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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County  
Court of Common Pleas  
The Honorable Jean H. Toal, Circuit Court Judge

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Civil Action No. 2023-CP-40-01759  
Appellate Case No. 2023-002007

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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; Zurn Industries, LLC.....**DEFENDANTS,**

and

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) LLC, Charter Consolidated Ltd., ESAB Corporation, Central Mining & Investment Corporation Ltd., Cape Holdco Ltd., The Law Debenture Corporation PLC, Cape Industrial Services Group Ltd., Mohed Altrad, Altrad UK Ltd., Cape UK Holdings Newco Ltd., Altrad Services, Ltd., f/k/a Cape Industrial Services Ltd., Altrad Investment Authority S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC.....**THIRD-PARTY DEFENDANTS,**

Of which ArranCo US, LLC, Hawk Bidco US Inc., and Sparrows Offshore, LLC are the.....**APPELLANTS.**

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**APPELLANTS ARRANCO US, LLC; HAWK BIDCO (US) INC.; AND  
SPARROWS OFFSHORE, LLC’S  
RETURN TO  
MOTION TO DISMISS INTERLOCUTORY APPEALS**

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Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC (collectively, the “Sparrows Appellants”), hereby file this Return to the Receiver’s Motion to Dismiss Interlocutory Appeals filed with this Court on April 16, 2024.

## INTRODUCTION

By a two-page filing, Respondent—Peter D. Protopapas, in his capacity as the court-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited—has requested this Court dismiss six separate appeals, all of which stem from a December 6 Order entered by the circuit court in the underlying action. As support for that motion, Respondent attached a “Packet of Orders” but provided no analysis of why or how those orders apply here. As this Court has stated many times, appealability of a lower court order is a case-by-case determination. Setting aside the conclusory nature of the Motion to Dismiss, the appellate court orders cited therein have only a facial similarity—but no substantive applicability—to the circumstances of this appeal.

While the issues in the cases presented by Respondent appear to be similar (in that they are related to various receiverships), the actual issues in this case differ in a way that renders the matters addressed in the circuit court’s December 6 Order immediately appealable for *one* simple, primary reason—the **December 6 Order *granted* a new receivership**.

The Receiver was appointed in the case of *Park v. Armstrong International, Inc., et al.* The entity placed into a receivership in *Park* was Cape PLC. Thereafter, Cape PLC was named as a defendant in the underlying case here, *Tibbs v. 3M Company, et al.* In ruling on the Motion to Dissolve filed by the Sparrows Appellants, the December 6 Order ignored the long list of procedural errors that plagued the appointment of the receiver and instead found that the receivership that was created over Cape PLC in *Park* is now over Cape Intermediate Holdings Limited (“CIHL”), a *separate and wholly distinct* legal entity to Cape PLC.

In *Park*, both Cape PLC and CIHL were named defendants, while in *Tibbs* only Cape PLC was named as a defendant. There can be no reasonable dispute as to whether the December 6

Order granted a new receivership over a different entity in a different case. To ignore this fact would be to disregard the clear and unmistakable language of the applicable statute and binding South Carolina precedent.

At an elementary, yet fundamental level, the December 6 Order created and granted a receivership—for the first time—over CIHL. While Respondent contended below that is not the case, determination of that answer is a question on the merits at the core of the Sparrows Appellants’ appeal, and should be resolved by this Court on full briefing and argument.

As set forth below: (1) the December 6 Order is immediately appealable because of its granting of a new receivership, thereby fitting squarely within the category of appellate rights granted by S.C. Code Ann. § 14-3-330(4) and (2) recent orders from this Court and the Supreme Court cited by the Receiver do not affect the appealability analysis here and do not supplant binding South Carolina precedent as to non-“legally appointed receivers” and an aggrieved party’s rights in response thereto. Respondent has failed to provide an availing reason for this appeal to be dismissed prior to briefing<sup>1</sup> and a hearing on the merits; accordingly, the Motion to Dismiss should be denied.

## **ARGUMENT**

### **I. The December 6 Order granted a new receivership.**

The factual background as to CIHL and Cape PLC is key to understanding why the December 6 Order is immediately appealable. “The determination of whether a trial court’s order is immediately appealable is governed by statute.” *Morrow v. Fundamental Long-Term Care*

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<sup>1</sup> The Sparrows Appellants timely filed initial briefs in this matter (as did the other appellants with respect to the December 6 Order now on appeal). Respondent sought an extension of time to file an initial brief, which no Appellant opposed, and has now filed this Motion to Dismiss, seemingly, in an attempt to avoid a merits resolution of these foundational questions and issues.



*Holdings, LLC*, 412 S.C. 534, 537, 773 S.E.2d 144, 145 (2015). The relevant statute sets forth, in part, that immediate appeal is appropriate from “[a]n interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.” S.C. Code Ann. § 14-3-330(4). The December 6 Order, among other things, is an order granting the appointment of a receiver as set forth below.

This case arises out of a Third-Party Complaint filed in the court below by Peter D. Protopapas (the “Receiver”), who was appointed over an entity named Cape PLC.<sup>2</sup> To be clear, the Receiver, however, was not appointed in this case, but rather was appointed in a separate asbestos lawsuit entitled *Park v. Armstrong International, Inc., et al.*, 2021-CP-40-02727. (**App. 1, 75**). In the *Park* case, the Plaintiffs sued many entities and specifically *named both Cape PLC and CIHL* among the defendants, alleging each entity was a “successor-in-interest to Cape Asbestos Company.”<sup>3</sup> See *Park* First & Second Am. Compls. (filed Nov. 17, 2021 and Dec. 23, 2021, respectively); (**App. 1, 75**).

Upon full conclusion of *Park*—after Plaintiffs’ counsel emailed the circuit court and other counsel that the case was “fully resolved”—both Cape PLC and CIHL were left with no adjudication of damages nor liability. See June 3, 2022 Email from Parks’ Counsel, attached as Ex. C to Sparrows Appellants’ Motion to Dissolve Receivership, filed Aug. 21, 2023 [hereinafter Motion to Dissolve]; (**App. 215**). Neither Cape PLC nor CIHL were served with the Second

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<sup>2</sup> Cape PLC is a registered public company in the Bailiwick of Jersey (an island located in the English Channel), and it is a going concern. It is not currently, nor has it ever been, dissolved.

<sup>3</sup> The amended pleadings in *Park* stated Cape PLC is organized under the laws of the United Kingdom with its principal place of business in England. *Park* First & Second Amd. Compls. ¶¶ 15, 26–27; (**App. 12, 83**). That is incorrect, as Cape PLC is a Jersey company, created in 2011.

Amended Complaint in *Park* prior to the full resolution of that case.<sup>4</sup> *See* Sparrows Appellants’ Reply on Motion to Dissolve, filed Oct. 23, 2023, at 5–6; (**App. 330-32**).

Nine months later, on March 6, 2023, counsel for the Parks filed a lengthy motion seeking appointment of a Receiver over “**Cape PLC** and its subsidiaries, affiliates, successors, and assigns” [hereinafter Motion to Appoint]. *See* Ex. D to Motion to Dissolve (emphasis added); (**App. 142**). This Motion to Appoint the Receiver was never—and thus far has never been—served on Cape PLC, and no proof of service has been provided as to CIHL.<sup>5</sup> *See* Reply on Motion to Dissolve at 6, n.9; (**App. 332**). Eleven days later, and without a hearing, on March 17, 2023, the circuit court granted the Motion to Appoint pursuant to subsections 15-65-10(4) and (5) of the South Carolina Code (2005). (**App. 418**). After noting “Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case,”<sup>6</sup> the order appointing the Receiver over

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<sup>4</sup> On August 28, 2023, an affidavit of a U.K. process server was filed in *Park* stating only that the “First Amended Summons” was mailed, via Royal mail, to an address in the U.K., which the circuit court used to find proper service as to both Cape PLC and CIHL. *But see* Rule 4(d), SCRCP (“The summons and complaint must be served together.”). Per this filed affidavit, the service of the “First Amended Summons” was asserted to have been effected on December 16, 2021—one week before the *Park* Plaintiffs filed their Second Amended Complaint. Cape PLC was never served with any summons or pleading—initial or amended—in Jersey.

<sup>5</sup> The circuit court found Cape PLC was served with the Motion to Appoint via DHL solely because the *Park* Plaintiffs, in the Motion to Appoint itself, stated: “Plaintiffs have placed into the hands of DHL, an international carrier, a copy of this motion and its exhibits, for delivery to the same address at which service was perfected.” (**App. 228**). The Sparrows Appellants have opposed that finding as not being supported by any affidavit or DHL delivery confirmation receipt and by noting the fact that the referenced “same address” in the U.K. was incorrect for Cape PLC, a Jersey entity. *See* Reply on Motion to Dissolve at 6, n.9; (**App. 332**). Respondent has yet to challenge this assertion by Sparrows Appellants.

<sup>6</sup> Cape PLC is, and was at the time of the Receiver’s appointment, an active entity based in Jersey. It was first registered there in 2011. The Court and all parties have now acknowledged the error in such statement: Cape PLC (just like CIHL) has not forfeited its charter nor has it (or CIHL) dissolved. *See* Dec. 6 Order at 25, n.16; (**App. 368, 445**).

“**Cape PLC**” and “its subsidiaries and global affiliates” set forth the following expansive rights and duties, including:

Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law with the power and authority fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be. This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape’s insurance carriers.

See Ex. E to Sparrows Appellants’ Motion to Dissolve [hereinafter *Park* Appointment Order];

(**App. 418-20**). Cape PLC is the only entity actually identified by name in this order. *Id.*<sup>7</sup>

The Sparrows Appellants challenged the receivership in the circuit court, and have brought this appeal, in part, on the grounds that **CIHL**—the entity over which Respondent seemingly seeks control—is decidedly *not* the **Cape PLC** entity over which the circuit court created a receivership in *Park*. The receivership over Cape PLC was granted in *Park* based upon the misinformation detailed above, and then a new receivership was granted over CIHL in this case. Through the erroneous use of the doctrine of misnomer,<sup>8</sup> the December 6 Order denied the legitimate arguments as to the demonstrably incorrect circumstances underpinning the initial appointment of the

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<sup>7</sup> The *Park* Appointment Order states further that Cape PLC is the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.).” Through the United Kingdom’s official public corporate database, it is clear that Cape Asbestos Company Ltd. (U.K. Company Number 00040203) was incorporated in the U.K. in 1893 has been named “Cape Intermediate Holdings Limited” since 2013. Through Jersey’s official public corporate database, it is equally clear that Cape PLC (Jersey Registration Number 108031) was incorporated there in 2011 and has always been named Cape PLC. It is uncontroverted that they are two separate and distinct, active corporate entities.

<sup>8</sup> This ruling, choosing to characterize what occurred as “misnomer,” presents another key issue within the December 6 Order that should be addressed—after full briefing—on the merits.

Receiver over Cape PLC in *Park* and the subsequent granting of a new receivership over CIHL in *Tibbs* and ruled:

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

December 6 Order at 19; (**App. 362**).

This is an error of law, as set forth in Sparrows Appellants’ Initial Brief, and resulted in the *granting* of a receivership over CIHL, an active and solvent entity, and the simultaneous *continuation and modification* of the receivership over Cape PLC. Stated differently, the Receivership was sought and granted in *Park* over Cape PLC. Realizing Cape PLC is the wrong entity, Respondent now seeks to have the *Park* appointment apply to CIHL in *Tibbs*. Obviously, that is not possible, but the December 6 Order ignored the long list of procedural errors and made it so through the improper misuse of “misnomer” to conflate two wholly different entities. *See Porter v. Brown*, 149 S.C. 151, 146 S.E. 810, 811 (1929) (allowing immediate appeal of denial of dispositive motion in similar case wherein receivership was created over wrong entity and was challenged in action separate from action in which receivership was erroneously created). Moreover, the *Park* Plaintiffs knew Cape PLC and CIHL were two distinct entities—and named them as such in their complaint. There was no basis for the circuit court to rule in this manner,

and the ruling is incorrect as evidenced both in the factual record and as a matter of law given binding South Carolina precedent “on all fours” with the circumstances here. Dismissive characterization of this legitimate appeal as some “strategy,” rather than the Sparrows Appellants seeking recognition of their appellate rights, misses the point. Simple review of the history of each entity named in *Park* and which one the Receiver was actually appointed for makes the issues put before this Court clear. And, relying on the very errors in the December 6 Order that are the basis for this appeal to argue this appeal is interlocutory completely misses the fact that those findings are demonstrably wrong—which is why the appellate process exists.

In *Porter*, the South Carolina Supreme Court assessed the legality of a receiver appointed over “New York Civic Opera Company,” which in the underlying complaint was referenced, in error, as a corporation organized under New York law when, in fact, the entity was a Florida corporation. 149 S.C. at 152, 146 S.E. at 810–11. Unlike the uncontroverted history of the instant case, the actual entity was served through an officer in New York as well as through a designated agent in Florida. *Id.* at 153, 146 S.E. at 811. In finding that the receiver had been unlawfully appointed and as further noting that all proceedings connected therewith were *coram non judice* and void, the Supreme Court explained:

It is clear that a *fatal mistake* was made when the following words were added: “A corporation organized under the laws of the state of New York.” This was vital in this case; there is no such corporation, *and all proceedings based on this error must fall*. A receiver was appointed for something that did not exist, because plaintiff bases his power and authority on an alleged act and creation of a corporation by the state of New York, and, when it appeared that the state of New York had created no such corporation, then there is an end to the matter. The existence of a person, corporation, or partnership for which an appointment of a receiver is sought is *fundamental*; and if there be no such person, corporation, or partnership, then it follows that there *can be no legally appointed receiver*. The existence of the New York corporation is the foundation of the alleged receivership proceedings, and, when it

appears that there is no such New York corporation, then it follows that there can be no receiver who can bring any suit, and it also follows that, when [the receiver] attempts to bring any action against the defendant as such receiver, the defendants, who are the appellants in this case, have the right to object that the said [receiver] is not the legally appointed receiver in this case. It is therefore plain that the order appealed from must be reversed.

*Id.* at 157, 146 S.E. at 812–13 (emphasis added); *see also id.* at 161 & n.1, 146 S.E. at 813–14 & n.1 (Cothran, J., concurring) (collecting authorities for the propositions that: (1) “[i]t is well settled as a general rule that the appointment of a receiver is an ancillary remedy in aid of the primary objection of the litigation between the parties” and (2) “[i]f the Court is without jurisdiction to appoint a receiver[,] the order is void and may be attacked or disregarded whenever it comes collaterally in question” and “may be assailed collaterally and with impunity by anybody” (quotations omitted)).

*Porter* is binding authority that conclusively establishes the circuit court’s reliance on “misnomer” to transform Cape PLC (a Jersey entity) into CIHL (a separate UK entity) is impermissible because the initial creation of a receivership over Cape PLC was a “fatal mistake.” *Porter*, 149 S.C. 151, 146 S.E. at 812. The receivership over Cape PLC is void and uncorrectable pursuant to *Porter*, and thus, the subsequent creation of a receivership over CIHL means that by definition, the December 6 Order “granted” a new receivership over CIHL, which is immediately appealable under *Porter* and subsection 14-3-330(4). Critically, CIHL was not named in the original appointment order, Cape PLC and CIHL were separately named defendants in *Park* where the original receivership over Cape PLC was sought and created (meaning the misnomer doctrine cannot apply because the *Park* plaintiffs *intentionally* sued them as two separate entities), and Cape PLC and CIHL were incorporated in different foreign jurisdictions over one-hundred years apart. At a bare minimum, this Court must adjudicate this hotly contested jurisdictional dispute

after full merits briefing—an outcome Respondent clearly seeks to avoid as reflected in the two-page motion that addresses none of the factual or legal issues necessary to resolve this dispositive jurisdictional point.

The import and validation of the errors in the case at hand and as fully detailed in the Sparrows Appellants’ Initial Brief—and further given the binding precedent of the Supreme Court in *Porter*—in conjunction with the actual effect of the circuit court’s finding that one receivership could cover two active, distinct entities, one over which a receivership was never sought, renders the circuit court’s December 6 Order immediately appealable. *See* S.C. Code Ann. § 14-3-330(4).

## **II. Only the facts of this case can be relied upon to determine appealability.**

The Motion to Dismiss improperly relies on procedural orders filed in other matters to ask this Court to summarily rule that this appeal is without merit and the December 6 Order is not immediately appealable. South Carolina law is clear that issues of appealability are determined “case-by-case.” *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015) (“By its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis.”). Accordingly, the facts set forth in Section I of this Return determine why the December 6 Order is appealable. Yet, Respondent posits orders in other appellate cases are determinative here due to the fact they are “identical to this appeal.” As set forth above, such a claim is wrong on its face. And, an error in the December 6 Order cannot be the basis to find that this case is similar to the others. At the most basic level, even if those orders are relevant here (which they are not) *none* of those appeals dealt with an order in which the circuit court **granted a new receivership**. Similarly, *none* of those appeals were as to circuit court orders that included inextricably linked issues as to personal jurisdiction over alleged affiliates targeted by the entity in receivership under non-traditional bases for exercising specific jurisdiction over

entities with no connection with, or contacts to, South Carolina. These jurisdictional issues are foundational, touch nearly everything currently before this Court, and further distinguish the circumstances relevant to the requisite “case-by-case” appealability inquiry to be conducted here.

**a. The Supreme Court’s March 2024 *Payne & Keller* order is not dispositive.**

On January 2, 2024, in *Childers v. Davis Mechanical Contractors, Inc., et al.* (hereinafter “*Payne & Keller*”), a number of third-party-defendant insurers filed a motion for certification of their appeal to the South Carolina Supreme Court. See C-Track entry dated January 3, 2024 in Appellate Case No. 2023-000727. That motion sought to certify an issue as to whether a continued receivership over *Payne & Keller* was appropriate in light of this Court’s denial of a motion to dissolve. By signed order, the Supreme Court decided the issue, stating nothing more than:

Appellant AIG Property Casualty Company (AIG) has filed a motion for certification of Appellate Case No. 2023-000727 pursuant to Rule 204(b), SCACR. Appellant Travelers Casualty and Surety Company has filed a motion joining AIG’s motion for certification.

We grant the motion for certification and motion for joinder, dispense with further briefing, vacate the court of appeals denial of sanctions, and dismiss the appeal because the underlying circuit court order at issue is not immediately appealable.

*Payne & Keller*, S.C. Sup. Ct. Order, dated March 27, 2024 (Appellate Case No. 2024-000005).

The Supreme Court’s *Payne & Keller* order has *no* bearing on the appealability of the order in this case because of the stark factual distinctions between the receivership at issue there and the receivership in this matter. Review of the motion to certify filed in that case reveals issues of: (1) a receivership over a dissolved corporation resurrected by the circuit court in a foreign jurisdiction; and (2) issues relating to insurance coverage of an entity placed into a receivership. As may be evident from the factual recitation above—and as set forth more fully in the Sparrows Appellants’



February 22, 2024 Initial Brief—there is *zero* congruency between the facts in *Payne & Keller* and the facts in this case. Since appealability is determined case-by-case, blind reliance on a Supreme Court order in a case as factually distinct as this one would be wholly inappropriate.

More specifically, in *Payne & Keller*, the insurer third-party defendants sought appellate review of this Court’s applicable ruling denying the receivership dissolution relief sought. In response to the Court of Appeals’ inquiry into appealability, a number of the insurers explained how the circuit court order fit within S.C. Code Ann. § 14-3-330(4), under the specific facts and procedural posture in that case, by arguing: (1) a denial of a motion to dissolve in effect and as a direct consequence thereof necessarily *continues* a receivership and (2) by permitting the Receiver to act outside of his appointment mandate—to “take any and all steps necessary to protect the interests of Payne & Keller whatever they may be”—through pursuit of a revocation of Payne & Keller’s Texas termination, this Court in effect and as a direct consequence thereof necessarily *modified* the receivership. See Response to Court’s Appealability Inquiry of AIG et al., dated May 15, 2023, at 9–10 (Appellate Case No. 2023-000727); Travelers’ Response Regarding Appealability, dated May 15, 2023, at 5–7 (Appellate Case No. 2023-000727).

Here, the appealability inquiry as to this Court’s December 6 Order denying the Sparrows Defendants’ Motion to Dissolve is fundamentally and factually different, as the relevant issue at hand concerns the circuit court’s *grant* of an entirely new receivership (in *Tibbs*) over a legal entity (CIHL) separate and distinct from Cape PLC named in the court’s underlying Order of Appointment (in *Park*).<sup>9</sup> See (**App. 418-421, 362**). By *granting* an entirely new receivership,

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<sup>9</sup> As referenced above, Cape PLC and CIHL were separately named defendants in *Park*; however, the *Park* Order of Appointment only named and identified Cape PLC. Subsequently, in its December 6 Order in *Tibbs*, the Court has now identified CIHL as the entity over which the Receiver has been appointed.

misconstruing the inapplicable doctrine of “misnomer,” and ignoring South Carolina binding precedent, including as stated in *Porter* (discussed above), the Court in fact also *modified* and *continued* a receivership. See (**App. 418-421, 362**). This is especially clear given that the circuit court’s December 6 Order was issued following briefing by the Receiver expressly requesting amendment and modification to the underlying Order of Appointment. See, e.g., Third-Party Plaintiff’s Omnibus Opposition to Motions to Dissolve, filed October 18, 2023, at p.17, n.13 (“The Court can simply amend the Appointment Order to clarify . . . if the Court finds that appropriate.”); (**App. 445**); *id.* at p.20, n.15 (“The Receiver would have no objection to the Court’s amendment of the Appointment Order to identify Cape Intermediate Holdings Ltd., if the Court finds that appropriate. See, e.g., *Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 (“If it later appears that the true name of the corporation is different . . . , the misnomer is properly a subject of amendment.”); S.C. Code § 33-14-320(c) (permitting amendment of appointment order).”); (**App. 448**).

Moreover, the South Carolina Appellate Court Rules make clear this Supreme Court Order opinion is not precedent and is not to be relied on in the way Respondent presents it. Rule 220(a) provides: “The appellate court shall make its decisions in writing by published opinions or memorandum opinions, with any concurring or dissenting opinions attached.” Clearly, that has not occurred here. Additionally, Rule 220(b) requires that “[i]n every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court’s decision, be preserved in the record of the case.”<sup>10</sup> Likewise, that too has not occurred, including because no authority has been cited and no explanation has been provided.

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<sup>10</sup> Rule 220(b), SCACR, has exceptions that either (i) do not apply or (ii) reinforce that this South Carolina Supreme Court Order has no precedential value:

With the nuanced facts of an entirely different receivership, parties, circumstances, circuit court order, appellate procedure, briefing, and other significant substantive differences, a three-sentence Order—devoid of explanation and citation—cannot have bearing on the issues in this case.<sup>11</sup> Respectfully, the December 6 Order is appealable pursuant to S.C. Code Ann. § 14-3-330(4) and is untied to the non-precedential procedural orders in the distinguishable *Payne & Keller* case.

**b. The April 2024 Orders in *Welch*, *Mitchell*, and *Link* are likewise inapplicable to the appealability determination here.**

On April 12, 2024, this Court issued three Orders denying appeals brought pursuant to subsection 14-3-330(4) of the South Carolina Code, finding each not immediately appealable. *See Mitchell*, Appellate Case No. 2024-000341; *Link & Donaghy*, Appellate Case No. 2024-000342;

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This rule does not apply to the following:

(1) The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, *the Supreme Court determines that a published opinion would have no precedential value* and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which are or are not clearly erroneous; (B) that the evidence to support a jury verdict is or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears.

Rule 220(b)(1) (emphasis added).

<sup>11</sup> The same is true with respect to the South Carolina Supreme Court’s April 17, 2024, Order denying the insurers’ petition for rehearing of the Supreme Court’s earlier March 27, 2024 Order, in which the basis for the denial was simply that, per Rule 221(a), SCACR, “Appellants have failed to show this Court overlooked or misapprehended any point in the order.” *Payne & Keller*, S.C. Sup. Ct. Order, dated April 17, 2024 (Appellate Case Nos. 2024-000005 and 2023-000727).

and *Welch*, Appellate Case No. 2024-000337. Two of those appeals (*Welch* and *Mitchell*) were brought by *insurers* under the same or similar *Payne & Keller* argument that by denying a motion to dissolve a receivership, the circuit court in effect and as a direct consequence thereof necessarily *continued* the receivership. See Travelers’ Response Regarding Appealability in both *Mitchell* and *Welch*, each dated March 25, 2024, at 6–9 (Appellate Case Nos. 2024-000341 & 2024-000341).

The *Link & Donaghy* appealability argument—while flowing from the circuit court’s order denying the Receiver’s motion to terminate representation of the active-and-solvent-entity-in-receivership’s counsel of choice and directing such client-engaged counsel to cooperate with the Receiver—stems from the same basis, *i.e.*, that the effect of such ruling was to *continue* the underlying receivership. See Appellants’ Memorandum on Appealability in *Link & Donaghy*, dated March 25, 2024, at 6 (Appellate Case No. 2024-000342).

For the same reasons that the Supreme Court’s order cannot determine appealability, these Orders—which *do not* address appealability of a circuit court granting a new receivership following an earlier appointment in a separate tort case—*cannot* be summarily dispositive of the issues posited in the Sparrows Appellants’ Initial Brief, which was submitted based on separate, distinct, distinguishable, and nuanced facts with respect to entirely different receiverships pertaining to unrelated parties, discrete circumstances, and a unique circuit court order, among other dissimilarities. Without in-depth exploration of the issues implicated in the December 6 Order—as the Motion to Dismiss clearly seeks—this appeal should not be dismissed.

**c. The findings on personal jurisdiction in the December 6 Order are properly before this Court.**

The issue of personal jurisdiction is inextricably intertwined with the propriety of the receivership. Attempting to enforce a South Carolina receivership statute against an active, solvent foreign entities over which the court has no personal jurisdiction—in order to seize foreign

assets—violates the Due Process Clause of the United States Constitution. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–92, 611 S.E.2d 505, 508 (2005). “Although a pre-trial motion to dismiss based on lack of personal jurisdiction is not usually immediately appealable, it can be considered when other appealable issues are presented to an appellate court.” *QZO, Inc. v. Moyer*, 358 S.C. 246, 252, 594 S.E.2d 541, 545 (Ct. App. 2004). Stated differently, “an order that is not directly appealable will be considered if there is an appealable issue before the court.” *Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001). This has long been a part of South Carolina law. These are clearly established tenets of the appealability of orders in South Carolina law.

