S.E.2d 316 (Ct. App. 1984).

[19] Fundamentally, the jurisdictional inquiry concerns whether a particular party is properly before the Court. *See, e.g., Daimler,* 571 U.S. 117 at 125 (observing that personal jurisdiction involves court's authority over a particular defendant); *Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375, 391–92 (4th Cir. 2018); *Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc.*, 841 F.2d 92, 95–96 (4th Cir. 1988) (noting that jurisdiction involves question of "proper parties"). When a company is the alter ego of its sole member, for example, the alter ego and the member are effectively the same entity. Accordingly, the jurisdictional contacts of the individual and alter ego entity are one in the same. *Sky Cable, LLC*, 886 F.3d at 392.

v. Havey Fund-Raising Mgmt., Inc., 519 F.2d 634 (8th Cir. 1975)); *see also Lucas v. Gulf & Western Indus., Inc.*, 666 F.2d 800, 806 (3d Cir. 1981); *Certified Bldg. Prods., Inc. v. Nat'l Labor Relations Bd.*, 528 F.2d 968 (9th Cir. 1976)); *see also Wm. Passalacqua Builders, Inc. v. Resnick Developers S., Inc.*, 933 F.2d 131, 142–43 (2d Cir. 1991) (when parties are alter egos of one another, a "jurisdictional objection evaporates" because "the alter egos are treated as one entity") (cited by *Wright*, 2019 WL 3344040, at *5); *Mendez v. Pure Foods Mgmt. Grp., Inc.*, 2016 WL 183473, at *1–7 (D. Conn. Jan. 14, 2016) ("Under the agency test, the court may attribute the subsidiary's actions to the parent if the parent exerts considerable control over the activities of the subsidiary."); *see also Gourdine v. Karl Storz Endoscopy-Am., Inc.*, 223 F. Supp. 3d 475, 487 (D.S.C. 2016) (finding specific jurisdiction over foreign entity under agency and alter ego theory). Indeed, "[t]he entire point of the alter-ego doctrine is that a defunct, dissolved or undercapitalized entity is responsible for causing injury," but because that entity is dominated or controlled by others, those others are also liable. *Hagan*, 2020 S.C. C.P. LEXIS 649, at *14.

When deciding whether to impute an entity's contacts to an affiliated company, courts "examine all relevant factors that relate to the intimacy of the relationship" between the affiliated entities and may consider factors such as overlapping officers and directors, the parent's capacity to influence major business decisions, whether separate books are records are maintained, whether an integrated sales system exists between the entities, whether the entities present a common marketing image, and whether the entities have formal separate structures but maintain unified operations. *In re Polyester Staple Antitrust Litig.*, 2008 WL 906331, at *13–14, *16 (W.D.N.C. Apr. 1, 2008) (finding exercise of personal jurisdiction over parent company proper where "the management personnel within [the subsidiaries] regularly sought approval from [the parent company] on matters beyond strategy and general business policy"). "The existence or absence of

any single factor is not determinative, as the analysis is driven by the facts of the particular case." *Id.* at *14; *see also Gourdine*, 223 F. Supp. 3d at 487 (imputing contacts of entity over which court had specific jurisdiction to foreign affiliate under agency theory).[20] Moreover, jurisdictional contacts can also be imputed to an individual alter ego. *See Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640, 653 (5th Cir. 2002) (jurisdictional contacts may be imputed to an individual alter ego consistent with due process).

Finally, the Court addresses an apparent misunderstanding of alter ego law imbedded in the Third-Party Defendants' arguments: They erroneously assert the alter ego theory is limited to parent–subsidiary relationships. To the contrary, South Carolina law is clear that the alter ego theory of personal jurisdiction does not require a finding of a parent–subsidiary relationship. As this Court recognized previously in the context of the Covil Receivership:

> There is . . . no requirement that the Insurers be an officer, director or shareholder of Covil for alter ego to apply. Plaintiffs make no such allegation, ***nor does alter ego theory require a finding of a parent-subsidiary relationship***. South Carolina jurisprudence requires only that the appropriate level of dominion and control was exercised, and that injustice occurred as a result.

[20] Similarly, the Fourth Circuit has addressed Maryland's "so-called 'agency' test," stating that it "allows a court to attribute the actions of a subsidiary corporation to the foreign parent corporation only if the parent exerts considerable control over the activities of the subsidiary." *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 61–62 (4th Cir. 1993) ("Central to the exertion of such control, and thus to whether the corporate veil may be pierced, is whether significant decisions of the subsidiary must be approved by the parent. Other relevant factors include whether the parent and the subsidiary maintain separate books and records, employ separate accounting procedures, and hold separate directors' meetings. Another consideration in deciding whether to pierce the corporate veil is the level of interdependence between parent and subsidiary; if the Maryland courts are to refrain from exercising jurisdiction over the parent, the subsidiary [must] have some independent reason for its existence, other than being under the complete domination and control of another legal entity simply for the purpose of doing its act and bidding. Finally, the court must find that Akzo knew, or should have known, that its conduct would have some impact in Maryland." (citations and internal quotation marks omitted)).

Hagan, 2020 S.C. C.P. LEXIS 649, at *15 (emphasis added).

B. Amalgamation of Interests (Single Business Enterprise) Theory.

South Carolina courts recognize another method—distinct from traditional alter ego and veil piercing doctrines—to hold separate entities responsible for harm caused by another business, *i.e.*, the "amalgamation of interests" theory or the "single business enterprise" theory.[21] This theory provides another framework by which this Court can exercise personal jurisdiction over the Third-Party Defendants, because where affiliated entities function as a single enterprise, South Carolina law may require the enterprise as a whole to answer for the debts and liabilities of its members. *See Las Palmas Assocs. v. Las Palmas Ctr. Assocs.*, 235 Cal. App. 3d 1220, 1249–50, 1 Cal. Rptr. 2d 301, 318 (1991) ("[U]nder the single-enterprise rule, liability can be found between sister companies. The theory has been described as follows: 'In effect what happens is that the court, for sufficient reason, has determined that though there are two or more personalities, there is but one enterprise; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it.'" (quotations and citation omitted)) (cited by *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 817 S.E.2d 273, 279 n.5 (2018)).

This concept was first recognized in South Carolina by the court of appeals in *Kincaid v. Landing Development Corp.*, 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986) and initially described as the "amalgamation of interests" theory. The Court of Appeals in *Kincaid* affirmed the trial court's finding that three related corporations (a development corporation, a management

[21] Although other jurisdictions do not use the term "amalgamation," other states have recognized that, in some instances outside of the traditional veil piercing context, certain enterprises choose to conduct their business in such a way that the law should no longer regard the various corporations as distinct entities. *Pertuis*, 817 S.E.2d at 279 & n.5 (citing cases). The *Pertuis* court observed that at least 14 states recognize some sort of single business enterprise theory.

corporation, and a construction corporation) sued for negligent construction and breach of warranty were properly regarded as a single entity, because the evidence showed "an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between the corporations and their activities." *Kincaid*, 344 S.E.2d at 874. Thereafter, the South Carolina Supreme Court recognized the theory in *Kennedy v. Columbia Lumber & Manufacturing Co., Inc.*, finding a lender could be liable if "it is so amalgamated with the developer or builder so as to blur its legal distinction." 299 S.C. 335, 384 S.E.2d 730, 734 (1989) (concluding amalgamation was not appropriate at liability stage and affirming trial court). The theory also was considered in a series of cases involving construction defects. *Magnolia N. Prop. Owners' Association v. Heritage Communities, Inc.*, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012); *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 717 S.E.2d 765 (Ct. App. 2011).

In 2018, the South Carolina Supreme Court formally recognized and named the theory the "single business enterprise theory," describing it as follows:

> [W]here multiple corporations have unified their business operations and resources to achieve a common business purpose and where adherence to the fiction of separate corporate entities would defeat justice, courts have refused to recognize the corporations' separateness, instead regarding them as a single enterprise-in-fact, to the extent the specific facts of a particular situation warrant.

Pertuis, 817 S.E.2d at 279; *see also id.* at 281 ("We formally recognize today this single business enterprise theory[.]"). In doing so, the Court in *Pertuis* made clear that, to combine different corporate entities into a single business enterprise, there must also be a showing of "bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions." *Id.* at 281. In other words, "when corporations are not operated as separate entities but rather integrate their resources to achieve a common business purpose, each constituent corporation may be held liable for debts incurred in pursuit of that business purposes." *Id.* at 279

n.5 ("Factors to be considered in determining whether the constituent corporations have not been maintained as separate entities include but are not limited to the following: common employees; common offices; centralized accounting; payment of wages by one corporation to another corporation's employees; common business name; services rendered by the employees of one corporation on behalf of another corporation; undocumented transfers of funds between corporations; and unclear allocation of profits and losses between corporations.").

More recently, the South Carolina Supreme Court concluded amalgamation was appropriate in a dispute between homeowners and housing developers. *Walbeck v. I'on Co., LLC*, 439 S.C. 568, 889 S.E.2d 537 (2023). In *Walbeck*, the trial court amalgamated several developers' interests in connection with claims asserted by two homeowners relating to the failure to convey certain real property community amenities to a homeowners' association ("HOA"). The Court of Appeals initially affirmed the trial court's finding amalgamation was warranted but subsequently reversed that finding in a substituted decision, concluding there was no evidence of "bad faith, abuse, fraud, wrongdoing, or injustice ***resulting from*** the blurring of the entities' legal distinctions." *Walbeck*, 889 S.E.2d at 550 (emphasis in original). The South Carolina Supreme Court reversed, holding the Court of Appeals correctly analyzed the issue initially but erred in its second opinion:

> While it is true that courts should be hesitant to invade the corporate form, here there is more than enough evidence that the creation of various entities furthered Developers' abilities to refrain from doing that which they repeatedly told the HOA and the residents they would do—turn over the disputed amenities to the HOA. As this Court stated in *Pertuis*, "the corporate structure should not shield—fraud, ***evasion of existing obligations***, circumvention of statutes, monopolization, criminal conduct, and the like."

Id. at 550 (quoting reference omitted) (emphasis in original).

