THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-001461
Circuit Court Case No. 2023-CP-40-01759

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

v.

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

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

of which

Asbestos Corporation Limited is the .....Appellant,

and

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

v.

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

of which

Mohed Altrad; Altrad Investment Authority SAS; ArranCo US, LLC; Hawk Bidco US Inc.; Sparrows Offshore, LLC; Anglo American PLC; De Beers PLC; De Beers Centenary AG; De Beers Consolidated Mines Proprietary Ltd.; De Beers UK Ltd.; ESAB Corporation; Charter Consolidated Ltd.; and Central Mining & Investment Corporation Ltd. are the……Appellants.

_____

INITIAL BRIEF OF APPELLANTS CHARTER CONSOLIDATED LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD.

_____

GORDON REES SCULLY MANSUKHANI, LLP
A. Victor Rawl, Jr. (SC 09261)
Email: vrawl@grsm.com
677 King Street, Suite 450
Charleston, SC 29403
Telephone: 843-714-2501

Counsel for Appellants Charter Consolidated Ltd., ESAB Corporation, and Central Mining and Investment Corporation Ltd.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Statutes

Rules

I. STATEMENT OF THE ISSUES ON APPEAL

1. Whether the circuit court erred in permitting the receivership to proceed against "Cape PLC n/k/a Cape Intermediate Holdings Limited" when the receivership was appointed in an unrelated case over a different entity, "Cape PLC, individually and as successor in interest to cape asbestos company limited."

2. Whether the purported receivership over "Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited" should be dissolved when no entity named cape plc was ever served with process in connection with the receivership appointment.

3. Whether the purported receivership over "Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited" should be dissolved when no Cape entity was served with any complaint in connection with the receivership appointment.

4. Whether the purported receivership over "Cape plc, individually and as successor in interest to Cape Asbestos Company Limited" should be dissolved when the requirements of South Carolina Code § 15-65-10(4)-(5) and federal law were not met.

5. Whether specific jurisdiction exists when Appellants did not direct any activity to South Carolina that relates to asbestos or any of the claims asserted by Respondent.

6. Whether the court erred in finding Appellants were the alter ego of Cape or part of a single business enterprise with Cape when Respondent failed to allege, among other things, specific *facts* as between Appellants and Cape that there was (a) any undercapitalization of Cape; (b) a failure to observe corporate formalities; (c) non-payment of dividends; (d) insolvency of Cape at the time of Appellants' purported relationship with Cape; (e) siphoning of funds by Appellants; (f) non-functioning of Cape's officers and directors; and (g) any absence of corporate records.

7. Whether the circuit court erred in determining that Respondent's claims for unjust

enrichment, alter ego/veil-piercing, accounting, and constructive trust arose from the South Carolina contacts imputed to Appellants, i.e. sales of asbestos into South Carolina generally by Cape Intermediate Holdings Ltd.'s subsidiary.

8. Whether the circuit court erred when it found that it had personal jurisdiction over ESAB under a successor liability theory when ESAB did not become the parent of Charter and Central Mining until 2022, more than 25 years after Charter and Central Mining ceased having any interest in Cape and more than 40 years after any of the alleged wrongdoing by Cape occurred.

II. SUMMARY OF ARGUMENT

The Circuit Court committed a series of reversible legal errors.[1] In denying the Motions to Dissolve Respondent's receivership appointment, the Circuit Court abused its discretion, as its findings lack evidentiary support and are contradicted by the record. Respondent was purportedly appointed the receiver over Cape PLC, an active foreign company formed in 2011, as "successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) . . . and its subsidiaries and global affiliates," in the *Park* action, a wholly unrelated asbestos action that had been "fully resolved" for months before the receivership appointment. Although the Circuit Court held that the Cape PLC receivership was valid because "Cape" was served in *Park*, failed to timely appear, and received proper notice of the Motion to Appear and the Receivership Order, the underlying facts tell a different story. In opposing the Motions to Dissolve, Respondent revealed that no entity named Cape PLC was ever served in *Park*; failed to demonstrate that Cape Intermediate Holdings Limited (which Respondent now argues is the entity placed in receivership, although it was not named in the Motion to Appoint and is not a defendant in the *Tibbs* Suit) was served with the First

[1] Pursuant to Rule 208(6), SCACR, and to the extent not inconsistent with the arguments presented herein, Appellants adopt and incorporate by reference the initial appeal briefs filed by other third-party defendants/appellants in this matter.

Amended Complaint; and admitted that neither Cape PLC nor Cape Intermediate Holdings Limited was served with the Second Amended Summons even though failure to respond to that pleading was the basis of the Motion to Appoint.

Nor does the evidence support a finding that the statutory receivership requirements are met. The Motion to Appoint, the Dissolution Opposition, and Respondent's proposed order do not set forth the necessary elements of South Carolina Code § 15-65-10(4); no evidence has been provided that a receivership is appropriate under South Carolina Code § 15-65-10(5); and there is no judgment against Cape PLC (or any Cape entity) in the *Park* case or any other case.

Instead of admitting that these defects are fatal to its appointment and that the wrong *Park* defendant may have been placed into receivership, Respondent attempted to obscure the facts under a cloud of rhetoric about "Cape's" alleged misdeeds more than fifty years ago, an argument that naming the wrong *Park* defendant should be excused as misnomer, and a discreet re-definition of Cape – from Cape PLC and its successors, as defined in the Motion to Appoint and the Receivership Order, to "Cape PLC n/k/a Cape Intermediate Holdings Ltd.," as defined in the Dissolution Opposition.

Even in the face of the uncontroverted evidence of these myriad defects as to service, notice, and evolving definitions of Cape PLC, and with no refuting evidence provided by Respondent, the Circuit Court adopted Respondent's proposed order in its entirety. This was an abuse of discretion under South Carolina law. Accordingly, this Court should reverse the Order as to dissolution of the receivership and remand with instructions to grant the Motions to Dissolve because the Order on receivership is not supported by the evidence in the record.

Furthermore, this Court should reverse the Circuit Court's Order on personal jurisdiction and remand with instructions to dismiss with prejudice the Third-Party Complaint as to Appellants

because the Third-Party Complaint fails to allege facts sufficient to support personal jurisdiction over Appellants. Appellants timely challenged the court's personal jurisdiction over them, arguing that the court did not have general or specific jurisdiction based on their nonexistent contacts with South Carolina. Respondent did not assert any facts to support a relationship between Cape PLC and Appellants. Even as to Cape Intermediate Holdings Ltd., Respondent failed to allege facts sufficient to support specific personal jurisdiction over Appellants. The Circuit Court appears to have agreed that no general jurisdiction exists, but incorrectly determined that Respondent met his burden to demonstrate specific jurisdiction under alter ego or single business enterprise theories. Neither the alter ego or single business enterprise theory applies here because there are insufficient *facts* alleged in the Third-Party Complaint demonstrating the requisite dominion and control by Appellants over either Cape PLC or Cape Intermediate Holdings Ltd. Nor could Respondent ever make these allegations as to ESAB, for example, as Respondent acknowledges that ESAB did not become the current corporate parent of Charter and Central Mining until more than twenty-five years after Charter and Central Mining ceased having a legal interest in the company now known as Cape Intermediate Holdings Ltd., and more than forty years after any of the alleged wrongdoing by that company.[2] Furthermore, Respondent's unconstitutional general, conclusory allegations as to all Third-Party Defendants as a whole should be soundly rejected.

The Third-Party Complaint's failure to allege sufficient facts is hardly surprising given that the issue of whether Charter and Central Mining were the alter egos of Cape was considered on the merits and rejected by the United States Court of Appeals for the Third Circuit more than 30 years ago. In that case, after a full trial specifically on the alter ego issue, the Third Circuit determined, as a matter of law, that Charter and Central Mining were not responsible for Cape's

[2] *See* Third-Party Compl., at ¶¶ 123 – 124.

liabilities in personal injury asbestos actions on alter ego or corporate veil-piercing theories because they simply did not exercise sufficient control over Cape. Nevertheless, relying on the same facts as the Third Circuit relied on to reject veil piercing and alter ego, Respondent attempts to use alter ego as a basis for personal jurisdiction here. As demonstrated below, Respondent has not pled sufficient facts to support such a conclusion and cannot overcome the same legal barriers that prevented previous plaintiffs from establishing such alter ego allegations against Charter and Central Mining.

III. STATEMENT OF THE CASE

This matter is before the Court on appeal from an order of the Honorable Jean Toal in the Court of Common Pleas for the Fifth Judicial Circuit, dated December 6, 2023 (the "Order"). Appellants Charter Consolidated Ltd. ("Charter"), ESAB Corporation ("ESAB"), and Central Mining and Investment Corporation Ltd. ("Central Mining" and, collectively, "Appellants") filed timely notices of appeal on December 19, 2023.

A. The *Tibbs* And *Park* Cases.

1. The underlying *Tibbs* Suit.

The underlying case is an asbestos personal injury action. On April 5, 2023, John A. Tibbs and Margaret B. Tibbs ("Plaintiffs") filed a Complaint against numerous defendants, including Cape PLC (but not Cape Intermediate Holdings Ltd.), in the Court of Common Pleas for the Fifth Judicial Circuit, County of Richland (the "*Tibbs* Suit").[3] Plaintiffs allege that Mr. Tibbs developed lung cancer as a result of his exposure to asbestos during the course of his and his father's employments with Duke Power Company at various jobsites in South Carolina and North

[3] Compl. at ¶ 113, *Tibbs v. 3M Co.*, Case No. 2023-CP-40-01759 (Ct. Com. Pl. Apr. 5, 2023).

Carolina.[4] Plaintiffs allege that Cape PLC "is liable for damages stemming from its own tortious conduct or the tortious conduct of . . . CAPE INDUSTRIES LTD., CAPE ASBESTOS COMPANY LTD., and *its* subsidiaries and global affiliates."[5]

2. The *Park* Case and the Appointment of the Receiver.

On November 17, 2021, plaintiffs in *Park v. Armstrong International, Inc., et al.*, C/A No. 2021-CP-40-02727 in the Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, filed a First Amended Complaint ("*Park* FAC").[6] The *Park* FAC added, *inter alia*, two defendants, one existing company named "Cape PLC, individually and as successor-in-interest to Cape Asbestos Company" ("Cape PLC") and one existing company named "Cape Intermediate Holdings Limited f/k/a Cape Intermediate Holdings PLC, individually and as successor-in-interest to Cape Asbestos Company" ("Cape Intermediate Holdings Limited").[7] On December 23, 2021, the *Park* plaintiffs filed a Second Amended Complaint ("*Park* SAC"), which again identified Cape PLC and Cape Intermediate Holdings Limited as two separate defendants.[8] *Park* was scheduled for trial on June 20, 2022, but on June 3, 2022, counsel for the *Park* plaintiffs reported to the Circuit Court that the case was "fully resolved."[9]

On March 6, 2023, nine months after *Park* was reported to be "fully resolved" and removed from the trial docket, the *Park* plaintiffs moved to appoint a receiver over defendant Cape PLC.[10]

---

[4] *Id.* at ¶¶ 106-109.

[5] *Id.* at ¶ 14 (emphasis added).

[6] *See Park* FAC, Ex. 4 to Third-Party Defendants Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" ("Altrad Motion to Dissolve").

[7] *See Park* FAC, at p. 1; ¶¶ 15, 26-27.

[8] *See Park* SAC, Ex. 5 to Altrad Motion to Dissolve, at p. 1; ¶¶ 15, 26-27.

[9] *See* Exs. 7 and 8 to Altrad Motion to Dissolve.

[10] *See* March 6, 2023 Motion to Appoint Receiver ("Motion to Appoint"), Ex. 2 to Altrad Motion to Dissolve, at p. 1.