Accordingly, the key inquiry whether the personal jurisdiction issues were presented with another issue that is immediately appealable under South Carolina law. As set forth above, the December 6 Order’s granting, continuation, and modification of the “Cape PLC” Receivership is immediately appealable pursuant to the facts of this case, the nature of the order, and subsection 14-3-330(4) of the South Carolina Code. And, while not normally appealable at this stage of litigation, the circuit court’s findings are so egregious that judicial economy warrants resolution of all of these issues at this time. Accordingly, this Court should find that portion of the December 6 Order addressing personal jurisdiction is immediately appealable. The circuit court did not conduct a proper analysis of any personal jurisdiction issues raised by the Sparrows Appellants below, ignored the abandonment of arguments by Respondent, and found in a cursory and conclusory manner personal jurisdiction existed using a novel theory incorrectly applied to these Sparrows Appellants.<sup>12</sup>

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<sup>12</sup> These issues are fully and extensively briefed in Sparrows Appellants’ February 22, 2024 Initial Brief.

Accordingly, the personal jurisdiction findings in the December 6 Order are likewise, properly before this Court.

### **CONCLUSION**

With only two pages of superficial statements and citation to zero published opinions, Respondent has moved to dismiss this legitimate appeal rather than address the Sparrows Appellants' valid merits-based arguments as to the multiple errors in the circuit court's December 6 Order and the constitutional violations intertwined therewith. As set forth herein, the issues as to the "Cape PLC" Receivership are immediately appealable under subsection 14-3-330(4) of the South Carolina Code. The procedural orders in other cases are clearly not dispositive of this issue, and Respondent has not provided any analysis other than conclusory presentation of unrelated orders and a request to dismiss. *See* Rule 240(c)(2) ("Each motion or petition shall include the following . . . (2) A memorandum with *citation of authorities* in support of the motion." (emphasis added)). As addressed above, the "Packet of Orders" offered by the Receiver do not address or relate to the reasons that the December 6 Order is appealable here. And, because of that, issues as to personal jurisdiction—addressed in the December 6 Order on appeal—are properly before this Court and should be reviewed at this time.

Accordingly, Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC respectfully request this Court deny Respondent's Motion to Dismiss Interlocutory Appeals.<sup>13</sup>

---

<sup>13</sup> Per Rules 240 and 208(b)(6), SCACR, the Sparrows Appellants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by similarly situated Appellants Mohed Altrad, Altrad Investment Authority S.A.S., ESAB Corporation, Charter Consolidated Ltd., and Central Mining & Investment Corporation Ltd.

Respectfully submitted,

*/s Steven J. Pugh*

---

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Carmen V. Ganjehsani (S.C. Bar No. 73515)

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LLC, HAWK BIDCO (US) INC., AND SPARROWS  
OFFSHORE, LLC**

Date: May 6, 2024

**May 06 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, Circuit Court Judge

Civil Action No. 2023-CP-40-01759  
Appellate Case No. 2023-002007

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; Zurn Industries, LLC.....**DEFENDANTS,**

and

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) LLC, Charter Consolidated Ltd., ESAB Corporation, Central Mining & Investment Corporation Ltd., Cape Holdco Ltd., The Law Debenture Corporation PLC, Cape Industrial Services Group Ltd., Mohed Altrad, Altrad UK Ltd., Cape UK Holdings Newco Ltd., Altrad Services, Ltd., f/k/a Cape Industrial Services Ltd., Altrad Investment Authority S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC.....**THIRD-PARTY DEFENDANTS,**

Of which ArranCo US, LLC, Hawk Bidco US Inc., and Sparrows Offshore, LLC are the.....**APPELLANTS.**

---

## APPENDIX

---

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Carmen V. Ganjehsani (S.C. Bar No. 73515)  
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LLC, HAWK BIDCO (US) INC., AND SPARROWS  
OFFSHORE, LLC**

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STATE OF SOUTH CAROLINA        )  
                                                        )  
COUNTY OF RICHLAND             ) FOR THE FIFTH JUDICIAL CIRCUIT

|                                          |   |                                     |
|------------------------------------------|---|-------------------------------------|
| KEITH W. PARK, individually and as the   | ) | C/A NO. 2021-CP-40-02727            |
| Personal Representative of the Estate of | ) |                                     |
| ISABELLA PARK,                           | ) |                                     |
|                                          | ) |                                     |
| Plaintiff,                               | ) | In Re:                              |
| v.                                       | ) | Asbestos Personal Injury Litigation |
|                                          | ) | Coordinated Docket                  |

ARMSTRONG INTERNATIONAL, INC.

3M COMPANY

4520 CORP., INC.

BECON CONSTRUCTION COMPANY, INC.

BW/IP INC.

CAPE INTERMEDIATE HOLDINGS  
LIMITED

CAPE PLC

CARBOLINE COMPANY

CARRIER CORPORATION

CELANESE CORPORATION

CLARK-RELIANCE CORPORATION,

CNA HOLDINGS LLC

COVIL CORPORATION

CRANE CO.

CRANE INSTRUMENTATION &  
SAMPLING, INC.

DANA COMPANIES LLC,

**FIRST AMENDED SUMMONS**

DANIEL INTERNATIONAL CORPORATION )  
 )  
 ECODYNE CORPORATION )  
 )  
 FISHER CONTROLS INTERNATIONAL, )  
 LLC )  
 )  
 FLOWSERVE CORPORATION, )  
 )  
 FLUOR CONSTRUCTORS )  
 INTERNATIONAL, )  
 )  
 FLUOR CONSTRUCTORS )  
 INTERNATIONAL, INC. )  
 )  
 FLUOR DANIEL SERVICES CORPORATION )  
 )  
 FLUOR ENTERPRISES, INC. )  
 )  
 FMC CORPORATION )  
 )  
 FOSTER WHEELER ENERGY )  
 CORPORATION )  
 )  
 GARDNER DENVER, INC. )  
 )  
 GENERAL ELECTRIC COMPANY )  
 )  
 THE GOODYEAR TIRE & RUBBER )  
 COMPANY )  
 )  
 GOULDS PUMPS, INCORPORATED )  
 )  
 GREAT BARRIER INSULATION CO. )  
 )  
 GRINNELL LLC )  
 )  
 HENRY PRATT COMPANY, LLC )  
 )  
 HOK GROUP, INC. )  
 )  
 METROPOLITAN LIFE INSURANCE )  
 COMPANY )  
 )  
 RILEY POWER INC., )  
 )

|                                   |   |
|-----------------------------------|---|
| ROBERTSHAW CONTROLS CO.           | ) |
|                                   | ) |
| RUST ENGINEERING & CONSTRUCTION   | ) |
| INC.                              | ) |
|                                   | ) |
| RUST INTERNATIONAL INC.           | ) |
|                                   | ) |
| SCHNEIDER ELECTRIC SYSTEMS USA,   | ) |
| INC.                              | ) |
|                                   | ) |
| SOUTHERN INSULATION, INC.         | ) |
|                                   | ) |
| SPIRAX SARCO, INC.                | ) |
|                                   | ) |
| SPX COOLING TECHNOLOGIES, INC.    | ) |
|                                   | ) |
| STARR DAVIS COMPANY, INC.         | ) |
|                                   | ) |
| STARR DAVIS COMPANY OF S.C., INC. | ) |
|                                   | ) |
| STERLING FLUID SYSTEMS (USA), LLC | ) |
|                                   | ) |
| UNION CARBIDE CORPORATION         | ) |
|                                   | ) |
| VISTRA CORP.                      | ) |
|                                   | ) |
| VISTRA INTERMEDIATE COMPANY LLC   | ) |
|                                   | ) |
| THE WILLIAM POWELL COMPANY        | ) |
|                                   | ) |
| YORK INTERNATIONAL CORPORATION    | ) |
|                                   | ) |
| ZURN INDUSTRIES, LLC              | ) |
|                                   | ) |
| Defendants.                       | ) |
|                                   | ) |

---

**FIRST AMENDED SUMMONS**

TO DEFENDANTS ABOVE-NAMED:

[ THIS SPACE IS INTENTIONALLY LEFT BLANK ]

YOU ARE HEREBY SUMMONED and required to answer the First Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the Plaintiff's counsel, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

/s/ Theile B. McVey

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Jamie D. Rutkoski (SC Bar No. 103270)

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**ATTORNEYS FOR PLAINTIFFS**

November 5, 2021  
Columbia, South Carolina.

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

**KEITH W. PARK**, individually and as the  
Personal Representative of the Estate of  
**ISABELLA PARK**,

Plaintiff,

v.

**ARMSTRONG INTERNATIONAL, INC.**

**3M COMPANY**

f/k/a MINNESOTA MINING AND  
MANUFACTURING COMPANY

**4520 CORP., INC.**

individually and as successor-in-interest to  
**BENJAMIN F. SHAW COMPANY**

**BECON CONSTRUCTION COMPANY,  
INC.**

**BW/IP INC.**

and its wholly-owned subsidiaries

**CAPE INTERMEDIATE HOLDINGS  
LIMITED**

f/k/a CAPE INTERMEDIATE HOLDINGS  
PLC, individually and as successor-in-interest to  
**CAPE ASBESTOS COMPANY**

**CAPE PLC**

individually and as successor-in-interest to  
**CAPE ASBESTOS COMPANY**

**CARBOLINE COMPANY**

**CARRIER CORPORATION**

**CELANESE CORPORATION**

**CLARK-RELIANCE CORPORATION**

and its JERGUSON GAGE & VALVE division  
and its JACOBY-TARBOX division

**C/A NO. 2021-CP-40-02727**

In Re:

Asbestos Personal Injury Litigation  
Coordinated Docket

Mesothelioma

Wrongful Death and Survival Action

**FIRST AMENDED  
COMPLAINT**

(Jury Trial Demanded)

)  
**CNA HOLDINGS LLC** )  
 f/k/a CELANESE CORPORATION f/k/a )  
 HOECHST CELANESE CORPORATION, sued )  
 individually and as successor in-interest-to )  
 FIBER INDUSTRIES, INC. )  
 )  
**COVIL CORPORATION** )  
 )  
**CRANE CO.** )  
 )  
**CRANE INSTRUMENTATION &** )  
**SAMPLING, INC.** )  
 f/k/a CIRCOR INSTRUMENTATION )  
 TECHNOLOGIES, INC. f/k/a HOKE INC. )  
 )  
**DANA COMPANIES, LLC** )  
 successor-by-merger to DANA )  
 CORPORATION )  
 )  
**DANIEL INTERNATIONAL** )  
**CORPORATION** )  
 )  
**ECODYNE CORPORATION** )  
 )  
**FISHER CONTROLS INTERNATIONAL,** )  
**LLC** )  
 )  
**FLOWSERVE CORPORATION** )  
 f/k/a THE DURIRON COMPANY INC. )  
 )  
**FLUOR CONSTRUCTORS** )  
**INTERNATIONAL** )  
 f/k/a FLUOR CORPORATION )  
 )  
**FLUOR CONSTRUCTORS** )  
**INTERNATIONAL, INC.** )  
 )  
**FLUOR DANIEL SERVICES** )  
**CORPORATION** )  
 )  
**FLUOR ENTERPRISES, INC.** )  
 )  
**FMC CORPORATION** )  
 on behalf of its former Peerless Pump business )  
 )  
 )



**FOSTER WHEELER ENERGY CORPORATION** )  
 )  
**GARDNER DENVER, INC.** )  
 )  
**GENERAL ELECTRIC COMPANY** )  
 )  
**THE GOODYEAR TIRE & RUBBER COMPANY** )  
 )  
**GOULDS PUMPS, INCORPORATED** )  
 )  
**GREAT BARRIER INSULATION CO.** )  
 )  
**GRINNELL LLC** )  
 d/b/a GRINNELL CORPORATION )  
 )  
**HENRY PRATT COMPANY, LLC** )  
 a subsidiary of MUELLER CO. LLC )  
 )  
**HOK GROUP, INC.** )  
 f/k/a HELLMUTH, OBATA AND )  
 KASSABAUM, INC., individually and as )  
 successor-in-interest to CRS SIRRINE, as )  
 successor-in-interest to J.E. SIRRINE )  
 )  
**METROPOLITAN LIFE INSURANCE COMPANY** )  
 a wholly-owned subsidiary of METLIFE INC. )  
 )  
**RILEY POWER INC.** )  
 f/k/a RILEY STOKER CORPORATION and )  
 D.B. RILEY, INC. )  
 )  
**ROBERTSHAW CONTROLS COMPANY** )  
 )  
**RUST ENGINEERING & CONSTRUCTION INC.** )  
 individually and as successor-in-interest to )  
 SIRRINE ENVIRONMENTAL )  
 CONSULTANTS, INC. )  
 )  
**RUST INTERNATIONAL INC.** )  
 individually and as successor-in-interest to )  
 SIRRINE ENVIRONMENTAL )  
 CONSULTANTS, INC. )  
 )

|                                              |   |
|----------------------------------------------|---|
| <b>SCHNEIDER ELECTRIC SYSTEMS USA, INC.</b>  | ) |
| f/k/a INVENSYS SYSTEMS, INC.                 | ) |
| <b>SOUTHERN INSULATION, INC.</b>             | ) |
| <b>SPIRAX SARCO, INC.</b>                    | ) |
| <b>SPX COOLING TECHNOLOGIES, INC.</b>        | ) |
| individually and as successor-in-interest to | ) |
| MARLEY COOLING TOWERS CO.                    | ) |
| <b>STARR DAVIS COMPANY, INC.</b>             | ) |
| <b>STARR DAVIS COMPANY OF S.C., INC.</b>     | ) |
| <b>STERLING FLUID SYSTEMS (USA), LLC</b>     | ) |
| <b>UNION CARBIDE CORPORATION</b>             | ) |
| <b>VISTRA CORP.</b>                          | ) |
| f/k/a VISTRA ENERGY CORP., individually      | ) |
| and as successor-in-interest to CRS SIRRINE  | ) |
| a/k/a CRSS, as successor-in-interest to J.E. | ) |
| SIRRINE                                      | ) |
| <b>VISTRA INTERMEDIATE COMPANY LLC</b>       | ) |
| individually and as successor-in-interest to | ) |
| CRSS INC.                                    | ) |
| <b>THE WILLIAM POWELL COMPANY</b>            | ) |
| <b>YORK INTERNATIONAL CORPORATION</b>        | ) |
| <b>ZURN INDUSTRIES, LLC</b>                  | ) |
| individually and as successor-in-interest to | ) |
| ZURN INDUSTRIES, INC.                        | ) |
| Defendants.                                  | ) |

---

## **PLAINTIFF'S COMPLAINT**

NOW COMES Plaintiff, KEITH W. PARK, individually, and as Personal Representative of the Estate of ISABELLA PARK (hereinafter "Plaintiff"), citizen and resident of the State of South Carolina, and sues the named Defendants for compensatory and punitive damages, by and through his attorneys, and comes before this court and alleges as follows:

### **GENERAL ALLEGATIONS**

1. This action is brought pursuant to the Wrongful Death Act, S.C. Gen. Stat. 15-51-10 *et seq.*, for the wrongful death of the Decedent, ISABELLA PARK, on behalf of all persons entitled to recover damages.

2. Plaintiff Isabella Park was diagnosed with mesothelioma caused by exposure to asbestos dust and fibers. This exposure occurred as a result of her husband's work with and around asbestos-containing products, which caused asbestos containing dust to cover his clothing, vehicle and body, which he brought home to Decedent, who was then exposed to said asbestos dust and fibers.

3. This Court has personal jurisdiction over Defendants because Plaintiff's claims arise from Defendants, or their predecessors in interest, conduct in:

- (a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;
- (b) Contracting to supply services or things in the State;
- (c) Commission of a tortious act in whole or in part in this State;
- (d) Having an interest in, using, or possessing real property in this State; and/or
- (e) Entering into a contract to be performed in whole or in part by either party in this State.

4. Each Defendant, or its predecessors in interest, that manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in South Carolina at times relevant to this action are referred to herein as “Product Defendants.” At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale and distribution of asbestos-containing products and raw materials.

5. Each Defendant, or its predecessors in interest, that owned and/or controlled the work sites where Decedent Isabella Park’s husband, Andrew Park, experienced occupational exposure as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment in his immediate vicinity are referred to herein as the “Premises Defendants.” At all times relevant to this action:

- (a) the Premises Defendants owned the property and approved the use of asbestos-containing materials on its premises.
- (b) the Premises Defendants invited the Decedent Isabella Park’s husband, Andrew Park, as a group leader and senior process engineer on to Defendant’s premises to perform construction work for Defendant’s benefit. Decedent’s husband was an invitee who had express permission to enter Defendant’s premises for the purpose of benefitting the owner (Defendant).
- (c) the Premises Defendants owed a duty of due care to discover risks and take safety precautions to warn of and eliminate unreasonable risks.
- (d) the Premises Defendants’ failure to warn of or eliminate the unreasonable risks associated with working on or around asbestos-containing materials on Defendants’ premises was a substantial factor contributing to cause Decedent Isabella Park’s mesothelioma.

6. Each Defendant, or its predecessors in interest, that provided labor, materials, goods, and/or services as architects, consultants, engineers, draftsmen, technicians, surveyors, or otherwise in connection with the design and/or repairs at the work sites where Decedent Isabella Park experienced occupational exposure as a result of working with and around others working

with asbestos and/or asbestos-containing products, materials, or equipment, are referred to herein as the “Design Defendants.”

7. Plaintiff’s claims against the Product Defendants, as defined herein, arise out of Defendants’ purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

8. Plaintiff’s claims against the Premises Defendants, as defined herein, arise out of Defendants’ ownership and/or control of real property located in South Carolina and the purchase and use of asbestos-containing products on their premises located in South Carolina, with which Decedent’s husband, Andrew Park (deceased), worked, and as a result was exposed to asbestos, which he brought home to Decedent and exposed her to asbestos.

9. Plaintiff’s claims against the Design Defendants, as defined herein, arise out of Defendants’, and/or Defendants’ employees’, direct and/or indirect purchase and use of asbestos and/or asbestos-containing products, materials, or equipment at the various industrial sites located in South Carolina where Decedent’s husband, Andrew Park, experienced occupational exposure to lethal doses of asbestos, which he brought home to Decedent and exposed her to asbestos, as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment.

10. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Decedent to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

11. Decedent Isabella Park was exposed to asbestos through asbestos dust and fibers brought home on her husband's work clothes, from asbestos dust in his vehicle and asbestos dust on his body including his hair, and from the dust being distributed and re-entrained in their home. Her exposure to asbestos dust and fibers occurred through her contact with her husband's work clothing and person when greeting him at the end of his workday, through laundering his work clothing on a regular basis, through spending time in his vehicle in which asbestos dust and fibers had been deposited, and through sharing a home contaminated with asbestos fibers that were constantly being stirred up and re-entrained in the air that they breathed throughout their home.

12. Decedent's cumulative exposure to asbestos as a result of acts and omissions of Defendants and/or their defective products, individually and together, was a substantial factor in causing Decedent Isabella Park's mesothelioma and other related injuries and subsequent death and therefore under South Carolina law, is the legal cause of Decedent's injuries and damages.

13. Neither Decedent Isabella Park, nor her late husband, were aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

14. Decedent's husband Andrew Park worked with, or in close proximity to others who worked with, asbestos-containing materials including but not limited to asbestos-containing products and other asbestos-containing materials manufactured and/or sold by the Product Defendants and used on property owned and controlled by the Premises Defendants. Decedent's husband Andrew Park brought this asbestos home with him, which caused Decedent to be exposed to asbestos.

15. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an "alternate entity" as hereinafter defined. Defendants are liable for the acts of their "alternate entity" and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other

acquisition resulting in a virtual destruction of Plaintiff's remedies against each such "alternate entity"; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"; such "alternate entities" have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiff's remedies against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

| DEFENDANT                              | ALTERNATE ENTITY                                                                                                       |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| 3M COMPANY                             | f/k/a MINNESOTA MINING AND MANUFACTURING COMPANY                                                                       |
| 4520 CORP., INC.                       | as successor-in-interest to BENJAMIN F. SHAW COMPANY                                                                   |
| BW/IP INC.                             | and its wholly-owned subsidiaries                                                                                      |
| CAPE INTERMEDIATE HOLDINGS LIMITED     | f/k/a CAPE INTERMEDIATE HOLDINGS PLC<br>as successor-in-interest to CAPE ASBESTOS COMPANY                              |
| CAPE PLC                               | as successor-in-interest to CAPE ASBESTOS COMPANY                                                                      |
| CLARK-RELIANCE COPORATION              | and its JERGUSON GAGE & VALVE division<br>and its JACOBY-TARBOX division                                               |
| CNA HOLDINGS LLC                       | f/k/a CELANESE CORPORATION<br>f/k/a HOECHST CELANESE CORPORATION<br>as successor in-interest-to FIBER INDUSTRIES, INC. |
| CRANE INSTRUMENTATION & SAMPLING, INC. | f/k/a CIRCOR INSTRUMENTATION TECHNOLOGIES, INC. f/k/a HOKE INC.                                                        |
| DANA COMPANIES, LLC                    | successor-by-merger to DANA CORPORATION                                                                                |

| DEFENDANT                            | ALTERNATE ENTITY                                                                                                                 |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| FLOWERVE CORPORATION                 | f/k/a THE DURIRON COMPANY INC.                                                                                                   |
| FLUOR CONSTRUCTORS INTERNATIONAL     | f/k/a FLUOR CORPORATION                                                                                                          |
| FMC CORPORATION                      | on behalf of its former Peerless Pump business                                                                                   |
| GRINNELL LLC                         | d/b/a GRINNELL CORPORATION                                                                                                       |
| HENRY PRATT COMPANY, LLC             | a subsidiary of MUELLER CO. LLC                                                                                                  |
| HOK GROUP, INC.                      | f/k/a HELLMUTH, OBATA AND KASSABAUM, INC.<br>as successor-in-interest to CRS SIRRINE<br>as successor-in-interest to J.E. SIRRINE |
| METROPOLITAN LIFE INSURANCE COMPANY  | a wholly-owned subsidiary of METLIFE INC.                                                                                        |
| RILEY POWER INC.                     | f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC.                                                                              |
| RUST ENGINEERING & CONSTRUCTION INC. | as successor-in-interest to SIRRINE ENVIRONMENTAL CONSULTANTS, INC.                                                              |
| RUST INTERNATIONAL INC.              | as successor-in-interest to SIRRINE ENVIRONMENTAL CONSULTANTS, INC.                                                              |
| SCHNEIDER ELECTRIC SYSTEMS USA, INC. | f/k/a INVENSYS SYSTEMS, INC.                                                                                                     |
| SPX COOLING TECHNOLOGIES, INC.       | as successor-in-interest to MARLEY COOLING TOWERS CO.                                                                            |
| VISTRA CORP.                         | f/k/a VISTRA ENERGY CORP.<br>as successor-in-interest to CRS SIRRINE a/k/a CRSS, as successor-in-interest to J.E. SIRRINE        |
| VISTRA INTERMEDIATE COMPANY LLC      | as successor-in-interest to CRSS INC.                                                                                            |
| ZURN INDUSTRIES, LLC                 | as successor-in-interest to ZURN INDUSTRIES, INC.                                                                                |



16. Plaintiff has been informed and believes, and thereon alleges, that at all times herein mentioned, Defendants or their “alternate entities” were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

17. Plaintiff has been informed and believes, and thereon alleges, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

18. As a direct and proximate result of the conduct as alleged within, Decedent Isabella Park suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to her damage in the sum of the amount as the trier of fact determines is proper.

19. As a direct and proximate result of the conduct as hereinafter alleged, Decedent Isabella Park incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court and all parties accordingly when the true and exact cost of Decedent’s medical treatment is ascertained.

### **THE PARTIES**

20. Plaintiff Keith W. Park is a current resident of the State of South Carolina. Decedent Isabella Park was exposed to asbestos as a result of her husband Andrew Park’s career

at various job sites, including but not limited to, locations in South Carolina. Decedent was exposed to asbestos through asbestos dust and fibers taken home on her husband, from asbestos dust in his vehicle, asbestos dust on his body including his hair, and from the dust being distributed and re-entrained.

21. Defendant, **ARMSTRONG INTERNATIONAL, INC.**, was and is a Michigan corporation with its principal place of business in Michigan. At all times material hereto, ARMSTRONG INTERNATIONAL, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Armstrong steam traps. ARMSTRONG INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiff's claims against ARMSTRONG INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

22. Defendant, **3M COMPANY**, f/k/a MINNESOTA MINING AND MANUFACTURING COMPANY, was and is a Delaware corporation with its principal place of business in Minnesota. At all times material hereto, 3M COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, 3M masks, 3M safety devices, and other asbestos-containing products. 3M COMPANY is sued as a Product Defendant. Plaintiff's claims against 3M COMPANY arise out of this Defendant's business activities in the State of South Carolina.

23. Defendant, **4520 CORP., INC.**, individually and as successor-in-interest to BENJAMIN F. SHAW COMPANY, was and is a Delaware corporation with its principal place of business in Oregon. At all times material hereto, 4520 CORP., INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or

retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. 4520 CORP., INC. is sued as a Product Defendant. 4520 CORP., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against 4520 CORP., INC. arise out of this Defendant's business activities in the State of South Carolina.

24. Defendant, **BECON CONSTRUCTION COMPANY, INC.**, was and is a Texas corporation with its principal place of business in Texas. At all times material hereto, BECON CONSTRUCTION COMPANY, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. BECON CONSTRUCTION COMPANY, INC. is sued as a Product Defendant. BECON CONSTRUCTION COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against BECON CONSTRUCTION COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

25. Defendant, **BW/IP INC.** and its wholly-owned subsidiaries, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, BW/IP INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing

products, materials, or equipment, including, but not limited to, asbestos-containing Byron Jackson pumps. BW/IP INC. is sued as a Product Defendant. Plaintiff's claims against BW/IP INC. arise out of this Defendant's business activities in the State of South Carolina.

26. Defendant, **CAPE INTERMEDIATE HOLDINGS LIMITED**, f/k/a CAPE INTERMEDIATE HOLDINGS PLC, individually and as successor-in-interest to CAPE ASBESTOS COMPANY, was and is a private limited company organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland, with its principal place of business in England. At all times material hereto, CAPE INTERMEDIATE HOLDINGS LIMITED mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing coatings, insulation, and refractory linings. CAPE INTERMEDIATE HOLDINGS LIMITED is sued as a Product Defendant. Plaintiff's claims against CAPE INTERMEDIATE HOLDINGS LIMITED arise out of this Defendant's business activities in the State of South Carolina.