Certain of the Third-Party Defendants argue the single business enterprise theory cannot be used to support personal jurisdiction. They are incorrect. Like the alter ego theory, the single business enterprise theory is an equitable doctrine, and one that courts in South Carolina have recognized "could be used to obtain personal jurisdiction over" foreign parent and "sister" entities. *E.g.*, *Duong v. N.A. Transp. Servs. LLC*, 2019 WL 13109647, at *13 (D.S.C. Sept. 25, 2019). Other states that have adopted the single business enterprise, or an analogous theory, have found the same. *See, e.g.*, *Dorfman v. Marriot Int'l Hotels, Inc.*, 2002 WL 14363, at *11 (S.D.N.Y. 2002) (finding exercise of personal jurisdiction where foreign parent exercised sufficient control over operations of subsidiary or, in the alternative, there was an agency relationship such that "the companies are engaged in a single business enterprise that relies on the joint efforts of various Otis affiliates, which are coordinated and controlled by Otis Elevator"); *Ruiz v. Economics Lab., Inc.*, 190 F. Supp. 701, 703–04 (D.P.R. 1968) (denying motion to dismiss on jurisdictional grounds where foreign entities were part of single business enterprise).

III. Grounds for Exercising Personal Jurisdiction Over Cape.

As a threshold matter, the Court addresses the Third-Party Defendants' contention the allegations contained in the Third-Party Complaint fail to establish personal jurisdiction over Cape. The Court finds their characterization to be incorrect, as the Third-Party Complaint alleges in meticulous detail Cape's contacts and conduct—including its efforts to market massive quantities of asbestos throughout to the lucrative U.S. market over a period of decades, despite its knowledge that those efforts would injure and kill thousands of people, including in South Carolina—and easily satisfies the requirements of South Carolina's long-arm statute. *See, e.g.*, Third-Party Compl. ¶¶ 72–76 (noting nationwide distribution of certain asbestos, over which Cape had a monopoly, and prior rejection of an objection to the exercise of personal jurisdiction in South

Carolina with respect to a Cape entity and alleging that "Cape deliberately and purposefully availed itself of the entirety of the United States market for asbestos fiber, including the South Carolina market.").

Specifically, this Court finds it has jurisdiction over Cape as "a person who act[ed] directly or by an agent as to a cause of action arising from" Cape's and NAAC's (i) "causing tortious injury or death in this State by an act or omission outside this State," and by "regularly . . . engag[ing] in [a] persistent course of conduct, or deriv[ing] substantial revenue from goods used or consumed or services rendered in this State," and/or (ii) "production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed." S.C. Code §§ 36-2-803(4), (8).

In addition, and as the South Carolina Court of Common Pleas for the County of Barnwell ruled more than 40 years ago, the exercise of personal jurisdiction in South Carolina over Cape's American subsidiary, NAAC, is proper. *See* Ex. 38 (*In re Asbestosis Cases*, Apr. 7, 1980 Order) at 3 ("I find that a conscious pattern of product distribution nationally which results in the product being incorporated in another product which was used in this state such as occurred here is a sufficient constitutional basis upon which to attach in personam jurisdiction."). Accordingly, independent of Cape's own connection with this State (including facilitating the sale and distribution of Cape asbestos from South African mines to locations in South Carolina), the allegations regarding Cape's effective domination of NAAC, including pursuant to alter ego, veil-piercing, and/or business-enterprise doctrines, as well as the allegation that NAAC acted as Cape's agent, separately provide a proper basis to exercise personal jurisdiction over Cape.

IV. Grounds for Exercising of Jurisdiction Over the Remaining Third-Party Defendants.

The Court separately addresses below each of the Third-Party Defendants remaining in this litigation who have responded by moving to dismiss the Third-Party Complaint and finds the Receiver has made the requisite *prima facie* jurisdictional showing for personal jurisdiction under an alter ego theory, guiding light, and/or single business enterprise theory, and/or have purposefully availed themselves to the jurisdiction of this Court, including through longstanding business activities directed at the United States, including South Carolina, with respect to the mining, marketing, and/or distribution of asbestos and other minerals, which gives rise to the claims against them.

As a threshold matter, this Court (and many others) recognize the alter ego test for personal jurisdiction ***is less stringent*** than the alter ego test for liability. *Hagan*, 2020 S.C. C.P. LEXIS 649, at *7; *Stuart v. Spademan*, 772 F.2d 1185, 1198 n.12 (5th Cir. 1985) (citing *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir. 1981)); *see also Gourdine*, 223 F. Supp. 3d at 483 ("If the jurisdictional facts are so intertwined with the facts upon which the ultimate issues on the merits must be resolved, then the entire factual dispute is appropriately resolved only by a proceeding on the merits. In such case, a district court may assume jurisdiction, reserve the question of jurisdiction, and determine relevant jurisdictional facts on a motion going to the merits or at trial." (citations and internal quotation marks omitted)); *Bakker v. 3CLogic, Inc.*, 2015 WL 13760013, at *3 (D.S.C. Sept. 23, 2015) ("Given the fact intensive nature of this analysis, and that the court at this stage in the litigation must construe all relevant allegations in the light most favorable to [the party alleging alter ego], the court finds [that party] has offered sufficient evidence of personal jurisdiction to allow full discovery to proceed. Full discovery will n[ot] offend traditional notions of fair play and substantial justice . . . ."); *see also* Talley Affidavit ¶ 45

(detailing relative frequency of veil piercing and observing that "courts are 'more lenient' when it comes to piercing for purposes of obtaining jurisdiction").

A. The Altrad Third-Party Defendants.

The Third-Party Complaint, along with the submitted affidavits and publicly available materials presented to the Court, adequately alleges facts sufficient to support the exercise of personal jurisdiction over each of the Responding Altrad Third-Party Defendants—the current owners of Cape—under an alter ego, guiding light, and/or single business enterprise theory. *See* Third-Party Compl. ¶¶ 113–19, 125–41. The Altrad Third-Party Defendants are alleged to be responsible, with Cape, for an ongoing scheme to evade responsibility for harm caused to South Carolinians by Cape's asbestos, while also financially benefiting from that scheme as effective alter egos of Cape. As detailed below, the Court finds that consistent with fair play and substantial justice, it can exercise jurisdiction over each of these Responding Altrad Third-Party Defendants, based on the record before the Court at this early stage.

i. Altrad Investment Authority S.A.S. (AIA)

a. Alter Ego Theory.

The Third-Party Complaint makes a *prima facie* showing that Cape is AIA's alter ego. South Carolina courts determining whether to exercise jurisdiction based on the alter-ego theory often consider the following factors: (i) common ownership, (ii) financial independence, (iii) the degree of selection of executive personnel and failure to observe corporate formalities; and (iv) the degree of control over marketing and operational policies. *Builder Mart*, 563 S.E.2d at 358. Ultimately, the key touchstone for the alter ego theory under South Carolina law is "that the appropriate level of dominion and control was exercised, and that injustice occurred as a result." *Hagan*, 2020 S.C. C.P. LEXIS 649, at *15 (emphasis added). Put differently, to exercise personal

jurisdiction under this theory, the plaintiff "must show that the subsidiary functions as the agent or mere department of the parent"—that is, that the subsidiary does all the business that the parent corporation could do if were on its own. *Builder Mart*, 563 S.E.2d at 358. The Third-Party Complaint, along with the affidavits in the record and the additional publicly available facts set forth in the briefing or submitted to the Court, easily satisfies this standard with respect to AIA.

First, with respect to common ownership, AIA, the head of the Altrad Group and the ultimate parent of all of the corporate Altrad Third-Party Defendants, allegedly owns, controls, and effectively ***is*** Cape. In 2017, AIA acquired Cape for approximately £332.2 million through its wholly owned subsidiary Altrad UK Ltd., which (i) was incorporated in June 2017 for the specific purpose of acquiring Cape, (ii) acts as a "wholly owned subsidiary of AIA [that has been] financed by AIA through a current account," and (iii) also "proceeded to refinance Cape's debt" as part of the acquisition. Third-Party Compl. ¶ 116; Ex. 88 (Altrad 2017 Annual Report), at 42, 44; Reuters, Altrad Investment to Buy UK Oil Services Firm Cape for 332.2 Mln Pounds (July 7, 2017);[22] *see Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640, 653 (5th Cir. 2002) (acknowledging that jurisdictional contacts of a predecessor corporation may be imputed to a successor corporation consistent with due process). Indeed, Altrad's 2017 Annual Report announced it "holds 100% of Cape," *i.e.*, the entity that engaged in decades of asbestos sales in the United States and South Carolina directly and through its wholly owned subsidiary, NAAC, and touted the acquisition as an "exceptional opportunity" to acquire "one of the world's leading providers of services to industry." Ex. 88 (Altrad 2017 Annual Report), at 40. AIA continues to own and control Cape to today. Third-Party Compl. ¶ 116.

[22] *Available at* https://www.reuters.com/article/cape-ma-altrad-investment/altrad-investment-to-buy-uk-oil-services-firm-cape-for-332-2-mln-pounds-idUSL4N1JY2KG.

Second, in the six years since AIA's acquisition of Cape, Cape has depended on AIA financially.[23] In its annual report for the year ended August 31, 2022, Altrad Services Ltd. stated "[t]he Board of [AIA] (the ultimate parent company) manages risk at a Group level." Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 3. The 2022 annual report acknowledged that "[m]any of [AIA's] operating environments have associated health and safety risks" and specifically highlighted the Altrad Group's responsibility for such risks in connection with Cape: "The Company [Altrad Services Ltd.] is maintaining a provision in respect of lodged and future industrial disease claims for which the Board of Directors of Cape plc believes the Group to be liable, arising on alleged exposure to previously manufactured asbestos products." *Id.* at 4. As a result, the Altrad Group set aside a £118.1 million provision of funds to address certain non-U.S. historical claims relating to asbestos exposure "for which the Board believes ***the Group may become liable***" (the "Provision of Funds"). Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 50 n.23 (emphasis added); *see also* Joshua Stein, *Altrad Makes £118m Provision for Asbestos Claims*, Construction News (Apr. 14, 2023).[24]

AIA is the ultimate parent company of Altrad Services Limited, the entity that made the Provision of Funds, and has provided a letter of support of Altrad Services Limited as a going

[23] AIA directly benefitted from Cape's historic asbestos monopoly (*i.e.*, large profits becoming long-term assets) and its litigation-avoidance strategy (*i.e.*, avoiding asbestos liabilities associated with the business it acquired). It also has continued that strategy, directing Cape to refuse to participate in litigation in the United States relating to its historic asbestos sales (including in the *Park* lawsuit).