The Motion to Appoint stated that Cape PLC is the "successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) . . . and its subsidiaries and global affiliates," to which it referred collectively as "Cape."[11] Cape PLC's co-defendant in *Park*, Cape Intermediate Holdings Limited, is not included in the definitions of Cape or Cape PLC, nor is it otherwise identified in the Motion to Appoint.[12]

The Motion to Appoint urged the Circuit Court to place Cape PLC into receivership because (a) "Cape" allegedly engaged in a scheme to avoid asbestos liabilities in the United States in the 1970s and (b) did not timely respond to the *Park* Second Amended Summons supposedly served upon it on March 8, 2022.[13] As to service, the Motion to Appoint cited to an attached "Exhibit A" as purported proof that Cape was served with the operative pleading, but no such exhibit was attached.[14] Importantly, the Motion to Appoint did not allege Cape PLC had been dissolved; forfeited its charter; or was ever qualified to do business in South Carolina (but posited that *if* Cape PLC had been so qualified, it would have subsequently forfeited its corporate rights).[15]

On March 17, 2023, the *Park* court entered an order (the "Receivership Order") appointing Peter Protopapas as receiver (the "Receiver") for Cape PLC on grounds that were not established in the Motion to Appoint: "because Cape [had been] dissolved and Cape, a foreign corporation, ha[d] forfeited its charter and [had] further failed to answer this case."[16]

---

[11] *See* Motion to Appoint, at p. 1.

[12] *See* Motion to Appoint, generally.

[13] *See* Motion to Appoint, generally.

[14] *See* Motion to Appoint, at p. 5.

[15] *See* Motion to Appoint, generally and at p. 7.

[16] *See* Receivership Order, Ex. 9 to Altrad Motion to Dissolve, at p. 1. Although the Receivership Order indicates that the Motion to Appoint was made pursuant to S.C. Code § 15-65-10(4)-(5), it appears that the Receiver has since determined that only S.C. Code § 15-65-10(5), applies, as it did not include any references to S.C. Code § 15-65-10(4) in its proposed order as to receivership.

More than five months after entry of the Receivership Order, issues with service on Cape PLC came to light when a "Notice of Filing of Ommitted [sic] Exhibit" ("Notice of Filing") was filed on the *Park* docket on August 28, 2023.[17] The Notice of Filing purported to be the missing proof of service of the Second Amended Summons and Complaint on Cape PLC on March 9, 2022, as was represented to the Circuit Court as part of the basis for the Motion to Appoint.[18] However, the Notice of Filing revealed via an affirmation from Andrew Geraint Morgan that Cape PLC was *not* served with the Second Amended Summons and Complaint on March 9, 2022.

Instead, Cape PLC's *Park* co-defendant, Cape Intermediate Holdings Limited, was served with the First Amended Summons on December 14, 2021.[19] There is no indication in the Notice of Filing that Cape PLC (or Cape Intermediate Holdings Limited, for that matter) was served with the First Amended Complaint along with the First Amended Summons.[20]

Mr. Morgan also purported to effect service of the First Amended Summons (with no reference to the First Amended Complaint) on Cape PLC via delivery to its separate and distinct *Park* co-defendant Cape Intermediate Holdings Limited, which he suggests was sufficient because Cape Intermediate Holdings Limited went by the name Cape PLC twelve years ago (although it has not existed under that name since).[21]

3. The *Park* Receiver files a Third-Party Complaint in the *Tibbs* Suit.

On June 30, 2023, Respondent (who was not a party to the *Tibbs* Suit and made no request to intervene) filed a third-party complaint (the "Third-Party Complaint") against numerous entities

[17] *See* Notice of Filing, Ex. 1 to Altrad Motion to Dissolve, generally.

[18] *See* Notice of Filing, at p. 1.

[19] *See* Notice of Filing, at p. 1; Notice of Filing, at Ex. A, at ¶¶ 5-6.

[20] *See* Notice of Filing, generally.

[21] *See* Notice of Filing, at Ex. A, at ¶¶ 4, 6.

(the "Third-Party Defendants"), including Appellants, alleging that each one is liable to Cape PLC and Respondent for alleged torts beyond the allegations asserted by Plaintiffs in the underlying action—that Third-Party Defendants as a general, wholesale matter "are responsible for the sale and use of asbestos or asbestos-containing products throughout the United States . . . which caused or materially contributed to thousands of deaths from mesothelioma or other asbestos-related disease, and billions of dollars of past, present, and calculable future damages. . . . The funds that they or their predecessors in interest have wrongfully diverted should have remained available to bodily-injury claimants in the United States . . . providing additional resources to meet Cape's obligations to the tens of thousands of individuals harmed."[22]

The Third-Party Complaint asserts four causes of action that are unrelated to the allegations asserted by Plaintiffs: unjust enrichment, constructive trust, alter ego and veil-piercing liability, and accounting.[23] The Third-Party Complaint, based on acts wholly unrelated to the Plaintiffs in the *Tibbs* Suit (or to Cape PLC) that allegedly occurred outside of this country by and between foreign corporations, seeks the following relief:

- "The proper and appropriate remedy under the circumstances here is for the Court to exercise its equitable power and authority to require . . . each . . . Third-Party Defendant[] to return funds that have been wrongfully diverted from meeting obligations and responsibilities in the United States, in an amount to be proven at trial";[24]

- "[T]he proper and appropriate remedy under the circumstances here is for the Court to declare that the Third-Party Defendants are alter egos of Third-Party Plaintiff and thereby liable to Third-Party Plaintiff and/or the Receiver for Asbestos Suits";[25] and

[22] Third-Party Compl., at Intro. Stat. and ¶ 134.

[23] *Id.* at ¶¶ 125-146.

[24] *Id.* at ¶ 130.

[25] *Id.* at ¶ 141.

- "[A] full accounting of each of the Third-Party Defendants."[26]

B. Appellants Move To Dismiss The Third-Party Complaint And Dissolve The Receivership.

On September 1, 2023, Appellants filed three separate Motions to Dismiss the Third-Party Complaint and requested an order granting dismissal, pursuant to Rule 12(b)(2), SCRCP, of all counts, claims, and causes of action asserted in the Third-Party Complaint filed by Respondent on the grounds that the Court lacks personal jurisdiction over Appellants; an order granting dismissal of the Third-Party Complaint on other grounds; and an order staying discovery as to Appellants pending resolution of their motions to dismiss ("Appellants' Motions to Dismiss").[27] Appellants' Motions to Dismiss also joined in, incorporated, and adopted as if fully set forth therein all other motions to dismiss, including any memorandum in support, replies, or responses filed or to be filed by all other Third-Party Defendants in the *Tibbs* Suit (collectively with the Appellants' Motions to Dismiss, the "Motions to Dismiss").[28]

On October 6, 2023, Appellants moved to dissolve the Cape PLC receivership ("Appellants' Motions to Dissolve")[29] on a multitude of grounds, including but not limited to:

- The Receivership Order was filed on March 17, 2023, in *Park*, and was procured by "Keith Park, individually and as the Personal Representative of the Estate of Isabella Park" ("Moving Party") nine months after the trial date and after that matter was reported to be "fully resolved."
- Moving Party in the Motion to Appoint does not allege that he is a judgment

[26] *Id.* at ¶ 145.

[27] Appellants' Motions to Dismiss filed on September 1, 2023, are comprised of ESAB's Motion to Dismiss the Third-Party Complaint, Charter's Motion to Dismiss the Third-Party Complaint, and Central Mining's Motion to Dismiss the Third-Party Complaint.

[28] *See, e.g.*, Charter's Motion to Dismiss, at p. 6.

[29] Appellants' Motions to Dissolve filed on October 6, 2023, are comprised of ESAB's Motion for Protective Order and to Dissolve Receivership, Charter's Motion for Protective Order and to Dissolve Receivership, and Central Mining's Motion for Protective Order and to Dissolve Receivership.

creditor or any other type of creditor of Cape PLC, nor does the Motion to Appoint identify any creditors of Cape PLC.

- The Receivership Order purports to appoint the Receiver "because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) ('Cape Asbestos') and its subsidiaries and global affiliates (collectively, 'Cape' or the 'Company') have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer in this case." Each of these facts was asserted in the Motion to Appoint and are demonstrably incorrect. Cape PLC, a Jersey company formed in 2011, has not dissolved or forfeited its charter and is not the "successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)." There was no evidence submitted in *Park* (in the record) showing that Cape PLC (or any Cape entity) was properly served with the operative Summons, Second Amended Complaint, or Motion to Appoint.

- There was no evidence submitted in *Park* demonstrating that notice of the Motion to Appoint was provided to Cape PLC, alleged Cape PLC affiliates, or to Third-Party Defendants as required by S.C. Code Ann. §§ 15-65-20 and 15-65-30. Likewise, there is no evidence that the Receivership Order was provided to Cape PLC, alleged Cape PLC affiliates, or to certain Third-Party Defendants as required by S.C. Code Ann. §§ 15-65-20 and 15-65-30. Appellants were not provided with notice of the Motion to Appoint prior to the entry of the Receivership Order.

- Neither the Motion to Appoint nor the Receivership Order identify any specific "property within this State" or even generally the existence of any "property within this State" of Cape PLC, alleged Cape PLC affiliates, or to any Third-Party Defendants as required by S.C. Code Ann. § 15-65-10(4).

- The Receivership Order violates basic tenets of due process and constitutional law because it purports to give a South Carolina receiver authority over property that is not located in and has no relationship to South Carolina and because no impacted parties were given prior notice of the Motion to Appoint. The Motion to Appoint neither identified the property sought to be placed in the hands of a receiver nor provided any evidence regarding the value of the property so sought to be placed in the hands of a receiver. The Receivership Order does not include "a clause fixing the value of the property" sought to be placed in the hands of a receiver as required by S.C. Code Ann. § 15-65-60.[30]

- Respondent seeks not to protect the interests of the company over which he has purportedly been given authority, but to generate liability for that company and obtain an impermissible advisory opinion on alter ego and veil piercing liability

[30] S.C. Code Ann. § 15-65-60 ("Whenever the court or judge before whom such application [to appoint receiver] is made shall appoint a receiver before final judgment in the cause there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-50.").

> against the Third-Party Defendants when no asbestos exposure liability against any Cape entity has been adjudicated in any South Carolina court.[31]

Appellants' Motions to Dissolve also joined in, incorporated, and adopted as if fully set forth therein all other motions to dissolve the Cape PLC receivership, including briefs, replies, or responses filed or to be filed by all other Third-Party Defendants in the *Tibbs* Suit to the extent such arguments were not adverse to the Appellants (collectively with the Appellants' Motions to Dissolve, the "Motions to Dissolve").[32]

On October 18, 2023, Respondent filed his Omnibus Opposition to Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction (the "Jurisdiction Opposition"); Omnibus Opposition to Certain Third-Party Defendants' Motions to Dismiss Under Rules 12(b)(1) and 12(b)(6) and, Alternatively, For More Definite Statement and to Strike or Sever Under Rules 12(e) and 14 (the "12(b) Opposition"); and Omnibus Opposition to Motions to Dissolve by Responding Altrad Third-Party Defendants and Charter Third-Party Defendants (the "Dissolution Opposition"). Although both the First and Second Amended Complaints in *Park* identify Cape PLC and Cape Intermediate Holdings Limited as two separate defendants, the Dissolution Opposition attempts to conflate the two presently existing independent entities for the first time by referring to Cape PLC as "Cape PLC n/k/a Cape Intermediate Holdings Ltd.,"[33] a name that never appears in any *Park* complaint, the Motion to Appoint, or the Receivership Order.

C. <u>The Hearing On Certain Third-Party Defendants' Motions.</u>

The Court held a hearing on October 25, 2023, which ultimately only addressed certain of the Third-Party Defendants' various motions (the "October 25 Hearing"). Almost the entirety of

[31] *See* Appellants' Motions to Dissolve, at pp. 2-5.

[32] *See* Appellants' Motions to Dissolve, at p. 2.

[33] *See, e.g.*, Dissolution Opposition, at p. 9.

the October 25 Hearing was devoted to arguments on the Motions to Dissolve and the Motions to Dismiss for Lack of Personal Jurisdiction.[34]

At the hearing, Respondent continued using the new moniker of "Cape PLC n/k/a Cape Intermediate Holdings Ltd." that was coined in the Dissolution Opposition,[35] and argued that "a reasonably intelligent person [should] understand" that the appointment of a receiver over *Park* defendant Cape PLC was actually the appointment of a receiver of *Park* defendant Cape Intermediate Holdings Ltd.[36] Respondent argued that South Carolina Code § 15-65-10(5) creates a virtually unfettered ability to place an entity in receivership "so that justice can prevail,"[37] even if: (1) none of the statutory receivership requirements have been met; (2) the operative pleading was never served on the entity placed in receivership; (3) the wrong entity was named in the Motion to Appoint and/or the correct entity was named but never served; (4) the Motion to Appoint contained significant factual misstatements about service and failed to attach proof of such service; and (5) the Receivership Order was granted on the grounds that the entity in question was dissolved and forfeited its charter (which was never asserted in the Motion to Appoint and is untrue).