27. Defendant, **CAPE PLC**, individually and as successor-in-interest to CAPE ASBESTOS COMPANY, was and is a private limited company organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland, with its principal place of business in England. At all times material hereto, CAPE PLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing coatings, insulation, and refractory linings. CAPE PLC is sued as a Product Defendant. Plaintiff's claims against CAPE PLC arise out of this Defendant's business activities in the State of South Carolina.

28. Defendant, **CARBOLINE COMPANY**, was and is a Delaware corporation with its principal place of business in Missouri. At all times material hereto, CARBOLINE COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing coatings. CARBOLINE COMPANY is sued as a Product Defendant. Plaintiff's claims against CARBOLINE COMPANY arise out of this Defendant's business activities in the State of South Carolina.

29. Defendant, **CARRIER CORPORATION**, was and is a Delaware corporation with its principal place of business in Florida. At all times material hereto, CARRIER CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Carrier Furnaces, Carrier air compressors and HVAC products. CARRIER CORPORATION is sued as a Product Defendant. Plaintiff's claims against CARRIER CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

30. Defendant, **CELANESE CORPORATION**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, CELANESE CORPORATION owned and/or controlled premises at which the Decedent's husband Andrew Park was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the Hoechst Celanese facility a/k/a Fiber Industries Inc. in Spartanburg, South Carolina and Greer, South Carolina. CELANESE CORPORATION is sued as a Premises Defendant. Plaintiff's claims against CELANESE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

31. Defendant, **CLARK-RELIANCE CORPORATION**, and its JERGUSON GAGE & VALVE division and its JACOBY-TARBOX division, was and is a Delaware corporation with its principal place of business in Ohio. At all times material hereto, CLARK-RELIANCE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Jacoby-Tarbox sight glasses and Jerguson boiler gauge glasses. CLARK-RELIANCE CORPORATION is sued as a Product Defendant. Plaintiff's claims against CLARK-RELIANCE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

32. Defendant, **CNA HOLDINGS LLC**, f/k/a CELANESE CORPORATION f/k/a HOECHST CELANESE CORPORATION, sued individually and as successor-in-interest to FIBER INDUSTRIES, INC., was and is a Delaware limited liability company with its principal place of business in Texas. At all times material hereto, CNA HOLDINGS LLC owned and/or controlled premises at which the Decedent's husband Andrew Park was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the Hoechst Celanese facility a/k/a Fiber Industries Inc. in Spartanburg, South Carolina and Greer, South Carolina. CNA HOLDINGS LLC is sued as a Premises Defendant. Plaintiff's claims against CNA HOLDINGS LLC arise out of this Defendant's business activities in the State of South Carolina.

33. Defendant, **COVIL CORPORATION**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, COVIL CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and

removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. COVIL CORPORATION is sued as a Product Defendant. COVIL CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Covil Corporation, exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against COVIL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

34. Defendant, **CRANE CO.**, was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, CRANE CO. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Crane valves and Deming pumps. CRANE CO. is sued as a Product Defendant. Plaintiff's claims against CRANE CO. arise out of this Defendant's business activities in the State of South Carolina.

35. Defendant, **CRANE INSTRUMENTATION & SAMPLING, INC.** f/k/a CIRCOR INSTRUMENTATION TECHNOLOGIES, INC. f/k/a HOKE INC., was and is a New York corporation with its principal place of business in South Carolina. At all times material hereto, CRANE INSTRUMENTATION & SAMPLING, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Hoke valves. CRANE INSTRUMENTATION & SAMPLING, INC. is sued as a Product Defendant. Plaintiff's claims against CRANE INSTRUMENTATION & SAMPLING, INC. arise out of this Defendant's business activities in the State of South Carolina.

36. Defendant, **DANA COMPANIES, LLC**, successor-by-merger to DANA CORPORATION, was and is a Virginia limited liability company with its principal place of business in Ohio. At all times material hereto, DANA COMPANIES LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Victor gaskets. DANA COMPANIES LLC is sued as a Product Defendant. Plaintiff's claims against DANA COMPANIES LLC arise out of this Defendant's business activities in the State of South Carolina.

37. Defendant, **DANIEL INTERNATIONAL CORPORATION**, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, DANIEL INTERNATIONAL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. DANIEL INTERNATIONAL CORPORATION is sued as a Product Defendant. DANIEL INTERNATIONAL CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiffs' claims against DANIEL INTERNATIONAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

38. Defendant, **ECODYNE CORPORATION**, was and is a Delaware corporation with its principal place of business in Illinois. At all times material hereto, ECODYNE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced,



repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing Foster Wheeler cooling towers. ECODYNE CORPORATION is sued as a Product Defendant. Plaintiff's claims against ECODYNE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

39. Defendant, **FISHER CONTROLS INTERNATIONAL, LLC**, was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, FISHER CONTROLS INTERNATIONAL, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Fisher valves. FISHER CONTROLS INTERNATIONAL, LLC is sued as a Product Defendant. Plaintiff's claims against FISHER CONTROLS INTERNATIONAL, LLC arise out of this Defendant's business activities in the State of South Carolina.

40. Defendant, **FLOWERVE CORPORATION**, f/k/a THE DURIRON COMPANY, INC., was and is a New York corporation with its principal place of business in Texas. At all times material hereto, FLOWERVE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Durco pumps and valves. FLOWERVE CORPORATION is sued as a Product Defendant. Plaintiff's claims against FLOWERVE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

41. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL** f/k/a/ FLUOR CORPORATION, was and is a California corporation with its principal place of business in Texas.

At all times material hereto, FLUOR CONSTRUCTORS INTERNATIONAL mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. FLUOR CONSTRUCTORS INTERNATIONAL is sued as a Product Defendant. FLUOR CONSTRUCTORS INTERNATIONAL is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against FLUOR CONSTRUCTORS INTERNATIONAL arise out of this Defendant's business activities in the State of South Carolina.

42. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR CONSTRUCTORS INTERNATIONAL, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. FLUOR CONSTRUCTORS INTERNATIONAL, INC. is sued as a Product Defendant. FLUOR CONSTRUCTORS INTERNATIONAL, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against FLUOR CONSTRUCTORS INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

43. Defendant, **FLUOR DANIEL SERVICES CORPORATION**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, **FLUOR DANIEL SERVICES CORPORATION** mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. **FLUOR DANIEL SERVICES CORPORATION** is sued as a Product Defendant. **FLUOR DANIEL SERVICES CORPORATION** is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against **FLUOR DANIEL SERVICES CORPORATION** arise out of this Defendant's business activities in the State of South Carolina.

44. Defendant, **FLUOR ENTERPRISES, INC.**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, **FLUOR ENTERPRISES, INC.** mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. **FLUOR ENTERPRISES, INC.** is sued as a Product Defendant. **FLUOR ENTERPRISES, INC.** is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against **FLUOR ENTERPRISES, INC.** arise out of this Defendant's business activities in the State of South Carolina.

45. Defendant, **FMC CORPORATION**, on behalf of its former Peerless Pump business, was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, FMC CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Peerless pumps. FMC CORPORATION is sued as a Product Defendant. Plaintiff's claims against FMC CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

46. Defendant, **FOSTER WHEELER ENERGY CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, FOSTER WHEELER ENERGY CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foster Wheeler boilers and Foster Wheeler cooling towers. FOSTER WHEELER ENERGY CORPORATION is sued as a Product Defendant. Plaintiff's claims against FOSTER WHEELER ENERGY CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

47. Defendant, **GARDNER DENVER, INC.**, was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, GARDNER DENVER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Gardner Denver pumps. GARDNER DENVER, INC. is sued as a Product Defendant. Plaintiff's claims

against GARDNER DENVER, INC. arise out of this Defendant's business activities in the State of South Carolina.

48. Defendant, **GENERAL ELECTRIC COMPANY**, was and is a New York corporation with its principal place of business in Massachusetts. At all times material hereto, GENERAL ELECTRIC COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing General Electric turbines. GENERAL ELECTRIC COMPANY is sued as a Product Defendant. Plaintiff's claims against GENERAL ELECTRIC COMPANY arise out of this Defendant's business activities in the State of South Carolina.

49. Defendant, **THE GOODYEAR TIRE & RUBBER COMPANY**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE GOODYEAR TIRE & RUBBER COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Durabla gaskets. THE GOODYEAR TIRE & RUBBER COMPANY is sued as a Product Defendant. Plaintiff's claims against THE GOODYEAR TIRE & RUBBER COMPANY arise out of this Defendant's business activities in the State of South Carolina.

50. Defendant, **GOULDS PUMPS, INCORPORATED**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, GOULDS PUMPS, INCORPORATED mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-

containing Goulds pumps. GOULDS PUMPS, INCORPORATED is sued as a Product Defendant. Plaintiff's claims against GOULDS PUMPS, INCORPORATED arise out of this Defendant's business activities in the State of South Carolina.

51. Defendant, **GREAT BARRIER INSULATION CO.**, was a Florida corporation with its principal place of business in Alabama. At all times material hereto, GREAT BARRIER INSULATION CO. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. GREAT BARRIER INSULATION CO. is sued as a Product Defendant. GREAT BARRIER INSULATION CO. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Great Barrier Insulation Co., exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against GREAT BARRIER INSULATION CO. arise out of this Defendant's business activities in the State of South Carolina.

52. Defendant, **GRINNELL LLC** d/b/a GRINNELL CORPORATION, was and is a Delaware limited liability company with its principal place of business in Florida. At all times material hereto, GRINNELL LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Grinnell boilers and valves. GRINNELL LLC is sued as a Product Defendant. Plaintiff's claims against GRINNELL LLC arise out of this Defendant's business activities in the State of South Carolina.

53. Defendant, **HENRY PRATT COMPANY, LLC**, a subsidiary of MUELLER CO. LLC, was and is a Delaware limited liability company with its principal place of business in Illinois. At all times material hereto, HENRY PRATT COMPANY, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Pratt valves and Henry Pratt steam valves. HENRY PRATT COMPANY, LLC is sued as a Product Defendant. Plaintiff's claims against HENRY PRATT COMPANY, LLC arise out of this Defendant's business activities in the State of South Carolina.

54. Defendant, **HOK GROUP, INC.**, f/k/a HELLMUTH, OBATA AND KASSABAUM, INC., individually and as successor-in-interest to CRS SIRRINE, as successor-in-interest to J.E. SIRRINE, was and is a Delaware corporation with its principal place of business in Missouri. At all times material hereto, HOK GROUP, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. HOK GROUP, INC. is sued as a Product Defendant and a Design Defendant. HOK GROUP, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against HOK GROUP, INC. arise out of this Defendant's business activities in the State of South Carolina.

55. Defendant, **METROPOLITAN LIFE INSURANCE COMPANY**, a wholly-owned subsidiary of METLIFE INC., was and is a New York corporation with its principal place of business in New York. METROPOLITAN LIFE INSURANCE COMPANY has done and does business in the State of South Carolina. METROPOLITAN LIFE INSURANCE COMPANY is named as a conspiracy defendant.

56. Defendant, **RILEY POWER INC.** f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC., was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, RILEY POWER INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Riley boilers and Union Iron Works boilers. RILEY POWER INC. is sued as a Product Defendant. Plaintiff's claims against RILEY POWER INC. arise out of this Defendant's business activities in the State of South Carolina.

57. Defendant, **ROBERTSHAW CONTROLS COMPANY**, was and is a Delaware corporation with its principal place of business in Illinois. At all times material hereto, ROBERTSHAW CONTROLS COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Fulton Sylphon valves. ROBERTSHAW CONTROLS COMPANY is sued as a Product Defendant. Plaintiff's claims against ROBERTSHAW CONTROLS COMPANY arise out of this Defendant's business activities in the State of South Carolina.

58. Defendant, **RUST ENGINEERING & CONSTRUCTION INC.**, individually and as successor-in-interest to SIRRINE ENVIRONMENTAL CONSULTANTS, INC., was and



is a Delaware corporation with its principal place of business in Texas. At all times material hereto, RUST ENGINEERING & CONSTRUCTION INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. RUST ENGINEERING & CONSTRUCTION INC. is sued as a Product Defendant and a Design Defendant. RUST ENGINEERING & CONSTRUCTION INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against RUST ENGINEERING & CONSTRUCTION INC. arise out of this Defendant's business activities in the State of South Carolina.

59. Defendant, **RUST INTERNATIONAL INC.**, individually and as successor-in-interest to SIRRINE ENVIRONMENTAL CONSULTANTS, INC., was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, RUST INTERNATIONAL INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. RUST INTERNATIONAL INC. is sued as a Product Defendant and a Design Defendant. RUST INTERNATIONAL INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people,

including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against RUST INTERNATIONAL INC. arise out of this Defendant's business activities in the State of South Carolina.

60. Defendant, **SCHNEIDER ELECTRIC SYSTEMS USA, INC.** f/k/a INVENSYS SYSTEMS, INC., was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, SCHNEIDER ELECTRIC SYSTEMS USA, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foxboro valves and Fulton Sylphon valves. SCHNEIDER ELECTRIC SYSTEMS USA, INC. is sued as a Product Defendant. Plaintiff's claims against SCHNEIDER ELECTRIC SYSTEMS USA, INC. arise out of this Defendant's business activities in the State of South Carolina.

61. Defendant, **SOUTHERN INSULATION, INC.**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, SOUTHERN INSULATION, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. SOUTHERN INSULATION, INC. is sued as a Product Defendant. SOUTHERN INSULATION, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Southern Insulation, Inc., exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against SOUTHERN INSULATION, INC. arise out of this Defendant's business activities in the State of South Carolina.

62. Defendant, **SPIRAX SARCO, INC.**, was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPIRAX SARCO, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Sarco steam traps and valves. SPIRAX SARCO, INC. is sued as a Product Defendant. Plaintiff's claims against SPIRAX SARCO, INC. arise out of this Defendant's business activities in the State of South Carolina.

63. Defendant, **SPX COOLING TECHNOLOGIES, INC.**, individually, and as successor-in-interest to MARLEY COOLING TOWERS CO., was and is a Delaware corporation with its principal place of business in Kansas. At all times material hereto, SPX COOLING TECHNOLOGIES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Marley cooling towers. SPX COOLING TECHNOLOGIES, INC. is sued as a Product Defendant. Plaintiff's claims against SPX COOLING TECHNOLOGIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

64. Defendant, **STARR DAVIS COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY, INC. is sued as a Product Defendant.

STARR DAVIS COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company Inc., exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against STARR DAVIS COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

65. Defendant, **STARR DAVIS COMPANY OF S.C., INC.**, was a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY OF S.C., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY OF S.C., INC. is sued as a Product Defendant. STARR DAVIS COMPANY OF S.C., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company of S.C. Inc., exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against STARR DAVIS COMPANY OF S.C., INC. arise out of this Defendant's business activities in the State of South Carolina.

66. Defendant, **STERLING FLUID SYSTEMS (USA), LLC**, was and is a Delaware limited liability company with its principal place of business in Indiana. At all times material hereto, STERLING FLUID SYSTEMS (USA), LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Peerless pumps. STERLING FLUID SYSTEMS (USA), LLC

is sued as a Product Defendant. Plaintiff's claims against STERLING FLUID SYSTEMS (USA), LLC arise out of this Defendant's business activities in the State of South Carolina.

67. Defendant, **UNION CARBIDE CORPORATION**, was and is a New York corporation with its principal place of business in Texas. At all times material hereto, UNION CARBIDE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing fibers. UNION CARBIDE CORPORATION is sued as a Product Defendant related to its Bakelite product(s), as well as supply of raw asbestos fiber under the product name Calidria. Plaintiff's claims against UNION CARBIDE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

68. Defendant, **VISTRA CORP.**, f/k/a VISTRA ENERGY CORP., individually and as successor-in-interest to CRS SIRRINE a/k/a CRSS, as successor-in-interest to J.E. SIRRINE, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, VISTRA CORP. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. VISTRA CORP. is sued as a Product Defendant and a Design Defendant. VISTRA CORP. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against VISTRA CORP. arise out of this Defendant's business activities in the State of South Carolina.

69. Defendant, **VISTRA INTERMEDIATE COMPANY LLC**, individually and as successor-in-interest to CRSS INC., was and is a Delaware limited liability company with its principal place of business in Texas. At all times material hereto, VISTRA INTERMEDIATE COMPANY LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. VISTRA INTERMEDIATE COMPANY LLC is sued as a Product Defendant and a Design Defendant. VISTRA INTERMEDIATE COMPANY LLC is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against VISTRA INTERMEDIATE COMPANY LLC arise out of this Defendant's business activities in the State of South Carolina.

70. Defendant, **THE WILLIAM POWELL COMPANY**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE WILLIAM POWELL COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Powell valves. THE WILLIAM POWELL COMPANY is sued as a Product Defendant. Plaintiff's claims against THE WILLIAM POWELL COMPANY arise out of this Defendant's business activities in the State of North Carolina.

71. Defendant, **YORK INTERNATIONAL CORPORATION**, was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto,

YORK INTERNATIONAL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing York compressors. YORK INTERNATIONAL CORPORATION is sued as a Product Defendant. Plaintiff's claims against YORK INTERNATIONAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

72. Defendant, **ZURN INDUSTRIES, LLC**, individually and as successor-in-interest to ZURN INDUSTRIES, INC., was and is a Delaware limited liability company with its principal place of business in Wisconsin. At all times material hereto, ZURN INDUSTRIES, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Zurn boilers, Zurn strainers, and Erie City boilers. ZURN INDUSTRIES, LLC is sued as a Product Defendant. Plaintiff's claims against ZURN INDUSTRIES, LLC arise out of this Defendant's business activities in the State of South Carolina.

73. Decedent, Isabella Park, was exposed through her husband, Andrew Park, while he worked with and around asbestos-containing equipment in his immediate vicinity at his work sites, the premises of Defendants CELANESE CORPORATION and CNA HOLDINGS LLC (collectively, hereinafter the "Premises Defendants"). All other Defendants, or their applicable predecessors in interest, (except for METROPOLITAN LIFE INSURANCE COMPANY) were engaged in the manufacture, sale, distribution and/or installation of asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action. At all times relevant to this action, the Defendants and the predecessors of the Defendants, for

whose actions the Defendants are legally responsible, were engaged in the manufacture, sale, distribution, and/or installation of asbestos-containing products and raw materials for use in South Carolina and other states at times relevant to this action.

### **BACKGROUND FACTS**

74. Plaintiff Keith W. Park brings this action for monetary damages as a result of Decedent Isabella Park contracting an asbestos-related disease and subsequently dying as a result.

75. On or about January 25, 2021, the Decedent, Isabella Park was diagnosed with malignant Mesothelioma. Decedent died as a proximate cause of her asbestos-related disease on or about June 9, 2021.

76. Decedent's mesothelioma was caused by her husband Andrew Park's employment as a group leader, and senior process engineer at various Hoechst Celanese facilities from 1970 to 1985 throughout South Carolina. Decedent's husband performed a variety of tasks throughout the facilities, and was further exposed through his work around various other trades, including, but not necessarily limited to, boilermakers, welders, mechanics, carpenters, iron workers, insulators, millwrights, and pipefitters, including but not limited to the following sites:

- Hoechst Celanese a/k/a Fiber Industries, Inc – Spartanburg, SC
- Hoechst Celanese a/k/a Fiber Industries, Inc – Greer, SC

77. While employed at these various jobsites, Decedent's husband Andrew Park wore his own clothes to work, was exposed to asbestos dust and fibers that he brought home on his work clothes, fell off in his vehicle and were on his body including his hair, that distributed and re-entrained in his vehicle and home, which caused Decedent Isabella Park to be exposed to said asbestos dust in sufficient amounts as to cause her to develop mesothelioma.

78. Decedent Isabella Park was exposed to asbestos dust and fibers from products, services, and goods manufactured, distributed and/or sold by Defendants for use at Decedent's



husband Andrew Park's jobsites which she came in contact with off premises by contact with her husband Andrew Park's work clothes, personal possessions and vehicle. Her exposure to asbestos dust and fibers occurred through her contact with her husband's work clothing and person when greeting him at the end of his work day, through laundering his work clothing on a regular basis, through spending time in his vehicle in which asbestos dust and fibers had been deposited, and through sharing a home contaminated with asbestos fibers that were constantly being stirred up and re-entrained in the air that they breathed throughout their home.

79. Decedent's exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Decedent Isabella Park's mesothelioma and other related injuries and subsequent death and therefore under South Carolina law, is the legal cause of Decedent's injuries and damages.

80. Decedent Isabella Park and Decedent's late husband were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

81. Plaintiff is informed and believes, and thereon alleges, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

82. As a direct and proximate result of the conduct as alleged within, Decedent Isabella Park suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to her damage in the sum of the amount as the trier of fact determines is proper.

83. As a direct and proximate result of the conduct as hereinafter alleged, Decedent Isabella Park incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this

time. Plaintiff requests leave to supplement this Court and all parties accordingly when the true and exact cost of Decedent Isabella Park's medical treatment is ascertained.

**FOR A FIRST CAUSE OF ACTION**  
**(Product Liability: Negligence)**

**Plaintiff Complains of Defendants for a Cause of Action for Negligence and Alleging as Follows:**

84. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

85. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as "alternate entities," engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products.

86. At all times herein mentioned, Defendants, and/or their "alternate entities" singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged and advertised, a certain product, namely

asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products, in that said products caused personal injuries to Decedent Isabella Park and others similarly situated, (hereinafter collectively called “exposed persons”), while being used for their intended purpose and in a manner that was reasonably foreseeable.

87. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos and asbestos-containing products from causing Decedent Isabella Park’s mesothelioma and subsequent death, due to an inability of any asbestos-alternative to penetrate the pleural lining of Decedent Isabella Park’s lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their “alternate entities.” The gravity of the potential harm resulting from the use of Defendants’ asbestos or asbestos-containing products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by Decedent’s husband Andrew Park. Defendants and/or their “alternate entities” had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

88. Defendants and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and asbestos-containing products would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would

break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, “rip-out,” and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Decedent’s husband Andrew Park and Decedent, would use or be in proximity to and exposed to said asbestos fibers.

89. At all times relevant, Defendants and/or their “alternate entities” were aware of their asbestos and asbestos-containing products’ defect but failed to adequately warn Decedent’s husband Andrew Park and Decedent or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants’ products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

90. Decedent’s husband Andrew Park and Decedent and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Decedent’s husband Andrew Park’s exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint, and resulted in Decedent being exposed at home.

91. Decedent Isabella Park suffered and subsequently died from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Decedent and Decedent’s husband Andrew Park were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

92. Defendants' conduct and defective products as described in this cause of action were a direct cause of Decedent Isabella Park's injuries and subsequent death, and all damages thereby sustained by Decedent Isabella Park. Plaintiff therefore seeks all compensatory damages in order to make him whole, according to proof.

93. Furthermore, the conduct of Defendants and/or their "alternate entities" in continuing to market and sell products which they knew were dangerous to Decedent and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Decedent Isabella Park and others similarly situated.

94. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, Defendants and/or their "alternate entities" did so with conscious disregard for the safety of "exposed persons" who came in contact with asbestos and asbestos-containing products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, asbestosis, mesothelioma, lung cancer, and other lung damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

95. Defendants and their "alternate entities" were aware that members of the general public and other "exposed persons," who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-

containing products, or products manufactured for foreseeable use with asbestos products, could cause injury, and Defendants and their “alternate entities,” each of them, knew that members of the general public and other “exposed persons,” who came in contact with asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health and human life.

96. The above-referenced conduct of Defendants and their “alternate entities” was motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Defendants, their “alternate entities,” and each of them consciously disregarded the safety of “exposed persons” in pursuit of profit. Defendants were consciously willing and intended to permit asbestos and asbestos-containing products to cause injury to “exposed persons” without warning them of the potential hazards and further induced persons to work with and be exposed thereto, including Decedent.

97. Decedent and Decedent’s husband Andrew Park and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos containing-products, and products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Decedent and Decedent’s husband Andrew Park or other exposed persons. Defendants and/or their “alternate entities” further failed to adequately warn of the risks to which Decedent Isabella Park, and others similarly situated were exposed.

98. Defendants and/or their "alternate entities" are liable for the fraudulent, oppressive, and malicious acts of their "alternate entities," and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their "alternate entities" as set forth herein.

99. The herein-described conduct of Defendants and their "alternate entities," was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all defendants.

**FOR A SECOND CAUSE OF ACTION**

**(Product Liability: Strict Liability - S.C. Code Ann. § 15-73-10, et seq.)**

**As a Second and Distinct Cause of Action for Strict Liability, Plaintiff Complains of Defendants, and Alleges as Follows:**

100. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

101. Decedent Isabella Park suffered and subsequently died from mesothelioma, a cancer related to exposure to asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Decedent was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

102. The Products Defendants' conduct and defective products as described above were a direct cause of Decedent Isabella Park's injuries and subsequent death, and the injuries and damages thereby sustained by Decedent.

103. Furthermore, the Defendants' conduct and that of their "alternate entities" in continuing to market and sell products which they knew were dangerous to Decedent and the

public without adequate warnings or proper use instructions, was done in a conscious disregard and indifference to the safety and health of Decedent and others similarly situated.

104. Defendants and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-out," and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling, "exposed persons," including Decedent, would use or be in proximity to and exposed to said asbestos fibers.

105. Decedent's husband Andrew Park, and Decedent, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, referred to herein in a manner that was reasonably foreseeable. Decedent Isabella Park's exposure to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products occurred at various locations as set forth in this Complaint.

106. Defendants and/or their "alternate entities" knew and intended that the above-referenced asbestos and asbestos-containing products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

107. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing



product. Said alternatives would have prevented Defendants' asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing Decedent Isabella Park's mesothelioma and subsequent death, due to an inability of any asbestos-alternative to penetrate the pleural lining of Decedent Isabella Park's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

108. The defect existed in the said products at the time they left the possession of Defendants, and/or their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including mesothelioma, asbestosis, other lung damage, and cancer to "exposed persons," including Decedent Isabella Park herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

109. Decedent and Decedent's husband Andrew Park, and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Decedent, Decedent's husband Andrew Park, or other exposed persons. Said Defendants and/or their "alternate entities" further failed to

adequately warn of the risks to which Decedent Isabella Park and others similarly situated were exposed.

110. Defendants' defective products as described above were a direct cause of Decedent Isabella Park's injuries and subsequent death, and the damages thereby sustained.

111. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, Defendants, and/or their "alternate entities," and each of them, did so with conscious disregard for the safety of Decedent and Decedent's husband Andrew Park, and other exposed persons who came in contact with the asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, mesothelioma, asbestosis, other lung damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

112. Defendants and/or their "alternate entities" were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products could cause injury. Defendants and/or their "alternate entities" further knew that members of the general

public and other exposed persons, who came in contact with asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact exposure was extremely hazardous to health and human life.