[24] *Available at* https://www.constructionnews.co.uk/health-and-safety/altrad-makes-118m-provision-for-asbestos-claims-14-04-2023/#:~:text=Altrad%20has%20set%20aside%20%C2%A3,historic%20alleged%20exposure%20to%20asbestos.

concern in connection with that entity's latest financial statements. Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 24, 50 n.23. This Provision of Funds—which reportedly "captured all expected material industrial disease scheme liabilities for which the Board believes the Group may become liable"—does not contemplate compensation for asbestos exposure claims asserted by South Carolinians or other American asbestos claimants. *Id.*

Third, publicly available information demonstrates that Altrad exercises control over the organization and executive team of Cape. In a press release dated September 10, 2018, Altrad announced it "combined Cape PLC, NSG and Hertel to create [the] UK's largest industrial services provider to the petrochemical, energy, and infrastructure industries." Altrad Website, *Altrad Combines Cape plc, NSG and Hertel to create UK's Largest Industrial Service Provider* (Sept. 10, 2018), *available at* https://www.altrad.com/en/newsreader/altrad-combines-cape-plc-nsg-and-hertel-to-create-uks-largest-industrial-service-provider.html. After the acquisition, certain Cape entities were rebranded with the Altrad name. *See* Third-Party Compl. ¶ 116 (referencing Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.). Further, the Altrad Group has a pattern of replacing the management of the companies it acquires, as it did in when it replaced, *en masse*, the leadership team of the Sparrows Group it acquired in July 2022. *Sparrows Leadership Team to Go* (Apr. 24, 2023), *available at* https://vertikal.net/en/news/story/41603/sparrows-leadership-team-to-go.

Fourth, the allegations in the Third-Party Complaint and the record before the Court at this stage of the litigation demonstrate AIA controls Cape's operational policies. AIA "manages risk at a Group level," including with respect to asbestos-related claims. Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 3. As

part of its risk management for the Altrad Group, AIA has continued Cape's policy of litigation avoidance, with Cape refusing to participate in litigation in the United States relating to its historic asbestos sales (including in the *Park* lawsuit), and instead accepting default judgments on the gamble they will never be enforceable. The continuation of this scheme is evidenced not only by Cape's lack of appearance in the *Park* lawsuit, even after the appointment of a Receiver, but also by the non-appearance of seven of the 12 Altrad Third-Party Defendants in this action.

While AIA has responded to the Third-Party Complaint, certain of its instrumentalities have refused to do so. For example, Altrad UK Ltd., the entity through which AIA purchased Cape and which is represented by the same counsel as AIA, has not appeared.[25] Similarly, Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.), the entity that set aside the Provision of Funds totaling £118 million for purposes of addressing Cape's liability for certain non-U.S. historical claims relating to asbestos exposure (reported as capturing "all expected material industrial disease scheme liabilities for which the Board believes ***the Group*** may become liable"), likewise failed to appear. Both of these entities are wholly owned subsidiaries of AIA and entities for which AIA is responsible for risk management (including with respect to asbestos claims). Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 24, 50 n.23. In other words, AIA has benefitted from and now directs Cape's efforts to avoid answering to victims in the United States, including in South Carolina. *Hagan*, 2020 S.C. C.P. LEXIS 649, at *14 (Richland Cnty. Ct. Com. Pl. June 29, 2020) (finding the "entire point of the alter-ego doctrine is that a defunct, dissolved or undercapitalized entity is responsible for causing injury" but because that entity is dominated or controlled by others, those others are also liable).

[25] *See* Ex. 87 (Joyner, Lay, and Carroll Email Exchange, dated August 18–20, 2023).

b. Single Business Enterprise.

The Third-Party Complaint also makes a *prima facie* showing of personal jurisdiction over AIA pursuant to the single business enterprise theory, which requires "a showing of more than the various entities' operations are intertwined" as well as "evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions." *Pertuis*, 817 S.E.2d at 280–81.

As detailed above, AIA has owned and controlled Cape since 2017. It has allegedly benefitted from Cape's historic asbestos monopoly (*i.e.*, large profits becoming long-term assets) yet avoided the liabilities associated with that monopoly through Cape's litigation-avoidance strategy (*i.e.*, avoiding asbestos liabilities). It continues that strategy to this day, directing Cape to refuse to participate in litigation in the United States relating to its historic asbestos sales (including in the *Park* lawsuit). The Third-Party Complaint alleges in great detail a scheme of bad faith, abuse, fraud, wrongdoing, and injustice resulting from the intentional blurring of the entities' legal distinctions, namely, the scheme pursuant to which Cape—through its agents, like NAAC—distributed asbestos into the United States (including into South Carolina), concealed the harms of asbestos, siphoned the funds from those sales to co-conspirators located outside of the United States, and avoided liability in the United States 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.

Based on these allegations and the record, AIA is subject to this Court's personal jurisdiction as an alter ego to Cape or, in the alternative, as part of an amalgamated, single business enterprise that collectively endeavored to sell massive amounts of Cape's deadly asbestos in the

United States, including in South Carolina, and to avoid answering to U.S. creditors and other injured parties for their asbestos-related injuries and harm.

ii. Mohed Altrad.

The Court also finds the Receiver made the required *prima facie* showing that Mohed Altrad is the alter ego to Cape, and/or the "guiding spirit" of AIA and the Altrad Group.[26] The Third-Party Complaint alleges that, since its acquisition of Cape in 2017, the Altrad Third-Party Defendants—under the control of their founder and namesake—have directed, allowed, facilitated, or benefitted from Cape's longstanding scheme to avoid liability stemming from its decades of sales of asbestos in the United States, including in South Carolina, despite its known health hazards. *See* Third-Party Compl. ¶¶113–19, 125–41. As alleged, and reflected in even the limited record before the Court at this stage of the litigation, under Mr. Altrad's leadership, the Altrad Third-Party Defendants have continued Cape's wrongful litigation-avoidance strategy while continuing to profit from Cape's ongoing business. The Third-Party Complaint, coupled with the record developed to date including through affidavits, exhibits to the parties' briefing related to the motions to dismiss, and publicly available records of which this Court can take judicial notice, collectively make the required *prima facie* showing that, as the founder and President of the Altrad Group, and as the majority shareholder, Mr. Altrad controls such decisions. *Id.* ¶ 118; Ex. 88 (Altrad 2017 Annual Report), at 20; Ex. 89 (Altrad 2022 Annual Report), at 71.

[26] The South Carolina Supreme Court has stated that "the single business enterprise theory is not to be used to amalgamate an individual with a company" and that it "exists as an equitable remedy for plaintiffs whenever they have been wronged ***by business entities*** with blurred identities." *Stoneledge and Lake Keowee Owners' Ass'n, Inc. v. IMK Dev., Co., LLC*, 435 S.C. 109, 866 S.E.2d 542, 551-52 (2021) (emphasis in original). As a result, this Court's exercise of personal jurisdiction over Mr. Altrad is premised on the alter ego theory.

Each of the *Builder Mart* factors counsel in favor of this Court's exercise of jurisdiction over Mr. Altrad. ***First***, Mr. Altrad owns nearly all of the Altrad Group, including Cape. As of 2017, the year AIA acquired Cape, Mr. Altrad "h[e]ld 77.78% of the [company's] shares." Ex. 88 (Altrad 2017 Annual Report), at 20. As of August 31, 2022, Mr. Altrad held 77.45% of the company's shares. Ex. 89 (Altrad 2022 Annual Report), at 71. By September 30, 2022, ***Mr. Altrad held 97.60% of the company's shares***.[27] *Id*. (depicting new shareholder structure as of September 30, 2022, as 97.60% owned by Mohed Altrad and 2.40% owned by "Others").

Second, as the overwhelmingly dominant owner of all of the Altrad Group, all of its entities—including AIA and Cape—are financially dependent on Mr. Altrad.

Third, Mr. Altrad controls AIA, which as detailed above, directed the reorganization and combination of Cape following its acquisition and has a practice of replacing the management of the companies it acquires.

Fourth, Mr. Altrad exercises control over the Altrad Group's, and by extension Cape's, operational policies. *Builder Mart*, 563 S.E.2d at 358. Just as AIA controls Cape's operational policies, including relating to risk management relating to asbestos claims, as detailed above, Mr. Altrad—as its founder, President, dominant majority shareholder, avowed leader, and namesake—controls AIA. Third-Party Compl. ¶¶ 116, 118, 119; *see also* Affidavit of M. Altrad ¶ 32. *See* Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 3. As the Altrad Group's website states, Mr. Altrad "still le[ads]" the

[27] Months later, in December 2022, a French court found Mr. Altrad guilty of bribery, influence peddling, and misuse of corporate assets. Third-Party Compl. ¶ 118; *see also* Chase Peterson-Withorn, *Who is Mohed Altrad, the Billionaire Scaffolding King Found Guilty of Rugby Bribery?* (Dec. 13, 2022), *available at* https://www.forbes.com/sites/chasewithorn/2022/12/13/who-is-mohed-altrad-the-billionaire-scaffolding-king-found-guilty-of-rugby-bribery/?sh=44120ed43846.

Altrad Group of companies. Altrad Website, *Our History*, https://www.altrad.com/en/our-history.html ("Today, the group is still led by its founder, Mohed Altrad."). The "Governance" section of the Altrad Group's website states that "General Management defines the strategy for the Altrad Group. It is headed by Mohed Altrad, founder and President of the group, and by Jan Vanderstraeten and Ran Oren, joint-Chief Executive Officers." Altrad Website, *Governance*, https://www.altrad.com/en/governance.html#:~:text=It%20is%20headed%20by%20Mohed,humanist%20conception%20of%20the%20company.