At the conclusion of the October 25 Hearing, the Circuit Court raised concerns about personal jurisdiction over certain entities, making specific mention of ESAB and using it as an example, that were only formed well after the events described in the Third-Party Complaint:

> The contention is made that this complaint doesn't say X – like ESAB, for example – is a successor-in-interest to Cape plc and benefited from this successor-in-interest so that it is now responsible for things that occurred before it was founded because it's a successor. And if the tie is not made there – this is the allegation in this complaint. Some even go further than that to say the tie can

[34] *See generally* Oct. 25 Hrg. Tr.

[35] *See, e.g.*, Oct. 25 Hrg. Tr., at 29:1-2, 40:14-15, 42:8-10, and 63:21-23.

[36] *See, e.g.*, Oct. 25 Hrg. Tr., at 31:5-25.

[37] *See* Oct. 25 Hrg. Tr., at 37:1-2.

> never be made because this entity didn't even exist at that time, so how could it be a successor-in-interest? But at least if it's going to be a successor-in-interest in such a way that it assumes responsibilities of the interest to which it is a successor, that has to specifically be alleged is the contention. What do you say to that? Because it's certainly not done in this complaint. The complaint is much more general than that and simply says what you just said, that they are successors-in-interest, period, end of conversation.[38]

The Circuit Court directed Respondent and Third-Party Defendants to submit proposed orders resolving the Motions to Dissolve and the Motions to Dismiss for Personal Jurisdiction.[39] Respondent submitted his proposed order on November 8, 2023, and a revised proposed order at 1:44 p.m. on December 4, 2023, and Appellants submitted their proposed orders later that day.

D. <u>The Appeal.</u>

On December 6, 2023, only 2 days after Appellants submitted their proposed orders, the Circuit Court entered the Order denying the Motions to Dissolve and Motions to Dismiss for Lack of Personal Jurisdiction. The Order adopts the proposed order submitted by Respondent nearly in its entirety and incorporates none of the suggested language or rulings provided by Appellants or any other Third-Party Defendants.

Among other things, the Order adopted Respondent's unsupported conflation of Cape PLC and Cape Intermediate Holdings Limited.[40] Additionally, the Order changed the definition of Cape from that used in the Motion to Appoint and the Receivership Order ("<u>Cape PLC</u> as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) . . . and its subsidiaries and global affiliates,"[41] to <u>Cape Intermediate Holdings Limited</u>, even though that entity was never

[38] *See* Oct. 25 Hrg Tr., at 114:1-21.

[39] *See* Oct. 25 Hrg. Tr., at 129:22-130:25.

[40] *See, e.g.*, Order, at p. 16 (referring to "Cape PLC, n/k/a Cape Intermediate Holdings Ltd.").

[41] *See* Receivership Order, at p. 1 (emphasis added).

named or even referenced in the Motion to Appoint or the Receivership Order.[42]

Employing this new definition of Cape (as Cape Intermediate Holdings Limited instead of Cape PLC), the Order denied the Motions to Dissolve and held, *inter alia*, as follows:

- "Cape" was properly served with the First Amended Summons and Complaint in *Park*.[43]
- Service on Cape Intermediate Holdings Limited was appropriate because it, like Cape PLC, had been named in *Park* as a successor in interest to Cape Asbestos Company Limited, and the name "Cape PLC" was only included on the service package "perhaps out of an abundance of caution."[44] "To the extent it was an error for the service paperwork to include the "formerly known as" name of the entity [i.e., Cape PLC, the *Park* defendant over which receivership was sought and which the Motion to Appoint said was served] . . . misnomer does not render service of process ineffective."[45]
- Cape PLC received proper notice of the appointment of a receiver.[46]
- Receivers are appointed in the asbestos docket "where the Court is concerned that the party at issue may move assets and avoid litigation," and thus the Circuit Court is authorized to do so under South Carolina Code § 15-65-10(5) where it sees fit, even if there has been no default, entry of judgment, or satisfaction of other receivership prerequisites.[47]

The Order went on to hold that the Circuit Court had specific jurisdiction over Appellants based on alter ego and single business enterprise theories.[48]

On December 19, 2023, Appellants filed notices of appeal regarding the Court's Order (the

---

[42] *See* Order, at p. 3 (emphasis added) ("The amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) (together with all predecessors in interest, 'Cape.')").

[43] *See* Order, at p. 15.

[44] *See* Order, at pp. 18-19.

[45] *See* Order, at p. 19.

[46] *See* Order, at pp. 22-23 ("The *Park* Plaintiffs provided notice of the appointment by DHL to the same address as which Cape [defined as Cape Intermediate Holdings Limited] was served, with the Motion to Appointment identifying Cape PLC. . . . The Court further rejects any argument the Receivership is void because the paperwork included a "formerly known as" name for the Cape entity . . . [because] any such misnomer does not void the notice...").

[47] *See* Order, at p. 24.

[48] *See* Order, at pp. 65 – 71.

"Appeal"), which stated that the December 6, 2023 Order was immediately appealable because, among other things, "it specifically continues a receivership despite a motion to dissolve the receivership, it modifies the scope of the receivership in numerous ways, and it has the effect of granting a new receivership over a corporate entity that was never involved in the initial motion to create this receivership." Appellants notified the Circuit Court and all parties of the pendency of the appeal by filing three Notices of Notice of Appeal on the same day.

IV. STATEMENT OF FACTS

A. Corporate History Of Cape And Charter.

Cape Industries, P.L.C. (now Cape Intermediate Holdings Limited)[49] was an industrial holding company incorporated in 1893.[50] Through its wholly owned subsidiaries, Cape primarily "engaged in mining, industrial contracting, manufacturing of auto parts (friction materials) and building supplies including insulation. [And, u]ntil 1979 it mined and sold asbestos fiber from South Africa through such subsidiaries."[51] In 1979, Cape sold all of its asbestos mining and marketing subsidiaries to an unrelated company.[52] According to Respondent, in 1989, Cape Industries, P.L.C. shorted its name to Cape PLC before again changing its name in 2011 to Cape Intermediate Holdings PLC. The company then re-registered as a private company to become

[49] Respondent and the Circuit Court have defined Cape different ways at various times. When citing to or referring to a filing or submission by either Respondent or the Circuit Court, Appellants have attempted to use the term as used by Respondent or the Court therein.

[50] *See* Third-Party Compl., at ¶ 45; *Craig v. Johns-Manville Corp.*, 1987 WL 10191, at *2 (E.D. Pa. Apr. 23, 1987), rev'd sub nom. *Craig v. Lake Asbestos of Quebec, Ltd.*, 843 F.2d 145 (3d Cir. 1988). Cape was re-registered as a public company and changed its name from Cape Industries Ltd. f/k/a Cape Asbestos Company Ltd. to Cape Industries P.L.C. in 1981. *See* Third-Party Compl., at ¶ 113.

[51] *Craig*, 1987 WL 10191, at *2; *see also* Third-Party Compl., at ¶ 102.

[52] *See* Third-Party Compl., at ¶ 102; *Craig*, 1987 WL 10191, at *3; *Craig*, 843 F.2d at 147.

Cape Intermediate Holdings Ltd. in 2013.[53]

Charter is a holding company that incorporated in 1964 as a mining finance company.[54] In 1965, Charter became public "through a share exchange between the British South Africa Co., Central Mining and Investment Corp. Ltd. and Consolidated Mines Selection Ltd." As part of that share exchange, Charter acquired a 16.8% interest in Cape Asbestos Company, which gradually increased to Charter holding all of Cape Asbestos Company's preferred stock and 62.5% of its common stock by May 1969.[55] In 1996, Charter sold all of its remaining interest in the entity previously known as Cape Asbestos.[56]

Charter has also undergone several name changes prior to being sold to Colfax Corporation ("Colfax") in 2012. For example, in 1993, Charter re-registered as a public company and became Charter PLC.[57] In 2008, a holding company called Charter International PLC took over Charter PLC.[58] Colfax then subsequently spun off Charter as a subsidiary of ESAB in spring 2022. Today, ESAB is a publicly traded, world-class manufacturing technology company and remains Charter's corporate parent, as well as the parent of Charter's subsidiary Central Mining.[59]

B. <u>Historic Litigation Over Charter's and Central Mining's Liability For Cape's Torts.</u>

In the mid-1980s, plaintiffs across the country began naming Charter and Central Mining as defendants in asbestos litigation, alleging that Charter and Central Mining were liable for Cape's

---

[53] *See* Third-Party Compl., at ¶ 113.

[54] *See Craig*, 1987 WL 10191, at *2.

[55] *See Craig*, 1987 WL 10191, at *2; Third-Party Compl., at ¶¶ 54-55.

[56] *See* Third-Party Compl., at ¶ 123.

[57] *See* Third-Party Compl., at ¶ 123.

[58] *Id.*

[59] *See* ESAB Corporation, *The History of ESAB Corporation.*, https://esabcorporation.com/our-story/history/ (last visited Aug. 8, 2023).

torts under an alter ego or corporate veil-piercing theory.[60] "Between 1985 and 1987, the issue was tried in several matters, each of which was resolved in [Charter's and Central Mining's] favour either at trial or on appeal."[61]

For example, in 1986, the District Court for the Eastern District of Pennsylvania presided over a two-day trial on the sole issue of whether Charter was liable under New Jersey law for Cape's torts under an alter ego or corporate veil-piercing theory.[62] The trial included live and deposition testimony from numerous witnesses. The trial judge initially concluded that Charter was the alter ego of Cape and held Charter responsible for a portion of plaintiff's damages.[63] On appeal, however, the Third Circuit, exercising plenary review, reversed and remanded "for entry of judgment in favor of Charter."[64] It held that Charter's "involvement in Cape's financial and managerial affairs fail[ed] to rise to the high standard of domination necessary to pierce the corporate veil."[65] Importantly, the Third Circuit found, as a matter of law, that "there is no evidence that Charter's intrusion into Cape's affairs is even 'constant' or day-to-day." The Third Circuit also found it particularly significant that Charter and Cape "each maintained separate books, records, bank accounts, offices and staff; each consulted their own financial advisors, accountants and stockbrokers."[66] Although the court found that Charter had the "power to control" Cape,

---

[60] *See* sec.gov/Archives/edgar/data/1420800/000114420411070464/v242942_defm14a.html.

[61] *Id.*

[62] *See Craig*, 1987 WL 10191; *Craig*, 843 F.2d 145. The Court included the following entities in its definition of Charter: "Charter Consolidated Investments, P.L.C., Central Mining Finance, Ltd., Charter Consolidated Services, Ltd., British South Africa Company and Consolidated Mines Selection." *Id*. at *1.

[63] *Id.* at *18.

[64] *Craig*, 843 F.2d at 152.

[65] *Id.*

[66] *Id*. at *152.

"potential control is not enough."[67]

The very next year, the Eastern District of Pennsylvania again considered the issue of whether Charter and Central Mining were the alter egos of Cape, this time under both New Jersey and Pennsylvania law, in dozens of asbestos cases pending in the Eastern District of Pennsylvania.[68] Relying on the Third Circuit's decision in *Craig*, and rejecting plaintiffs' arguments that there was "new" evidence not considered by the Third Circuit, this Court again held that Charter was not liable under an alter ego or piercing the corporate veil theory for Cape's asbestos torts. The Eastern District of Pennsylvania further pointed out that many other courts had considered the exact same issue and resolved it the exact same way.[69]

C. <u>Appellants Lack Jurisdictional Ties To South Carolina.</u>

The Third-Party Complaint also alleges there is jurisdiction over each of the Appellants pursuant to South Carolina's long-arm statute.[70] Appellants, however, are not subject to jurisdiction in this Court. For example, ESAB is organized under the laws of Delaware, with its

---

[67] *Id*. (*citing Scalise v. Beech Aircraft Corp.*, 276 F. Supp. 58, 62 (E.D. Pa. 1967) ("although stock ownership and identity of officers and directors naturally subject the subsidiary to a measure of control, the issue . . . is how such control is exercised").

[68] *See In re Charter Defendants' Motion for Summary Judgment in all Cases Pending in the Eastern District of Pennsylvania in Which They are Parties*, Misc. No. 86-0457, 1989 U.S. Dist. LEXIS 15591 (E.D. Pa. May 18, 1989). In these cases, the Charter defendants, including Charter Consolidated P.L.C., Charter Consolidated Investments Limited, Charter Consolidated Services Limited, Central Mining Finance Limited, The Consolidated Mines Selection Company Limited, and the British South Africa Company, were named as both defendants and third-party defendants. *Id*. at *1.