113. The above-referenced conduct of Defendants, and/or their "alternate entities" motivated by the financial interest of Defendants, their "alternate entities," and each of them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products. Defendants and/or their "alternate entities" consciously disregarded the safety of "exposed persons" in their pursuit of profit and in fact consciously intended to cause injury to Decedent Isabella Park and other exposed persons and induced persons to work with, be exposed to, and thereby injured by asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products.

114. Defendants are liable for the fraudulent, oppressive, and malicious acts of their "alternate entities," and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their "alternate entities" as set forth herein.

115. The conduct of said defendants, their "alternate entities," and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all defendants.

116. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos and products manufactured for foreseeable use with asbestos products.

**FOR A THIRD CAUSE OF ACTION**  
**(Vicarious Liability of Defendants Based upon Respondeat Superior)**

**As a Third Distinct Cause of Action Against Defendants, Plaintiff Brings this Third Cause of Action for Vicarious Liability of Product and Premises Defendants Based upon Respondeat Superior and Alleges as Follows:**

117. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

118. Prior to and during all relevant times Defendants and/or their “alternate entities” employed workers (hereinafter “employees”) in areas where defendants owned, maintained, controlled, managed and/or conducted business activities where Decedent’s husband Andrew Park worked and/or spent time as alleged above.

119. At all times herein mentioned, Defendants’ employees frequently encountered asbestos-containing products, materials, and debris during the course and scope of their employment, and during their regular work activities negligently disturbed asbestos-containing

materials to which Decedent's husband Andrew Park was exposed, and as a result Decedent was exposed at home.

120. Employees handling and disturbing asbestos-containing products in Decedent's husband Andrew Park's vicinity were the agents and employees of defendants and at all times relevant were subject to the control of Defendants with respect to their acts, labor, and work involving (a) the removal, transport, installation, cleaning, handling, and maintenance of asbestos-containing products, materials, and debris, and (b) the implementation of safety policies and procedures. Defendants controlled both the means and manner of performance of the work of their employees as described herein.

121. Employees handling and disturbing asbestos-containing products in Decedent's husband Andrew Park's, Decedent's, and others' vicinity received monetary compensation from Defendants in exchange for the work performed and these employees performed the work in the transaction and furtherance of Defendants' businesses.

122. Harmful asbestos fibers were released during Defendants' employees' use, handling, breaking, or other manipulation of asbestos-containing products and materials.

123. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Decedent's husband Andrew Park, who would then bring said asbestos home, causing Decedent to inhale those fibers.

124. The asbestos and asbestos-containing materials were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air onto surrounding surfaces, and onto persons in the area. The inhalation of asbestos fibers can cause serious disease and death.

125. Defendants' employees' use, handling and manipulation of asbestos-containing materials, as required by their employment and occurring during the course and scope of their

employment, did in fact, cause personal injuries, including mesothelioma and other lung damage, to exposed persons including Decedent Isabella Park.

126. Defendants' employees were negligent in their use, handling and manipulation of said products in that they failed to isolate their work with asbestos and/or to suppress asbestos fibers from being released into the air and surrounding areas. They also failed to take appropriate steps to learn how to prevent exposure to asbestos, failed to warn and/or adequately warn Decedent's husband Andrew Park that he, and as a result Decedent, was being exposed to asbestos, failed to adequately warn Decedent and Decedent's husband Andrew Park of the harm associated with their exposure to asbestos, and provide them with protection to prevent their inhalation of asbestos.

127. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Decedent's husband Andrew Park, and as a result Decedent.

128. Defendants' employees owed Decedent and Decedent's husband Andrew Park a duty to exercise due care and diligence in their activities while he was lawfully on the premises so as not to cause them harm.

129. Defendants' employees breached this duty of care as described above.

130. At all times mentioned, Decedent and Decedent's husband Andrew Park were unaware of the dangerous condition and unreasonable risk of personal injury created by Defendants' employees' use of and work with asbestos-containing products and materials.

131. As a direct result of the Defendants' employees' conduct, Decedent's husband Andrew Park's exposure to asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products, each individually and together, caused severe and

permanent injury and death to Decedent Isabella Park and the damages and injuries as complained of herein by Plaintiff.

132. The risks herein alleged and the resultant damages suffered by the Decedent Isabella Park were typical of or broadly incidental to Defendants' business enterprises. As a practical matter, the losses caused by the torts of Defendants' employees as alleged were sure to occur in the conduct of Defendants' business enterprises. Nonetheless, Defendants engaged in, and sought to profit by, their business enterprises without exercising due care as described in this Complaint, which, on the basis of past experience, involved harm to others as shown through the torts of employees.

133. Based on the foregoing, Defendants as the employers of said employees are vicariously liable under the doctrine of respondeat superior for all negligent acts and omissions committed by their employees in the course and scope of their work that caused harm to Decedent.

**FOR A FOURTH CAUSE OF ACTION**  
**(Premises Liability: Negligence as to Premises Owner/Contractor)**

**As a Fourth Distinct Cause of Action for General Negligence, Plaintiff Complains of Premises Defendants, and Alleges as Follows:**

134. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

135. Prior to and during all relevant times, the Premises Defendants and/or their "alternate entities" employed workers in areas where Premises Defendants owned, maintained, controlled, managed and/or conducted business activities where Decedent's husband Andrew Park worked and/or spent time.

136. At all times herein mentioned, Premises Defendants selected, supplied, and distributed asbestos-containing materials to their employees for use during their regular work activities, and said employees disturbed those asbestos-containing materials.

137. Premises Defendants were negligent in selecting, supplying, distributing and disturbing the asbestos-containing products and in that said products were unsafe. Said products were unsafe because they released asbestos fibers and dust into air when used which would be inhaled by Decedent's husband Andrew Park and settled onto his clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers, by-standers, and family members including Decedent Isabella Park would be exposed to dangerous asbestos dust beyond the present.

138. The asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products described herein were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air, and the inhalation of asbestos fibers causes serious disease and death. Here, the handling of the above-described asbestos-containing materials by Premises Defendants' employees, as required by their employment and occurring during the course and scope of their employment, did, in fact, cause personal injuries, including mesothelioma, lung cancer and other lung damage, to exposed persons, including Decedent.

139. At all times herein mentioned, Premises Defendants knew or should have known that their employees and bystanders thereto, including Decedent and Decedent's husband Andrew Park, frequently encountered asbestos-containing products and materials during the course and scope of their work activities.

140. At all times herein mentioned, Premises Defendants knew or should have known that the asbestos-containing materials encountered by their employees and bystanders thereto including Decedent and Decedent's husband Andrew Park, were unsafe in that harmful asbestos fibers were released during the use, handling, breaking, or other manipulation of asbestos-containing products and materials, and that once released, asbestos fibers can be inhaled, and can



alight on the clothes, shoes, skin, hair, and body parts of those exposed, where further activity causes the fibers to once again be released into the air where they can be inhaled, all of which causes serious disease and/or death.

141. At all times herein mentioned, Premises Defendants, in the exercise of reasonable diligence, should have known that absent adequate training and supervision, their employees and bystanders thereto, including Decedent and Decedent's husband Andrew Park, were neither qualified nor able to identify asbestos-containing products nor to identify the hazardous nature of their work activities involving asbestos-containing products.

142. At all times herein mentioned, Decedent and Decedent's husband Andrew Park were unaware of the dangerous condition and unreasonable risk of personal injury created by the presence and use of asbestos-containing products and materials.

143. At all times herein mentioned, Premises Defendants, in the exercise of reasonable diligence, should have known that workers and bystanders thereto, would bring dangerous dust home from the workplace and contaminate their family cars and homes, continuously exposing and potentially causing injury to others off the premises.

144. At all times herein mentioned, Premises Defendants had a duty to use due care in the selection, supply, distribution and disturbance of asbestos-containing products and materials to their employees, to adequately instruct, train, and supervise their employees and to implement adequate safety policies and procedures to protect workers and persons encountering those workers, including Decedent, from suffering injury or death as a result of the asbestos hazards encountered and created by the work of Premises Defendants' employees.

145. Premises Defendants' duties as alleged herein exist and existed independently of Defendants' duties to maintain their premises in reasonably safe condition, free from concealed hazards.

146. Premises Defendants negligently selected, supplied, and distributed the asbestos-containing materials and failed to adequately train or supervise their employees to identify asbestos-containing products and materials; to ensure the safe handling of asbestos-containing products and materials encountered during the course of their work activities; and to guard against inhalation of asbestos fibers and against the inhalation of asbestos fibers by those who would come into close contact with them after they had used, disturbed, or handled, said asbestos-containing products and materials during the course and scope of their employment by Premises Defendants.

147. Premises Defendants failed to warn their employees and bystanders thereto, including Decedent and Decedent's husband Andrew Park, of the known hazards associated with asbestos and the asbestos-containing materials they were using and/or disturbing.

148. As a direct and proximate result of the conduct of Premises Defendants in selecting, supplying, distributing and disturbing asbestos-containing materials or products manufactured for foreseeable use with asbestos products and failing to adequately train and supervise their employees and failing to adopt and implement adequate safety policies and procedures as alleged herein, Decedent Isabella Park became exposed to and inhaled asbestos fibers, which was a substantial factor in causing Decedent Isabella Park to develop asbestos-related disease mesothelioma and subsequently die, and to suffer all damages attendant thereto.

**FOR A FIFTH CAUSE OF ACTION**  
**(Negligence Per Se)**

**As a Fifth Distinct Cause of Action for Negligence Per Se, Plaintiff Complains of Defendants, and Alleges as Follows:**

149. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

150. The actions of Defendants also constituted negligence per se.

151. Defendants violated federal and state regulations relating to asbestos exposure. Such violations constitute negligence per se or negligence as a matter of law. Further, each such violation resulted in dangerous and unlawful exposures to asbestos for Decedent. Plaintiff is not making any claims under federal law; instead, Plaintiff is simply using the violation of federal standards as proof of liability on his state-law theories. Further, the reference to Federal regulations does not create a federal question. *See Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804 (1986). Any removal on this basis will be met with an immediate motion for remand and for sanctions.

152. The negligence per se of Defendants was a proximate cause of Decedent's injuries.

**FOR A SIXTH CAUSE OF ACTION**  
**(Negligence as to Design Defendants)**

**As a Sixth Distinct Cause of Action for Negligence, Plaintiff Complains of Design Defendants and Alleges as Follows:**

153. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

154. The work performed by the Design Defendants was defective in all, but not limited to, the following particulars:

- (a) In failing and neglecting to properly inspect the building for defects in the construction, design, and defects in the asbestos-containing products, materials and/or equipment.
- (b) In failing and neglecting to properly train employees in the proper installation of asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (c) In failing and neglecting to properly supervise employees, contractors, subcontractors, and/or suppliers in the proper installation of asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (d) In failing and neglecting to employ careful contractors and/or employees.

- (e) In failing and neglecting to properly install asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (f) In failing to properly install the asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (g) In failing to properly warn Decedent of dangers and risks associated with the conditions of the material and work product which was being installed for use by Decedent Isabella Park and others in his vicinity.
- (h) By such other failures as will be proved at trial.

All of which is contrary to one or more of workmanlike practice; the plans, specifications, and other contract documents; manufacturers' recommendations and instructions; trade custom and usage; and applicable building codes.

155. As a direct, proximate, and foreseeable result of the negligence of the Design Defendants, Decedent suffered and incurred actual damages, as described hereinabove, and are entitled to recover such damages from the Design Defendants in such an amount as the trier of fact may find. The actions and omissions to act of the Design Defendants were willful, wanton, reckless and grossly negligent, so as to entitle the Plaintiff to recover punitive damages.

**FOR A SEVENTH CAUSE OF ACTION**  
**(Negligent Design Services Against Design Defendants)**

**As a Seventh Distinct Cause of Action for Negligent Design Services, Plaintiff Complains of Design Defendants and Alleges as Follows:**

156. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

157. Design Defendants owed Decedent a duty to perform professional design services, including construction administration, in accordance with professional standards obtained in South Carolina for the delivery and performance of such services.

158. Design Defendants breached such professional standards in all, but not limited to, the following particulars:

- (a) In failing and neglecting to take reasonable care in the design of said building.
- (b) In failing and neglecting to properly design said building, to issue proper construction, to prevent continuous and substantial exposure to asbestos and/or asbestos-containing products.
- (c) In failing and neglecting to properly supervise the construction of said building.
- (d) In failing and neglecting to properly and reasonably design said building to eliminate exposure to asbestos and/or asbestos-containing products, including but not limited to asbestos-containing insulation.
- (e) In negligently specifying the use of inappropriate, improper and/or defective and deficient building systems, materials, and components, including but not limited to asbestos-containing insulation.
- (f) By such other failures as will be proved at trial.

159. As a direct, proximate, and foreseeable result of the negligence of the Design Defendants, Decedent suffered and incurred actual damages, as described hereinabove, and are entitled to recover such damages from the Design Defendants in such an amount as the trier of fact may find. The actions and omissions to act of the Design Defendants were willful, wanton, reckless and grossly negligent, so as to entitle the Plaintiff to recover punitive damages.

**FOR AN EIGHTH CAUSE OF ACTION**

**(Product Liability: Breach of Implied Warranties - S.C. Code Ann. § 36-2-314)**

**As an Eighth Distinct Cause Of Action for Breach of Implied Warranties, Plaintiff Complains of Defendants and Alleges as Follows:**

160. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

161. Each of the Defendants impliedly warranted that their asbestos materials or asbestos-containing products were of good and merchantable quality and fit for their intended use.

162. The implied warranty made by the Defendants, that the asbestos and asbestos-containing products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Decedent's husband Andrew Park carried out his duties and was inhaled by Decedent Isabella Park through asbestos dust and fibers taken home on her husband's work clothes, from asbestos dust in his vehicle and asbestos dust on his body including his hair and from the dust being distributed and re-entrained.

163. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Decedent's husband Andrew Park was exposed to Defendants' asbestos, asbestos-containing products, and/or products manufactured for foreseeable use with asbestos products and consequently Decedent Isabella Park was exposed to Defendants' asbestos dust and fibers that remained on her husband's clothes, in his vehicle, on his work equipment and on his body, and developed mesothelioma, causing Decedent Isabella Park to suffer all damages attendant thereto.

**FOR A NINTH CAUSE OF ACTION**  
**(Fraudulent Misrepresentation)**

**For a Ninth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendants, and Alleges as Follows:**

164. Plaintiff repeats and re-alleges the portions of the above paragraphs where relevant.

165. That during, before and after Decedent's exposure to asbestos products manufactured by Defendants and/or their "alternate entities", the Defendants and/or their "alternate entities" falsely represented facts, including the dangers of asbestos exposure to Decedent and Decedent's husband Andrew Park in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such

as Decedent. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

166. The foregoing representations were material conditions precedent to Decedent's continued exposure to asbestos-containing products. Defendants and/or their "alternate entities", each intended that Decedent and Decedent's husband Andrew Park act upon the representations by continuing Decedent's late husband's work around, and thereby exposure to, the asbestos products. Decedent and Decedent's husband Andrew Park were ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

167. As a direct and proximate result Decedent and Decedent's husband Andrew Park's reliance upon Defendants' false representations, Decedent suffered injury and damages as described herein.

**FOR A TENTH CAUSE OF ACTION**

**(Conspiracy, Concert of Action – Defendant Metropolitan Life Insurance Company)**

**For a Tenth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendant Metropolitan Life Insurance Company, and Alleges as Follows:**

168. Plaintiff repeats and re-alleges the portions of the above paragraphs where relevant.

169. Beginning in the late 1920's, conspirators including Defendant Metropolitan Life Insurance Company ("Met Life"), as well as Johns-Manville, Raybestos-Manhattan and others, undertook a duty to conduct research on asbestos-related health problems and to inform the public about any health risks that could be associated therewith. In or about 1929, Met Life, through its agents and employees acting within the scope of their agency and employment, including but not limited to Dr. Anthony J. Lanza ("Lanza"), began an investigation of asbestos-related health hazards. In 1935, this study was altered by Lanza, with the full knowledge of Met Life, at the request of and in concert with the asbestos industry in order to wrongly influence the United States Public Health Service, the United States medical community and various state legislatures.

170. Thereafter, Defendant Met Life through the acts and omissions of its employees, most notably Lanza, undertook a series of activities with various members of the asbestos industry including but not limited to Johns-Manville, Raybestos-Manhattan/Raymark Industries, Inc., United States Gypsum, American Brake Blok/Abex, and others to suppress and misrepresent the dangers of exposure to asbestos dust to employees of Met Life's insureds and the general public and the medical community.

171. The conspirators through their agent, Lanza of Met Life, made a concerted effort to discredit and to terminate the experiments of certain scientists who were developing data of profound importance for the area of public health in relation to the cancer hazard which existed for workers and bystanders in the asbestos industry.

172. As a direct and proximate result of Met Life's intentional publication of deceptive and misleading medical data and information, and other conspiratorial acts and omissions, Defendant caused asbestos to be used in the occupational settings from which Decedent and Decedent's husband Andrew Park were exposed to asbestos dust which resulted in Decedent Isabella Park's injuries. Defendant Met Life, through its agents and employees and officers, aided and abetted and gave substantial assistance to Johns-Manville and Raybestos-Manhattan in their tortious selling of asbestos products and voluntarily undertook a duty to warn the United States Public Health Service, the medical community, and others about the danger of asbestos and consciously and negligently misrepresented the dangers of asbestos to the United States Public Health Service, the medical community, and others, all to the ultimate harm of Decedent herein.

173. Defendant Met Life rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Decedent Isabella Park was exposed, and such assistance by Met Life aided and abetted the negligence and the marketing of unreasonably dangerous



asbestos-containing products by such manufacturers which proximately caused Decedent Isabella Park's illness and subsequent death.

174. In both conducting tests and in publishing their alleged results, Met Life failed to exercise reasonable care to conduct or publish complete, adequate and accurate tests of the health effects of asbestos. Met Life also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure.

175. Decedent Isabella Park unwittingly and justifiably relied upon the thoroughness of Met Life's tests and information dissemination, the results of which Met Life published in leading medical journals.

176. As a direct and proximate contributing result of Met Life's failures to conduct or accurately publish adequate tests or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to Decedent Isabella Park from asbestos exposure was increased, and (ii) Decedent suffered the injuries described herein.

177. In failing to test fully and adequately for the adverse health effects from exposure to asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in collaborating with the other Defendants materially to understate the hazards of asbestos exposure, all for its own profit and gain, Met Life acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including Decedent.

178. Additionally and alternatively, as a direct and proximate result of Met Life's actions and omissions, Decedent and Decedent's husband Andrew Park was caused to remain ignorant of all the dangers of asbestos resulting in Decedent, Decedent's husband, his co-workers, their family, and the general public to be unaware of the true and full dangers of asbestos, depriving Decedent

and Decedent's husband Andrew Park of the opportunity to decide for themselves whether they wanted to take the risk of being exposed to asbestos, denied Decedent and Decedent's husband Andrew Park the opportunity to take precautions against the dangers of asbestos and proximately caused Decedent's damages herein.

179. During the relevant time period the Decedent and Decedent's husband Andrew Park were exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied, and/or sold by Johns Manville and/or Raybestos/Raymark.

180. Defendant, Met Life, together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engaged in a conspiracy or concert of action to inflict injury on the Decedent Isabella Park, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the Decedent Isabella Park in the course of or as a consequence of the conspiracy of concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action:

- (a) In 1932, Met Life, through Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos-related disease. Further collaboration between Manville and Met Life continued the cover-up.
- (b) Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Lanza, Associate Director of Met Life, which was then insurer of Manville and Raymark, that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as 'fatal' and through other selective editing that

affirmatively misrepresent asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark, and Met Life as insurer. Furthermore, upon information and belief, it is alleged that Met Life, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.

- (c) In 1936, the conspirators or some of them entered into an agreement with the Saranac Laboratories. Under this agreement, these conspirators acquired the power to decide what information Saranac could publish about asbestos disease and to control in what form such publications would occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.
- (d) By November 1948, or earlier, Manville, Met Life (acting through Lanza), Raymark, and others decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.
- (e) At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensities of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the Decedent.
- (f) As a direct result of influence exerted by the above described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and

deliberately disseminated this misleading Vorwald publication to universities, libraries, government officials, agencies and others.

- (g) Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.
- (h) For many decades, Met Life, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature, and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly.
- (i) Despite the medical and scientific data, literature and test reports possessed by and available to Met Life, individually and in conspiracy with Manville and Raymark, fraudulently, willfully and maliciously withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, cancer, mesothelioma, and other illnesses and diseases from Decedent who using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products; caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases, which Metropolitan, Manville and Raymark knew were either incorrect, incomplete, outdated and misleading; distorted the results of medical examinations conducted upon workers who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm which workers suffered; and failed to adequately warn the Decedent of the dangers to which she was exposed when they knew of the dangers.
- (j) By the false and fraudulent representations, omissions, failures, and concealments set forth above, Met Life, Manville and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the Decedent to rely upon said false and fraudulent representations, omissions, failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Said misrepresentations were false,

incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

181. Decedent and Decedent's husband Andrew Park reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Met Life, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

182. As a direct and proximate result of the conspiracy and concert of action between Met Life, Manville and Raymark, the Decedent and Decedent's husband Andrew Park were deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result brought home on his clothes, hair, shoes, and in his case asbestos dust or fibers contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the Decedent Isabella Park was damaged.

**FOR AN ELEVENTH CAUSE OF ACTION**  
**(Wrongful Death Action, S.C. Code Ann. § 15-51-10 et seq.)**

**For an Eleventh Distinct Cause of Action for Wrongful Death, Plaintiff Complains of Defendants, and Alleges as Follows:**

183. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs, where relevant.

184. Plaintiff brings this cause of action for Isabella Park's wrongful death pursuant to S.C. Code Ann. § 15-51-10, for the benefit of Keith W. Park, as the son of Decedent, and on behalf of the heirs of Isabella Park, as defined by S.C. Code § 15-51-20.

185. As a direct and proximate result of the negligence, recklessness, carelessness, and intentional actions of Defendants as described above, Isabella Park died on June 9, 2021, and her heirs

have and will endure pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, loss of love, loss of society with the Decedent, loss of guidance from the Decedent, loss of her companionship and deprivation of the use and comfort of the Decedent's experience, knowledge and judgment in managing the affairs of herself and her beneficiaries, and they have been otherwise seriously damaged. Moreover, reasonable funeral expenses were incurred, and Plaintiff prays for judgment against Defendants in such amount of actual and punitive damages as the trier of fact may determine.

**FOR A TWELFTH CAUSE OF ACTION**  
**(Survival Action, S.C. Code Ann. § 15-5-90)**

**For a Twelfth Distinct Cause of Action, known statutorily as a Survival Action, Plaintiff Complains of Defendants, and Alleges as Follows:**

186. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs, where relevant.

187. Plaintiff, Keith W. Park, the son of Decedent Isabella Park and the Personal Representative of the Estate of Isabella Park, deceased, brings this survival action as allowed under S.C. Code Ann. § 15-5-90.

188. Plaintiff brings this cause of action for Decedent's medical, surgical and hospital bills, as well as for Decedent's conscious pain and suffering prior to her untimely death, as well as for the mental distress of Decedent due to knowledge of her impending death from her incurable disease.

189. As a direct and proximate result of the negligence, recklessness, carelessness, and in some cases intentional actions of Defendants as described, Decedent Isabella Park endured conscious pain, suffering, mental anguish and distress until her untimely death, and Plaintiff prays for judgment against Defendants in such amount of actual and punitive damages as the trier of fact may determine is just.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays judgment, joint and several, against Defendants and/or their “alternate entities” in an amount to be proved at trial, as follows:

1. For Decedent’s actual damages according to proof, including pain and suffering, mental distress, as well as medical, surgical and hospital bills;
2. For loss of income or earnings according to proof;
3. For pecuniary loss of the beneficiaries/heirs including but not limited to funeral and burial costs, for mental shock and suffering of the beneficiaries/heir, for wounded feelings of the beneficiaries/heirs, for grief and sorrow of the beneficiaries/heirs, loss of Decedent’s companionship and deprivation of the use and comfort of her experience, knowledge and judgment in managing the affairs of herself and her beneficiaries;
4. For punitive damages according to proof;
5. For Plaintiff’s cost of suit herein;
6. For damages for breach of implied warranty according to proof;
7. For damages for fraudulent misrepresentation according to proof;
8. For damages for conspiracy, concert of action (as to Defendant Metropolitan Life Insurance Company);
9. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

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**A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.**

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

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*and*

Jordan Blumenfeld-James (CA Bar No. 235185)

(To be admitted *Pro Hac Vice*)

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**ATTORNEYS FOR PLAINTIFF**

November 2, 2021

Columbia, South Carolina.



IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

KEITH W. PARK, individually and as the  
Personal Representative of the Estate of  
ISABELLA PARK,

Plaintiff,

V.

ARMSTRONG INTERNATIONAL, INC.

3M COMPANY

4520 CORP., INC.

BECON CONSTRUCTION COMPANY, INC.

BW/IP INC.

CAPE INTERMEDIATE HOLDINGS  
LIMITED

CAPE PLC

CARBOLINE COMPANY

CARRIER CORPORATION

CELANESE CORPORATION

CLARK-RELIANCE CORPORATION,

CNA HOLDINGS LLC

COVIL CORPORATION

CRANE CO.

CRANE INSTRUMENTATION &  
SAMPLING, INC.