Moreover, it is well established that when a court has engaged in traditional veil piercing, it may exercise personal jurisdiction vicariously over an individual like Mr. Altrad if the court has jurisdiction over the individual's alter ego company. *Hagan*, 2020 S.C. C.P. LEXIS 649, at *6; *see also Newport News Holdings Corp. v. Virtual City Vision, Inc.*, 650 F.3d 423, 433 (4th Cir. 2011) (observing that courts have "consistently acknowledged that it is compatible with due process to exercise personal jurisdiction over an individual . . . who is an alter ego" (citation omitted)); *cf. Ranza v. Nike, Inc.*, 793 F.3d 1059, 1072–73 (9th Cir. 2015) (noting that alter ego test "may be used to extend personal jurisdiction"); *see also Patin*, 294 F.3d at 653 (jurisdictional contacts may be imputed to an individual alter ego consistent with due process).

There is another basis for this Court to exercise personal jurisdiction over Mr. Altrad. As the U.S. District Court for the District of South Carolina explained in *Charleston Equities*, 2017 WL 10504748, at *4, there is an additional conceptual framework to analyze the imputation of jurisdictional contacts to an individual who serves as the "guiding light" or "guiding spirit" for its alter ego corporate entity. At this preliminary stage, the Receiver has made a *prima facie* showing that Mr. Altrad satisfies this framework. Under this "guiding spirit" theory, a court may hold an individual subject to personal jurisdiction even though he committed the wrongful act outside of

South Carolina, as long as there is "some showing of direct, personal involvement by the corporate officer in some decision or action which is causally related to the plaintiff's injury." *Charleston Equities*, 2017 WL 10504748, at *4. As the majority shareholder, founder, President, Board member, and person who "still le[ads]" the Altrad Group and AIA, Mr. Altrad is the "guiding spirit." Based on his various roles and the extent of his ownership, Mr. Altrad necessarily controls the Altrad Group, and with it, Cape. Third-Party Compl. ¶ 118; *Charleston Equities*, 2017 WL 10504748, at *4 (owners and directors of Charleston Equities were "necessarily . . . the 'guiding spirit' for any action undertaken" by it).

As such, at this preliminary stage, the Court finds the Receiver has made the required *prima facie* showing to support the exercise of personal jurisdiction over Mr. Altrad, the President, the founder, the face, and the majority owner of the Altrad Group, as an alter ego to Cape and/or as its guiding light and spirit. *Charleston Equities*, 2017 WL 10504748, at *4; *see also Springs Indus., Inc. v. Gasson*, 923 F. Supp. 823, at 827–28 (D.S.C. 1996) (finding minimum contact established because "[a]t this stage of the proceedings, [the plaintiff] has alleged sufficient facts to show that [officer] was involved in the decision making which is causally related to its injury and that he was, at least in part, the guiding spirt behind the wrongful conduct").

iii. U.S. Subsidiaries of the Altrad Group — Sparrows Offshore, LLC, Hawk Bidco, US, LLC, and Arranco US, LLC.

a. Alter Ego.

The Third-Party Complaint also makes a *prima facie* showing of personal jurisdiction over Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC pursuant to the alter ago theory.[28] As alleged in the Third-Party Complaint and reflected in other documents before the

[28] Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC collectively challenged this Court's personal jurisdiction over them in a single brief. In support of that brief, each of these

Court, on July 11, 2022, AIA completed the acquisition of "the Sparrows Group," including Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC.[29] Third-Party Compl. ¶ 117 & n.38; Press Release, *Altrad Completes Acquisition of Engineering and Maintenance Specialist Sparrows Group* (July 11, 2022), https://www.altrad.com/en/newsreader/altrad-completes-acquisition-of-engineering-and-maintenance-specialist-sparrows-group.html.

First, since July 2022, Cape and the "Sparrows Group" have shared common ownership as part of the Altrad Group, which in turn is owned almost entirely by Mr. Altrad. *See* Third-Party Compl. ¶ 117. ***Second***, both are allegedly controlled and financially dependent on AIA, under the direction of Mr. Altrad. *Id.* ¶ 116–18. ***Third***, consistent with its alleged control of Cape (*id.* ¶ 116), AIA appears to control the selection of executive personnel over the Sparrows entities. *See id.* ¶ 118. The record reflects that despite initially announcing that the "Sparrows Group" would "be run autonomously by its existing management," by April 2023 (less than a year after the

three entities submitted an affidavit from the same person—Adam C. Wood—who held the title of "Director" in each entity. *See* Affidavit of Adam C. Wood ¶ 2 ("I am a Director of Hawk Bidco (US) Inc. ('Hawk Bidco')."); Affidavit of Adam C. Wood in Support ¶ 2 ("I am Director of ArranCo US, LLC ('ArranCo')."); Affidavit of Adam C. Wood ¶ 2 ("I am a Director and the Senior Vice President of Sparrows Offshore, LLC ('Sparrows Offshore')."). These entities admit that they share the same directors. *E.g.*, Affidavit of Adam C. Wood in Support ¶ 38 (Arranco shares "same directors" with Sparrows Offshore and Hawk BidCo).

[29] As alleged, the "Sparrows Group" acquired by the Altrad Group in July 2022 also included Sparrows Offshore Group, Ltd. (based in Aberdeen, Scotland) and the Sparrows Group LLC (a Delaware LLC created in March 2023). The Altrad Third-Party Defendants that have responded to the Third-Party Complaint have disclaimed any "affiliation or association" with those two non-responding entities. According to the Receiver, however, that disclaimer conflicts with public materials regarding their affiliations, in which Altrad has touted its recent acquisition of the Sparrows Group, which on information and belief includes these two entities. *See, e.g.*, Altrad Press Release, *Altrad Agrees to Acquire Sparrows Group* (Mar. 2, 2022), https://www.altrad.com/en/newsreader/altrad-agrees-to-acquire-sparrows-group.html. At this stage, factual disputes should be resolved in favor of the Receiver, as the non-moving party. *HHHunt Corp.*, 699 S.E.2d at 704.

acquisition), AIA terminated its leadership team (including its CEO, CFO, CTO, HSEQ, HR director, and executive director for the Middle East, India, Caspian, and Asia Pacific) *en masse* and installed its own management team that would report to AIA and Mr. Altrad. Sparrows Leadership Team to Go (Apr. 24, 2023), *available at* https://vertikal.net/en/news/story/41603/sparrows-leadership-team-to-go (reporting that announcement "came as a complete surprise to many of those that will be affected"). ***Fourth***, and ultimately, AIA (as a corporate instrumentality of Mr. Altrad) is plausibly alleged to exercise control over both Cape and the Sparrows entities' operations. *See* Third-Party Compl. ¶¶ 116–19. Despite announcing that Sparrows would "be run autonomously by its existing management as a separate entity within Altrad," in October 2, 2023, Altrad announced the rebranding of the "Sparrows Group" to "Altrad Sparrows." Aberdeen Business News, *Altrad Spreads Its Wings as Altrad Sparrows* (Oct. 2, 2023), https://aberdeenbusinessnews.co.uk/sparrows-spreads-its-wings-as-altrad-sparrows/; *see also Builder Mart*, 563 S.E.2d at 358.

b. **Single Business Enterprise.**

The Court further finds the Third-Party Complaint makes a *prima facie* showing of personal jurisdiction over Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC pursuant to the single business enterprise theory. As alleged, and reflected in the documents before the Court at this preliminary stage, these entities have been absorbed into and intertwined with AIA—the current owner, controller, and successor-in-interest to Cape—and the broader Altrad Group, which continues to benefit from Cape's sale of asbestos and evasion of its associated liabilities to tort victims within the United States, including South Carolina.

Moreover, like the broader Altrad Group's continuation of Cape's litigation avoidance strategy, Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC have been part

of that scheme to insulate capital from American creditors, with Sparrows Offshore Group Ltd. passing a resolution to liquidate on July 27, 2023, ***within two weeks of being served with the Receiver's Third Party Complaint in this case***, while each of Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC continue to operate apparently as part of the Altrad Group. *Pertuis*, 817 S.E.2d at 280–81. That decision to liquidate soon after service may (or may not) be part of a combined, coordinated effort to evade liabilities associated with Cape's historic business activities, which at this stage, the Court believes sufficient to exercise personal jurisdiction with respect to affiliated "Altrad Sparrows" entities that have appeared.

The Court expresses similar concern that certain affiliates of these Altrad Group members share a common registered address with Cape and have been served in this third-party action (including at least one entity also represented by counsel for Mr. Altrad and AIA) but nevertheless have not appeared in this action—a decision consistent with Cape's *modus operandi* of litigation avoidance. Accordingly, the Court believes these actions—following the filing of the Third-Party Complaint—further buttress allegations of and concerns regarding ongoing bad faith, abuse, fraud, wrongdoing, or injustice being perpetuated by and within the Altrad Group, including with respect to the management of these "Altrad Sparrows" entities.

Based on these allegations and the record, and at this preliminary stage, the Court finds Sparrows, Hawk BidCo, and Arranco are subject to this Court's personal jurisdiction as an alter ego to Cape or, in the alternative, as part of a single business enterprise that collectively endeavored to sell, or benefit from the sale of Cape's asbestos in the United States, including South Carolina, while avoiding answering to U.S. creditors for the resulting harm. *See, e.g.*, Ex. 70, at CAPE000142 (1975 correspondence acknowledging risk of exposure of future-acquired U.S. companies or businesses to U.S. courts to satisfy default judgments entered against Cape).

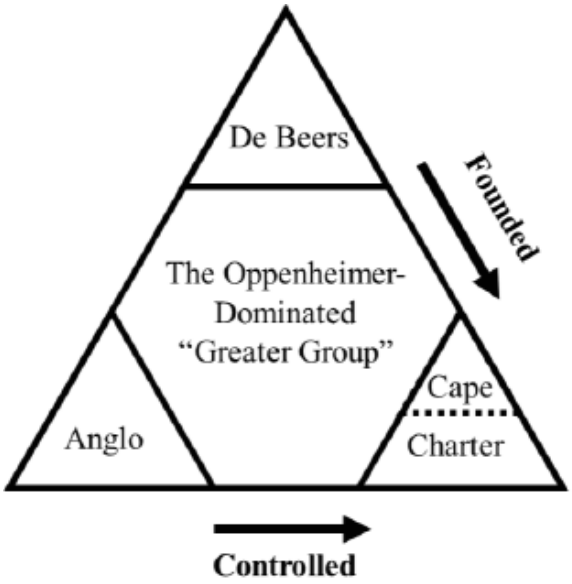
B. The Oppenheimer Third-Party Defendants.