[69] *See id.* at *5-*6 (citing *Bednar v. Carey Canada, Inc.*, No. 88-3707 (D.N.J. Feb. 7, 1989); *Lee/McDaniels v. Carey Canada*, Inc., Nos. 83-1412, 83-1413 (D.N.J. Dec. 1, 1988); *McCracken v. Lac D'Amiante du Quebec, Ltee.*, No. 84-0128 (E.D. Pa. Sept. 9, 1988); *Kessinger v. Grefco, Inc.*, No. 85-3092 (C.D. Ill. May 2, 1986); *Newhouse/Sparta v. Lac D'Amiante du Quebec, Ltee.*, Nos. 83-2932, 83-2933 (D.N.J. July 19, 1988); *Simmons v. AC&S, Inc.*, No. 84-1170 (W.D. Ark. June 4, 1985); *In re Asbestos Litig. Venued in Middlesex Cty.: Manville Plantworker Cases Only*, No. L-37243-79 (N.J. Super Ct. Law Div. July 10, 1987)).

[70] *See* Third-Party Compl., at ¶¶ 37, 140.

principal place of business in Maryland.[71] Central Mining and Charter are organized under the laws of the United Kingdom with their principal place of business in Essex.[72]

Appellants have no assets in South Carolina.[73] They do not own, lease, or have any interest whatsoever in any real property in South Carolina; nor does they maintain any bank accounts in South Carolina.[74] Moreover, Appellants currently do not, and have not historically, mined, milled, or sold asbestos in South Carolina.[75] Appellants also currently do not, and have not historically, produced, manufactured, or distributed asbestos or asbestos-containing products for use in South Carolina.[76] Neither Cape PLC nor Cape Intermediate Holdings are subsidiaries of Appellants.[77] Furthermore, Respondent does not allege any connection between Cape PLC and Appellants.

V. ARGUMENT

The Order should be reversed because the Circuit Court's denial of the Motions to Dissolve is not supported by South Carolina or federal law or the evidence in the record. The Order should further be reversed and the Third-Party Complaint dismissed as to Appellants pursuant to Rule (12)(b)(2) of the South Carolina Rules of Civil Procedure for the reasons set forth herein.

A. The Circuit Court Erred In Denying The Motions To Dissolve.

There is no evidentiary support to conclude that the appointment of Respondent was valid.

---

[71] Affidavit of Rita J. Herring in Support of ESAB's Motion to Dismiss the Third-Party Complaint ("Herring ESAB Aff."), at ¶ 5.

[72] Affidavit of Rita J. Herring in Support of Charter's Motion to Dismiss the Third-Party Complaint ("Herring Charter Aff."), at ¶ 5; Affidavit of Rita J. Herring in Support of Central Mining's Motion to Dismiss the Third-Party Complaint ("Herring Central Mining Aff."), at ¶ 5.

[73] *See* Herring Charter Aff., at ¶ 6; Herring Central Mining Aff., at ¶ 6; Herring ESAB Aff., at ¶ 6.

[74] *See*, *e.g.*, Herring Charter Aff., at ¶¶ 7-8; Herring Central Mining Aff., at ¶¶ 7-8.

[75] *See* Herring Charter Aff., at ¶ 9; Herring Central Mining Aff., at ¶ 9; Herring ESAB Aff., at ¶ 9.

[76] *See*, *e.g.*, Herring Central Mining Aff., at ¶ 10; Herring ESAB Aff., at ¶ 10.

[77] *See* Herring Charter Aff., at ¶ 4; Herring Central Mining Aff., at ¶ 4; Herring ESAB Aff., at ¶ 4.

To the contrary, the record demonstrates that the appointment of Respondent was fraught with defects every step of the way, including:

- The Motion to Appoint was not made until months after *Park* resolved, without entry of any judgments or identification of any creditors;

- The Motion to Appoint was directed at a *Park* defendant named Cape PLC, and therefore the Receivership Order appointed Respondent over *Park* defendant Cape PLC. Now, however, Respondent argues that receivership was not appointed over the only known entity currently named Cape PLC (an entity in the Bailiwick of Jersey), but rather a different *Park* defendant named Cape Intermediate Holdings Limited that was not identified in the Motion to Appoint or the Receivership Order;

- The Motion to Appoint was based on Cape PLC's alleged failure to answer after being served with the Second Amended Summons on March 8, 2022 (as purportedly demonstrated by a missing Exhibit A) but the record reveals that;

    - No entity currently named Cape PLC was ever served with any pleadings in *Park*;

    - The *Park* Second Amended Summons was never served on Cape Intermediate Holdings Limited (let alone the Second Amended Complaint); and

    - Although Respondent claims the First Amended Complaint was served on Cape Intermediate Holdings Limited, no proof of that service has ever been provided to the Court, in connection with the Motion to Appoint or otherwise;

- Notice of the Motion to Appoint and the Receivership Order was never provided to the only known entity currently named Cape PLC;

- The Motion to Appoint does not satisfy any of the statutory grounds for receivership under South Carolina Code § 15-65-10; and

- The Receivership Order was granted on the grounds that Cape PLC was dissolved and had forfeited its charter (neither of which were demonstrated in the Motion to Appoint) and had failed to answer in *Park* (even though no proof of service of the operative complaint on Cape PLC had been provided to the Circuit Court).

Respondent has failed to provide any evidence refuting these defects.

1. Standard of review.

"[T]he appointment of a receiver is within the discretion of the circuit [court]."[78] However, "[t]he appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution."[79] "[A] receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined."[80] Matters within the circuit court's discretion are subject to reversal for abuse of discretion, and abuse of discretion occurs when the circuit court's decision is controlled by an error of law or lacks evidentiary support.[81]

2. The record contains ample undisputed evidence of procedural defects in the appointment.

As described more fully above, the receivership appointment was rife with serious errors, ranging from Respondent's inability to prove that either Cape PLC or Cape Intermediate Holdings were served with the *Park* pleadings to Respondent's *de facto* admission that the receivership was appointed over the wrong entity. Rather than provide evidence refuting these defects when raised in the Motions to Dismiss, the Dissolution Opposition admitted that mistakes were made but suggested they should be overlooked, including but not limited to the following:

Defect	**Respondent's Response**
The Receivership Order was not filed in *Park* until nine months after the trial date and after *Park* was reported to be "fully resolved." *See* Appellants' Motions to Dissolve, at pp. 2-3.	Admits that counsel for the *Park* plaintiffs reported *Park* as fully resolved in a June 3, 2022 email to the circuit court but argues this was intended to reference only defendants who had appeared and were scheduled for trial (although

[78] *See Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (first alteration in original) (quoting *Midlands Util., Inc. v. S.C. Dep't of Health & Envtl. Control*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989)).

[79] *See id*. (quoting *Midlands Util., Inc.*, 301 S.C. at 228, 391 S.E.2d at 538).

[80] *See id*. (quoting *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887)).

[81] *See Burke v. Republic Parking Sys., Inc.*, 421 S.C. 553, 558, 808 S.E.2d 626, 628 (Ct. App. 2017).

	the email is silent on these "exclusions"). *See* Dissolution Opposition, at p. 4.
No default or judgment was ever entered against any Cape entity in *Park*. *See* Appellants' Motions to Dissolve, at p. 3.	No need to enter a default or a judgment against Cape in order to appoint a receiver. *See* Dissolution Opposition, at p. 18.
The only entity currently named Cape PLC is an entity formed in 2011 in the Bailiwick of Jersey that has neither dissolved nor forfeited its charter and is not the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.). *See* Appellants' Motion to Dissolve, at p. 3.	Argues that *Park* plaintiffs made a mistake and that the receivership was not intended to be sought over the present entity named Cape PLC, but rather an entity that ceased existing under that name 12 years prior to the Motion to Appoint. *See* Dissolution Opposition, at p. 3. Admits that Cape PLC is not the name of the successor in interest to Cape Asbestos Holdings Limited. *See* Dissolution Opposition, at p. 3. Admits that Cape PLC is an entity in the Bailiwick of Jersey and not the entity over which receivership was intended to be sought. *See* Dissolution Opposition, at pp. 9, 10, 11, 19. Argues that "[i]t does not matter" that receivership was sought for the wrong *Park* defendant and that this should be deemed a simple matter of misnomer as opposed to placing the wrong entity into receivership. *See* Dissolution Opposition, at p. 19.
The existing entity named Cape PLC was not served in this action. *See* Appellants' Motions to Dissolve, at p. 3.	Argues that "service" of the First Amended Summons on Cape PLC at Cape Intermediate Holdings Limited's registered address in the United Kingdom is sufficient because Cape Intermediate Holdings Limited went by that name 12 years ago, and Cape PLC and Cape Intermediate Holdings Limited are alleged to be successors in interest to the same entity. *See* Dissolution Opposition, at p. 19.
Although the Motion to Appoint is premised on Cape PLC's failure to timely respond to the Second Amended Summons in *Park*, which the Motion to Appoint represents was served on Cape PLC on March 8, 2022, no Cape entity was properly served with the *Park* Second Amended Summons or Second	Admits the Second Amended Summons and Complaint was never served on any Cape entity, on March 8, 2022 or otherwise. *See* Dissolution Opposition, at p. 4. Argues that there was no need to serve the Second Amended Summons and Complaint

Amended Complaint at any time. *See* Appellants' Motion to Dissolve, at p. 3.	because this would "exalt technical form over substance" and the First Amended Complaint had already been "served" on Cape PLC at Cape Intermediate Holdings Limited's registered address in the United Kingdom. *See* Dissolution Opposition, at pp. 13-15.
There was no evidence submitted in *Park* demonstrating that notice of the Motion to Appoint was provided to Cape PLC, alleged Cape PLC affiliates or to Third-Party Defendants as required by S.C. Code Ann. §§ 15-65-20 and 15-65-30. *See* Appellants' Motions to Dissolve, at pp. 3-4.	Argues that "notice" of the Motion to Appoint mailed to Cape PLC at Cape Intermediate Holdings Limited's registered address in the United Kingdom is sufficient because Cape Intermediate Holdings Limited went by that name 12 years ago, and Cape PLC and Cape Intermediate Holdings Limited are alleged to be successors in interest to the same entity. *See* Dissolution Opposition, at pp. 3, 5.

Each of these deficiencies is sufficient on its own to warrant dissolution, but among the most serious is the appointment of receivership over the wrong entity. The Motion to Appoint and the Receivership Order are crystal clear: the receivership was sought and appointed over *Park* defendant Cape PLC. Nonetheless, at Respondent's urging, the Circuit Court in effect swapped *Park* defendant Cape PLC out of receivership and swapped *Park* defendant Cape Intermediate Holdings Limited into receivership without giving the latter an opportunity to defend itself against this extraordinary remedy, all on the basis of the doctrine of misnomer – the application of which is not supported by the evidence in this case.

More specifically, misnomer may be invoked when "it later appears that the true name of a corporation is different from the name under which it was sued" but "every intelligent person understands who is meant."[82] Notably, *Griffin* and other South Carolina cases do not suggest misnomer permits a court to impute relief granted against an existing defendant to a different existing defendant without a separate application for relief. Instead, misnomer typically arises

[82] *See Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (1992).

when a plaintiff sues a business under its trade name as opposed to its official corporate name or when there was a slight error in the name in the pleadings.[83] Misnomer only applies if a misnamed party is "name[d]… in such terms that every intelligent person understands who is meant."[84]

Here, Respondent insisted it was obvious that by "Cape PLC," the *Park* plaintiffs intended to refer to *Park* defendant Cape Intermediate Holdings Limited and not *Park* defendant Cape PLC, even though Cape Intermediate Holdings Limited was also a named defendant in *Park* and Cape Intermediate Holdings' name never appears in the Motion to Appoint, the Receivership Order, or the definition of "Cape" in those documents. The evidence considered by the Circuit Court shows that this is anything but obvious.