DANA COMPANIES LLC,

C/A NO. 2021-CP-40-02727

In Re:  
Asbestos Personal Injury Litigation  
Coordinated Docket

## **SECOND AMENDED SUMMONS**

DANIEL INTERNATIONAL CORPORATION )  
)  
ECODYNE CORPORATION )  
)  
FISHER CONTROLS INTERNATIONAL, )  
LLC )  
)  
FLOWSERVE CORPORATION, )  
)  
FLUOR CONSTRUCTORS )  
INTERNATIONAL, )  
)  
FLUOR CONSTRUCTORS )  
INTERNATIONAL, INC. )  
)  
FLUOR DANIEL SERVICES CORPORATION )  
)  
FLUOR ENTERPRISES, INC. )  
)  
FMC CORPORATION )  
)  
FOSTER WHEELER ENERGY )  
CORPORATION )  
)  
GARDNER DENVER, INC. )  
)  
GENERAL ELECTRIC COMPANY )  
)  
THE GOODYEAR TIRE & RUBBER )  
COMPANY )  
)  
GOULDS PUMPS, INCORPORATED )  
)  
GREAT BARRIER INSULATION CO. )  
)  
GRINNELL LLC )  
)  
HENRY PRATT COMPANY, LLC )  
)  
HOK GROUP, INC. )  
)  
HONEYWELL INTERNATIONAL, INC. )  
)  
METROPOLITAN LIFE INSURANCE )  
COMPANY )  
)

|                                   |   |
|-----------------------------------|---|
| RILEY POWER INC.,                 | ) |
|                                   | ) |
| ROBERTSHAW CONTROLS CO.           | ) |
|                                   | ) |
| RUST ENGINEERING & CONSTRUCTION   | ) |
| INC.                              | ) |
|                                   | ) |
| RUST INTERNATIONAL INC.           | ) |
|                                   | ) |
| SCHNEIDER ELECTRIC SYSTEMS USA,   | ) |
| INC.                              | ) |
|                                   | ) |
| SOUTHERN INSULATION, INC.         | ) |
|                                   | ) |
| SPIRAX SARCO, INC.                | ) |
|                                   | ) |
| SPX COOLING TECHNOLOGIES, INC.    | ) |
|                                   | ) |
| STARR DAVIS COMPANY, INC.         | ) |
|                                   | ) |
| STARR DAVIS COMPANY OF S.C., INC. | ) |
|                                   | ) |
| STERLING FLUID SYSTEMS (USA), LLC | ) |
|                                   | ) |
| UNION CARBIDE CORPORATION         | ) |
|                                   | ) |
| VISTRA CORP.                      | ) |
|                                   | ) |
| VISTRA INTERMEDIATE COMPANY LLC   | ) |
|                                   | ) |
| THE WILLIAM POWELL COMPANY        | ) |
|                                   | ) |
| YORK INTERNATIONAL CORPORATION    | ) |
|                                   | ) |
| ZURN INDUSTRIES, LLC              | ) |
|                                   | ) |
| Defendants.                       | ) |
|                                   | ) |

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**SECOND AMENDED SUMMONS**

TO DEFENDANTS ABOVE-NAMED:

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YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the Plaintiff's counsel, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

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*and*

Jordan Blumenfeld-James (CA Bar No. 235185)

(To be admitted *Pro Hac Vice*)

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**ATTORNEYS FOR PLAINTIFFS**

December 17, 2021  
Columbia, South Carolina.

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

KEITH W. PARK, individually and as the ) C/A NO. 2021-CP-40-02727  
Personal Representative of the Estate of )  
ISABELLA PARK, )  
Plaintiff, )  
v. ) In Re:  
ARMSTRONG INTERNATIONAL, INC. ) Asbestos Personal Injury Litigation  
3M COMPANY ) Coordinated Docket  
f/k/a MINNESOTA MINING AND ) Mesothelioma  
MANUFACTURING COMPANY ) Wrongful Death and Survival Action  
4520 CORP., INC. )  
individually and as successor-in-interest to )  
BENJAMIN F. SHAW COMPANY )  
BECON CONSTRUCTION COMPANY, )  
INC. ) (Jury Trial Demanded)  
BW/IP INC. )  
and its wholly-owned subsidiaries )  
CAPE INTERMEDIATE HOLDINGS )  
LIMITED )  
f/k/a CAPE INTERMEDIATE HOLDINGS )  
PLC, individually and as successor-in-interest to )  
CAPE ASBESTOS COMPANY )  
CAPE PLC )  
individually and as successor-in-interest to )  
CAPE ASBESTOS COMPANY )  
CARBOLINE COMPANY )  
CARRIER CORPORATION )  
CELANESE CORPORATION )  
CLARK-RELIANCE CORPORATION )  
and its JERGUSON GAGE & VALVE division )  
and its JACOBY-TARBOX division )

**CNA HOLDINGS LLC**  
 f/k/a CELANESE CORPORATION f/k/a  
 HOECHST CELANESE CORPORATION, sued  
 individually and as successor in-interest-to  
 FIBER INDUSTRIES, INC.

**COVIL CORPORATION**

**CRANE CO.**

**CRANE INSTRUMENTATION &  
 SAMPLING, INC.**  
 f/k/a CIRCOR INSTRUMENTATION  
 TECHNOLOGIES, INC. f/k/a HOKE INC.

**DANA COMPANIES, LLC**  
 successor-by-merger to DANA  
 CORPORATION

**DANIEL INTERNATIONAL  
 CORPORATION**

**ECODYNE CORPORATION**

**FISHER CONTROLS INTERNATIONAL,  
 LLC**

**FLOWSERVE CORPORATION**  
 f/k/a THE DURIRON COMPANY INC.

**FLUOR CONSTRUCTORS  
 INTERNATIONAL**  
 f/k/a FLUOR CORPORATION

**FLUOR CONSTRUCTORS  
 INTERNATIONAL, INC.**

**FLUOR DANIEL SERVICES  
 CORPORATION**

**FLUOR ENTERPRISES, INC.**

**FMC CORPORATION**  
 on behalf of its former Peerless Pump business

**FOSTER WHEELER ENERGY CORPORATION** )  
 )  
**GARDNER DENVER, INC.** )  
 )  
**GENERAL ELECTRIC COMPANY** )  
 )  
**THE GOODYEAR TIRE & RUBBER COMPANY** )  
 )  
**GOULDS PUMPS, INCORPORATED** )  
 )  
**GREAT BARRIER INSULATION CO.** )  
 )  
**GRINNELL LLC** )  
 d/b/a GRINNELL CORPORATION )  
 )  
**HENRY PRATT COMPANY, LLC** )  
 a subsidiary of MUELLER CO. LLC )  
 )  
**HOK GROUP, INC.** )  
 f/k/a HELLMUTH, OBATA AND )  
 KASSABAUM, INC., individually and as )  
 successor-in-interest to CRS SIRRINE, as )  
 successor-in-interest to J.E. SIRRINE )  
 )  
**HONEYWELL INTERNATIONAL, INC.** )  
 individually and as successor-in-interest to )  
 ALLIED SIGNAL, INC. )  
 )  
**METROPOLITAN LIFE INSURANCE COMPANY** )  
 a wholly-owned subsidiary of METLIFE INC. )  
 )  
**RILEY POWER INC.** )  
 f/k/a RILEY STOKER CORPORATION and )  
 D.B. RILEY, INC. )  
 )  
**ROBERTSHAW CONTROLS COMPANY** )  
 )  
**RUST ENGINEERING & CONSTRUCTION INC.** )  
 individually and as successor-in-interest to )  
 SIRRINE ENVIRONMENTAL )  
 CONSULTANTS, INC. )  
 )  
 )

**RUST INTERNATIONAL INC.** )  
individually and as successor-in-interest to )  
**SIRRINE ENVIRONMENTAL** )  
**CONSULTANTS, INC.** )  
) )  
**SCHNEIDER ELECTRIC SYSTEMS USA,** )  
**INC.** )  
f/k/a INVENSYS SYSTEMS, INC. )  
) )  
**SOUTHERN INSULATION, INC.** )  
) )  
**SPIRAX SARCO, INC.** )  
) )  
**SPX COOLING TECHNOLOGIES, INC.** )  
individually and as successor-in-interest to )  
MARLEY COOLING TOWERS CO. )  
) )  
**STARR DAVIS COMPANY, INC.** )  
) )  
**STARR DAVIS COMPANY OF S.C., INC.** )  
) )  
**STERLING FLUID SYSTEMS (USA), LLC** )  
) )  
**UNION CARBIDE CORPORATION** )  
) )  
**VISTRA CORP.** )  
f/k/a VISTRA ENERGY CORP., individually )  
and as successor-in-interest to CRS SIRRINE )  
a/k/a CRSS, as successor-in-interest to J.E. )  
SIRRINE )  
) )  
**VISTRA INTERMEDIATE COMPANY** )  
**LLC** )  
individually and as successor-in-interest to )  
CRSS INC. )  
) )  
**THE WILLIAM POWELL COMPANY** )  
) )  
**YORK INTERNATIONAL CORPORATION** )  
) )  
**ZURN INDUSTRIES, LLC** )  
individually and as successor-in-interest to )  
ZURN INDUSTRIES, INC. )  
) )  
Defendants. )  
) )

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## **PLAINTIFF'S SECOND AMENDED COMPLAINT**

NOW COMES Plaintiff, KEITH W. PARK, individually, and as Personal Representative of the Estate of ISABELLA PARK (hereinafter "Plaintiff"), citizen and resident of the State of South Carolina, and sues the named Defendants for compensatory and punitive damages, by and through his attorneys, and comes before this court and alleges as follows:

### **GENERAL ALLEGATIONS**

1. This action is brought pursuant to the Wrongful Death Act, S.C. Gen. Stat. 15-51-10 *et seq.*, for the wrongful death of the Decedent, ISABELLA PARK, on behalf of all persons entitled to recover damages.

2. Plaintiff Isabella Park was diagnosed with mesothelioma caused by exposure to asbestos dust and fibers. This exposure occurred as a result of her husband's work with and around asbestos-containing products, which caused asbestos containing dust to cover his clothing, vehicle and body, which he brought home to Decedent, who was then exposed to said asbestos dust and fibers.

3. This Court has personal jurisdiction over Defendants because Plaintiff's claims arise from Defendants, or their predecessors in interest, conduct in:

- (a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;
- (b) Contracting to supply services or things in the State;
- (c) Commission of a tortious act in whole or in part in this State;
- (d) Having an interest in, using, or possessing real property in this State; and/or
- (e) Entering into a contract to be performed in whole or in part by either party in this State.

4. Each Defendant, or its predecessors in interest, that manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in South Carolina at times relevant to this action are referred to herein as “Product Defendants.” At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale and distribution of asbestos-containing products and raw materials.

5. Each Defendant, or its predecessors in interest, that owned and/or controlled the work sites where Decedent Isabella Park’s husband, Andrew Park, experienced occupational exposure as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment in his immediate vicinity are referred to herein as the “Premises Defendants.” At all times relevant to this action:

- (a) the Premises Defendants owned the property and approved the use of asbestos-containing materials on its premises.
- (b) the Premises Defendants invited the Decedent Isabella Park’s husband, Andrew Park, as a group leader and senior process engineer on to Defendant’s premises to perform construction work for Defendant’s benefit. Decedent’s husband was an invitee who had express permission to enter Defendant’s premises for the purpose of benefitting the owner (Defendant).
- (c) the Premises Defendants owed a duty of due care to discover risks and take safety precautions to warn of and eliminate unreasonable risks.
- (d) the Premises Defendants’ failure to warn of or eliminate the unreasonable risks associated with working on or around asbestos-containing materials on Defendants’ premises was a substantial factor contributing to cause Decedent Isabella Park’s mesothelioma.

6. Each Defendant, or its predecessors in interest, that provided labor, materials, goods, and/or services as architects, consultants, engineers, draftsmen, technicians, surveyors, or otherwise in connection with the design and/or repairs at the work sites where Decedent Isabella Park experienced occupational exposure as a result of working with and around others working

with asbestos and/or asbestos-containing products, materials, or equipment, are referred to herein as the “Design Defendants.”

7. Plaintiff’s claims against the Product Defendants, as defined herein, arise out of Defendants’ purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

8. Plaintiff’s claims against the Premises Defendants, as defined herein, arise out of Defendants’ ownership and/or control of real property located in South Carolina and the purchase and use of asbestos-containing products on their premises located in South Carolina, with which Decedent’s husband, Andrew Park (deceased), worked, and as a result was exposed to asbestos, which he brought home to Decedent and exposed her to asbestos.

9. Plaintiff’s claims against the Design Defendants, as defined herein, arise out of Defendants’, and/or Defendants’ employees’, direct and/or indirect purchase and use of asbestos and/or asbestos-containing products, materials, or equipment at the various industrial sites located in South Carolina where Decedent’s husband, Andrew Park, experienced occupational exposure to lethal doses of asbestos, which he brought home to Decedent and exposed her to asbestos, as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment.

10. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Decedent to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

11. Decedent Isabella Park was exposed to asbestos through asbestos dust and fibers brought home on her husband's work clothes, from asbestos dust in his vehicle and asbestos dust on his body including his hair, and from the dust being distributed and re-entrained in their home. Her exposure to asbestos dust and fibers occurred through her contact with her husband's work clothing and person when greeting him at the end of his workday, through laundering his work clothing on a regular basis, through spending time in his vehicle in which asbestos dust and fibers had been deposited, and through sharing a home contaminated with asbestos fibers that were constantly being stirred up and re-entrained in the air that they breathed throughout their home.

12. Decedent's cumulative exposure to asbestos as a result of acts and omissions of Defendants and/or their defective products, individually and together, was a substantial factor in causing Decedent Isabella Park's mesothelioma and other related injuries and subsequent death and therefore under South Carolina law, is the legal cause of Decedent's injuries and damages.

13. Neither Decedent Isabella Park, nor her late husband, were aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

14. Decedent's husband Andrew Park worked with, or in close proximity to others who worked with, asbestos-containing materials including but not limited to asbestos-containing products and other asbestos-containing materials manufactured and/or sold by the Product Defendants and used on property owned and controlled by the Premises Defendants. Decedent's husband Andrew Park brought this asbestos home with him, which caused Decedent to be exposed to asbestos.

15. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an "alternate entity" as hereinafter defined. Defendants are liable for the acts of their "alternate entity" and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other

acquisition resulting in a virtual destruction of Plaintiff's remedies against each such "alternate entity"; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"; such "alternate entities" have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiff's remedies against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

| DEFENDANT                              | ALTERNATE ENTITY                                                                                                       |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| 3M COMPANY                             | f/k/a MINNESOTA MINING AND MANUFACTURING COMPANY                                                                       |
| 4520 CORP., INC.                       | as successor-in-interest to BENJAMIN F. SHAW COMPANY                                                                   |
| BW/IP INC.                             | and its wholly-owned subsidiaries                                                                                      |
| CAPE INTERMEDIATE HOLDINGS LIMITED     | f/k/a CAPE INTERMEDIATE HOLDINGS PLC<br>as successor-in-interest to CAPE ASBESTOS COMPANY                              |
| CAPE PLC                               | as successor-in-interest to CAPE ASBESTOS COMPANY                                                                      |
| CLARK-RELIANCE CORPORATION             | and its JERGUSON GAGE & VALVE division<br>and its JACOBY-TARBOX division                                               |
| CNA HOLDINGS LLC                       | f/k/a CELANESE CORPORATION<br>f/k/a HOECHST CELANESE CORPORATION<br>as successor in-interest-to FIBER INDUSTRIES, INC. |
| CRANE INSTRUMENTATION & SAMPLING, INC. | f/k/a CIRCOR INSTRUMENTATION TECHNOLOGIES, INC. f/k/a HOKE INC.                                                        |
| DANA COMPANIES, LLC                    | successor-by-merger to DANA CORPORATION                                                                                |

| DEFENDANT                            | ALTERNATE ENTITY                                                                                                                 |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| FLOWERVE CORPORAION                  | f/k/a THE DURIRON COMPANY INC.                                                                                                   |
| FLUOR CONSTRUCTORS INTERNATIONAL     | f/k/a FLUOR CORPORATION                                                                                                          |
| FMC CORPORATION                      | on behalf of its former Peerless Pump business                                                                                   |
| GRINNELL LLC                         | d/b/a GRINNELL CORPORATION                                                                                                       |
| HENRY PRATT COMPANY, LLC             | a subsidiary of MUELLER CO. LLC                                                                                                  |
| HOK GROUP, INC.                      | f/k/a HELLMUTH, OBATA AND KASSABAUM, INC.<br>as successor-in-interest to CRS SIRRINE<br>as successor-in-interest to J.E. SIRRINE |
| HONEYWELL INTERNATIONAL, INC.        | as successor-in-interest to ALLIED SIGNAL, INC.                                                                                  |
| METROPOLITAN LIFE INSURANCE COMPANY  | a wholly-owned subsidiary of METLIFE INC.                                                                                        |
| RILEY POWER INC.                     | f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC.                                                                              |
| RUST ENGINEERING & CONSTRUCTION INC. | as successor-in-interest to SIRRINE ENVIRONMENTAL CONSULTANTS, INC.                                                              |
| RUST INTERNATIONAL INC.              | as successor-in-interest to SIRRINE ENVIRONMENTAL CONSULTANTS, INC.                                                              |
| SCHNEIDER ELECTRIC SYSTEMS USA, INC. | f/k/a INVENSYS SYSTEMS, INC.                                                                                                     |
| SPX COOLING TECHNOLOGIES, INC.       | as successor-in-interest to MARLEY COOLING TOWERS CO.                                                                            |
| VISTRA CORP.                         | f/k/a VISTRA ENERGY CORP.<br>as successor-in-interest to CRS SIRRINE a/k/a CRSS, as successor-in-interest to J.E. SIRRINE        |
| VISTRA INTERMEDIATE COMPANY LLC      | as successor-in-interest to CRSS INC.                                                                                            |

| DEFENDANT            | ALTERNATE ENTITY                                  |
|----------------------|---------------------------------------------------|
| ZURN INDUSTRIES, LLC | as successor-in-interest to ZURN INDUSTRIES, INC. |

16. Plaintiff has been informed and believes, and thereon alleges, that at all times herein mentioned, Defendants or their “alternate entities” were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

17. Plaintiff has been informed and believes, and thereon alleges, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

18. As a direct and proximate result of the conduct as alleged within, Decedent Isabella Park suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to her damage in the sum of the amount as the trier of fact determines is proper.

19. As a direct and proximate result of the conduct as hereinafter alleged, Decedent Isabella Park incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court and all parties accordingly when the true and exact cost of Decedent’s medical treatment is ascertained.

### **THE PARTIES**

20. Plaintiff Keith W. Park is a current resident of the State of South Carolina. Decedent Isabella Park was exposed to asbestos as a result of her husband Andrew Park's career at various job sites, including but not limited to, locations in South Carolina, Pennsylvania, and Virginia. Decedent was exposed to asbestos through asbestos dust and fibers taken home on her husband, from asbestos dust in his vehicle, asbestos dust on his body including his hair, and from the dust being distributed and re-entrained.

21. Defendant, **ARMSTRONG INTERNATIONAL, INC.**, was and is a Michigan corporation with its principal place of business in Michigan. At all times material hereto, ARMSTRONG INTERNATIONAL, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Armstrong steam traps. ARMSTRONG INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiff's claims against ARMSTRONG INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

22. Defendant, **3M COMPANY**, f/k/a MINNESOTA MINING AND MANUFACTURING COMPANY, was and is a Delaware corporation with its principal place of business in Minnesota. At all times material hereto, 3M COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, 3M masks, 3M safety devices, and other asbestos-containing products. 3M COMPANY is sued as a Product Defendant. Plaintiff's claims against 3M COMPANY arise out of this Defendant's business activities in the State of South Carolina.



23. Defendant, **4520 CORP., INC.**, individually and as successor-in-interest to BENJAMIN F. SHAW COMPANY, was and is a Delaware corporation with its principal place of business in Oregon. At all times material hereto, 4520 CORP., INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. 4520 CORP., INC. is sued as a Product Defendant. 4520 CORP., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against 4520 CORP., INC. arise out of this Defendant's business activities in the State of South Carolina.

24. Defendant, **BECON CONSTRUCTION COMPANY, INC.**, was and is a Texas corporation with its principal place of business in Texas. At all times material hereto, BECON CONSTRUCTION COMPANY, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. BECON CONSTRUCTION COMPANY, INC. is sued as a Product Defendant. BECON CONSTRUCTION COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against BECON CONSTRUCTION COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

25. Defendant, **BW/IP INC.** and its wholly-owned subsidiaries, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, BW/IP INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Byron Jackson pumps. BW/IP INC. is sued as a Product Defendant. Plaintiff's claims against BW/IP INC. arise out of this Defendant's business activities in the State of South Carolina.

26. Defendant, **CAPE INTERMEDIATE HOLDINGS LIMITED**, f/k/a CAPE INTERMEDIATE HOLDINGS PLC, individually and as successor-in-interest to CAPE ASBESTOS COMPANY, was and is a private limited company organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland, with its principal place of business in England. At all times material hereto, CAPE INTERMEDIATE HOLDINGS LIMITED mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing coatings, insulation, and refractory linings. CAPE INTERMEDIATE HOLDINGS LIMITED is sued as a Product Defendant. Plaintiff's claims against CAPE INTERMEDIATE HOLDINGS LIMITED arise out of this Defendant's business activities in the State of South Carolina.

27. Defendant, **CAPE PLC**, individually and as successor-in-interest to CAPE ASBESTOS COMPANY, was and is a private limited company organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland, with its principal place of business in England. At all times material hereto, CAPE PLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment,

including, but not limited to, asbestos-containing coatings, insulation, and refractory linings. CAPE PLC is sued as a Product Defendant. Plaintiff's claims against CAPE PLC arise out of this Defendant's business activities in the State of South Carolina.

28. Defendant, **CARBOLINE COMPANY**, was and is a Delaware corporation with its principal place of business in Missouri. At all times material hereto, CARBOLINE COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing coatings. CARBOLINE COMPANY is sued as a Product Defendant. Plaintiff's claims against CARBOLINE COMPANY arise out of this Defendant's business activities in the State of South Carolina.

29. Defendant, **CARRIER CORPORATION**, was and is a Delaware corporation with its principal place of business in Florida. At all times material hereto, CARRIER CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Carrier Furnaces, Carrier air compressors and HVAC products. CARRIER CORPORATION is sued as a Product Defendant. Plaintiff's claims against CARRIER CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

30. Defendant, **CELANESE CORPORATION**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, CELANESE CORPORATION owned and/or controlled premises at which the Decedent's husband Andrew Park was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the Hoechst Celanese facility a/k/a Fiber

Industries Inc. in Spartanburg, South Carolina and Greer, South Carolina. CELANESE CORPORATION is sued as a Premises Defendant. Plaintiff's claims against CELANESE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

31. Defendant, **CLARK-RELIANCE CORPORATION**, and its JERGUSON GAGE & VALVE division and its JACOBY-TARBOX division, was and is a Delaware corporation with its principal place of business in Ohio. At all times material hereto, CLARK-RELIANCE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Jacoby-Tarbox sight glasses and Jerguson boiler gauge glasses. CLARK-RELIANCE CORPORATION is sued as a Product Defendant. Plaintiff's claims against CLARK-RELIANCE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

32. Defendant, **CNA HOLDINGS LLC**, f/k/a CELANESE CORPORATION f/k/a HOECHST CELANESE CORPORATION, sued individually and as successor-in-interest to FIBER INDUSTRIES, INC., was and is a Delaware limited liability company with its principal place of business in Texas. At all times material hereto, CNA HOLDINGS LLC owned and/or controlled premises at which the Decedent's husband Andrew Park was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the Hoechst Celanese facility a/k/a Fiber Industries Inc. in Spartanburg, South Carolina and Greer, South Carolina. CNA HOLDINGS LLC is sued as a Premises Defendant. Plaintiff's claims against CNA HOLDINGS LLC arise out of this Defendant's business activities in the State of South Carolina.

33. Defendant, **COVIL CORPORATION**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, COVIL

CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. COVIL CORPORATION is sued as a Product Defendant. COVIL CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Covil Corporation, exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against COVIL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

34. Defendant, **CRANE CO.**, was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, CRANE CO. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Crane valves and Deming pumps. CRANE CO. is sued as a Product Defendant. Plaintiff's claims against CRANE CO. arise out of this Defendant's business activities in the State of South Carolina.

35. Defendant, **CRANE INSTRUMENTATION & SAMPLING, INC.** f/k/a CIRCOR INSTRUMENTATION TECHNOLOGIES, INC. f/k/a HOKE INC., was and is a New York corporation with its principal place of business in South Carolina. At all times material hereto, CRANE INSTRUMENTATION & SAMPLING, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Hoke valves. CRANE INSTRUMENTATION

& SAMPLING, INC. is sued as a Product Defendant. Plaintiff's claims against CRANE INSTRUMENTATION & SAMPLING, INC. arise out of this Defendant's business activities in the State of South Carolina.

36. Defendant, **DANA COMPANIES, LLC**, successor-by-merger to DANA CORPORATION, was and is a Virginia limited liability company with its principal place of business in Ohio. At all times material hereto, DANA COMPANIES LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Victor gaskets. DANA COMPANIES LLC is sued as a Product Defendant. Plaintiff's claims against DANA COMPANIES LLC arise out of this Defendant's business activities in the State of South Carolina.

37. Defendant, **DANIEL INTERNATIONAL CORPORATION**, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, DANIEL INTERNATIONAL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. DANIEL INTERNATIONAL CORPORATION is sued as a Product Defendant. DANIEL INTERNATIONAL CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against DANIEL INTERNATIONAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

38. Defendant, **ECODYNE CORPORATION**, was and is a Delaware corporation with its principal place of business in Illinois. At all times material hereto, ECODYNE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing Foster Wheeler cooling towers. ECODYNE CORPORATION is sued as a Product Defendant. Plaintiff's claims against ECODYNE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

39. Defendant, **FISHER CONTROLS INTERNATIONAL, LLC**, was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, FISHER CONTROLS INTERNATIONAL, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Fisher valves. FISHER CONTROLS INTERNATIONAL, LLC is sued as a Product Defendant. Plaintiff's claims against FISHER CONTROLS INTERNATIONAL, LLC arise out of this Defendant's business activities in the State of South Carolina.

40. Defendant, **FLOWSERVE CORPORATION**, f/k/a THE DURIRON COMPANY, INC., was and is a New York corporation with its principal place of business in Texas. At all times material hereto, FLOWSERVE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Durco pumps and valves. FLOWSERVE

CORPORATION is sued as a Product Defendant. Plaintiff's claims against FLOWSERVE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

41. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL** f/k/a/ **FLUOR CORPORATION**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, **FLUOR CONSTRUCTORS INTERNATIONAL** mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. **FLUOR CONSTRUCTORS INTERNATIONAL** is sued as a Product Defendant. **FLUOR CONSTRUCTORS INTERNATIONAL** is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against **FLUOR CONSTRUCTORS INTERNATIONAL** arise out of this Defendant's business activities in the State of South Carolina.

42. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** is sued as a Product Defendant. **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** is also sued for the work it did at the various industrial sites in the



southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against FLUOR CONSTRUCTORS INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

43. Defendant, **FLUOR DANIEL SERVICES CORPORATION**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLUOR DANIEL SERVICES CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. FLUOR DANIEL SERVICES CORPORATION is sued as a Product Defendant. FLUOR DANIEL SERVICES CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against FLUOR DANIEL SERVICES CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

44. Defendant, **FLUOR ENTERPRISES, INC.**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR ENTERPRISES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. FLUOR ENTERPRISES, INC. is sued as a Product Defendant. FLUOR ENTERPRISES,

INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against FLUOR ENTERPRISES, INC. arise out of this Defendant's business activities in the State of South Carolina.