The Court also finds that it has personal jurisdiction over the five Oppenheimer Third-Party Defendants that remain in this action.[30] These Third-Party Defendants include Anglo American PLC (in England), De Beers Consolidated Mines Ltd. (in South Africa), De Beers Centenary AG (in Switzerland), De Beers PLC (in the Bailiwick of Jersey), and De Beers UK Ltd. (in England).

As alleged in the Third-Party Complaint, and further buttressed by documents presented to the Court, these Third-Party Defendants bear responsibility, whether individually or as a matter of successor responsibility, for the claims presented against them. In particular, members of the "De Beers Group," Anglo American Corporation of South Africa, Ltd., and other parts of the Oppenheimer "Greater Group" are alleged to have exerted significant control over Cape, which was alleged to have been part of the premier amalgamated mining and ***marketing*** empire of the twentieth century, as reflected in the figure below (from Paragraph 54 of the Third-Party Complaint).[31]

[30] As originally named, De Beers S.A. is now identified as a predecessor in interest to De Beers PLC, and the other 11 Oppenheimer Third-Party Defendants have been voluntarily dismissed by the Receiver, without prejudice.

[31] *Compare* De Beers Group Website, *A Diamond Is Forever*, https://www.debeersgroup.com/about-us/a-diamond-is-forever (touting "A Diamond is Forever" as the "Slogan of the Century," rolled out in 1947 to advertise diamonds—for which the Anglo/De Beers Group had an effective monopoly—to American consumers, including in South Carolina) *with* the entirety of Third-Party Complaint (alleging highly profitable scheme during the same decades to promote amosite and crocidolite asbestos—for which the Anglo/De Beers Group had an effective monopoly—to American consumers, including in South Carolina, and then direct and promote the attempted evasion of tort liability by Cape and its Anglo/De Beers affiliates).



As set forth below, the Court finds there are numerous allegations, especially at this initial stage of the proceeding, that support exercising jurisdiction over the remaining five Oppenheimer Third-Party Defendants, including as a matter of successor liability for Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd. *See Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97, 98–99 (1924) (identifying bases for successor liability, *e.g.*, (i) there was an agreement to assume such obligations; (ii) the circumstances surrounding the transaction amount to a consolidation or merger of the two corporations; (iii) the successor company was a mere continuation of the predecessor; or (iv) the transaction was entered into fraudulently to wrongfully defeat creditors' claims). The Third-Party Complaint also alleges extensive facts indicating that Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd.—including through Charter—exerted significant control and operational oversight over Cape, acting as its alter ego, including without limitation having (i) been involved in the formation of Cape (Third Party Compl. ¶¶ 42, 45, 47, 49); (ii) overlapping officers, directors, and share ownership among the organizations (including through Charter) (*id.* ¶¶ 45, 47, 49, 55–56, 59–61, 67), (iii) a capacity to influence or control major business decisions of Cape, including

relating to personnel (*id.* ¶¶ 50–52, 54, 58 & n.10, 59, 61, 67), (iv) a common marketing image, or mechanism for influence over business and governmental stakeholders (*id*. ¶¶ 53, 59–60, 62–63, 68-69); (v) a plan to create corporate complexity and artificial corporate separation and to make strategic divestitures to avoid answering to American creditors (*id.* ¶¶ 53 & n.7, 59, 62, 64–67, 105-109); and/or (vi) unity of operations, including a common physical addresses, despite formally separate structures (*id.* ¶¶ 54, 57). *See, e.g., In re Polyester Staple Antitrust Litig.*, 2008 WL 906331, at *13–14, *16 (supporting application of personal jurisdiction over parent entity that was required for consultation or approval of certain corporate decisions at issue); *see also Builder Mart*, 563 S.E.2d at 358. At this early stage in the proceeding, these allegations (including documents in support) are more than sufficient to impute the jurisdictional contacts of Cape and its American subsidiary, NAAC.

Further, these allegations—which are well supported with documentation, including statements in Third-Party Defendants' annual reports and by their corporate officers in sworn testimony—suggest substantial relationship intimacy between the Cape Asbestos Company Ltd., De Beers Consolidated Mines Ltd., Anglo American Corporation of South Africa Ltd., and other members of the Oppenheimer business empire (including Charter) beginning in the 1890s and continuing as late as the 1990s, even after Cape purported to stop selling asbestos.

For the same reasons jurisdiction is proper under an alter ego theory, so too can the single business enterprise theory confer jurisdiction over Anglo American Corporation of South Africa Ltd. and De Beers Consolidated Mines Ltd. The Third-Party Complaint alleges facts showing these entities controlled Cape (through Charter and other members of the Oppenheimer mining empire) during the years in which Cape was shipping asbestos into the United States with the assistance of NAAC, demonstrating that the entities were acting with a "common business purpose." Third-

Party Compl. ¶ 70; *Pertuis*, 817 S.E.2d at 279; *Duong*, 2019 WL 13109647, at *13 (recognizing use of single business enterprise doctrine to obtain personal jurisdiction over" foreign parent and "sister" entities). Indeed, the Third-Party Complaint specifically alleges unified or integrated business operations and resources to achieve a common business purpose, including use of common employees and unclear allocation of profits and losses between corporations, as Cape's production and distribution chain is alleged to have been supported by Oppenheimer-affiliated businesses in South Africa and elsewhere, which also profited from continuation of the asbestos trade. *See* Third-Party Compl. ¶¶ 52–53, 57, 61–62, 67–69, 120 (alleging use of Central Mining engineers by Cape, whom were paid by Anglo American; how "Cape's affiliations . . . were key to Cape's success"; that Cape's/Charter's close association with other South African companies allowed it to "'exercise . . . influence' in Apartheid-era South Africa"; and that "Cape was owned, controlled, operated by, and dominated in furtherance of and in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere—to those entities' substantial financial benefit").

As a result of these contacts, moreover, persons have allegedly been harmed, including in South Carolina, and there is a more than a suggestion of bad faith, abuse, fraud, wrongdoing, or injustice by the Oppenheimer Third-Party Defendants with respect to their perpetuation of this common business purpose and blurring of the distinction among the numerous members in the Anglo/De Beers Group of companies. *See, e.g.*, Talley Affidavit ¶ 41 (stating, as a matter of economic analysis, that "[a]ssuming the facts as alleged in the third-party complaint by the Receiver are true . . . , they resemble a textbook case of strategic and inefficient asset stripping—one that suggests the costs of [limited liability] exceed the benefits of [limited liability] in these circumstances," and thus the "economic case for disregarding the veil of limited liability among

the defendants (or a sizeable number of them) appears strong"). In fact, as their own annual reports acknowledge, members of this "group system" are provided "a full range of administrative and technical services and [are] able, by virtue of [their] financial strength and standing, to [be] assure[d] . . . capital for expansion and development." Ex. 20 (Anglo 1974 Annual Report), at 3. In turn, the Third-Party Complaint alleges in great detail that this group affiliation furthered Cape's asbestos business and provided the roadmap for its liability-avoidance scheme.[32] *See, e.g.*, Third-Party Compl. ¶¶ 102–03 (alleging that Cape asbestos mines were sold to another company also in the Oppenheimers' extensive investment portfolio). Accordingly, contacts from Cape and NAAC are also properly imputed to these Third-Party Defendants under an amalgamated, single business enterprise theory. For these reasons, and as also discussed further below, the Court finds that the exercise of personal jurisdiction over them would not offend traditional notions of fair play and substantial justice.

i. <u>Anglo American PLC.</u>

Anglo American PLC is alleged to be a corporation organized under the laws of England, United Kingdom, with its principal place of business in London, England, United Kingdom. Third-

[32] Although affiants for the Oppenheimer Third-Party Defendants disclaim direct involvement in the sales of asbestos, the Third-Party Complaint alleges otherwise, including that Cape was part of a global amalgamated mining empire which—as part of a common business enterprise—extracted from South Africa and sold and marketed to customers in the United States, including South Carolina, numerous types of raw materials, including asbestos (as well as diamonds, copper, gold, coal, uranium, etc.). *Compare* Third-Party Compl. ¶¶ 51, 67–69 (alleging various interests in minerals and other resources, also mined from South Africa and sold predominantly to the United States) *with* Anglo American H1 2023 Results, at 66 (July 27, 2023) (identifying "USA" as still responsible for the majority of "Global Diamond Jewellery Demand," with China a distant second with 10% of demand, according to De Beers-commissioned analytics and consumer studies), *available at* https://www.angloamerican.com/~/media/Files/A/Anglo-American-Group-v5/PLC/investors/reports/anglo-american-half-year-2023-results-presentation.pdf. It is well-established that factual disputes should be resolved in favor of the Receiver, the non-moving party, at this stage. *See HHHunt Corp.*, 699 S.E.2d at 704.

Party Compl. ¶ 2. In addition, Anglo American PLC is expressly alleged to be a successor in interest to Anglo American Corporation of South Africa Ltd. As the Third-Party Complaint further alleges, in 1998, "Anglo American Corporation of South Africa Ltd. moved its headquarters to London and re-registered as Anglo American PLC, which involved complex changes to its corporate structure that included absorbing [other Oppenheimer entities] and moving assets out of South Africa (thereby mitigating the risk of post-Apartheid nationalization)." *Id.* ¶ 121 n.41.