Rather, the record demonstrates that the *Park* plaintiffs did *not* think Cape PLC was the same entity as Cape Intermediate Holdings Limited. Unlike *Griffin*, in which the plaintiff inadvertently sued a single defendant under the name by which the plaintiff knew it by instead of its corporate name but was referring to the same defendant throughout, the *Park* plaintiffs named Cape PLC and Cape Intermediate Holdings Limited as two separate defendants – twice (once in the First Amended Complaint and once in the Second Amended Complaint). Using the standard set forth in *Griffin*, "every intelligent person" would understand this to mean that the *Park* plaintiffs meant to bring two separate defendants into court, one named Cape PLC and one named Cape

[83] *See, e.g., Griffin*, 310 S.C. at 423 S.E.2d at 146 (defendant named First Deposit National Bank conducted business with plaintiff under the name Capital Cash, so plaintiff's naming of defendant as Capital Cash instead of First Deposition National Bank in the complaint was excused); *McCall v. IKON*, 363 S.C. 646, 611 S.E.2d 315 (2005) (service of process on corporation under its trade name under which plaintiff did business with it instead of its corporate name was valid); *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 399 S.E.2d 779 (1990) (permitting amendment of default judgment to substitute corporation's name for its trade name); *Burns v. Crawford Metal Corporation*, 2022 WL 18635158 (D.S.C. October 13, 2022) (finding misnomer where defendant was misidentified as Crawford Steel Corporation instead of Crawford Metal Corporation).

[84] *See Griffin*, 310 S.C. at 292, 423 S.E.2d at 146.

Intermediate Holdings Limited. The *Park* plaintiffs had both "Cape" defendants at their disposal when they filed the Motion to Appoint, and they chose Cape PLC, not Cape Intermediate Holdings Limited. If anything was obvious, it was that the *Park* plaintiffs made an affirmative decision to pursue receivership against Cape PLC and not Cape Intermediate Holdings Limited.

Accordingly, the Circuit Court abused its discretion when it permitted the *de facto* substitution of Cape Intermediate Holdings Limited into the extraordinary remedy of receivership pursuant to the doctrine of misnomer.

Even setting aside the confusion as to *who* should have been served, Respondent has never provided proof that *any* Cape entity was served with the First Amended Complaint in this case (and admits that no Cape entity was ever served with the Second Amended Complaint). Respondent's only "proof" of service on Cape PLC is Mr. Morgan's affirmation indicating that he purported to serve Cape PLC with the First Amended Summons (but not the First Amended Complaint) by sending it to Cape International Holdings Limited's business address, which the record reflects is not the business address of Jersey-based Cape PLC. As "evidence" that the First Amended Complaint was included in Mr. Morgan's service package to Cape PLC, the Dissolution Opposition offers a photo of a sealed envelope addressed to Cape Intermediate Holdings Limited (but not Cape PLC) being inserted into a mailbox, coupled with an assertion by Respondent that the envelope's unseen contents included the First Amended Complaint:

A photograph of a sealed envelope coupled with an unsworn representation by Respondent that it contained the First Amended Complaint is not evidence of service of that pleading, on Cape PLC or anyone else.[85] Certainly, Respondent does not suggest that he assembled the envelope, saw its contents, or handled service (nor could he have, as this "service" predated his appointment by more than a year). Therefore, he has no personal knowledge to support his assertions on this point. The only person with personal knowledge of what was included in the service package was Mr. Morgan; the *Park* plaintiffs or Respondent could have obtained an affirmation from him indicating that he included the First Amended Complaint in the service package, but tellingly, they did not. The only "proof" of service of that pleading are Respondent's self-serving statements justifying the legitimacy of his appointment, which would not constitute proof of service in any court.

Thus, even if delivering the First Amended Complaint to Cape Intermediate Holdings Limited's business address could have effected service in *Park* (which it could not), there is no evidence that this ever actually occurred. Thus, the Circuit Court abused its discretion in finding that "the evidence of records [sic] 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."[86]

3. The evidence demonstrates that the appointment does not satisfy statutory requirements.

Even setting aside the issues of "misnomer" and service (each of which render the receivership defective without further inquiry), the receivership must still be dissolved because the

[85] *See* Dissolution Opposition, at p. 12.

[86] *See* Order, at p. 22; *see also* Order, at p. 4 ("In December 2021, the *Park* Plaintiffs served the named Cape entities"); at p. 20 ("the…record evidence reveals *both* the summons and the complaint documents were served on Cape").

appointment does not satisfy the requirements of the South Carolina receivership statute.

The Order indicates that receivership is based on South Carolina Code § 15-65-10(5), which authorizes appointment of a receiver over a corporation if certain conditions are met:

> A receiver may be appointed by a judge of the circuit court, either in or out of court:
>
> * * *
>
> (5) In such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.

See S.C. Code § 15-65-10(5).

Here, the Order held that the drastic remedy of receivership was warranted under South Carolina Code § 15-65-10(5) because "Cape" engaged in an alleged liability avoidance scheme that ended nearly 50 years before the *Park* action was filed. However, there was no evidence before the Circuit Court that any entity currently named Cape PLC ever engaged in such conduct. To the contrary, Respondent vehemently argued in the court below that "current" Cape PLC has nothing to do with this action or the allegations therein.[87] Furthermore, the law—and existing practices of the State of South Carolina—do not provide for seeking receivership over one defendant, but then insisting "everyone knew" they intended to request receivership over a different defendant.

Moreover, the appointment of a prejudgment receivership that seizes control of a foreign company without any predicate adjudication of liability (and without appropriate notice) violates the Takings Clause, the Due Process Clause, the Excessive Fines Clause, the Substantive Due

[87] *See, e.g.*, Dissolution Opposition, at p. 10 (stating that Cape PLC in the Bailiwick of Jersey, the only current Cape PLC, is not at issue); at p. 11 (insisting that references to Cape PLC do not refer to "the recently formed Bailiwick of Jersey entity" by that name); at p. 25 ("no filing has ever referenced the Jersey-formed Cape holding company," *i.e.*, Cape PLC).

Process Clause, and the Equal Protection Clause.[88]

B. The Circuit Court Erred In Finding Personal Jurisdiction Over Appellants Exists.

The Circuit Court erred when it denied Appellants' Motions to Dismiss for Lack of Personal Jurisdiction because Respondent did not alleged facts, as opposed to conclusory allegations, that are sufficient to support jurisdiction over Appellants in the State of South Carolina. To determine whether personal jurisdiction exists over a non-domiciliary corporation such as Appellants, courts engage in a two-pronged analysis: (1) a plaintiff must demonstrate that granting jurisdiction under the statute would not violate the Fourteenth Amendment of the United States Constitution;[89] *and* (2) a plaintiff must show that defendant's conduct falls within South Carolina's long-arm statute, S.C. Code Ann. § 36-2-803. Both prongs must be satisfied for jurisdiction to exist. Here, Respondent failed to establish either.

1. Standard of review.

The decision of the trial court denying a motion to dismiss for lack of personal jurisdiction cannot be affirmed if it is unsupported by the evidence or influenced by an error of law.[90] Errors of law are reviewed *de novo*.[91]

When a party challenges a trial court's jurisdiction over it, the plaintiff bears the burden of establishing that personal jurisdiction exists.[92] "The question of personal jurisdiction over a

---

[88] Appellants join in and incorporate by reference the other third-party defendants/appellants' arguments regarding this issue, including, but not limited to, the arguments made in the Initial Brief of Appellants Mohed Altrad and Altrad Investment Authority SAS.

[89] *See Moosally v. W. W. Norton & Co.*, 594 S.E.2d 878, 886 (S.C. Ct. App. 2004); *Abdulla v. S. Bank*, 439 S.C. 391, 400, 887 S.E.2d 138, 143 (Ct. App. 2023).

[90] *Cockrell v. Hillerich & Bradsby Co.*, 611 S.E.2d 505, 508 (S.C. 2005); *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 539, 783 S.E.2d 839, 842 (Ct. App. 2016).

[91] *See, e.g., Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017) (de novo standard applies to questions of law).

[92] *Moosally*, 594 S.E.2d at 882.

nonresident defendant is one which must be resolved upon the facts of each particular case."[93] "At the pretrial stage, the burden of proving personal jurisdiction over a nonresident defendant is met by a prima facie showing of jurisdiction either in the complaint or in affidavits."[94] Subject matter jurisdiction is a court's "power to hear and determine cases of the general class to which the proceedings in question belong."[95] When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, however, the plaintiff bears the burden of proving subject-matter jurisdiction.[96] A court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.[97]

2. Appellants are not subject to specific jurisdiction in South Carolina through their own contacts, or lack thereof, with South Carolina.

South Carolina lacks specific personal jurisdiction over Appellants because the claims in the Third-Party Complaint do not arise out of or relate to conduct by Appellants in South Carolina.[98] A court may exercise personal jurisdiction over a corporation as to a cause of action arising from a defendant's contacts with the state pursuant to the long-arm statute.[99] "South Carolina's long-arm statute, which includes the power to exercise personal jurisdiction over causes of action arising from tortious injuries in South Carolina, has been construed to extend to the outer limits of the due process clause."[100] "Because South Carolina treats its long-arm statute as

---

[93] *Cockrell*, 611 S.E.2d at 508.

[94] *Id.*

[95] *Simmons v. Simmons*, 634 S.E.2d 1, 3 (S.C. Ct. App. 2006).

[96] *Elridge v. City of Greenwood*, 503 S.E.2d 191, 197 (S.C. Ct. App. 1998).

[97] *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 655 S.E.2d 476, 478 (2007).

[98] Respondent did not allege, nor did the Circuit Court find, general jurisdiction over Appellants. Accordingly, Appellants' Brief solely addresses specific jurisdiction.

[99] S.C. Code § 36-2-803(1).

[100] *Cockrell*, 611 S.E.2d at 508.

coextensive with the due process clause, the sole question [with respect to specific personal jurisdiction] becomes whether the exercise of personal jurisdiction would violate due process."[101] And that inquiry, in turn, asks whether "[t]he plaintiff's claims . . . arise out of or relate to the defendant's contacts with the forum."[102]

a. ESAB's contacts with South Carolina are insufficient to establish specific jurisdiction.

Here, nothing in the Third-Party Complaint plausibly suggests the claims asserted against ESAB arise out of or relate to conduct by ESAB anywhere, let alone in South Carolina. In fact, there are no allegations whatsoever in the Complaint about any conduct by ESAB. The only two paragraphs that even mention ESAB describe ESAB's citizenship[103] and state that, in 2022, ESAB became the parent company of Charter and Central Mining.[104]

For the first time in Respondent's Jurisdiction Opposition, Respondent argued in a footnote that ESAB is subject to specific jurisdiction because it is a "world leader in welding and cutting equipment and consumables, with dozens of dealers and repair centers selling ESAB products through South Carolina."[105] The Circuit Court then relied on Respondent's argument to find that "ESAB may conduct material business in the State of South Carolina." The Circuit Court, however, ignores that specific jurisdiction requires that the causes of action must "arise out of or

[101] *Id.*

[102] *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1025 (2021) (internal quotations omitted); *see also* S.C. Code Ann. § 36-2-803(2) (permitting a court to exercise personal jurisdiction over a defendant "*only* [with respect to] a cause of action *arising* from [the defendant's] acts" in or directed to South Carolina) (emphasis added).

[103] *See* Third-Party Compl., at ¶ 20.

[104] *Id.*, at ¶ 124.

[105] Jurisdiction Opposition, at p. 33.

relate to" ESAB's contacts with South Carolina.[106] Under no interpretation of the Third-Party Complaint (or the Tibbs Suit) do any claims by any party arise out of or relate to sales by ESAB of welding and cutting equipment in South Carolina. Rather, the claims asserted against ESAB arise out of or relate to conduct by Cape Asbestos Company occurring decades ago. Cape, however, is and always has been an entirely separate and distinct corporate entity from ESAB and is not a subsidiary of ESAB[107]—in fact, Respondent takes great pains to describe in his Jurisdiction Opposition that, at all relevant times as to ESAB, Cape Asbestos Company (now known as Cape Intermediate Holdings) was owned and controlled by Third-Party Defendants completely unrelated to ESAB.[108] Furthermore, Respondent makes no allegations that ESAB ever owned or controlled Cape PLC.

Moreover, ESAB does not currently, and has not historically, mined, milled, sold, or supplied asbestos in South Carolina.[109] Likewise, ESAB does not currently, and has not historically, produced, manufactured, or distributed asbestos or asbestos-containing products for use in South Carolina.[110] Finally, ESAB has no assets in South Carolina, including no interest in real property in South Carolina, so that cannot provide a basis for the exercise of specific personal jurisdiction in this forum.[111] Under these circumstances, the unsupported allegations in the Third-Party Complaint that each of the Third-Party Defendants is subject to this Court's jurisdiction under the state's long-arm statute is simply insufficient to establish specific personal jurisdiction.