45. Defendant, **FMC CORPORATION**, on behalf of its former Peerless Pump business, was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, FMC CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Peerless pumps. Additionally, at all times material hereto, FMC CORPORATION owned and/or controlled premises at which Decedent's husband, Andrew Park, was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the FMC polymer plant in Lewistown, Pennsylvania. FMC CORPORATION is sued as a Product Defendant and as a Premises Defendant. Plaintiff's claims against FMC CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

46. Defendant, **FOSTER WHEELER ENERGY CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, FOSTER WHEELER ENERGY CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foster Wheeler boilers and Foster Wheeler cooling towers. FOSTER WHEELER ENERGY CORPORATION is sued as a Product Defendant. Plaintiff's

claims against FOSTER WHEELER ENERGY CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

47. Defendant, **GARDNER DENVER, INC.**, was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, GARDNER DENVER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Gardner Denver pumps. GARDNER DENVER, INC. is sued as a Product Defendant. Plaintiff's claims against GARDNER DENVER, INC. arise out of this Defendant's business activities in the State of South Carolina.

48. Defendant, **GENERAL ELECTRIC COMPANY**, was and is a New York corporation with its principal place of business in Massachusetts. At all times material hereto, GENERAL ELECTRIC COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing General Electric turbines. GENERAL ELECTRIC COMPANY is sued as a Product Defendant. Plaintiff's claims against GENERAL ELECTRIC COMPANY arise out of this Defendant's business activities in the State of South Carolina.

49. Defendant, **THE GOODYEAR TIRE & RUBBER COMPANY**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE GOODYEAR TIRE & RUBBER COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Durabla gaskets. THE GOODYEAR TIRE & RUBBER

COMPANY is sued as a Product Defendant. Plaintiff's claims against THE GOODYEAR TIRE & RUBBER COMPANY arise out of this Defendant's business activities in the State of South Carolina.

50. Defendant, **GOULDS PUMPS, INCORPORATED**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, GOULDS PUMPS, INCORPORATED mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Goulds pumps. GOULDS PUMPS, INCORPORATED is sued as a Product Defendant. Plaintiff's claims against GOULDS PUMPS, INCORPORATED arise out of this Defendant's business activities in the State of South Carolina.

51. Defendant, **GREAT BARRIER INSULATION CO.**, was a Florida corporation with its principal place of business in Alabama. At all times material hereto, GREAT BARRIER INSULATION CO. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. GREAT BARRIER INSULATION CO. is sued as a Product Defendant. GREAT BARRIER INSULATION CO. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Great Barrier Insulation Co., exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against GREAT BARRIER INSULATION CO. arise out of this Defendant's business activities in the State of South Carolina.

52. Defendant, **GRINNELL LLC** d/b/a GRINNELL CORPORATION, was and is a Delaware limited liability company with its principal place of business in Florida. At all times material hereto, GRINNELL LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Grinnell boilers and valves. GRINNELL LLC is sued as a Product Defendant. Plaintiff's claims against GRINNELL LLC arise out of this Defendant's business activities in the State of South Carolina.

53. Defendant, **HENRY PRATT COMPANY, LLC**, a subsidiary of MUELLER CO. LLC, was and is a Delaware limited liability company with its principal place of business in Illinois. At all times material hereto, HENRY PRATT COMPANY, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Pratt valves and Henry Pratt steam valves. HENRY PRATT COMPANY, LLC is sued as a Product Defendant. Plaintiff's claims against HENRY PRATT COMPANY, LLC arise out of this Defendant's business activities in the State of South Carolina.

54. Defendant, **HOK GROUP, INC.**, f/k/a HELLMUTH, OBATA AND KASSABAUM, INC., individually and as successor-in-interest to CRS SIRRINE, as successor-in-interest to J.E. SIRRINE, was and is a Delaware corporation with its principal place of business in Missouri. At all times material hereto, HOK GROUP, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing

materials, and the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. HOK GROUP, INC. is sued as a Product Defendant and a Design Defendant. HOK GROUP, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against HOK GROUP, INC. arise out of this Defendant's business activities in the State of South Carolina.

55. Defendant, **HONEYWELL INTERNATIONAL, INC.**, individually and as successor-in-interest to ALLIED SIGNAL, INC., was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, HONEYWELL INTERNATIONAL, INC. owned and/or controlled premises at which the Decedent's husband Andrew Park was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the Allied Chemical facility in Petersburg, Virginia. HONEYWELL INTERNATIONAL, INC. is sued as a Premises Defendant. Plaintiff's claims against HONEYWELL INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

56. Defendant, **METROPOLITAN LIFE INSURANCE COMPANY**, a wholly-owned subsidiary of METLIFE INC., was and is a New York corporation with its principal place of business in New York. METROPOLITAN LIFE INSURANCE COMPANY has done and does business in the State of South Carolina. METROPOLITAN LIFE INSURANCE COMPANY is named as a conspiracy defendant.

57. Defendant, **RILEY POWER INC. f/k/a RILEY STOKER CORPORATION** and D.B. RILEY, INC., was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, RILEY POWER INC. mined, manufactured,

processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Riley boilers and Union Iron Works boilers. RILEY POWER INC. is sued as a Product Defendant. Plaintiff's claims against RILEY POWER INC. arise out of this Defendant's business activities in the State of South Carolina.

58. Defendant, **ROBERTSHAW CONTROLS COMPANY**, was and is a Delaware corporation with its principal place of business in Illinois. At all times material hereto, ROBERTSHAW CONTROLS COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Fulton Sylphon valves. ROBERTSHAW CONTROLS COMPANY is sued as a Product Defendant. Plaintiff's claims against ROBERTSHAW CONTROLS COMPANY arise out of this Defendant's business activities in the State of South Carolina.

59. Defendant, **RUST ENGINEERING & CONSTRUCTION INC.**, individually and as successor-in-interest to SIRRINE ENVIRONMENTAL CONSULTANTS, INC., was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, RUST ENGINEERING & CONSTRUCTION INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. RUST ENGINEERING & CONSTRUCTION INC. is sued as a Product Defendant and a Design Defendant. RUST ENGINEERING &

CONSTRUCTION INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against RUST ENGINEERING & CONSTRUCTION INC. arise out of this Defendant's business activities in the State of South Carolina.

60. Defendant, **RUST INTERNATIONAL INC.**, individually and as successor-in-interest to SIRRINE ENVIRONMENTAL CONSULTANTS, INC., was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, RUST INTERNATIONAL INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. RUST INTERNATIONAL INC. is sued as a Product Defendant and a Design Defendant. RUST INTERNATIONAL INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against RUST INTERNATIONAL INC. arise out of this Defendant's business activities in the State of South Carolina.

61. Defendant, **SCHNEIDER ELECTRIC SYSTEMS USA, INC.** f/k/a INVENSYS SYSTEMS, INC., was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, SCHNEIDER ELECTRIC SYSTEMS USA, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing



products, materials, or equipment, including, but not limited to, asbestos-containing Foxboro valves and Fulton Sylphon valves. SCHNEIDER ELECTRIC SYSTEMS USA, INC. is sued as a Product Defendant. Plaintiff's claims against SCHNEIDER ELECTRIC SYSTEMS USA, INC. arise out of this Defendant's business activities in the State of South Carolina.

62. Defendant, **SOUTHERN INSULATION, INC.**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, SOUTHERN INSULATION, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. SOUTHERN INSULATION, INC. is sued as a Product Defendant. SOUTHERN INSULATION, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Southern Insulation, Inc., exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against SOUTHERN INSULATION, INC. arise out of this Defendant's business activities in the State of South Carolina.

63. Defendant, **SPIRAX SARCO, INC.**, was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPIRAX SARCO, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Sarco steam traps and valves. SPIRAX SARCO, INC. is sued as a Product Defendant. Plaintiff's claims against SPIRAX SARCO, INC. arise out of this Defendant's business activities in the State of South Carolina.

64. Defendant, **SPX COOLING TECHNOLOGIES, INC.**, individually, and as successor-in-interest to MARLEY COOLING TOWERS CO., was and is a Delaware corporation with its principal place of business in Kansas. At all times material hereto, SPX COOLING TECHNOLOGIES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Marley cooling towers. SPX COOLING TECHNOLOGIES, INC. is sued as a Product Defendant. Plaintiff's claims against SPX COOLING TECHNOLOGIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

65. Defendant, **STARR DAVIS COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY, INC. is sued as a Product Defendant. STARR DAVIS COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company Inc., exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against STARR DAVIS COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

66. Defendant, **STARR DAVIS COMPANY OF S.C., INC.**, was a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY OF S.C., INC. manufactured, processed, imported, converted,

compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY OF S.C., INC. is sued as a Product Defendant. STARR DAVIS COMPANY OF S.C., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company of S.C. Inc., exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against STARR DAVIS COMPANY OF S.C., INC. arise out of this Defendant's business activities in the State of South Carolina.

67. Defendant, **STERLING FLUID SYSTEMS (USA), LLC**, was and is a Delaware limited liability company with its principal place of business in Indiana. At all times material hereto, STERLING FLUID SYSTEMS (USA), LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Peerless pumps. STERLING FLUID SYSTEMS (USA), LLC is sued as a Product Defendant. Plaintiff's claims against STERLING FLUID SYSTEMS (USA), LLC arise out of this Defendant's business activities in the State of South Carolina.

68. Defendant, **UNION CARBIDE CORPORATION**, was and is a New York corporation with its principal place of business in Texas. At all times material hereto, UNION CARBIDE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing fibers. UNION CARBIDE CORPORATION is sued as a Product Defendant related to

its Bakelite product(s), as well as supply of raw asbestos fiber under the product name Calidria. Plaintiff's claims against UNION CARBIDE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

69. Defendant, **VISTRA CORP.**, f/k/a VISTRA ENERGY CORP., individually and as successor-in-interest to CRS SIRRINE a/k/a CRSS, as successor-in-interest to J.E. SIRRINE, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, VISTRA CORP. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. VISTRA CORP. is sued as a Product Defendant and a Design Defendant. VISTRA CORP. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against VISTRA CORP. arise out of this Defendant's business activities in the State of South Carolina.

70. Defendant, **VISTRA INTERMEDIATE COMPANY LLC**, individually and as successor-in-interest to CRSS INC., was and is a Delaware limited liability company with its principal place of business in Texas. At all times material hereto, VISTRA INTERMEDIATE COMPANY LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern

United States. VISTRA INTERMEDIATE COMPANY LLC is sued as a Product Defendant and a Design Defendant. VISTRA INTERMEDIATE COMPANY LLC is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Decedent's husband Andrew Park and Decedent, to lethal doses of asbestos. Plaintiff's claims against VISTRA INTERMEDIATE COMPANY LLC arise out of this Defendant's business activities in the State of South Carolina.

71. Defendant, **THE WILLIAM POWELL COMPANY**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE WILLIAM POWELL COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Powell valves. THE WILLIAM POWELL COMPANY is sued as a Product Defendant. Plaintiff's claims against THE WILLIAM POWELL COMPANY arise out of this Defendant's business activities in the State of North Carolina.

72. Defendant, **YORK INTERNATIONAL CORPORATION**, was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, YORK INTERNATIONAL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing York compressors. YORK INTERNATIONAL CORPORATION is sued as a Product Defendant. Plaintiff's claims against YORK INTERNATIONAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

73. Defendant, **ZURN INDUSTRIES, LLC**, individually and as successor-in-interest to ZURN INDUSTRIES, INC., was and is a Delaware limited liability company with its principal place of business in Wisconsin. At all times material hereto, ZURN INDUSTRIES, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Zurn boilers, Zurn strainers, and Erie City boilers. ZURN INDUSTRIES, LLC is sued as a Product Defendant. Plaintiff's claims against ZURN INDUSTRIES, LLC arise out of this Defendant's business activities in the State of South Carolina.

74. Decedent, Isabella Park, was exposed through her husband, Andrew Park, while he worked with and around asbestos-containing equipment in his immediate vicinity at his work sites, the premises of Defendants CELANESE CORPORATION, CNA HOLDINGS LLC, FMC CORPORATION, and HONEYWELL INTERNATIONAL, INC. (collectively, hereinafter the "Premises Defendants"). All other Defendants, or their applicable predecessors in interest, (except for METROPOLITAN LIFE INSURANCE COMPANY) were engaged in the manufacture, sale, distribution and/or installation of asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action. At all times relevant to this action, the Defendants and the predecessors of the Defendants, for whose actions the Defendants are legally responsible, were engaged in the manufacture, sale, distribution, and/or installation of asbestos-containing products and raw materials for use in South Carolina and other states at times relevant to this action.

### **BACKGROUND FACTS**

75. Plaintiff Keith W. Park brings this action for monetary damages as a result of Decedent Isabella Park contracting an asbestos-related disease and subsequently dying as a result.

76. On or about January 25, 2021, the Decedent, Isabella Park was diagnosed with malignant Mesothelioma. Decedent died as a proximate cause of her asbestos-related disease on or about June 9, 2021.

77. Decedent's mesothelioma was caused by her husband Andrew Park's employment as a group leader, and senior process engineer at various industrial facilities from approximately the mid 1960s through the mid 1980s, in various states including but not limited to South Carolina, Pennsylvania, and Virginia. Decedent's husband performed a variety of tasks throughout the facilities, and was further exposed through his work around various other trades, including, but not necessarily limited to, boilermakers, welders, mechanics, carpenters, iron workers, insulators, millwrights, and pipefitters, including but not limited to the following sites:

- FMC Corporation – Lewistown, PA
- Allied Chemical Corp. – Petersburg, VA
- Hoechst Celanese a/k/a Fiber Industries, Inc – Spartanburg, SC
- Hoechst Celanese a/k/a Fiber Industries, Inc – Greer, SC

78. While employed at these various jobsites, Decedent's husband Andrew Park wore his own clothes to work, was exposed to asbestos dust and fibers that he brought home on his work clothes, fell off in his vehicle and were on his body including his hair, that distributed and re-entrained in his vehicle and home, which caused Decedent Isabella Park to be exposed to said asbestos dust in sufficient amounts as to cause her to develop mesothelioma.

79. Decedent Isabella Park was exposed to asbestos dust and fibers from products, services, and goods manufactured, distributed and/or sold by Defendants for use at Decedent's husband Andrew Park's jobsites which she came in contact with off premises by contact with her husband Andrew Park's work clothes, personal possessions and vehicle. Her exposure to asbestos

dust and fibers occurred through her contact with her husband's work clothing and person when greeting him at the end of his work day, through laundering his work clothing on a regular basis, through spending time in his vehicle in which asbestos dust and fibers had been deposited, and through sharing a home contaminated with asbestos fibers that were constantly being stirred up and re-entrained in the air that they breathed throughout their home.

80. Decedent's exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Decedent Isabella Park's mesothelioma and other related injuries and subsequent death and therefore under South Carolina law, is the legal cause of Decedent's injuries and damages.

81. Decedent Isabella Park and Decedent's late husband were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

82. Plaintiff is informed and believes, and thereon alleges, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

83. As a direct and proximate result of the conduct as alleged within, Decedent Isabella Park suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to her damage in the sum of the amount as the trier of fact determines is proper.

84. As a direct and proximate result of the conduct as hereinafter alleged, Decedent Isabella Park incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court and all parties accordingly when the true and exact cost of Decedent Isabella Park's medical treatment is ascertained.



**FOR A FIRST CAUSE OF ACTION**  
**(Product Liability: Negligence)**

**Plaintiff Complains of Defendants for a Cause of Action for Negligence and Alleging as Follows:**

85. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

86. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products.

87. At all times herein mentioned, Defendants, and/or their “alternate entities” singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products, in that said products caused personal injuries to Decedent Isabella Park and

others similarly situated, (hereinafter collectively called “exposed persons”), while being used for their intended purpose and in a manner that was reasonably foreseeable.

88. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos and asbestos-containing products from causing Decedent Isabella Park’s mesothelioma and subsequent death, due to an inability of any asbestos-alternative to penetrate the pleural lining of Decedent Isabella Park’s lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their “alternate entities.” The gravity of the potential harm resulting from the use of Defendants’ asbestos or asbestos-containing products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by Decedent’s husband Andrew Park. Defendants and/or their “alternate entities” had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

89. Defendants and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and asbestos-containing products would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other

applications, including, but not limited to grinding sawing, chipping, hammering, scraping, sanding, breaking, removal, “rip-out,” and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Decedent’s husband Andrew Park and Decedent, would use or be in proximity to and exposed to said asbestos fibers.

90. At all times relevant, Defendants and/or their “alternate entities” were aware of their asbestos and asbestos-containing products’ defect but failed to adequately warn Decedent’s husband Andrew Park and Decedent or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants’ products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

91. Decedent’s husband Andrew Park and Decedent and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Decedent’s husband Andrew Park’s exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint, and resulted in Decedent being exposed at home.

92. Decedent Isabella Park suffered and subsequently died from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Decedent and Decedent’s husband Andrew Park were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

93. Defendants’ conduct and defective products as described in this cause of action were a direct cause of Decedent Isabella Park’s injuries and subsequent death, and all damages

thereby sustained by Decedent Isabella Park. Plaintiff therefore seeks all compensatory damages in order to make him whole, according to proof.

94. Furthermore, the conduct of Defendants and/or their "alternate entities" in continuing to market and sell products which they knew were dangerous to Decedent and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Decedent Isabella Park and others similarly situated.

95. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, Defendants and/or their "alternate entities" did so with conscious disregard for the safety of "exposed persons" who came in contact with asbestos and asbestos-containing products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, asbestosis, mesothelioma, lung cancer, and other lung damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

96. Defendants and their "alternate entities" were aware that members of the general public and other "exposed persons," who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products, could cause injury, and Defendants and their "alternate entities," each of them, knew that members of

the general public and other “exposed persons,” who came in contact with asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health and human life.

97. The above-referenced conduct of Defendants and their “alternate entities” was motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Defendants, their “alternate entities,” and each of them consciously disregarded the safety of “exposed persons” in pursuit of profit. Defendants were consciously willing and intended to permit asbestos and asbestos-containing products to cause injury to “exposed persons” without warning them of the potential hazards and further induced persons to work with and be exposed thereto, including Decedent.

98. Decedent and Decedent’s husband Andrew Park and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos containing-products, and products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Decedent and Decedent’s husband Andrew Park or other exposed persons. Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Decedent Isabella Park, and others similarly situated were exposed.

99. Defendants and/or their "alternate entities" are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and

managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their “alternate entities” as set forth herein.

100. The herein-described conduct of Defendants and their “alternate entities,” was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all defendants.

**FOR A SECOND CAUSE OF ACTION**

**(Product Liability: Strict Liability - S.C. Code Ann. § 15-73-10, et seq.)**

**As a Second and Distinct Cause of Action for Strict Liability, Plaintiff Complains of Defendants, and Alleges as Follows:**

101. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

102. Decedent Isabella Park suffered and subsequently died from mesothelioma, a cancer related to exposure to asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Decedent was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

103. The Products Defendants’ conduct and defective products as described above were a direct cause of Decedent Isabella Park’s injuries and subsequent death, and the injuries and damages thereby sustained by Decedent.

104. Furthermore, the Defendants’ conduct and that of their “alternate entities” in continuing to market and sell products which they knew were dangerous to Decedent and the public without adequate warnings or proper use instructions, was done in a conscious disregard and indifference to the safety and health of Decedent and others similarly situated.

105. Defendants and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-out," and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling, "exposed persons," including Decedent, would use or be in proximity to and exposed to said asbestos fibers.

106. Decedent's husband Andrew Park, and Decedent, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, referred to herein in a manner that was reasonably foreseeable. Decedent Isabella Park's exposure to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products occurred at various locations as set forth in this Complaint.

107. Defendants and/or their "alternate entities" knew and intended that the above-referenced asbestos and asbestos-containing products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

108. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants' asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing

Decedent Isabella Park's mesothelioma and subsequent death, due to an inability of any asbestos-alternative to penetrate the pleural lining of Decedent Isabella Park's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

109. The defect existed in the said products at the time they left the possession of Defendants, and/or their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including mesothelioma, asbestosis, other lung damage, and cancer to "exposed persons," including Decedent Isabella Park herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

110. Decedent and Decedent's husband Andrew Park, and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Decedent, Decedent's husband Andrew Park, or other exposed persons. Said Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Decedent Isabella Park and others similarly situated were exposed.



111. Defendants' defective products as described above were a direct cause of Decedent Isabella Park's injuries and subsequent death, and the damages thereby sustained.

112. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, Defendants, and/or their "alternate entities," and each of them, did so with conscious disregard for the safety of Decedent and Decedent's husband Andrew Park, and other exposed persons who came in contact with the asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, mesothelioma, asbestosis, other lung damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

113. Defendants and/or their "alternate entities" were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products could cause injury. Defendants and/or their "alternate entities" further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products would assume,

and in fact did assume, that exposure to asbestos and asbestos- containing products was safe, when in fact exposure was extremely hazardous to health and human life.

114. The above-referenced conduct of Defendants, and/or their "alternate entities" motivated by the financial interest of Defendants, their "alternate entities," and each of them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products. Defendants and/or their "alternate entities" consciously disregarded the safety of "exposed persons" in their pursuit of profit and in fact consciously intended to cause injury to Decedent Isabella Park and other exposed persons and induced persons to work with, be exposed to, and thereby injured by asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products.

115. Defendants are liable for the fraudulent, oppressive, and malicious acts of their "alternate entities," and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their "alternate entities" as set forth herein.

116. The conduct of said defendants, their "alternate entities," and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all defendants.

117. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign,

predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos and products manufactured for foreseeable use with asbestos products.

**FOR A THIRD CAUSE OF ACTION**  
**(Vicarious Liability of Defendants Based upon Respondeat Superior)**

**As a Third Distinct Cause of Action Against Defendants, Plaintiff Brings this Third Cause of Action for Vicarious Liability of Product and Premises Defendants Based upon Respondeat Superior and Alleges as Follows:**

118. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

119. Prior to and during all relevant times Defendants and/or their “alternate entities” employed workers (hereinafter “employees”) in areas where defendants owned, maintained, controlled, managed and/or conducted business activities where Decedent’s husband Andrew Park worked and/or spent time as alleged above.

120. At all times herein mentioned, Defendants’ employees frequently encountered asbestos-containing products, materials, and debris during the course and scope of their employment, and during their regular work activities negligently disturbed asbestos-containing materials to which Decedent’s husband Andrew Park was exposed, and as a result Decedent was exposed at home.

121. Employees handling and disturbing asbestos-containing products in Decedent's husband Andrew Park's vicinity were the agents and employees of defendants and at all times relevant were subject to the control of Defendants with respect to their acts, labor, and work involving (a) the removal, transport, installation, cleaning, handling, and maintenance of asbestos-containing products, materials, and debris, and (b) the implementation of safety policies and procedures. Defendants controlled both the means and manner of performance of the work of their employees as described herein.

122. Employees handling and disturbing asbestos-containing products in Decedent's husband Andrew Park's, Decedent's, and others' vicinity received monetary compensation from Defendants in exchange for the work performed and these employees performed the work in the transaction and furtherance of Defendants' businesses.

123. Harmful asbestos fibers were released during Defendants' employees' use, handling, breaking, or other manipulation of asbestos-containing products and materials.

124. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Decedent's husband Andrew Park, who would then bring said asbestos home, causing Decedent to inhale those fibers.

125. The asbestos and asbestos-containing materials were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air onto surrounding surfaces, and onto persons in the area. The inhalation of asbestos fibers can cause serious disease and death.

126. Defendants' employees' use, handling and manipulation of asbestos-containing materials, as required by their employment and occurring during the course and scope of their employment, did in fact, cause personal injuries, including mesothelioma and other lung damage, to exposed persons including Decedent Isabella Park.

127. Defendants' employees were negligent in their use, handling and manipulation of said products in that they failed to isolate their work with asbestos and/or to suppress asbestos fibers from being released into the air and surrounding areas. They also failed to take appropriate steps to learn how to prevent exposure to asbestos, failed to warn and/or adequately warn Decedent's husband Andrew Park that he, and as a result Decedent, was being exposed to asbestos, failed to adequately warn Decedent and Decedent's husband Andrew Park of the harm associated with their exposure to asbestos, and provide them with protection to prevent their inhalation of asbestos.

128. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Decedent's husband Andrew Park, and as a result Decedent.

129. Defendants' employees owed Decedent and Decedent's husband Andrew Park a duty to exercise due care and diligence in their activities while he was lawfully on the premises so as not to cause them harm.

130. Defendants' employees breached this duty of care as described above.

131. At all times mentioned, Decedent and Decedent's husband Andrew Park were unaware of the dangerous condition and unreasonable risk of personal injury created by Defendants' employees' use of and work with asbestos-containing products and materials.

132. As a direct result of the Defendants' employees' conduct, Decedent's husband Andrew Park's exposure to asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products, each individually and together, caused severe and permanent injury and death to Decedent Isabella Park and the damages and injuries as complained of herein by Plaintiff.

133. The risks herein alleged and the resultant damages suffered by the Decedent Isabella Park were typical of or broadly incidental to Defendants' business enterprises. As a practical matter, the losses caused by the torts of Defendants' employees as alleged were sure to occur in the conduct of Defendants' business enterprises. Nonetheless, Defendants engaged in, and sought to profit by, their business enterprises without exercising due care as described in this Complaint, which, on the basis of past experience, involved harm to others as shown through the torts of employees.

134. Based on the foregoing, Defendants as the employers of said employees are vicariously liable under the doctrine of respondeat superior for all negligent acts and omissions committed by their employees in the course and scope of their work that caused harm to Decedent.

**FOR A FOURTH CAUSE OF ACTION**  
**(Premises Liability: Negligence as to Premises Owner/Contractor)**

**As a Fourth Distinct Cause of Action for General Negligence, Plaintiff Complains of Premises Defendants, and Alleges as Follows:**

135. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

136. Prior to and during all relevant times, the Premises Defendants and/or their "alternate entities" employed workers in areas where Premises Defendants owned, maintained, controlled, managed and/or conducted business activities where Decedent's husband Andrew Park worked and/or spent time.

137. At all times herein mentioned, Premises Defendants selected, supplied, and distributed asbestos-containing materials to their employees for use during their regular work activities, and said employees disturbed those asbestos-containing materials.