Other materials provided to the Court since the filing of the Third-Party Complaint on June 30, 2023, also appear to support the Receiver's assertions that Anglo American PLC ("AA PLC") may bear responsibility as a successor in interest to Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd., including in light of the structure and terms of the 1998 merger between Anglo American Corporation of South Africa Ltd. ("AAC") and other Oppenheimer business interests.[33] For example, as part of that formal combination of businesses, it was reported in financial press that (i) the "Boards of De Beers Consolidated Mines Limited and De Beers Centenary AG (together 'De Beers') announce[d] that they [had] agreed in principle to support the formation of AA plc for AAC and Minorco [*i.e.*, the international investment arm that replaced Charter], and to accept AA plc shares in respect of De Beers' shareholdings of 38.2

[33] *See, e.g.*, Lynne Duke, *Mining Firm's Move Splits South Africans*, The Washington Post (Oct. 18, 1998), https://www.washingtonpost.com/archive/politics/1998/10/18/mining-firms-move-splits-south-africans/fd90b101-ebe7-4de2-a0e9-f17f0793e3dd// (referencing "restructuring plan that will move the South African and global mining giant's headquarters to London," including as "a decision to merge with its offshore natural resources arm, Luxembourg-based Minorco SA," but with its "major shareholders . . . remain[ing[South African[,] [p]rimary among them [being] the Johannesburg-based De Beers Consolidated Mines Ltd., the world's largest diamond miner and marketer, as well as the Oppenheimer family which owns De Beers"); Darren Schuettler, *Anglo Merger with Minorco to Create Mining Giant*, J. of Commerce (Oct. 15, 1998), https://www.joc.com/article/anglo-merger-minorco-create-mining-giant_19981015.html ("Anglo said the deal, which will effectively end the company's 81-year corporate presence in the country of its birth, was necessary to protect shareholder interests in post-apartheid South Africa.").

percent in AAC and 22.5 percent in Minorco," and (ii) "a number of listed and unlisted companies and joint ventures" would continue "in which De Beers and AAC have common direct interests," because as:

> part of the restructuring of AAC, the Boards of De Beers and AAC [had] agreed in principle that all De Beers' holdings in these companies and joint ventures will be disposed of to AAC in return for an entitlement to AAC shares which will be converted into shares in AA plc on completion of the combination of AAC and Minorco.

Anglo American, Minorco to Merge in Stock Swap, Bloomberg (Oct. 15, 1998), https://www.bloomberg.com/press-releases/1998-10-15/anglo-american-minorco-to-merge-in-stock-swap.

In addition, in line with the Receiver's allegation that the "Oppenheimer Third-Party Defendants have increased their business activities in the United States" (Third-Party Compl. ¶ 122), Anglo American PLC has lobbied and is actively lobbying the U.S. government, implicating the State of South Carolina as well. *See* U.S. Senate Lobbying Report (July 18, 2023), https://lda.senate.gov/filings/public/filing/2ae34448-9d9b-4218-899a-3040666a499a/print/ (identifying interest "in engagements related to the investment in critical minerals exploration and extraction in Southern Africa"). That lobbying, moreover, is alleged to be part of a longstanding campaign by the Anglo/De Beers Group to establish a foothold of influence in the United States, including as potentially relevant to Cape, and as alleged in the Third-Party Complaint. *See id.* ¶ 70 (alleging that Cape was included as "part of the Oppenheimer empire's global expansion" in the 1950s—1970s).

Based on these allegations and the record presently before the Court, the Court finds (i) the Receiver has made the required *prima facie* showing that Anglo American PLC, whether individually or as a successor in interest to De Beers Consolidated Mines Ltd. and/or Anglo

American Corporation of South Africa Ltd., was an alter ego of Cape or part of an amalgamated, single business enterprise, or benefitted from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States, including to South Carolina, and (ii) the exercise of personal jurisdiction over Anglo American PLC is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds,[34] to the United States of America, including South Carolina.

ii. <u>De Beers Consolidated Mines Ltd.</u>

De Beers Consolidated Mines Ltd. (n/k/a De Beers Consolidated Mines Proprietary Ltd.) is alleged to be a corporation organized under the laws of the Republic of South Africa, with its principal place of business in Kimberley, Northern Cape, South Africa. Third-Party Compl. ¶ 5. De Beers Consolidated Mines Ltd. is among certain Oppenheimer Third-Party Defendants—with or through predecessors in interest—alleged to have owned, controlled, operated, or dominated Cape in furtherance of or in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere, thereby financially benefiting with respect to Cape's asbestos business in the United States and its perpetuation of the liability-avoidance scheme. *See id.* ¶¶ 120–21. As summarized above, the Third-Party Complaint alleges—in substantial detail—a connection between "De Beers" and Cape beginning in the 1890s and continuing at least through the time that

[34] *See also* Gill Nelson *et al.*, *The Risk of Asbestos Exposure in South African Diamond Mine Workers*, Annals of Occupational Hygiene, Vol. 55 (July 2011) ("Asbestos is associated with the South African diamond mining industry, primarily due to the nature of kimberlite but also the location of the diamond mines in relation to asbestos deposits."), *available at* https://academic.oup.com/annweh/article/55/6/569/175512.

Cape initiated its liability-avoidance scheme in the late 1970s. *See id.* ¶¶ 45, 112, 122 (defining "De Beers," as referenced in the Third-Party Complaint, to include De Beer's Consolidated Mines Ltd. "with its affiliates and successors in interest" in the "De Beers Group," as controlled by Anglo American PLC, which act as "successors in interest and beneficiaries of Cape's liability-avoidance scheme, co-responsible for Cape's tortious conduct").

Based on these allegations and the record before the Court at this preliminary stage, the Court finds (i) the Receiver has made the required *prima facie* showing that De Beers Consolidated Mines Ltd. (n/k/a De Beers Consolidated Mines Proprietary Ltd.) was an alter ego of Cape or part of an amalgamated, single business enterprise, or benefiting from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States of America, including to South Carolina, and (ii) the exercise of personal jurisdiction over De Beers Consolidated Mines Ltd. is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds, to the United States of America, including South Carolina.

iii. <u>De Beers Centenary AG.</u>

De Beers Centenary AG is alleged to be a corporation organized under the laws of Switzerland, with its principal place of business in Emmenbrücke, Switzerland. Third-Party Compl. ¶ 4. De Beers Centenary AG is among certain Oppenheimer Third-Party Defendants—with or through predecessors in interest—alleged to have owned, controlled, operated, or dominated Cape in furtherance of or in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere, thereby financially benefiting from Cape's asbestos

business in the United States and its perpetuation of the liability-avoidance scheme. *See id.* ¶¶ 120–21. De Beers Centenary AG is also alleged to be involved in expanding business activities in the United States, including bringing litigation and enforcing trademarks or other valuable rights, under the De Beers name. *Id.* ¶ 122. Moreover, this entity is effectively alleged to be a successor in interest to De Beers Consolidated Mines Ltd. (as formed in 1888) and responsible for actions as part of various entities in the "De Beers Group," which have been created since the 1970s and act as "successors in interest and beneficiaries of Cape's liability-avoidance scheme, co-responsible for Cape's tortious conduct." *See id.* ¶¶ 45, 112, 122.

Other public materials buttress the Receiver's assertions that De Beers Centenary AG may bear responsibility as a successor in interest to Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd., in light of the terms and structure of its creation in 1990 by being spun off from De Beers Consolidated Mines Ltd. *See, e.g.*, *De Beers to Become 2 Companies*, N.Y. Times (Mar. 7, 1990) ("De Beers Consolidated Mines Ltd., the huge South African diamond mining concern, said today that it would split itself in two and base one of the newly formed companies in Switzerland. The Swiss company will oversee De Beers's foreign businesses, which accounted for 80 percent of the company's 1989 net profit. The move appeared to be an attempt by the company to minimize its exposure to potential political turbulence in South Africa, where a newly energized black majority has vowed to nationalize major industries if it wins power from the white minority.").[35]

[35] *See also, e.g.*, Indictment, *United States v. General Elec. Co. et al.*, No. CR-2-94-019 (S.D. Ohio Feb. 17, 1994) (collectively referring to De Beers Consolidated Mines Ltd. and De Beers Centenary AG as "De Beers," responsible for "own[ing] or control[ing] various companies that manufactured, distributed, and sold industrial diamond products"), *available at* https://www.justice.gov/sites/default/files/atr/legacy/2006/03/20/indictment.pdf; *De Beers Signs Pact for Soviet Diamonds*, Roanoke Times (July 26, 1990) (referencing a multi-billion dollar agreement between De Beers Centenary AG and the Soviet Union, accomplished because the

Based on these allegations and the record before the Court at this preliminary stage, the Court finds (i) the Receiver has made the required *prima facie* showing that De Beers Centenary AG, whether individually or as a successor in interest to De Beers Consolidated Mines Ltd. and/or Anglo American Corporation of South Africa Ltd., was an alter ego of Cape or part of an amalgamated, single business enterprise, or benefitted from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States of America, including to South Carolina, and (ii) the exercise of personal jurisdiction over De Beers Centenary AG is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds, to the United States of America, including South Carolina.

iv. <u>De Beers PLC.</u>

De Beers PLC is alleged to be a corporation organized under the laws of the Bailiwick of Jersey, with its principal place of business in St. Helier, Jersey. Third-Party Compl. ¶ 3. De Beers PLC is among certain Oppenheimer Third-Party Defendants—with or through predecessors in interest—alleged to have owned, controlled, operated, or dominated Cape in furtherance or in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere, thereby financially benefiting with respect to Cape's asbestos business in the United States and its perpetuation of the liability-avoidance scheme. *See id.* ¶¶ 120–21. Moreover, this entity is

Soviets were willing to "openly do business" only with the Swiss arm of De Beers, having "refused to deal directly with the South African company because of apartheid"), *available at* https://scholar.lib.vt.edu/VA-news/ROA-Times/issues/1990/rt9007/900726/07260532.htm.

effectively alleged to be a successor in interest to De Beers Consolidated Mines Ltd. (as formed in 1888) and responsible for actions as part of various entities in the "De Beers Group," which have been created since the 1970s and act as "successors in interest and beneficiaries of Cape's liability-avoidance scheme, co-responsible for Cape's tortious conduct." *See id.* ¶¶ 45, 112, 122.

As this Third-Party Defendant admits, it was formed in 2000 as a "[h]olding company of De Beers group." Oppenheimer Personal Jurisdiction Chart (submitted by Third-Party Defendants to the Court during the hearing on Oct. 25, 2023). Other public materials likewise buttress the Receiver's assertions that De Beers PLC may bear responsibility as successor in interest to Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd., in light of De Beers PLC directly controlling De Beers Consolidated Mines Ltd. (with 74% shareholding as of 2021) and effectively being dominated by Anglo American PLC (with 85% shareholding). *See* De Beers Consolidated Mines Proprietary Ltd. Manual, at 2 (June 2021), https://www.debeersgroup.com/~/media/Files/D/De-Beers-Group-V2/documents/dbcm-and-subsidiares-paia-manual.pdf; De Beers PLC Annual Financial Statements for the Year Ended 31 December 2022, at 2 ("The Company is the holding company for the De Beers Group of companies, which consists of the Company, and all entities (which include subsidiaries, joint arrangements and associates) that are controlled, jointly controlled or significantly influenced by the Company (the 'Group' or 'De Beers'). . . . De Beers is 85% owned by Anglo American plc, with the remaining 15% interest held by the Government of the Republic of Botswana."). De Beers PLC also acts as a direct successor in interest to a Duchy of Luxembourg holding company also named as a Third-Party Defendant in this lawsuit, De Beers S.A., which ceased operation in 2016, after its registered office was changed to the Bailiwick of Jersey and name changed to De Beers PLC. *See* Minutes of De Beers S.A. Shareholders Meeting, at 3 (Nov. 10, 2016).