---

[106] *See Ford Motor Co.*, 141 S. Ct. at 1025.

[107] Herring ESAB Aff., at ¶ 4.

[108] *See* Jurisdiction Opposition, at p. 22–26.

[109] *Id.* at ¶ 9.

[110] *Id.* at ¶ 10.

[111] *Id.* at ¶ 7.

b. Charter's contacts with South Carolina are insufficient to establish specific jurisdiction.

Similarly, nothing in the Third-Party Complaint plausibly suggests the claims asserted against Charter arise out of or relate to conduct by Charter anywhere, let alone in South Carolina. Rather, the claims asserted against Charter arise out of or relate to conduct by Cape Asbestos Company. Cape, however, is and always has been an entirely separate and distinct corporate entity from Charter and is not a subsidiary of Charter.[112] Moreover, Charter does not currently, and has not historically, mined, milled, sold, or supplied asbestos in South Carolina.[113] Likewise, Charter does not currently, and has not historically, produced, manufactured, or distributed asbestos or asbestos-containing products for use in South Carolina.[114] Finally, Charter has no assets in South Carolina, including no interest in real property in South Carolina, so that cannot provide a basis for the exercise of specific personal jurisdiction in this forum.[115] Under these circumstances, the unsupported allegations in the Third-Party Complaint that each of the Third-Party Defendants is subject to this Court's jurisdiction under the state's long-arm statute is simply insufficient to establish specific personal jurisdiction over Charter.

c. Central Mining's contacts with South Carolina are insufficient to establish specific jurisdiction.

Additionally, nothing in the Third-Party Complaint plausibly suggests the claims asserted against Central Mining arise out of or relate to conduct by Central Mining anywhere, let alone in South Carolina. Rather, the claims asserted against Central Mining arise out of or relate to conduct by Cape. Cape, however, is and always has been an entirely separate and distinct corporate entity

[112] Herring Charter Aff., at ¶ 4.

[113] *Id.* at ¶ 9.

[114] *Id.* at ¶ 10.

[115] *Id.* at ¶ 7.

from Central Mining and is not a subsidiary of Central Mining.[116] Moreover, Central Mining does not currently, and has not historically, mined, milled, sold, or supplied asbestos in South Carolina.[117] Likewise, Central Mining does not currently, and has not historically, produced, manufactured, or distributed asbestos or asbestos-containing products for use in South Carolina.[118] Finally, Central Mining has no assets in South Carolina, including no interest in real property in South Carolina, so that cannot provide a basis for the exercise of specific personal jurisdiction in this forum.[119] Under these circumstances, the unsupported allegations in the Third-Party Complaint that each of the Third-Party Defendants is subject to this Court's jurisdiction under the state's long-arm statute is simply insufficient to establish specific personal jurisdiction over Central Mining.

3. The Circuit Court erred in holding Respondent's conclusory allegations sufficiently demonstrated the necessary domination and control to establish personal jurisdiction over Appellants under an alter ego or single business enterprise theory.

The Circuit Court incorrectly applied the alter ego and single business enterprise theories to find personal jurisdiction over Appellants.[120] In South Carolina, to hold a party responsible

[116] Herring Central Mining Aff., at ¶ 4.

[117] *Id.* at ¶ 9.

[118] *Id.* at ¶ 10.

[119] *Id.* at ¶ 7.

[120] Although Respondent also argued personal jurisdiction was appropriate under piercing the corporate veil standard, which has a similar test as an alter ego theory, the Circuit Court ultimately found that personal jurisdiction was appropriate over Appellants under an alter ego test. *See, e.g.*, Order, at p. 67; *see also Sturkie v. Sifly*, 280 S.C. 453, 456–57, 313 S.E.2d 316, 318 (Ct. App. 1984) (In order to pierce the corporate veil, courts employ a two-prong test, looking first at an eight-factor analysis to determine if corporate formalities were sufficiently observed and then second on the element of injustice or unfairness; eight factors are: "(1) whether the corporation was grossly undercapitalized; (2) failure to observe corporate formalities; (3) non-payment of dividends; (4) insolvency of the debtor corporation at the time; (5) siphoning of funds of the corporation by the dominant stockholder; (6) non-functioning of other officers or directors; (7)

under an alter ego theory, a plaintiff must show both "(1) total domination and control of one entity by another and (2) inequitable consequences caused thereby."[121] A mere parent-subsidiary relationship, like all other stockholder relationships, necessarily involves interaction and elements of oversight and control. This fact alone has never provided a sufficient basis to impose the extraordinary remedy of veil-piercing. Instead, the level of control must be such that the "subservient entity manifests no separate interest of its own and functions solely to achieve the goals of the dominant entity."[122]

Similar to an alter ego theory, a single business enterprise theory also requires that a plaintiff appropriately allege that defendants had dominion and control such that the entities acted as unified operations (the primary difference being that a single business enterprise theory can encompass "sister" organizations, not just parent/subsidiaries like alter ego and veil piercing).[123]

Respondent has the burden of demonstrating alter ego and the presumption is that corporations are separate.[124] "South Carolina courts have consistently recognized that it is difficult to plead that one entity is the alter ego of another."[125] Although no single factor is determinative in an alter ego or single business enterprise theory, courts generally examine factors such as

---

absence of corporate records; and (8) the fact that the corporation was merely a façade for the operations of the dominant stockholder" (the "*Sturkie* Factors")).

[121] *Oskin v. Johnson*, 400 S.C. 390, 400, 735 S.E.2d 459, 465 (2012).

[122] *Id.*; *Colleton Cnty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 237, 638 S.E.2d 685, 692 (2006).

[123] *See Pertuis v. Front Roe Rests., Inc.*, 817 S.E.2d 273, 273 (2018) (citations omitted) ("We formally recognize today this single business enterprise theory, and in doing so, we acknowledge that corporations are often formed for the purpose of shielding shareholders from individual liability; there is nothing remotely nefarious in doing that.").

[124] *Sturkie*, 280 S.C. at 457, 313 S.E.2d at 318 ("The party seeking to have the corporate entity disregarded has the burden of proving the doctrine should be applied.").

[125] *Fancy That! Bistro & Catering, LLC v. Sentinel Ins. Co.*, 2021 WL 4804974, at *4 (D.S.C. Oct. 14, 2021).

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.[126] Merely owning stock,[127] having an overlap in operations,[128] or having common officers and/or directors are insufficient.[129] The absence of evidence that the defendant failed to observe corporate formalities is, alone, fatal to an alter ego argument.[130] Moreover, alter-ego theory "'does not apply in the absence of fraud or misuse of control by the dominant entity which results in some injustice.'"[131]

Importantly, for both the alter ego and single business enterprise theories, Respondent must meet the above standards at each level of the corporate ladder and must *separately* establish that each defendant was part of a single business enterprise with or was the alter ego over the entity that the South Carolina courts have personal jurisdiction over. Instead of trying to meet this requirement, Respondent improperly attempted to group plead in order to establish personal

---

[126] *See 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").

[127] *Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153-54, 268 S.E.2d 42, 44 (1980) ("the mere acquisition and control of a domestic subsidiary's capital stock does not subject the foreign parent to the jurisdiction of that State's courts.").

[128] *See, e.g., Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (2002) ("unified marketing and advertising and holding out to the public as a single entity, without more, [is] insufficient to confer jurisdiction.").

[129] *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44; *Jones ex rel. Jones v. Enter. Leasing Co.-Se.*, 383 S.C. 259, 267, 678 S.E.2d 819, 823–24 (Ct. App. 2009).

[130] *J.R. v. Walgreens Boots All., Inc.*, 470 F. Supp. 3d 534, 549 (D.S.C. 2020).

[131] *Oskin*, 400 S.C. at 408, 735 S.E.2d at 465 (quoting *Colleton Cnty. Taxpayers*, 371 S.C. at 237, 638 S.E.2d at 692); *see also Baker v. Equitable Leasing Corp.*, 275 S.C. 359, 367-68, 271 S.E.2d 596, 600 (1980) (holding that the alter-ego theory should be used only when retaining separate "personalities would promote fraud, wrong, or injustice or contravene public policy").

jurisdiction over Appellants. It is "plainly unconstitutional," however, to group defending parties together to meet this burden in establishing personal jurisdiction.[132] Accordingly, Respondent must independently establish that there was the requisite domination and control for the Court to find each of the following: (1) Cape Asbestos Company was the alter ego of or part of a single business enterprise with North American Asbestos Corporation ("NAAC"); (2) Cape Asbestos Company's direct parent was the alter ego of or part of a single business enterprise with Cape;[133] (3) Central Mining and Charter were the alter egos of or part of a single business enterprise with Cape Asbestos Company's direct parent company; and (4) ESAB is the alter ego of or part of a single business enterprise with Central Mining and Charter. Respondent wholly fails to meet his burden and, in most cases, does not even attempt to do so.

Even Respondent's futile attempts to impute NAAC's South Carolina contacts to Appellants by arguing a direct relationship between Cape and Appellants does not (and could not) allege sufficient facts related to Appellants' control over Cape. Instead, most of the Third-Party Complaint and the Order focuses on facts about other entities' control over each other, which is wholly irrelevant to the analysis of whether Central Mining and Charter exercised sufficient control over Cape and whether ESAB exercised sufficient control over Cape (an entity that it had

---

[132] *See Rush v. Savchuk*, 444 U.S. 320, 331-32 (1980).

[133] Both Respondent and the Circuit Court wholly ignore this step and fail to even mention that neither Central Mining or Charter had a direct ownership interest in Cape Asbestos Company and that, instead, intermediary companies held the ownership interest. *See, e.g.*, Thid-Party Compl., at ¶ 48 (indicating that Central Mining took over the business interests of Wernher, Beit & Co., which held interests in Cape Asbestos); Charter Consolidated Ltd. Report and Accounts for Year Ended 31 March 1975, Ex. 59 to Jurisdiction Opposition, at p. 36 (indicating that Charter did not directly own an interest in Cape and, instead, only owned Cape through "subsidiaries"); Charter Consolidated Ltd. Annual Report and Accounts 1966, Ex. 4 to Jurisdiction Opposition, at p. 32-33 (not listing any Cape entity as a direct subsidiary to Charter). The Court can reverse the Circuit Court's decision on personal jurisdiction solely based on the Third-Party Complaint's complete lack of any allegations whatsoever regarding *any* factors for alter ego or single business enterprise theories at this critical level of the corporate ladder.

no connection to at all), Central Mining, and Charter.[134] Conclusory allegations that Appellants controlled Cape because, for example, they were the majority owners of Cape and had common directors or employees (or were acting as a "corporate buffer" with another entity) are woefully insufficient.[135] First, it is well settled law in South Carolina that majority ownership and common officers or directors, standing alone, simply do not "support the conclusion the subsidiary is its parent's alter ego or agent for the transaction of its business."[136] Second, even if Charter and Central Mining controlled Cape (they did not for the reasons discussed further below), the Third-Party Complaint does not even attempt to allege sufficient facts to pierce the corporate veil between ESAB and Charter/Central Mining.

Even under a single business enterprise theory, the Third-Party Complaint still fails to allege facts sufficient to establish specific jurisdiction over Appellants. The allegations related to control over Cape are wholly inadequate, especially as to ESAB who could not have acted through any "unified operations" with Cape because Cape was owned and controlled by unrelated Third-Party Defendants by the time ESAB acquired Charter and Central Mining.

a. Charter is not subject to specific jurisdiction through an alter ego or single business enterprise theory.

The Circuit Court erred when it determined that it has specific jurisdiction over Charter based on Cape's (through NAAC's) purported jurisdictional contacts in South Carolina through an alter ego or single business enterprise theory.[137] Even taking the allegations alleged in the Third-

[134] *See, e.g.*, Third-Party Compl., at ¶¶ 57–59; Jurisdiction Opposition, at p. 32-33.

[135] *See, e.g.*, Third-Party Compl., at ¶¶ 140–141; Jurisdiction Opposition, at p. 32-33.

[136] *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44.

[137] *See ScanSource, Inc. v. Mitel Networks Corp.*, 2011 WL 2550719, at *4 (D.S.C. June 24, 2011) (dismissing claims for lack of personal jurisdiction on alter ego and veil piercing theories as plaintiff "failed to support its allegation that [parent company's] subsidiaries are merely facades for [its] operations").