138. Premises Defendants were negligent in selecting, supplying, distributing and disturbing the asbestos-containing products and in that said products were unsafe. Said products

were unsafe because they released asbestos fibers and dust into air when used which would be inhaled by Decedent's husband Andrew Park and settled onto his clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers, by-standers, and family members including Decedent Isabella Park would be exposed to dangerous asbestos dust beyond the present.

139. The asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products described herein were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air, and the inhalation of asbestos fibers causes serious disease and death. Here, the handling of the above-described asbestos-containing materials by Premises Defendants' employees, as required by their employment and occurring during the course and scope of their employment, did, in fact, cause personal injuries, including mesothelioma, lung cancer and other lung damage, to exposed persons, including Decedent.

140. At all times herein mentioned, Premises Defendants knew or should have known that their employees and bystanders thereto, including Decedent and Decedent's husband Andrew Park, frequently encountered asbestos-containing products and materials during the course and scope of their work activities.

141. At all times herein mentioned, Premises Defendants knew or should have known that the asbestos-containing materials encountered by their employees and bystanders thereto including Decedent and Decedent's husband Andrew Park, were unsafe in that harmful asbestos fibers were released during the use, handling, breaking, or other manipulation of asbestos-containing products and materials, and that once released, asbestos fibers can be inhaled, and can alight on the clothes, shoes, skin, hair, and body parts of those exposed, where further activity

causes the fibers to once again be released into the air where they can be inhaled, all of which causes serious disease and/or death.

142. At all times herein mentioned, Premises Defendants, in the exercise of reasonable diligence, should have known that absent adequate training and supervision, their employees and bystanders thereto, including Decedent and Decedent's husband Andrew Park, were neither qualified nor able to identify asbestos-containing products nor to identify the hazardous nature of their work activities involving asbestos-containing products.

143. At all times herein mentioned, Decedent and Decedent's husband Andrew Park were unaware of the dangerous condition and unreasonable risk of personal injury created by the presence and use of asbestos-containing products and materials.

144. At all times herein mentioned, Premises Defendants, in the exercise of reasonable diligence, should have known that workers and bystanders thereto, would bring dangerous dust home from the workplace and contaminate their family cars and homes, continuously exposing and potentially causing injury to others off the premises.

145. At all times herein mentioned, Premises Defendants had a duty to use due care in the selection, supply, distribution and disturbance of asbestos-containing products and materials to their employees, to adequately instruct, train, and supervise their employees and to implement adequate safety policies and procedures to protect workers and persons encountering those workers, including Decedent, from suffering injury or death as a result of the asbestos hazards encountered and created by the work of Premises Defendants' employees.

146. Premises Defendants' duties as alleged herein exist and existed independently of Defendants' duties to maintain their premises in reasonably safe condition, free from concealed hazards.



147. Premises Defendants negligently selected, supplied, and distributed the asbestos-containing materials and failed to adequately train or supervise their employees to identify asbestos-containing products and materials; to ensure the safe handling of asbestos-containing products and materials encountered during the course of their work activities; and to guard against inhalation of asbestos fibers and against the inhalation of asbestos fibers by those who would come into close contact with them after they had used, disturbed, or handled, said asbestos-containing products and materials during the course and scope of their employment by Premises Defendants.

148. Premises Defendants failed to warn their employees and bystanders thereto, including Decedent and Decedent's husband Andrew Park, of the known hazards associated with asbestos and the asbestos-containing materials they were using and/or disturbing.

149. As a direct and proximate result of the conduct of Premises Defendants in selecting, supplying, distributing and disturbing asbestos-containing materials or products manufactured for foreseeable use with asbestos products and failing to adequately train and supervise their employees and failing to adopt and implement adequate safety policies and procedures as alleged herein, Decedent Isabella Park became exposed to and inhaled asbestos fibers, which was a substantial factor in causing Decedent Isabella Park to develop asbestos-related disease mesothelioma and subsequently die, and to suffer all damages attendant thereto.

**FOR A FIFTH CAUSE OF ACTION**  
**(Negligence Per Se)**

**As a Fifth Distinct Cause of Action for Negligence Per Se, Plaintiff Complains of Defendants, and Alleges as Follows:**

150. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

151. The actions of Defendants also constituted negligence per se.

152. Defendants violated federal and state regulations relating to asbestos exposure. Such violations constitute negligence per se or negligence as a matter of law. Further, each such violation resulted in dangerous and unlawful exposures to asbestos for Decedent. Plaintiff is not making any claims under federal law; instead, Plaintiff is simply using the violation of federal standards as proof of liability on his state-law theories. Further, the reference to Federal regulations does not create a federal question. *See Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804 (1986). Any removal on this basis will be met with an immediate motion for remand and for sanctions.

153. The negligence per se of Defendants was a proximate cause of Decedent's injuries.

**FOR A SIXTH CAUSE OF ACTION**  
**(Negligence as to Design Defendants)**

**As a Sixth Distinct Cause of Action for Negligence, Plaintiff Complains of Design Defendants and Alleges as Follows:**

154. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

155. The work performed by the Design Defendants was defective in all, but not limited to, the following particulars:

- (a) In failing and neglecting to properly inspect the building for defects in the construction, design, and defects in the asbestos-containing products, materials and/or equipment.
- (b) In failing and neglecting to properly train employees in the proper installation of asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (c) In failing and neglecting to properly supervise employees, contractors, subcontractors, and/or suppliers in the proper installation of asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (d) In failing and neglecting to employ careful contractors and/or employees.

- (e) In failing and neglecting to properly install asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (f) In failing to properly install the asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (g) In failing to properly warn Decedent of dangers and risks associated with the conditions of the material and work product which was being installed for use by Decedent Isabella Park and others in his vicinity.
- (h) By such other failures as will be proved at trial.

All of which is contrary to one or more of workmanlike practice; the plans, specifications, and other contract documents; manufacturers' recommendations and instructions; trade custom and usage; and applicable building codes.

156. As a direct, proximate, and foreseeable result of the negligence of the Design Defendants, Decedent suffered and incurred actual damages, as described hereinabove, and are entitled to recover such damages from the Design Defendants in such an amount as the trier of fact may find. The actions and omissions to act of the Design Defendants were willful, wanton, reckless and grossly negligent, so as to entitle the Plaintiff to recover punitive damages.

**FOR A SEVENTH CAUSE OF ACTION**  
**(Negligent Design Services Against Design Defendants)**

**As a Seventh Distinct Cause of Action for Negligent Design Services, Plaintiff Complains of Design Defendants and Alleges as Follows:**

157. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

158. Design Defendants owed Decedent a duty to perform professional design services, including construction administration, in accordance with professional standards obtained in South Carolina for the delivery and performance of such services.

159. Design Defendants breached such professional standards in all, but not limited to, the following particulars:

- (a) In failing and neglecting to take reasonable care in the design of said building.
- (b) In failing and neglecting to properly design said building, to issue proper construction, to prevent continuous and substantial exposure to asbestos and/or asbestos-containing products.
- (c) In failing and neglecting to properly supervise the construction of said building.
- (d) In failing and neglecting to properly and reasonably design said building to eliminate exposure to asbestos and/or asbestos-containing products, including but not limited to asbestos-containing insulation.
- (e) In negligently specifying the use of inappropriate, improper and/or defective and deficient building systems, materials, and components, including but not limited to asbestos-containing insulation.
- (f) By such other failures as will be proved at trial.

160. As a direct, proximate, and foreseeable result of the negligence of the Design Defendants, Decedent suffered and incurred actual damages, as described hereinabove, and are entitled to recover such damages from the Design Defendants in such an amount as the trier of fact may find. The actions and omissions to act of the Design Defendants were willful, wanton, reckless and grossly negligent, so as to entitle the Plaintiff to recover punitive damages.

**FOR AN EIGHTH CAUSE OF ACTION**

**(Product Liability: Breach of Implied Warranties - S.C. Code Ann. § 36-2-314)**

**As an Eighth Distinct Cause Of Action for Breach of Implied Warranties, Plaintiff Complains of Defendants and Alleges as Follows:**

161. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs where relevant.

162. Each of the Defendants impliedly warranted that their asbestos materials or asbestos-containing products were of good and merchantable quality and fit for their intended use.

163. The implied warranty made by the Defendants, that the asbestos and asbestos-containing products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Decedent's husband Andrew Park carried out his duties and was inhaled by Decedent Isabella Park through asbestos dust and fibers taken home on her husband's work clothes, from asbestos dust in his vehicle and asbestos dust on his body including his hair and from the dust being distributed and re-entrained.

164. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Decedent's husband Andrew Park was exposed to Defendants' asbestos, asbestos-containing products, and/or products manufactured for foreseeable use with asbestos products and consequently Decedent Isabella Park was exposed to Defendants' asbestos dust and fibers that remained on her husband's clothes, in his vehicle, on his work equipment and on his body, and developed mesothelioma, causing Decedent Isabella Park to suffer all damages attendant thereto.

**FOR A NINTH CAUSE OF ACTION**  
**(Fraudulent Misrepresentation)**

**For a Ninth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendants, and Alleges as Follows:**

165. Plaintiff repeats and re-alleges the portions of the above paragraphs where relevant.

166. That during, before and after Decedent's exposure to asbestos products manufactured by Defendants and/or their "alternate entities", the Defendants and/or their "alternate entities" falsely represented facts, including the dangers of asbestos exposure to Decedent and Decedent's husband Andrew Park in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such

as Decedent. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

167. The foregoing representations were material conditions precedent to Decedent's continued exposure to asbestos-containing products. Defendants and/or their "alternate entities", each intended that Decedent and Decedent's husband Andrew Park act upon the representations by continuing Decedent's late husband's work around, and thereby exposure to, the asbestos products. Decedent and Decedent's husband Andrew Park were ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

168. As a direct and proximate result Decedent and Decedent's husband Andrew Park's reliance upon Defendants' false representations, Decedent suffered injury and damages as described herein.

#### **FOR A TENTH CAUSE OF ACTION**

#### **(Conspiracy, Concert of Action – Defendant Metropolitan Life Insurance Company)**

#### **For a Tenth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendant Metropolitan Life Insurance Company, and Alleges as Follows:**

169. Plaintiff repeats and re-alleges the portions of the above paragraphs where relevant.

170. Beginning in the late 1920's, conspirators including Defendant Metropolitan Life Insurance Company ("Met Life"), as well as Johns-Manville, Raybestos-Manhattan and others, undertook a duty to conduct research on asbestos-related health problems and to inform the public about any health risks that could be associated therewith. In or about 1929, Met Life, through its agents and employees acting within the scope of their agency and employment, including but not limited to Dr. Anthony J. Lanza ("Lanza"), began an investigation of asbestos-related health hazards. In 1935, this study was altered by Lanza, with the full knowledge of Met Life, at the request of and in concert with the asbestos industry in order to wrongly influence the United States Public Health Service, the United States medical community and various state legislatures.

171. Thereafter, Defendant Met Life through the acts and omissions of its employees, most notably Lanza, undertook a series of activities with various members of the asbestos industry including but not limited to Johns-Manville, Raybestos-Manhattan/Raymark Industries, Inc., United States Gypsum, American Brake Blok/Abex, and others to suppress and misrepresent the dangers of exposure to asbestos dust to employees of Met Life's insureds and the general public and the medical community.

172. The conspirators through their agent, Lanza of Met Life, made a concerted effort to discredit and to terminate the experiments of certain scientists who were developing data of profound importance for the area of public health in relation to the cancer hazard which existed for workers and bystanders in the asbestos industry.

173. As a direct and proximate result of Met Life's intentional publication of deceptive and misleading medical data and information, and other conspiratorial acts and omissions, Defendant caused asbestos to be used in the occupational settings from which Decedent and Decedent's husband Andrew Park were exposed to asbestos dust which resulted in Decedent Isabella Park's injuries. Defendant Met Life, through its agents and employees and officers, aided and abetted and gave substantial assistance to Johns-Manville and Raybestos-Manhattan in their tortious selling of asbestos products and voluntarily undertook a duty to warn the United States Public Health Service, the medical community, and others about the danger of asbestos and consciously and negligently misrepresented the dangers of asbestos to the United States Public Health Service, the medical community, and others, all to the ultimate harm of Decedent herein.

174. Defendant Met Life rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Decedent Isabella Park was exposed, and such assistance by Met Life aided and abetted the negligence and the marketing of unreasonably dangerous

asbestos-containing products by such manufacturers which proximately caused Decedent Isabella Park's illness and subsequent death.

175. In both conducting tests and in publishing their alleged results, Met Life failed to exercise reasonable care to conduct or publish complete, adequate and accurate tests of the health effects of asbestos. Met Life also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure.

176. Decedent Isabella Park unwittingly and justifiably relied upon the thoroughness of Met Life's tests and information dissemination, the results of which Met Life published in leading medical journals.

177. As a direct and proximate contributing result of Met Life's failures to conduct or accurately publish adequate tests or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to Decedent Isabella Park from asbestos exposure was increased, and (ii) Decedent suffered the injuries described herein.

178. In failing to test fully and adequately for the adverse health effects from exposure to asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in collaborating with the other Defendants materially to understate the hazards of asbestos exposure, all for its own profit and gain, Met Life acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including Decedent.

179. Additionally and alternatively, as a direct and proximate result of Met Life's actions and omissions, Decedent and Decedent's husband Andrew Park was caused to remain ignorant of all the dangers of asbestos resulting in Decedent, Decedent's husband, his co-workers, their family, and the general public to be unaware of the true and full dangers of asbestos, depriving Decedent



and Decedent's husband Andrew Park of the opportunity to decide for themselves whether they wanted to take the risk of being exposed to asbestos, denied Decedent and Decedent's husband Andrew Park the opportunity to take precautions against the dangers of asbestos and proximately caused Decedent's damages herein.

180. During the relevant time period the Decedent and Decedent's husband Andrew Park were exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied, and/or sold by Johns Manville and/or Raybestos/Raymark.

181. Defendant, Met Life, together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engaged in a conspiracy or concert of action to inflict injury on the Decedent Isabella Park, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the Decedent Isabella Park in the course of or as a consequence of the conspiracy of concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action:

- (a) In 1932, Met Life, through Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos-related disease. Further collaboration between Manville and Met Life continued the cover-up.
- (b) Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Lanza, Associate Director of Met Life, which was then insurer of Manville and Raymark, that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as 'fatal' and through other selective editing that

affirmatively misrepresent asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark, and Met Life as insurer. Furthermore, upon information and belief, it is alleged that Met Life, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.

- (c) In 1936, the conspirators or some of them entered into an agreement with the Saranac Laboratories. Under this agreement, these conspirators acquired the power to decide what information Saranac could publish about asbestos disease and to control in what form such publications would occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.
- (d) By November 1948, or earlier, Manville, Met Life (acting through Lanza), Raymark, and others decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.
- (e) At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensities of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the Decedent.
- (f) As a direct result of influence exerted by the above described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and

deliberately disseminated this misleading Vorwald publication to universities, libraries, government officials, agencies and others.

- (g) Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.
- (h) For many decades, Met Life, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature, and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly.
- (i) Despite the medical and scientific data, literature and test reports possessed by and available to Met Life, individually and in conspiracy with Manville and Raymark, fraudulently, willfully and maliciously withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, cancer, mesothelioma, and other illnesses and diseases from Decedent who using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products; caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases, which Metropolitan, Manville and Raymark knew were either incorrect, incomplete, outdated and misleading; distorted the results of medical examinations conducted upon workers who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm which workers suffered; and failed to adequately warn the Decedent of the dangers to which she was exposed when they knew of the dangers.
- (j) By the false and fraudulent representations, omissions, failures, and concealments set forth above, Met Life, Manville and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the Decedent to rely upon said false and fraudulent representations, omissions, failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Said misrepresentations were false,

incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

182. Decedent and Decedent's husband Andrew Park reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Met Life, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

183. As a direct and proximate result of the conspiracy and concert of action between Met Life, Manville and Raymark, the Decedent and Decedent's husband Andrew Park were deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result brought home on his clothes, hair, shoes, and in his case asbestos dust or fibers contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the Decedent Isabella Park was damaged.

**FOR AN ELEVENTH CAUSE OF ACTION**  
**(Wrongful Death Action, S.C. Code Ann. § 15-51-10 et seq.)**

**For an Eleventh Distinct Cause of Action for Wrongful Death, Plaintiff Complains of Defendants, and Alleges as Follows:**

184. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs, where relevant.

185. Plaintiff brings this cause of action for Isabella Park's wrongful death pursuant to S.C. Code Ann. § 15-51-10, for the benefit of Keith W. Park, as the son of Decedent, and on behalf of the heirs of Isabella Park, as defined by S.C. Code § 15-51-20.

186. As a direct and proximate result of the negligence, recklessness, carelessness, and intentional actions of Defendants as described above, Isabella Park died on June 9, 2021, and her heirs

have and will endure pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, loss of love, loss of society with the Decedent, loss of guidance from the Decedent, loss of her companionship and deprivation of the use and comfort of the Decedent's experience, knowledge and judgment in managing the affairs of herself and her beneficiaries, and they have been otherwise seriously damaged. Moreover, reasonable funeral expenses were incurred, and Plaintiff prays for judgment against Defendants in such amount of actual and punitive damages as the trier of fact may determine.

**FOR A TWELFTH CAUSE OF ACTION**  
**(Survival Action, S.C. Code Ann. § 15-5-90)**

**For a Twelfth Distinct Cause of Action, known statutorily as a Survival Action, Plaintiff Complains of Defendants, and Alleges as Follows:**

187. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs, where relevant.

188. Plaintiff, Keith W. Park, the son of Decedent Isabella Park and the Personal Representative of the Estate of Isabella Park, deceased, brings this survival action as allowed under S.C. Code Ann. § 15-5-90.

189. Plaintiff brings this cause of action for Decedent's medical, surgical and hospital bills, as well as for Decedent's conscious pain and suffering prior to her untimely death, as well as for the mental distress of Decedent due to knowledge of her impending death from her incurable disease.

190. As a direct and proximate result of the negligence, recklessness, carelessness, and in some cases intentional actions of Defendants as described, Decedent Isabella Park endured conscious pain, suffering, mental anguish and distress until her untimely death, and Plaintiff prays for judgment against Defendants in such amount of actual and punitive damages as the trier of fact may determine is just.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays judgment, joint and several, against Defendants and/or their “alternate entities” in an amount to be proved at trial, as follows:

1. For Decedent’s actual damages according to proof, including pain and suffering, mental distress, as well as medical, surgical and hospital bills;
2. For loss of income or earnings according to proof;
3. For pecuniary loss of the beneficiaries/heirs including but not limited to funeral and burial costs, for mental shock and suffering of the beneficiaries/heir, for wounded feelings of the beneficiaries/heirs, for grief and sorrow of the beneficiaries/heirs, loss of Decedent’s companionship and deprivation of the use and comfort of her experience, knowledge and judgment in managing the affairs of herself and her beneficiaries;
4. For punitive damages according to proof;
5. For Plaintiff’s cost of suit herein;
6. For damages for breach of implied warranty according to proof;
7. For damages for fraudulent misrepresentation according to proof;
8. For damages for conspiracy, concert of action (as to Defendant Metropolitan Life Insurance Company);
9. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

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**A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.**

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

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*and*

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**ATTORNEYS FOR PLAINTIFF**

December 17, 2021  
Columbia, South Carolina.

|                                                |   |                                     |
|------------------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                        | ) | IN THE COURT OF COMMON PLEAS        |
|                                                | ) |                                     |
| COUNTY OF RICHLAND                             | ) | FOR THE FIFTH JUDICIAL CIRCUIT      |
|                                                | ) |                                     |
| <b>KEITH W. PARK</b> , individually and as the | ) | <b>C/A NO. 2021-CP-40-02727</b>     |
| Personal Representative of the Estate of       | ) |                                     |
| <b>ISABELLA PARK</b> ,                         | ) | <i>In Re:</i>                       |
|                                                | ) | Asbestos Personal Injury Litigation |
| Plaintiffs,                                    | ) | Coordinated Docket                  |
|                                                | ) |                                     |
| v.                                             | ) |                                     |
|                                                | ) |                                     |
| <b>ARMSTRONG INTERNATIONAL, INC.</b> ,         | ) |                                     |
| et al.                                         | ) |                                     |
|                                                | ) |                                     |
| Defendants.                                    | ) |                                     |

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**MOTION TO APPOINT RECEIVER**

Plaintiffs, pursuant to S.C. Code §§ 15-65-10(4) and (5), move this Court to appoint a receiver over Cape PLC and its subsidiaries, affiliates, successors, and assigns. Cape PLC is a defendant in the above-captioned action.

**BACKGROUND**

Cape PLC is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.<sup>1</sup>) (“Cape Asbestos”) and its subsidiaries and global affiliates (collectively, “Cape” or the “Company”), which were and are private companies organized and existing under the laws of the United Kingdom, with its principal place of business in England. At all times relevant, Cape was involved in all elements of the global asbestos industry, but in particular mining many thousands of tons of raw asbestos fiber in South Africa and then selling it to the most dominant manufacturers of asbestos-containing products in the United States—substantial quantities of

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<sup>1</sup> Effective July 1, 1974, Cape Asbestos Company Ltd. changed its name to Cape Industries Ltd. **Ex.1**, CAPE000308 (certificate of incorporation on change of name).



which were used in South Carolina. Cape also concocted a scheme to avoid its legal responsibilities to persons injured from using those end products because, startlingly, Cape deemed itself as having—in its own words—no “moral responsibility” to those end users. Rather than defending its conduct in front of juries in the United States, Cape decided to simply accept default judgments in asbestos lawsuits and ultimately flee the country, knowing that nearly all the Company’s assets were in jurisdictions (namely, the U.K., South Africa, and Lichtenstein) where judgments in those lawsuits could not be enforced. Although Cape stiff-armed its creditors in the United States—namely, workers exposed to asbestos mined by Cape—and absconded to London and South Africa, certain of its insurance assets presumably remain. The appointment of a receiver to marshal Cape’s assets and satisfy claims is therefore the appropriate remedy, as explained below.

#### **A. Cape Establishes American Presence and Operations Through NAAC.**

At its peak, from mines in Apartheid-era South Africa, Cape produced approximately 90%<sup>2</sup> of the world’s supply of amosite asbestos, including asbestos imported and used in South Carolina.

For the “purpose of expediting and facilitating the movement” of asbestos from South African mines, on October 14, 1953, Cape Asbestos Company Ltd. (a U.K. entity) established the North American Asbestos Corporation (“NAAC”), a direct subsidiary that was part of the Company’s “mining division” and domiciled in Illinois.<sup>3</sup> NAAC had both marketing and distribution roles: (i) serving as Cape’s sales agency in the United States, with sole authority to offer Cape products and responsibility for transmitting information about customer needs to Cape mines, and (ii) ensuring proper distribution of asbestos products and that shipments from Africa

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<sup>2</sup> *Hammond v. North American Asbestos Corp.*, 454 N.E. 2d 210, (Ill. 1983)(confirming that Cape Asbestos supplies 90% of the world’s supply of amosite asbestos and virtually the sole supplier of longer fiber grades).

<sup>3</sup> See **Ex. 2**, CAPE000110–12 (1982 court filing describing NAAC’s history); **Ex. 3**, CAPE000177 (identifying NAAC as the sole U.S.-based entity of the Cape mining division); **Ex. 4**, CAPE000869 (1973 letter describing NAAC as “a division of Cape Asbestos Co. Ltd., with corporate offices in London”).

made it “all the way through to the customer’s plant,” including, on information and belief, to plants in South Carolina or through South Carolina ports.<sup>4</sup> NAAC “effect[ively] . . . put the Mines at every U.S. port” (**Ex. 5**, CAPE000988–89) and by 1970 was the “largest U.S. importer of Amphibole Fibres,” which were “re-distributed from . . . warehouse locations in East Coast, Gulf Coast and West Coast Ports” (**Ex. 6**, CAPE000878–79).

Over its history, NAAC was “essentially a one-man operation” consisting of an operational lead supported by four office clerical personnel (overseen by a board of directors made up of largely of Company lawyers or other Cape executives, until all Cape officials resigned in 1975 as a “sensible precaution” in light of U.S. litigation).<sup>5</sup> In coordination with the global Cape network, however, NAAC sold asbestos to Cape’s numerous American-based clients, including, but not limited to, the U.S. Government, Keene Corporation (f/k/a Baldwin-Ehret-Hill), Carey, Fibreboard, GAF (f/k/a Ruberoid), Owens Corning, Johns-Manville and Pittsburgh Corning. **Ex. 7**, CAPE000994–95. These companies were giants among asbestos product manufacturers, and on information and belief, their products were used extensively in South Carolina. In addition, NAAC tried to influence public and corporate opinion about the safety of asbestos, including, but not limited to, rebutting emerging medical critiques of its safety.<sup>6</sup>

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<sup>4</sup> See **Ex. 8**, CAPE000263–66 (describing intended business of NAAC); **Ex. 9**, CAPE000333 (1975 Cape Asbestos cover letter of NAAC director resignations); **Ex. 10**, CAPE000729 (appointment announcement describing NAAC as “specialize[d] in marketing and distribution of Blue and Amosite asbestos in the United States, Canada, Mexico and the Caribbean”); **Ex. 5**, CAPE000988–89 (1969 NAAC memorandum describing customer services).

<sup>5</sup> See **Ex. 2**, CAPE000110–12 (describing NAAC’s lean staffing); **Ex. 11**, CAPE001514 (“Despite the volume of sales and profits of NAAC, our operation is a very small one, with only a total of 5 employees”); **Ex. 12**, CAPE001528 (six directors in 1970).

<sup>6</sup> See, e.g., **Ex. 13**, CAPE000130 (1977 Cape Asbestos Fibres Limited prioritizing efforts of Asbestos International Association to “organise a body of medical opinion that is prepared to stand up” to critical opinions).

and Bob Hutcheson. This organisation is getting along well in spite of the inevitable difficulty of correlating the views of representatives of so many different countries. It is clear to me that one of our first tasks must be to try to organise a body of medical opinion that is prepared to stand up to Selikoff.