Based on these allegations and the record before the Court at this preliminary stage, the Court finds (i) the Receiver has made the required *prima facie* showing that De Beers PLC, whether individually or as a successor in interest to De Beers Consolidated Mines Ltd. and/or Anglo American Corporation of South Africa Ltd., was an alter ego of Cape or part of an amalgamated, single business enterprise, or benefitted from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States of America, including to South Carolina, and (ii) the exercise of personal jurisdiction over De Beers PLC is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds, to the United States of America, including South Carolina.

v. <u>De Beers UK Ltd.</u>

De Beers UK Ltd. is alleged to be a corporation organized under the laws of England, United Kingdom, with its principal place of business in London, England, United Kingdom. Third-Party Compl. ¶ 7. De Beers UK Ltd. is among certain Oppenheimer Third-Party Defendants—with or through predecessors in interest—alleged to have owned, controlled, operated, or dominated Cape in furtherance or in concert with Oppenheimer business interests in South Africa, the United kingdom, and elsewhere, thereby financially benefiting with respect to Cape's asbestos business in the United States and its perpetuation of the liability-avoidance scheme. *See id.* ¶¶ 120–21. De Beers UK Ltd. is also alleged to be involved in expanding business activities in the United States under the De Beers name, including bringing litigation and enforcing trademarks or other valuable rights. *Id.* ¶ 122. Moreover, this entity is effectively alleged to be a successor in interest

to De Beers Consolidated Mines Ltd. (as formed in 1888) and responsible for actions as part of various entities in the "De Beers Group," which have been created since the 1970s and act as "successors in interest and beneficiaries of Cape's liability-avoidance scheme, co-responsible for Cape's tortious conduct." *See id.* ¶¶ 45, 112, 122.

Other public materials buttress the Receiver's assertions that De Beers UK Ltd. may bear responsibility as a successor in interest to Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd., in light of the terms and structure of its creation in 1986 (*e.g.*, as a potential forerunner to other corporate maneuvers of the Anglo/De Beers Group to mitigate corporate/geopolitical risks during the 1990s through major reorganizations, as referenced above). In addition, materials published by De Beers UK Ltd. confirm the close relationship and operation with other members of the De Beers Group, with De Beers UK Ltd. acting as a "wholly-owned subsidiary of De Beers plc," which in turn "is an 85% owned subsidiary of Anglo American plc," whose "principal activity is the provision of corporate functions and marketing services for the De Beers Group . . . and development and maintenance of intellectual property." De Beers UK Limited Annual Report and Financial Statements for the Year Ended 31 December 2022, at 1.

Based on these allegations and the record before the Court at this preliminary stage, the Court finds (i) the Receiver has made the required *prima facie* showing that De Beers UK Ltd., whether individually or as a successor in interest to De Beers Consolidated Mines Ltd. and/or Anglo American Corporation of South Africa Ltd., as an alter ego of Cape or part of an amalgamated, single business enterprise, or benefitted from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States of America, including to South Carolina, and (ii) the exercise of

personal jurisdiction over De Beers UK Ltd. is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds, to the United States of America, including South Carolina.

C. The Charter Third-Party Defendants.

The Receiver also has alleged sufficient facts to make a *prima facie* showing that the exercise of jurisdiction is proper over the Charter Third-Party Defendants under both the alter ego and single business enterprise theories. As alleged in the Third-Party Complaint, and further supported by publicly available materials that have been presented to the Court, both Charter and Central Mining were alter egos of Cape—used to exert significant control over Cape and to expand the Oppenheimer family's business holdings internationally. *E.g.*, Third-Party Compl. ¶¶ 54, 58. As their parent and alleged successor in interest, ESAB runs Central Mining and Charter, exercising control over these two entities critical to Cape's business and perpetuation of the liability-avoidance scheme (including in furtherance of the Oppenheimer mining empire, *supra*). For the reasons described below, jurisdiction should be exercised over the Charter Third-Party Defendants.

i. Central Mining.

a. Alter Ego.

The Third-Party Complaint alleges specific facts indicating that Central Mining, an Anglo-controlled entity, exerted significant control and operational oversight over Cape, acting as its alter ego. The Third-Party Complaint alleges facts in support of each of the *Builder Mart* factors. As alleged, in 1905, Central Mining was organized "to take over the assets and business interests of Wernher, Beit & Co., which included interests in Cape Asbestos"—*i.e.*, common ownership.

Third-Party Compl. ¶ 48. Central Mining or other affiliates of the Corner House Group continued to control Cape in the 1930s and after. *See id.* ¶ 50 & n.4. As of the Second World War, Central Mining "had become affiliated as an 'Oppenheimer' company' and was also Cape's majority shareholder." *Id.* By 1949, Central Mining controlled Cape's board of directors. *Id.* Central Mining's control over Cape was not just based on ownership and financial dependence; it also exercised control over Cape's personnel and operations. As alleged, Central Mining "leveraged its expertise and methods in gold mining to improve the performance at Cape mines by seconding its employees to Cape in South Africa" (at Anglo's, rather than Cape's, cost). *Id.* ¶ 52. According to the allegations of the Third-Party Complaint, during the years that Cape was shipping asbestos into the United States (including into South Carolina) through NAAC, it was predominately controlled by Central Mining (and later, Charter). *See In re Polyester Staple Antitrust Litig.*, 2008 WL 906331, at *13 (where one entity exercises significant control over the "day to day" operations of another entity, contacts of the subsidiary can be imputed to the parent). As a result, the Court finds it is appropriate to impute Cape's contacts onto Central Mining to establish personal jurisdiction.

b. Single Business Enterprise.

For the same reasons this Court has personal jurisdiction over Central Mining as an alter ego of Cape, so too does the single business enterprise theory establish jurisdiction. The Third-Party Complaint alleges facts showing that Central Mining (including under Anglo's ownership), controlled Cape for a period of decades during which it was flooding the U.S. (and South Carolina) market with asbestos, including with the assistance of NAAC, demonstrating that the entities were acting with a "common business purpose." And the Third-Party Complaint alleges ample abuse, wrongdoing, and injustice in connection with that "common business purpose," namely the effort

to take advantage of the lucrative U.S. (and South Carolina) market for asbestos while hiding the known dangers of that product and siphoning profits from the United States to foreign affiliates for the purpose of insulating Cape from exposure to American creditors injured by its asbestos. *Pertuis*, 817 S.E.2d at 279–81; Third Party Compl. ¶ 70.

ii. Charter

The Court finds personal jurisdiction over Charter is also present, both as an alter ego of Cape and under the single business enterprise theory. An alter ego claim "requires a showing of (1) total domination and control of one entity by another and (2) inequitable consequences caused thereby." *Oskin v. Johnson*, 400 S.C. 390, 400, 735 S.E.2d 459, 465 (2012) (citing *Colleton Cnty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 237, 638 S.E.2d 685, 692 (2006)). The Third-Party Complaint meets these substantive requirements, along with the *Builder Mart* factors.

a. Alter Ego.

The Third-Party Complaint is replete with detailed factual allegations suggesting that Charter, as an instrumentality of the Oppenheimer Third-Party Defendants, dominated Cape. For example, it alleges that, in 1965, the Oppenheimer family merged Central Mining with two other mining companies to create Charter. While Charter had direct and indirect interests in Cape since its founding, in 1969, Charter acquired majority ownership of Cape, thereby gaining control over Cape. Third-Party Compl. ¶ 55. Taken as true, as the Court must at this stage, the Third-Party Complaint alleges the distinctions between Charter and Anglo were superficial, including that the entities shared office space, personnel, and board members—with the Oppenheimers consistently dictating major decisions within the Anglo/De Beers/Charter "Greater Group." *Id.* ¶¶ 57, 59. Cape was Charter's primary operating company and principal industrial subsidiary, and, by extension,

Cape and its subsidiaries were part of the Anglo American group of companies that dominated the mining economy in South Africa. *E.g.*, *id.* ¶¶ 55–56, 61–62. Having comprehensively alleged ownership, financial, operational, and decision-making control, the Third-Party Complaint also makes extensive allegations concerning the resulting harm, or "inequitable consequences" produced by Charter's control over Cape. As with Central Mining, during Cape's "most bountiful years" of shipping asbestos into the United States (including into South Carolina) through NAAC, without regard for the grave harm it would case, it was owned and controlled by Central Mining and Charter, both of which were controlled in turn by the Anglo/De Beers Group. *Id.*, ¶¶ 50–65, 70.

b. Single Business Enterprise.

The alleged lack of meaningful separation between Anglo, Cape, Charter, and Central Mining coupled with their coordinated effort to capitalize on the U.S. market for asbestos while avoiding the attendant liabilities associated with mining, marketing, and distributing a product with known health hazards support the conferral of jurisdiction over these entities as a single business enterprise. As alleged in the Third-Party Complaint, Charter was designed to serve as a "corporate cushion" for Anglo that could quickly purge cash to other Oppenheimer-affiliated entities and add a level of separation between Anglo and Cape, in an attempt to insulate Anglo from the liability associated with a profitable asbestos business. *Id.* ¶ 65. The Oppenheimer family's control of Central Mining, Charter, Cape, and its other enterprises was central to the management of its businesses and the domination of the South African mining economy, and support conferral of jurisdiction as a single business enterprise.[36] *Id*. ¶¶ 67–68.

[36] Asbestos plaintiffs have previously sought—with some success—to hold Charter and Central Mining liable for Cape's unethical business practices. *See, e.g.*, *Cameron v. Owens-Corning Fiberglas Corp.*, 296 Ill. App. 3d 978, 989 (1998) ("Plaintiffs have alleged a conspiracy with

iii. ESAB.