Party Complaint as true, as a matter of law, Charter's actions do not rise to the level of domination and control required to hold it responsible as an alter ego of Cape or as part of a single business enterprise with Cape.[138]

The Third-Party Complaint does not include facts ***specific*** to how Charter controlled Cape and certainly does not allege facts sufficient to even remotely demonstrate that Charter had "total domination and control" over Cape such that Cape "manifest[ed] no separate interest of its own."[139] Although the Third-Party Complaint contains some allegations of control and domination between Charter and various entities[140] and the Order asserts without any citation or support that the Third-Party Complaint "comprehensively alleged ownership, financial, operational, and decision-making control" by Charter over Cape,[141] there are almost no allegations of control specifically between Charter and Cape. In fact, the *only* specific allegations as to control between Charter and Cape are that: (1) Charter was the majority owner of Cape starting in 1969;[142] (2) Charter "second[ed] and compensate[ed] key personnel for Cape's management";[143] (3) Charter used its "influence" in South Africa to allow Cape to profit from mining and exporting asbestos;[144]

---

[138] *See, e.g., In re Joseph Walker & Co., Inc.*, 522 B.R. 165, 193 (Bankr. D.S.C. 2014) (refusing to find alter ego liability where company "maintained separate bank accounts, obtained credit lines based solely upon its own assets and liabilities, obtained and possessed its own federal tax identification number and accordingly paid taxes when they became due" and employed separate legal counsel and accounting firms).

[139] *Oskin*, 400 S.C. at 400, 735 S.E.2d at 465; *Colleton Cnty. Taxpayers*, 371 S.C. at 237, 638 S.E.2d a 692.

[140] For example, the Order relies on Charter's and Anglo's purported "shared office space, personnel, and board members"; however, any shared services between Charter and Anglo cannot in any way demonstrate Charter's total domination and control over Cape. *See* Order, at p. 67.

[141] Order, at p. 68.

[142] *See* Third-Party Compl., at ¶ 55.

[143] *See* Third-Party Compl., at ¶ 61.

[144] *Id.* at ¶ 61.

and (4) Cape's chairman was also a director for Charter.[145] These allegations are hardly a comprehensive statement of Charter's "ownership, financial, operational, and decision-making control" over Cape and are wholly insufficient as a matter of law.[146]

Having an overlap in interests and paying for certain personnel, however, does not rise to the level of Charter having "constant" or day to day control over Cape required to pierce the corporate veil. This is especially true given that South Carolina courts have repeatedly held that "[c]ommon officers and/or directors and public identification of one corporation as the other's subsidiary do not, without more, support the conclusion the subsidiary is its parent's alter ego or agent for the transaction of its business."[147] Furthermore, the generic and conclusory allegations, such as a "failure to follow corporate formalities" and "domination and control . . . over Cape's . . . executive personnel and board of directors,"[148] are insufficient as a matter of law.[149]

The Third-Party Complaint's lack of specific factual allegations related to Charter's

---

[145] *Id*. at ¶ 78.

[146] *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44; *Jones ex rel. Jones*, 383 S.C. at 267, 678 S.E.2d at 823–24.

[147] *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44; *Jones ex rel. Jones*, 383 S.C. at 267, 678 S.E.2d at 823–24.

[148] *See* Third-Party Compl., at ¶ 140.

[149] *See David v. McCleod Regional Med. Ctr.*, 626 S.E.2d 1, 3 (S.C. 2006) (requiring more than "generic allegations and conjecture" to sustain malpractice claim; *Paradis v. Charleston Cty. Sch. Dist.*, 819 S.E.2d 147, 153 (S.C. Ct. App. 2018) (confirming that code pleading is required in South Carolina and that code pleading is not as "lenient" as federal notice pleading); *see also* J. F. Flanagan, S.C. Civ. P. § 8.B. ("[T]he pleader must describe each element of the cause of action in terms of the facts of the case."); *Mincey v. World Savings Bank FSB*, 614 F. Supp. 2d 610 (D.S.C. 2008) (rejecting plaintiffs' attempt to allege veil-piercing or alter ego based on conclusory allegations with no specific facts); *Pro Slab, Inc. v. Argos USA Corp.*, 2018 WL 6985008, at *5 (D.S.C. June 28, 2018), *reconsideration granted on other grounds*, 2018 WL 6985010 (D.S.C. Dec. 3, 2018) (granting defendants' motions to dismiss where the "amended complaint contains no factual allegations to support [the] legal conclusion" that certain affiliated corporate entities were alter egos of one another).

purported control over Cape is hardly surprising given the previous decisions by the District Court for the Eastern District of Pennsylvania and the Third Circuit decades ago finding that Charter and Central Mining were *not* alter egos of Cape.[150] Indeed, in *Craig*, the Third Circuit reversed a district court decision, made after a two-day trial on the merits, and found as a matter of law that Central Mining and Charter did not exercise a great enough degree of domination over Cape to hold them responsible for Cape's asbestos liability.[151] In *In re Charter Defendants*, the Eastern District of Pennsylvania granted summary judgment and dismissed with prejudice all claims asserted against Central Mining and Charter in every asbestos action pending in the Eastern District of Pennsylvania on the basis that the Court was bound by the Third Circuit's *Craig* decision finding that Charter and Central Mining were not alter egos of Cape.[152]

Respondent is now asserting personal jurisdiction against Charter (and Central Mining) based on the exact same alter ego issue and grounded in the very same facts that the *Craig* and *In re Charter Defendants* courts analyzed to reject the alter ego theory. A comparison between the facts and legal issues decided in *Craig* and *In re Charter Defendants* with the facts and legal questions asserted here shows the clear duplication between the arguments. For example, the Third-Party Complaint includes allegations regarding Central Mining's and Charter's majority position on Cape's board of directors to suggest purported dominance or control;[153] however, the Third Circuit found that fact unpersuasive.[154] Likewise, the Third-Party Complaint includes

---

[150] *See, e.g.*, *Craig*, 843 F.2d at 152; *In re Charter Defs.*, 1989 U.S. Dist. LEXIS 15591; *Culbreth v. Amosa Ltd.*, 898 F.2d 13 (3d Cir. 1990); *Simmons*, No. 84-1170.

[151] *Craig*, 843 F.2d at 152.

[152] *In re Charter Defendants*, 1989 U.S. Dist. LEXIS 15591, at *1-3.

[153] *See* Third-Party Compl., at ¶ 50.

[154] *See Craig*, 843 F.2d at 151 ("It is to be expected that a corporation seeking to acquire majority ownership of another will seek to achieve control.").

allegations regarding Central Mining's and Charter's "seconding employees to Cape,"[155] but the Third Circuit found that fact similarly unpersuasive.[156] The Third-Party Complaint offers nothing new that the Eastern District of Pennsylvania and the Third Circuit did not already consider and reject as a basis for finding that Central Mining and Charter were the alter ego of Cape—nor could Respondent offer any "new" relevant facts as to Charter's or Central Mining's control over Cape because Cape sold its asbestos business more than seven years before the trial in *Craig*.[157]

The Third Circuit found that there was "no evidence" that "Charter's intrusion into Cape's affairs [was] even constant or day-to-day. Moreover, and significantly, the district court found that '[t]he two corporate groups each maintained separate books, records, bank accounts, offices and staff; each consulted their own financial advisors, accountants and stockbrokers."[158] The Eastern District of Pennsylvania agreed with and applied the Third Circuit's decision that there was "no evidence that would satisfy the control element of the corporate veil 'piercing' test to conclude that Charter controlled Cape."[159]

Given that Respondent does not allege—because he cannot do so—sufficient facts to show Charter dominated and controlled Cape such that the Court should pierce the corporate veil (under either an alter ego or single business enterprise theory), the Court should reverse the Circuit Court's denial of Charter's Motion to Dismiss for Personal Jurisdiction and remand with instructions to dismiss Charter with prejudice.

---

[155] Third-Party Compl., at ¶ 52; *see also id.*, at ¶ 59 ("The Oppenheimers consistently sat on Charter's board of directs after its founding.").

[156] *See Craig*, 843 F.2d at 151 (deciding issue in Charter's favor despite "presence of three Charter nominees on Cape's Board").

[157] *See* Third-Party Compl., at ¶ 102.

[158] *Craig*, 843 F.2d at 152.

[159] *In re Charter Defendants*, 1989 U.S. Dist. LEXIS 15591, at *8.

b. Central Mining is not subject to specific jurisdiction through an alter ego or single business enterprise theory.

The Circuit Court erred when it determined that it has specific jurisdiction over Central Mining based on Cape's (through NAAC's) purported jurisdictional contacts in South Carolina through an alter ego or single business enterprise theory.[160] Even taking the allegations alleged in the Third-Party Complaint as true, as a matter of law, Central Mining's actions do not rise to the level of domination and control required to hold it responsible as an alter ego of Cape or as part of a single business enterprise with Cape.[161]

The Third-Party Complaint does not include facts ***specific*** to how Central Mining controlled Cape and certainly does not allege facts sufficient to even remotely demonstrate that Central Mining had "total domination and control" over Cape such that Cape "manifest[ed] no separate interest of its own."[162] Although the Third-Party Complaint contains some allegations of control and domination between Central Mining and various entities, there are almost no allegations of control specifically between Central Mining and Cape. In fact, the *only* specific allegations as to control between Central Mining and Cape are that: (1) Central Mining was initially organized to take over the assets and business interests of a third-party organization that held "interests" in Cape Asbestos;[163] (2) Central Mining was a major shareholder in Cape in the mid-1900s;[164] (3) Central Mining "second[ed] employees to Cape";[165] (4) by 1949, Central Mining

[160] *See ScanSource, Inc.*, 2011 WL 2550719, at *4.

[161] *See, e.g.*, *In re Joseph Walker*, 522 B.R. at 193.

[162] *Oskin*, 400 S.C. at 400, 735 S.E.2d at 465; *Colleton Cnty. Taxpayers*, 371 S.C. at 237, 638 S.E.2d a 692.

[163] Third-Party Compl., at ¶ 48.

[164] *Id.*, at ¶ 50.

[165] *Id.*, at ¶ 50.

had a majority on the board of directors of Cape;[166] and (5) Central Mining used its expertise to "improve" Cape's performance.[167] These allegations are insufficient as a matter of law.[168]

Having an overlap in interests and paying for certain personnel, however, does not rise to the level of Central Mining having "constant" or day to day control over Cape required to pierce the corporate veil under either an alter ego or single business enterprise theory. This is especially true given that South Carolina courts have repeatedly held that "[c]ommon officers and/or directors and public identification of one corporation as the other's subsidiary do not, without more, support the conclusion the subsidiary is its parent's alter ego or agent for the transaction of its business."[169] Moreover, the Third-Party Complaint's generic conclusory allegations, such as a "failure to follow corporate formalities" and "domination and control . . . over Cape's . . . executive personnel and board of directors,"[170] are insufficient as a matter of law.[171]

Furthermore, given the previous decisions by the Third Circuit and the District Court for the Eastern District of Pennsylvania finding that Central Mining was *not* an alter ego of Cape, discussed in Section V(B)(3)(a) supra, the Third-Party Complaint's lack of specific factual allegations related to Central Mining's purported control over Cape is expected.[172] Respondent does not allege—because he cannot do so—sufficient facts to show Central Mining dominated and

---

[166] *Id.*, at ¶ 50.

[167] *Id.*, at ¶ 52.

[168] *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44; *Jones ex rel. Jones*, 383 S.C. at 267, 678 S.E.2d at 823–24.

[169] *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44; *Jones ex rel. Jones*, 383 S.C. at 267, 678 S.E.2d at 823–24.

[170] *See* Third-Party Compl., at ¶ 140.

[171] *See* Note 149, supra.

[172] *See, e.g., Craig*, 843 F.2d at 152; *In re Charter Defs.*, 1989 U.S. Dist. LEXIS 15591; *Culbreth*, 898 F.2d 13; *Simmons*, No. 84-1170.

controlled Cape such that the Court should pierce the corporate veil (under either an alter ego or single business enterprise theory). The Court should, therefore, reverse the Circuit Court's denial of Central Mining's Motion to Dismiss for Personal Jurisdiction and remand with instructions to dismiss Central Mining with prejudice.

c. ESAB is not subject to specific jurisdiction through an alter ego or single business enterprise theory.