As the alleged parent company of and successor in interest to Central Mining and Charter, the Third-Party Complaint alleges sufficient facts demonstrating that jurisdiction over ESAB is likewise proper under both the alter ego and single business enterprise theories. The Third-Party Complaint and the record before the Court ties ESAB to Cape through its subsidiaries, Central Mining and Charter. The Third-Party Complaint alleges that, in the 1980s and 1990s, the Oppenheimer's chose to demote the role of Charter in its portfolio, including re-registering it as a public company (renamed Charter PLC) in 1993. *Id.* ¶ 123. Three years later, Charter sold its

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sufficient specificity to provide the circuit court with jurisdiction over Charter."); *Craig v. Johns-Manville Corp.*, 1987 WL 10191, at *18 (E.D. Pa. Apr. 23, 1987) (predicting that "on the present record, the New Jersey Supreme Court would not hesitate to pierce the 'diaphanous veil' between Charter and Cape"), *rev'd*, 843 F.2d 145, 150 (3d Cir. 1988) (on appeal, contradicting the trial judge's assessment and myopically interpreting Cape's history to find that "evasion of tort liability has never, in itself, been sufficient basis to disregard corporate separateness" under N.J. law); *Paravati v. Bell Asbestos Mines, Ltd.*, 1986 WL 492, at *1 (E.D. Pa. Dec. 3, 1986) (denying Charter's motion for partial summary judgment because "the case in its current posture has disputed issues of material fact"); *Parker v. Bell Asbestos Mines, Ltd.*, 607 F. Supp. 1397, 1404 (E.D. Pa. 1985) ("[I]f the plaintiff . . . can prove that Charter controls Cape, and that Cape has deliberately avoided liability to American plaintiffs, it will be fair to ask Charter to stay and defend Cape's position."); *Barber v. Pittsburgh Corning Corp.*, 464 A.2d 323, 328–29 (Pa. Super. Ct. 1983) (finding that "the record shows clearly the extent to which [Cape] comprises an operating arm of Charter"). Dismissals of Charter in prior lawsuits in other states are not binding on this Court—and are distinguishable from the facts alleged in this third-party action, which is still at an early stage in the proceeding. *See Culbreth v. Amosa (Pty.) Ltd.*, 898 F.2d 13, 14–15 (3d Cir. 1990) (affirming summary judgment dismissal of alter ego claim under Pennsylvania law on an apparently bare record showing only that Charter became Cape's majority owner in 1969*); Mohn v. Int'l Vermiculite Co.*, 498 N.E.2d 375, 376–77 (Ill. App. Ct. 1986) (declining to reverse ruling that "Charter was [not] estopped from relitigating its relationship with Cape"). This action is not a "subsequent suit by the same parties when the claims arise out of the same transaction or occurrence that is the subject of the prior suit between those parties." *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 190–91, 417 S.E.2d 569, 571 (1992). Instead, those cases involve a course of conduct that is not within the same scope of the allegations in the Third-Party Complaint, which are exhaustive in implicating other members of a broader scheme involving Cape. Further, the issues addressed in the Third Circuit and otherwise have never been decided under South Carolina law. The doctrines of res judicata and/or collateral estoppel do not apply.

interest in Cape for approximately £48 million. *Id*. In 2008, Charter PLC became Charter International PLC, and was acquired by Colfax Corporation ("Colfax") in 2012 at a valuation of $2.4 billion. *Id.* In 2022, Colfax spun off ESAB. *Id*. ¶ 124. ESAB now is the parent company of both Charter and Central Mining, and as the alleged successor in interest as well, may bear responsibility for them. *Brown*, 128 S.C. 428, 123 S.E. at 98–99.

In addition, as detailed in the Receiver's Omnibus Opposition to the Personal Jurisdiction Motions, it appears ESAB may conduct material business in the State of South Carolina. Discovery may reveal the extent of that business, as well as other facts regarding ESAB's relation with Central Mining and Charter that further support holding ESAB liable as a corporate successor. For example, public materials suggest that (i) Charter and Central Mining (as Charter's subsidiary) are not actively engaged in business, (ii) Charter and Central Mining rely on ESAB for "sufficient financial resources and support" to remain a going concern, including through a letter of financial support provided by ESAB, and (iii) Charter and Central Mining are assessed as a going concern on a year-to-year basis. *See* Strategic Report, Report of the Directors and Audited Financial Statements for the Year Ended 31 December 2021 for Charter Consolidated Limited, at 3, 5, 12, 21 (Oct. 19, 2022); Strategic Report, Report of the Directors and Audited Financial Statements for the Year Ended 31 December 2022 for Charter Consolidated Limited, at 3, 12, 16, 21 (Oct. 24, 2023). Discovery may reveal additional details of these financial arrangements and how and why the historic mining houses of Central Mining and Charter—alleged to be directly responsible for Cape's business practices and liability-avoidance scheme—are being maintained as going concerns by a Maryland-based welding and cutting business (ESAB).

Because the acts of Charter and Central Mining are alleged to have been carried over to ESAB, ESAB cannot skirt jurisdiction at this time.

V. The Exercise of Specific Jurisdiction Over Each Third-Party Defendant Conforms with the Constitutional Requirements.

As detailed above, the Third-Party Defendants' contacts with South Carolina—including through their agent, Cape—satisfy South Carolina's test for the exercise of specific jurisdiction. *See* S.C. Code §§ 36-2-803(4), (8) (contemplating jurisdiction over a person who acts directly or through agent). Specifically, Cape allegedly acted as the agent of the Third-Party Defendants in functioning as "the asbestos-mining leg of an amalgamated mining empire based out of South Africa" that facilitated the movement of asbestos from South African mines to the United States (including into South Carolina) over a period of decades, while concealing its known dangers. Third-Party Compl. ¶¶ 51, 85–86. It further is alleged to have acted as the agent of the Third-Party Defendants in its implementation of a liability-avoidance scheme pursuant to which it accelerated the flow offshore of proceeds from asbestos sales in the United States, minimizing the capital available to compensate South Carolinians hurt or killed by its asbestos, and refusing to accept process or appear in U.S. legal proceedings. *Id.* ¶¶ 91, 93, 97.

The Court finds the exercise of specific jurisdiction is proper because the Third-Party Complaint's allegations demonstrate (i) the Third-Party Defendants have purposefully availed themselves of the privilege of conduct activities in South Carolina, (ii) the claims at issue arise from those activities, and (iii) the exercise of personal jurisdiction would be constitutionally reasonable. *Charleston Equities*, 2017 WL 10504748, at *2.

First, through their agent, Cape, the Third-Party Defendants have purposefully availed themselves of the benefits and protections of South Carolina's law, including purposefully targeting the U.S. market for asbestos—as well as for numerous other minerals, including diamonds, in the case of certain Third-Party Defendants—and, as a result, reaping massive profits from the sale of such minerals (including without limitation crocidolite and amosite asbestos) in

that market, including in South Carolina, over a period of decades. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475–76 (1985).

Second, the claims arise out of and relate to those activities—namely, the coordinated effort to mine, market, and sell massive amounts of asbestos (among other minerals) into the United States, including in South Carolina, funnel the resulting profits overseas (thereby minimizing the capital available to compensate South Carolinians hurt or killed by Cape's asbestos), and then refuse to accept process or appear in U.S. legal proceedings. Through this litigation, the Receiver seeks to identify, preserve, and marshal the assets of Cape and its affiliates, including those that were funneled overseas, to ensure they are available to redress the devastating toll caused by this scheme. *Helicopteros*, 466 U.S. at 414.

Third, exercise of personal jurisdiction over the Third-Party Defendants "would comport with 'fair play and substantial justice.'" *Burger King*, 471 U.S. at 476 (quoting *Int'l Shoe v. Washington*, 326 U.S. 310, 320 (1945)). In so finding, this Court has weighed "the burden on the defendant, the forum State's interest in adjudicating the dispute, the Plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies." *Christian Sci. Bd. of Dirs. of the First Church of Christ, Scientist v. Nolan*, 259 F.3d 209, 217 (4th Cir. 2001) (quoting *Burger King*, 471 U.S. at 477). The Court finds that fair play and substantial justice sharply favor the exercise of personal jurisdiction, especially at this stage of the litigation and in light of the substantial allegations and supporting documentation presented to the Court thus far.[37]

[37] *See, e.g.*, Talley Affidavit ¶ 41 ("Assuming the facts as alleged in the third-party complaint by the Receiver are true (which I take to be true for purposes of this affidavit), they resemble a textbook case of strategic and inefficient asset stripping—one that suggests the costs of [limited

Exercise of such jurisdiction does not offend traditional notions of fair play and substantial justice, because "South Carolina has a substantial interest in protecting its citizens from unfair actions by out of state defendants who use the corporate form as a shield from liability." *Charleston Equities*, 2017 WL 10504748, at *5. Taking the allegations as true, as the Court must at this stage, the Third-Party Defendants participated in or benefitted from a scheme to shrug off the serious injury and death they knew would result from distributing asbestos in pursuit of even higher profits, to actively conceal or mispresent health risks of asbestos, and to siphon funds out of the United States to benefit foreign affiliates to reduce the proceeds available to individuals hurt or killed by asbestos in South Carolina. *See, e.g.*, Buxton Affidavit ¶ 7 ("A dismissal at this stage of pleadings would only embolden domestic and international abuse of our system of corporate jurisprudence in South Carolina, a system ultimately established for the benefit of its citizens and not for use in purposefully harming them.").

* * * * *

For the reasons set forth herein, the Court **DENIES** the Dissolution Motions in their entirety. Further, for the reasons set forth herein, the Court concludes that its exercise of personal jurisdiction is proper as to each of the remaining Third-Party Defendants and therefore **DENIES** each of the Personal Jurisdiction Motions.

IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]

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liability] exceed the benefits of [limited liability] in these circumstances. Such inefficiencies, as shown above, can be efficiently deterred by a credible commitment to relax the [limited liability] shield. Consequently, and on this basis, economic case for disregarding the veil of limited liability among the defendants (or a sizeable number of them) appears strong.").

Richland Common Pleas

Case Caption: John A Tibbs , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2023CP4001759

Type: Order/Other

So Ordered

Jean H. Toal