The Circuit Court erred when it determined that it has specific jurisdiction over ESAB based on Cape's (through NAAC's) purported jurisdictional contacts in South Carolina through an alter ego or single business enterprise theory.[173] For ESAB, Respondent must not only have established that NAAC's contacts with South Carolina should be imputed to Cape, and then subsequently be imputed to Charter and Central Mining, but Respondent must also establish that ESAB sufficiently dominated and controlled Charter and Central Mining to then impute those contacts onto ESAB. Yet, the Third-Party Complaint fails to contain a single allegation related to ESAB's control over Charter and Central Mining and, instead, relies solely on the parent-subsidiary relationship. Even taking the bare-bone allegations as to ESAB alleged in the Third-Party Complaint as true, as a matter of law, ESAB's actions cannot rise to the level of domination and control required to hold them responsible as alter egos of Cape or as part of a single business enterprise with Cape.

The Third-Party Complaint does not include facts specific to how ESAB controlled Cape (nor could it do so) and certainly does not allege facts sufficient to even remotely demonstrate that ESAB had "total domination and control" over Cape such that Cape "manifest[ed] no separate

[173] *See ScanSource, Inc.*, 2011 WL 2550719, at *4.

interest of its own."[174] The sole connection alleged between ESAB and Cape is through its independent subsidiaries Charter and Central Mining. Yet, even if the Court were to find that Charter or Central Mining were the alter ego of Cape—it should not—none of that has any bearing on whether ESAB is the alter ego of Cape. The Third-Party Complaint does not allege a single fact that connects ESAB and Cape other than that, decades after Charter no longer held any interest in Cape, Charter and Central Mining were purchased by another entity that was then spun off into ESAB.[175] The Third-Party Complaint and the Order are devoid of any allegations or discussions of the factors related to ESAB's relationship with Charter and Central Mining, and fails to allege whatsoever that, since 2022, ESAB failed to follow corporate formalities with respect to Charter and Central Mining.

Although the Third-Party Complaint contains some allegations of control and domination between various entities, there are absolutely no allegations of control specifically between ESAB and Cape, or between ESAB and Central Mining/Charter. Nor could there be any such allegations of control by ESAB over Cape as Respondent acknowledges Cape was sold by Charter in 1996, decades before Charter was spun off to ESAB in 2022.[176] Furthermore, as discussed above, the relatively few allegations Respondent made with respect to either Charter or Central Mining's purported "total domination and control" over Cape are woefully insufficient as a matter of law.[177]

Given that Respondent does not allege—because he cannot do so—sufficient facts to show ESAB dominated and controlled Cape, Central Mining, and Charter such that the Court should

---

[174] *Oskin*, 400 S.C. at 400, 735 S.E.2d at 465; *Colleton Cnty. Taxpayers*, 371 S.C. at 237, 638 S.E.2d a 692.

[175] *See* Third-Party Compl., at ¶ 124.

[176] *See* Third-Party Compl., at ¶¶ 123–124.

[177] *See* Sections V(B)(3)(a) and V(B)(3)(b), supra.

pierce the corporate veil (under either an alter ego or single business enterprise theory), the Court should reverse the Circuit Court's denial of ESAB's Motion to Dismiss for Personal Jurisdiction and remand with instructions to dismiss ESAB with prejudice.[178]

4. The Circuit Court erred in finding that Cape's purported contacts with South Carolina, even if imputed to Appellants, are sufficient to establish personal jurisdiction.

Even if this Court finds that Appellants are the alter ego of Cape or are part of a single business enterprise with Cape—it should not—that only means that Cape's purported jurisdictional contacts with South Carolina are imputed to Appellants. It does not automatically mean that jurisdiction over Appellants attaches.[179] Here, the Circuit Court incorrectly found that Cape's purported contacts with South Carolina, even if imputed to Appellants, are sufficient to establish specific jurisdiction over Appellants. Yet, the only contact with South Carolina that the Third-Party Complaint mentions is that Cape's subsidiary, NAAC, sold asbestos in the United States, including in South Carolina.[180] Importantly, however, the claims asserted against ESAB do not arise out of any asbestos sold in South Carolina (nor does the Third-Party Complaint make such as assertion). For that matter, there are not even any allegations in Plaintiffs' Complaint or the Third-Party Complaint that Tibbs was exposed to amosite asbestos sold or mined by Cape.[181]

Although specific jurisdiction can certainly be established by an entity's contacts with South Carolina, the critical distinction between general and specific jurisdiction is that, for specific

---

[178] *See, e.g., In re Joseph Walker*, 522 B.R. at 193.

[179] *See Duong v. N. Am. Transportation Servs. LLC*, 2019 WL 13109647, at *13 (D.S.C. Sept. 25, 2019) (holding that, even if the single business enterprise theory applied, plaintiff failed to allege jurisdictional facts necessary to establish personal jurisdiction).

[180] *See, e.g.*, Third-Party Compl., at ¶¶ 73–76; Jurisdiction Opposition, at p. 20-21.

[181] *See generally* Third-Party Compl.

jurisdiction, the claims must actually arise from the contacts with the state.[182] The Third-Party Complaint asserts four causes of action: unjust enrichment, constructive trust, alter ego or piercing the corporate veil liability, and accounting. None of these claims arise out of Cape's purported sales of asbestos to any particular entity or person in South Carolina (or even arise from the use of asbestos in South Carolina) and, instead, arise out of purported conduct in South Africa, the United Kingdom, and other places outside of South Carolina. Unless the claims actually arise from Cape's contacts in South Carolina, the mere fact that Cape's jurisdictional contacts (or, in reality, NAAC's jurisdictional contacts) may be imputed to ESAB (they should not) is insufficient for this Court to assert personal jurisdiction over ESAB.[183]

5. The Circuit Court erred in finding that it had personal jurisdiction over ESAB under a successor liability theory.

As a last-minute Hail Mary, Respondent belatedly argued that South Carolina has jurisdiction over ESAB because it has successor liability to Charter and Central Mining. South Carolina law is clear, however, that there must be more than a generic assertion of successor liability for an entity to actually be deemed a successor.[184] Neither the Third-Party Complaint nor the Order demonstrate ESAB somehow assumed the responsibilities of Charter, Central Mining,

[182] *See Coggeshall*, 376 S.C. 12, 655 S.E.2d 476.

[183] *See Outpost Cap. Mgmt., LLC v. Prioleau*, 2017 WL 5514513, at *7 (D.S.C. Nov. 16, 2017) (finding that even an entities' contacts could be imputed to defendant through an alter ego theory, the court still did not have specific jurisdiction over defendant because the claims against defendant did not arise from the entities' contacts with South Carolina).

[184] *See Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 263, 818 S.E.2d 447, 451 (2018) ("Ordinarily, in the absence of a statute, a successor or purchasing corporation is not liable for the debts of a predecessor or seller unless: (1) there was an agreement to assume such debts; (2) the circumstances surrounding the transaction amount to a consolidation or merger of the two corporations; (3) the successor company was a mere continuation of the predecessor; or (4) the transaction was entered into fraudulently for the purpose of wrongfully defeating creditors' claims.").

or Cape, through any of the methods that would allow successor liability under South Carolina law (for example, by way of an agreement assuming liability for Charter, Central Mining, or Cape).[185]

In fact, the Third-Party Complaint fails to allege any facts as to how or why ESAB is the successor to Charter and Central Mining such that ESAB assumed the responsibilities of Charter and Central Mining.[186] The Third-Party Complaint contains no allegations that there are any agreements wherein ESAB assumed responsibilities for Charter or Central Mining (nor does Respondent even attempt an explanation for how ESAB would have assumed successor liability to Charter and Central Mining). Additionally, the Third-Party Complaint fails to allege that ESAB merged with Charter or Central Mining, that ESAB was a "mere continuation" of Charter or Central Mining, or that the spin-off where ESAB became the parent of Central Mining and Charter was "entered into fraudulently for the purpose of wrongfully defeating creditors' claims."[187]

Although Respondent argues that certain entities are playing an active and current role in avoiding Cape's asbestos liabilities (and therefore successor liability attaches), Respondent does not make these same allegations as to ESAB. The only allegations, provided mere hours before Appellants were set to oppose Respondent's proposed order on the Motions to Dismiss, related to

---

[185] *See Nationwide Mut. Ins. Co.*, 424 S.C. at 263, 818 S.E.2d at 451; *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924); *see also* Oct. 25 Hrg. Tr., at 115:5-15 ("[I]s its successor 50 years later going to be held responsible for what happened 50 years ago . . . when there's no relationship financially or assetwise between the two entities. This is simply a entity created long thereafter with no agreements alleged that – or relationships that allege that they assume the responsibilities of the entity they succeeded or even how that succession works. That's what's gotten me troubled about this thing."). Furthermore, Respondent's attempt to manufacture successor liability, months after briefing was complete, through the introduction of new evidence mere hours before Appellants were required to respond to Respondent's Proposed Order, which was wholly incorporated by the Circuit Court mere days later, is improper and should be rejected.

[186] *See, e.g.*, *Nationwide Mut. Ins. Co.*, 424 S.C. at 269, 818 S.E.2d at 454 (acknowledging that South Carolina "corporate law generally favors the free transfer of assets and disfavors successor liability" and that the standard for successor liability is strict).

[187] *Id.*, at 263.

ESAB's successor liability is that ESAB has provided a "letter of financial support" to Charter and Central Mining, which are not actively engaged in business but are still considered going concerns.[188] These allegations are insufficient, as a matter of law, to meet the strict standard for finding successor liability. Furthermore, the Third-Party Complaint fails to allege any factual hook that ESAB, an entity that did not become the parent of Central Mining and Charter until 2022, was *created* with the acceptance of liability for Charter's and Central Mining's alleged former conduct. Accordingly, the Circuit Court improperly found that successor liability attached to establish personal jurisdiction over ESAB.

VI. CONCLUSION

For the reasons stated above, the Court should reverse the Circuit Court's denial of the Motions to Dissolve and Motions to Dismiss for Lack of Personal Jurisdiction and remand the claims to the Circuit Court with direction to enter an order to dissolve the Receivership and dismiss the Third-Party Complaint as to Appellants.

Dated: February 22, 2024

GORDON REES SCULLY MANSUKHANI, LLP

BY: */s/ A. Victor Raw, Jr.*

A. Victor Rawl, Jr. (SC 09261)
Email: vrawl@grsm.com
677 King Street, Suite 450
Charleston, SC 29403
Telephone: 843-714-2501

Counsel for Appellants Charter Consolidated Ltd., ESAB Corporation, and Central Mining and Investment Corporation Ltd

[188] *See* Order, at p. 70.

RECEIVED
Feb 22 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-001461
Circuit Court Case No. 2023-CP-40-01759

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

v.

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

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

Defendants,

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

v.

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

of which

Charter Consolidated Ltd.; and Central Mining & Investment Corporation Ltd. are the ..... Appellants.

PROOF OF SERVICE

I, the undersigned of the law offices of GORDON REES SCULLY MANSUKHANI, LLP, attorneys for Appellants ESAB Corporation, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Initial Brief of Appellants ESAB Corporation; Charter Consolidated Ltd.; and Central Mining & Investment Corporation Ltd.

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Counsel for Plaintiffs

James H. Elliott, Jr. (jelliott@richardsonplowden.com)
Cameron D. Berthelsen (cberthelsen@richardsonplowden.com)

Counsel for Co-Appellants AA/DB Non-US Third-Party Defendants

Steven J. Pugh (spugh@richardsonplowden.com)
Benjamin P. Carlton (bcarlton@richardsonplowden.com)
Carmen V. Ganjehsani (cganjehsani@richardsonplowden.com)
Ashwin R. Sanzgiri (asanzgiri@richardsonplowden.com)

Counsel for Co-Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

M. Todd Carroll (todd.carroll@wbd-us.com)
Kevin A. Hall (kevin.hall@wbd-us.com)
M. Elizabeth O'Neill (elizabeth.oneill@wbd-us.com)

Counsel for Co-Appellants Mohed Altrad and Altrad Investment Authority SAS

Stephen L. Brown (sbrown@ycrlaw.com)
James D. Gandy, III (tgandy@ycrlaw.com)
Stephen A. Griffith (sgriffith@ycrlaw.com)

Counsel for Asbestos Corporation Limited

By: /s/ A. Victor Rawl, Jr.