Cape Asbestos, moreover, dominated NAAC's decision-making, with NAAC, for example, unable to "borrow one dollar without [Cape Asbestos's] approval" and routinely forced to withdraw cash from the United States to pay dividends to Cape Asbestos (minimizing the assets on NAAC's balance sheet).<sup>7</sup>

### **B. Cape Accepts Default Judgements and Liquidates NAAC to Evade Claimants.**

After the onset of asbestos-related product liability litigation in the 1970s, Cape became especially concerned with its own liability.<sup>8</sup> Thus, Cape Asbestos went through tortured machinations to make it *appear* it was reducing oversight over NAAC, but in reality, NAAC continued to operate as a mere division or instrumentality under Cape's domination and control.<sup>9</sup>

In addition, Cape began to engage in a campaign of litigation avoidance by refusing to accept process or appear in any proceedings in the United States, including failing to respond to

<sup>7</sup> See, e.g., **Ex. 14**, CAPE001507 (1976 letter noting borrowing limit); **Ex. 15**, CAPE000261–62 (1959 letter suggesting that Cape was "extremely cautious" in picking NAAC personnel who would "fit into [the Company's] scheme of things . . . without causing embarrassment all around"); **Ex. 16**, CAPE000816 (1976 board minutes showing payment of \$250,000 dividend); **Ex. 17**, CAPE000931–32 (NAAC President stating in 1956 that NAAC "think[s] of ourselves as being part of a coordinated group with responsibilities to the whole, even though this may mean subordinating other and more profitable interests of NAAC," and expressing offense at being called "commission agents," which "implies an independent, lack of responsibility, and an emphasis on local self-interest").

<sup>8</sup> See, e.g., **Ex. 18**, CAPE000351–56 (1975 lawyer letter referring to "attempt to limit NAAC's and Cape's exposure to future United States litigation").

<sup>9</sup> See **Ex. 19**, CAPE000123 (NAAC discouraging Cape visits to the U.S. in 1978 or else negate "maneuvers" related to "continued problems with product liability litigation"); **Ex. 20**, CAPE000152 (1975 letter suggesting to "disassociate the Parent Company as fully as possible from the operating companies"); **Ex. 21**, CAPE000154 (1975 letter raising whether to "do something to change the identity of NAAC in order to avoid exposing the company unnecessarily," while doing "everything possible to maintain a successful selling operation in the United States"); **Ex. 22**, CAPE000166–67 (1974 NAAC letter suggesting that "no one from Cape be an officer of NAAC since we want it to be as independent as possible in order to avoid any contention that it is the alter ego of Cape and that Cape is doing business in the United States"); **Ex. 9**, CAPE000333 (1975 Cape Asbestos letter stating "that it would be a sensible precaution against Cape's involvement in any future proceedings for [Cape personnel] to resign from the N.A.A.C. Board," and enclosing resignation letters).

the Second Amended Summons in this action, as properly served pursuant to Article 10 of the Hague Convention on March 8, 2022 *See Exhibit A*.<sup>10</sup> According to Cape executives, this strategy was warranted because they “really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of [a] US product liability cult.” Piercing the Corporate Veil: Cape Industries and Multinational Corporate Liability for a Toxic Hazard, 1950-2004; Tweeddale and Flynn, *Enterprise & Society*, June 2007, Vol.8 No. 2 pp.268-296 (1977 letter from Cape’s counsel) attached as **Ex. 25**.

Ultimately, to avoid paying damages to workers whom were made sick or killed by using its asbestos, Cape resolved to liquidate NAAC, effective January 31, 1978. *See, e.g., Ex. 26*, CAPE001035 (April 1978 letter noting liquidation and requesting Cape Asbestos official to stop sending accounting memoranda to former NAAC officials, “for safety’s sake”). Existing debts of NAAC were paid, with remaining assets transferred upstream to NAAC’s direct parent company at the time, Cape Industries Overseas Ltd. (a U.K. entity wholly owned by Cape Industries Ltd.). *See Ex. 27*, CAPE000593 (noting conveyance of assets). NAAC’s liquidation was central to Cape’s litigation-avoidance strategy, based on legal advice that no British or South African court would enforce a judgment against a Cape entity if it never appeared again in the United States.<sup>11</sup>

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<sup>10</sup> *See Ex. 23*, CAPE000550–51 (NAAC personnel opining in 1978 “that it is most unlikely that any plaintiff would bother to pursue collection of any default judgments against Cape”); **Ex. 24**, CAPE000702 (NAAC counsel in 1979 confirming receipt of correspondence stating that “U.K. and South African lawyers confirm that any resulting judgments will not be enforceable against Cape’s U.K. and South African assets” and that “the potential loss of all NAAC’s outstanding assets is not material in the Cape Group context”).

<sup>11</sup> *See, e.g., Ex. 28*, CAPE000141–43 (1975 legal letter advising Cape on default-judgment risk); **Ex. 29**, CAPE000566 (1978 memorandum agreeing that it would be in the “best interests of Cape companies other than NAAC” to make “no response” to litigation); **Ex. 30**, CAPE000617–19 (summarizing 1984 deposition testimony regarding litigation strategy).

Yet, Cape continued to contemplate schemes to facilitate the sale of asbestos to U.S. customers while minimizing its product-liability risk.<sup>12</sup> For example, Continental Products Corporation (using the same physical address as NAAC in Chicago, Illinois) was formed to “act as a commission agent for the future sales of asbestos from South Africa” in the United States, with South African mines selling to a new Lichtenstein subsidiary called Associated Mines Company, which in turn sold asbestos to the United States under its own invoices. **Ex. 32**, CAPE000386; *see also* **Ex. 33**, CAPE000531 (announcement of Continental Products Corporation as “Agent to handle the North American requirements for Amosite and Crocidolite asbestos fibre”). The express “purpose of this corporate arrangement [was] to eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to lawsuits brought against it under theories of strict liability concerning products liability on the sale of asbestos in the United States.” **Ex. 34**, CAPE000377–79.

### **C. A Receiver Can Marshal Cape’s Assets to Satisfy Claims.**

Asbestos claimants have been generally unsuccessful in recovering against Cape entities (except for a single instance in which Cape contributed to the settlement of certain asbestos claims brought in Texas). Indeed, due to its complex scheme to liquidate NAAC and not respond to litigation, Cape left its creditors—namely, the thousands of people it exposed to asbestos—without any meaningful entity to proceed against and, apparently, disposed of its United States-based assets without regard to those creditors. Now, apparently, all that potentially remains of Cape in the United States is its historical insurance coverage.

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<sup>12</sup> *See, e.g.*, **Ex. 31**, CAPE000728 (1977 meeting memorandum “to discuss liquidation of NAAC and formation of new off-shore company to service North American market”).

Plaintiffs request that this Court appoint a receiver to marshal Cape’s assets, including insurance coverage, and that the receiver be granted such further and other powers as may be appropriate, including, but not limited to, the acceptance of service of claims, retaining counsel, making claims against insurance policies that may exist, and otherwise wholly administer all of the assets and attendant business of Cape.

### **LAW AND ARGUMENT**

South Carolina Code § 15-65-10(4) states that:

A receiver may be appointed by a judge of the circuit court, either in or out of court:  
 ... (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations ....

It is undisputed that Cape, through its complex scheme and 1978 liquidation of its American subsidiary, NAAC, has intentionally fled the United States to avoid its liabilities and obligations to its creditors and to the extent it ever properly qualified itself to do business in South Carolina has forfeited those rights. *See, e.g.*, Black’s Law Dictionary (11th ed. 2019), *forfeiture* (“loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty”) Thus, appointment of a receiver over Cape and its affiliates is appropriate under subsection (4).

South Carolina Code §15-65-10(5), moreover, states that:

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 ....

Section 15-65-10(5) reflects an “old practice” of equity and “important principle of law” to correct injustice, particularly “when a debtor is trying to defeat his creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts.” *Va.-Carolina Chem. Co. v. Hunter*, 66 S.E. 177, 179 (S.C. 1909). Thus, if a business “disposes of large resources” but “leaves ... debts unpaid”—while “set[ting]

creditors at arm's length by refusing . . . to take any interest in the satisfaction of their claims"—then there is a prima facie case of fraud warranting appointment of a receiver. *Id.* at 180 (citing *Miller v. Hughes*, 12 S.E. 419 (S.C. 1890)). It is respectfully submitted that the appointment of a receiver over Cape and its affiliates is appropriate under subsection (5) because Cape engaged in an intentional scheme to defraud its creditors by refusing to appear or accept service in the United States after being faced with substantial asbestos-related liabilities.

Section 15-65-20 requires that notice of this application be provided to the party to the action whose property is sought to be put in the hands of the receiver. Plaintiffs, concurrently herewith, have provided copies of this motion to Cape PLC.<sup>13</sup>

### **CONCLUSION**

For the foregoing reasons, the appointment of a receiver for Cape for all purposes, including, but not limited to, marshaling available assets of Cape and its subsidiaries, successors, and assigns, is appropriate. Plaintiffs request that this Court issue an order appointing a receiver as soon as practicably possible and for such other and further relief to which they may be entitled. Plaintiffs respectfully suggest that Peter Protopapas be appointed the receiver over Cape.

Respectfully submitted,

s/ Aaron D. Chapman

Aaron D. Chapman (SC Bar No. 104485)  
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Theile B. McVey (SC Bar No. 16682)  
Jamie D. Rutkoski (SC Bar No. 103270)

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<sup>13</sup> Plaintiffs have placed into the hands of DHL, an international carrier, a copy of this motion and its exhibits, for delivery to the same address at which service was perfected.

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**ATTORNEYS FOR PLAINTIFF**

March 6, 2023,  
Dallas, Texas.



|                                         |   |                                            |
|-----------------------------------------|---|--------------------------------------------|
| STATE OF SOUTH CAROLINA                 | ) | IN THE COURT OF COMMON PLEAS               |
|                                         | ) |                                            |
| COUNTY OF RICHLAND                      | ) | FOR THE FIFTH JUDICIAL CIRCUIT             |
|                                         | ) |                                            |
| JOHN A. TIBBS and MARGARET B. TIBBS,    | ) |                                            |
|                                         | ) | Civil Action No. 2023-CP-40-01759          |
|                                         | ) |                                            |
| Plaintiffs,                             | ) | In Re:                                     |
|                                         | ) | Asbestos Personal Injury Litigation        |
| v.                                      | ) | Coordinated Docket                         |
|                                         | ) |                                            |
| 3M COMPANY, <i>et al.</i> ,             | ) |                                            |
|                                         | ) |                                            |
| Defendants.                             | ) |                                            |
| *****                                   | ) |                                            |
|                                         | ) |                                            |
| CAPE PLC, individually and as           | ) |                                            |
| successor in interest to CAPE           | ) |                                            |
| ASBESTOS COMPANY LIMITED, by            | ) | <b>DEFENDANTS ARRANCo US, LLC,</b>         |
| and through its duly appointed Receiver | ) | <b>HAWK BIDCO (US), INC., AND SPARROWS</b> |
| Peter D. Protopapas,                    | ) | <b>OFFSHORE, LLC'S MOTION TO</b>           |
|                                         | ) | <b>DISSOLVE THE CAPE PLC</b>               |
| Third-Party Plaintiff,                  | ) | <b>"RECEIVERSHIP"</b>                      |
|                                         | ) |                                            |
| v.                                      | ) |                                            |
|                                         | ) |                                            |
| ANGLO AMERICAN PLCS, <i>et al.</i> ,    | ) |                                            |
|                                         | ) |                                            |
| Third-Party Defendants.                 | ) |                                            |
|                                         | ) |                                            |

Subject to and without waiving their earlier filed objections to personal jurisdiction in South Carolina, Third-Party Defendants ArranCo US, LLC, Hawk Bidco (US), Inc., and Sparrows Offshore, LLC (collectively, "the Sparrows Defendants"<sup>1</sup>) move

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<sup>1</sup>. For the sake of clarity, Sparrows Offshore Group, Ltd and The Sparrows Group, LLC, which are both named in the Third-Party Complaint, are separate and unrelated entities with no affiliation or association with these Sparrows Defendants and are, therefore, not included, in any respect, to the defined "Sparrows Defendants" referenced herein.

to dissolve the purported receivership of Peter D. Protopapas (“Receiver”) over “Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited,” which was created by a March 17, 2023 order entered in a separate lawsuit to which the Sparrows Defendants were not a party, *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727 (“*Park* Lawsuit”). Since they were not parties to the *Park* Lawsuit, the Sparrows Defendants had no notice or opportunity to oppose or appeal the *Park* receivership order. This motion presents their first opportunity to do so.

By filing this motion, the Sparrows Defendants do not waive, but instead specifically preserve, their objection to personal jurisdiction in South Carolina, for the reasons explained in the Rule 12(b)(2) motion filed prior to this motion and incorporated in full by reference. The Sparrows Defendants specifically request that the Court rule on their motion to dismiss for lack of personal jurisdiction before addressing any of the arguments raised in the present motion to dissolve the receivership, all of which are asserted in the strict alternative to the Sparrows Defendants’ personal jurisdiction objections.

### **GROUND FOR DISSOLVING THE PUTATIVE RECEIVERSHIP**

The Court must dissolve the receivership for at least the following reasons, which are based on information reflected on the public dockets of this Court, or publicly available information that Mr. Park or the Receiver could have located by exercising a modicum of reasonable diligence:

1. Nothing in the record suggests that Cape PLC, a Jersey company, was lawfully served in the *Park* Lawsuit.

2. Cape PLC was not lawfully served with either the summons and complaint or with the motion to appoint the receiver (in violation of South Carolina Code § 15-65-20).

3. Park's counsel attached no proof of service to his motion to appoint the receiver showing lawful service on Cape PLC. In fact, despite the motion representing to the Court that the proof of service was attached as Exhibit A, it was not.

4. The Court did not perform the steps legally necessary to appoint a receiver over Cape PLC for purposes of the *Park* Lawsuit, including by confirming lawful service of process in the *Park* Lawsuit, entering default against Cape PLC, granting a default judgment against Cape PLC, and entering judgment against Cape PLC purporting to reflect a liquidated sum of damages due to the *Park* plaintiffs based on a sufficient factual showing.

5. Park's counsel procured the order appointing the receiver in the *Park* Lawsuit based on incorrect contentions including that (a) Cape PLC is "dissolved," (b) Cape PLC has "forfeited its charter," (c) Cape PLC was lawfully served in the *Park*

Lawsuit, and (d) Cape PLC is the successor-in-interest to the Cape Asbestos Company Limited. None of these contentions, which were alleged in the motion to appoint the receiver, and which were reflected in the order appointing the receiver, were correct, as any reasonably diligent review of the public record would have revealed.

6. Cape PLC is not the successor-in-interest to Cape Asbestos Company Limited, as any reasonably diligent review of the public record would have revealed.

7. The order appointing a receiver in the *Park* Litigation is unconstitutional and unlawful because the Court does not have, and made no finding that it has, personal jurisdiction over the target of the receivership—Cape PLC.

8. The order appointing a receiver in the *Park* Litigation is unlawful because, as stated by the South Carolina Supreme Court, “an adjudication of a receivership is a harsh and drastic remedy, one to be granted only with great caution.” *Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 91, 172 S.E. 787, 788 (1934). Principles of equity did not and do not support the appointment of a receiver over a foreign company incorporated in Jersey (a) that is not dissolved and is a going concern, (b) with no assets in South Carolina, (c) based on a single purported default, (d) in a lawsuit in which it was not served with process, and (e) without any adjudication or allocation of liability, or entry of default judgment, in the *Park* Litigation where the receivership was created.

9. There is no justiciable controversy, and the Court has no jurisdiction to issue the advisory opinion sought by the Receiver, because the *Park* Lawsuit was completely resolved and settled prior to the filing of the motion to appoint the receiver. Moreover, Mr.

Park lacked standing to even seek the appointment of a receiver, as he was not a judgment creditor of Cape PLC.

10. There is no justiciable controversy, and the Court has no jurisdiction to issue the advisory opinion sought by the Receiver, because Parks' counsel filed the motion to appoint the receiver to advance the plaintiffs' position in unrelated asbestos cases rather than advance the interests of the clients in the *Park* Lawsuit.

11. There is no justiciable controversy, and the Court has no jurisdiction to issue the advisory opinion sought by the Receiver, because the Receiver appointed in the *Park* Lawsuit does not purport to seek relief on behalf of Parks.

12. The Receiver, who allegedly stands in the shoes of Cape PLC as its court-appointed representative and must impartially *defend* its interests, does not have standing to pursue claims that *maximize* liability for Cape PLC in an effort to pass along those manufactured liabilities to third parties via derivative alter ego / veil piercing claims. *See Powell v. Bank of Am.*, 379 S.C. 437, 445, 665 S.E.2d 237, 241 (Ct. App. 2008) (finding no standing and rejecting "the idea that one party may acquire standing by asserting the interest of an adverse party").

13. The order appointing the receiver, based on its plain language and pursuant to South Carolina law, is limited to the *Park* Lawsuit and does not lawfully authorize the Receiver to take actions in any other lawsuit, including the present *Tibbs* Lawsuit.

14. The order appointing the receiver, based on its plain language and pursuant to South Carolina law, does not authorize the receiver to file lawsuits on behalf of a foreign company against other foreign and out-of-state companies, whether in the *Park* Lawsuit

or the present *Tibbs* Lawsuit. As explained by the South Carolina Supreme Court, “[t]he power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.” *Pollock v. B. & L. Ass’n*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896).

15. The Order appointing the receiver is unlawful because it purports to give the Receiver “the power and authority fully [sic] administer all assets of Cape,” when S.C. Code § 15-65-10(4) limits a South Carolina receivership “in like cases, of the property within this State of foreign corporations.” The reference to “like cases” regarding foreign corporations is a clear limitation on a receiver’s power only where a South Carolina court has *in rem* jurisdiction. On its face, the statute only allows a South Carolina court to appoint a receiver over the assets of a foreign corporation that are found “within this State.”

16. The Order appointing the receiver is unlawful to the extent based on S.C. Code § 15-65-10(4), because public records show that Cape PLC is not dissolved, not insolvent, and not in imminent danger of insolvency, it has not forfeited its corporate rights in its jurisdiction of incorporation, Jersey, and it never had corporate rights to forfeit in South Carolina, including because South Carolina has no personal jurisdiction over Cape PLC.

17. The Order appointing the receiver is unlawful to the extent based on S.C. Code § 15-65-10(4), because that statute does not allow a South Carolina court to create a receivership over a foreign corporation that does not have any property in the state and has not had any judgment entered against it.

18. The Order appointing the receiver is unlawful to the extent based on S.C. Code § 15-65-10(5), because the appointment of a South Carolina receiver over an active Jersey company that was first incorporated in 2011—decades after the alleged events identified as the “fraud warranting appointment of a receiver”—is not consistent with “existing practice” in South Carolina.

19. The order appointing the receiver does not and cannot apply outside the *Park* Lawsuit, and does not and cannot authorize the receiver to assert claims in other lawsuits, including the present *Tibbs* Lawsuit.

20. The Receiver does not have authority to pursue claims through the vehicle of a third-party complaint under Rule 14, SCRCP, in the *Tibbs* Lawsuit because that procedural vehicle only allows for derivative liability for claims adjudicated in the primary action, i.e. the Tibbs’ underlying asbestos exposure claims against the primary defendants. Only a receiver appointed under S.C. Code §§ 15-65-10(2) or 15-65-10(3) “[a]fter judgment” has authority to pursue such derivative claims. The receiver in the *Park* Lawsuit was appointed under §§ 15-65-10(4) and 15-65-10(5), so he is ineligible to pursue derivative claims through a third-party complaint filed in a different lawsuit.

21. The order appointing the receiver was not entered in the *Tibbs* Lawsuit, which violated the due process rights of all third-party defendants in the *Tibbs* Lawsuit who were stripped of the ability to oppose or appeal that order in a separate lawsuit to which they were not parties.

22. Cape PLC, a Jersey company, was not lawfully served in the *Tibbs* Lawsuit.

Cape PLC was not lawfully served with the summons and complaint in the *Tibbs* Lawsuit, nor was it lawfully served with any motion to appoint the receiver in the *Tibbs* Lawsuit, in violation of S.C. Code § 15-65-20.

23. The order appointing the receiver violates the South Carolina receivership statute, which does not authorize receiverships over foreign companies over which the South Carolina courts have no jurisdiction, does not authorize receiverships over foreign companies with no property in South Carolina, and does not authorize receivers to file lawsuits on behalf of foreign corporations.

24. The order appointing the receiver is unlawful and violates principles of international comity because it purports to interfere with the pre-existing exclusive jurisdiction of the U.K. courts, which previously exercised jurisdiction over the assets of the true successor-in-interest to Cape Asbestos Company Limited in 2006, as described in the Scheme of Arrangement summarized in Note 32 of Cape PLC's Annual Report 2022, which is available to the public for download from the Jersey companies website.

25. The order appointing the receiver is unlawful and violates principles of international comity because it purports to interfere with the pre-existing exclusive jurisdiction of the Jersey courts to exercise oversight and management over the internal affairs of a Jersey company.

26. The receiver in the *Tibbs* Lawsuit is acting *ultra vires*, has incurable conflicts of interest, and has violated the express terms of the order appointing the receiver because he has not taken "any and all steps necessary to protect the interests of Cape whatever they may be," but instead is acting to expand the liabilities of Cape through a



receivership that is wholly controlled by the same plaintiff's attorneys asserting claims adverse to Cape.

27. The receiver in the *Tibbs* Lawsuit is acting *ultra vires*, has incurable conflicts of interest, and is incapable of acting as a receiver, because Mr. Protopapas is not "entirely impartial," but instead is acting as "one of the agents of the plaintiff, actively pressing its claims against the defendant." *Va.-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 224, 66 S.E. 177, 180 (1909) (setting aside receivership order). As stated by the South Carolina Supreme Court, "[n]o special fitness or peculiar circumstances are shown which might justify the appointment of one so closely connected with one of the parties in interest." *Id.* The Supreme Court has warned more than once that appointing "an agent of a creditor of the debtor, who had been placed in receivership," is improper. *Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 92, 172 S.E. 787, 789 (1934). Mr. Protopapas is merely an agent for the plaintiff's asbestos bar in South Carolina. He seeks to *impair* Cape PLC's rights for the benefit of unspecified nonparty asbestos claimants in lawsuits *against* Cape PLC, and whose claims the receiver has no right to assert.

28. The order appointing the receiver violates *inter alia* the Dormant Commerce Clause, the Foreign Commerce Clause, the Taking Clause, the Due Process Clause, the Excessive Fines Clause, the Equal Protection Clause, and the Supremacy Clause of the U.S. Constitution.

## **BACKGROUND**

In *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727, the plaintiff filed an amended complaint on November 17, 2021, that named Cape Intermediate Holdings Limited and Cape PLC as defendants. (Ex. A) In Paragraph 15 of that pleading, Mr. Park alleged that each of these entities is the “successor-in-interest to Cape Asbestos Company.” In Paragraphs 26 and 27 of that pleading, Mr. Park alleged that each of these entities is a presently-operating company organized under the laws of the United Kingdom with its principal place of business in England.

Publicly available information shows that Mr. Park was incorrect, as Cape PLC is a Jersey company that was created in 2011. See Ex. H, Jersey Financial Services Commission Registry for Cape PLC, at [www.jerseyfsc.org/registry/registry-entities/entity/292339](http://www.jerseyfsc.org/registry/registry-entities/entity/292339). Regardless, there are no other allegations specific to either of these entities anywhere else in that or any other pleading filed in *Park*.

The Court ordered *Park* to begin trial on June 20, 2022. (Ex. B, Docketing Order at 2 (filed Dec. 1, 2021, in *Park*).) On June 3, 2022, Mr. Park’s counsel reported to the Court that the case was “fully resolved.” (Ex. C, Email from Ms. McVey to 479 recipients (June 3, 2022).) Other than stipulations of dismissal being filed, the case was over, and no damages or liability were ever attributed to Cape Intermediate Holdings Limited or Cape PLC. In fact, there is no indication in the record Mr. Park ever even attempted to serve either of these entities with process in the first place.

But then nine months later, without a live case or controversy pending, Mr. Park—whose case was already “fully resolved,” according to his lawyer—filed a 130-page motion

with exhibits to have the Court appoint a receiver over “Cape PLC and its subsidiaries, affiliates, successors, and assigns,” a group that is undefined in the motion. (Ex. D Mot. to Appoint Receiver at 1 (filed Mar. 6, 2023, in *Park*).) In its Motion to Appoint Receiver, Counsel represents to the Court that Cape PLC was served with the *Park* Second Amended Summons on March 8, 2022 via the Hague Convention, and cites to an Exhibit A that does not exist on review of the Court’s docket. As such, there is nothing in the record, other than counsel’s incorrect representation that it was so, to indicate Mr. Park ever completed service on Cape PLC.

On March 17, 2023, the Court granted that motion without a hearing, explaining:

This Court finds that the application [to appoint Mr. Protopapas as receiver] is meritorious under the applicable statute 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 this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.

(Ex. E Order Appointing Cape PLC Receiver at 1 (filed Mar. 17, 2023, in *Park*).) It then tasked Mr. Protopapas with taking “any and all steps necessary to protect the interests of Cape whatever they may be.” (*Id.*)

Three months later, Mr. Protopapas, in his supposed capacity as the receiver for “Cape PLC,” filed a third-party complaint in *Tibbs v. 3M Company*, Case No. 2023-CP-40-01759. But rather than plead a case whereby Cape PLC attempts to shift derivative liability to a third-party defendant—which is the only permissible use of third-party practice recognized by Rule 14, SCRCP, and which would make no sense here, as Cape PLC has no predicate liability and has never had any—Mr. Protopapas alleges that he is

a crusader against dozens of companies that he contends have shielded Cape PLC from having liability, trumpeting that his pleading “begins their reckoning.” (Third-Party Compl. at “Introductory Statement” (June 30, 2023).) In other words, rather than “protect the interests” of Cape PLC as is his obligation as its receiver, Mr. Protopapas is instead manufacturing fictitious liability against Cape PLC and the other named third-party defendants in *Tibbs*, including the Moving Defendants.

Everything about this supposed receivership runs afoul of the law. For numerous reasons listed above and discussed below, it has no standing to proceed, and the receivership appointment must be dissolved immediately.

### **ARGUMENT**

#### **I. The factual grounds for appointing the Receiver were false.**

The Court should dissolve its order appointing the Receiver for the threshold reason that it is based on demonstrably incorrect statements. South Carolina Code § 15-65-10 identifies the limited circumstances under which a court can consider appointing a receiver over property. The *Park* Court cited Sections (4) and (5) of this statute when appointing Mr. Protopapas. Those statutes provide that a receiver may be appointed to marshal property within the State of South Carolina:

- (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
- (5) In such other cases as are provided by law or may in accordance with the existing practice, except as otherwise provided in this Code.

This situation meets none of these conditions.

**No Corporate Dissolution.** In the appointment order, the Court stated that “Cape Industries Ltd.” (as well as an unspecified, undescribed, unidentified number of “its subsidiaries and global affiliates”) has “dissolved.” The Court used this supposed dissolution as a basis for appointing a receiver over “Cape PLC,” citing Section 15-65-10(4)’s permission for a court to appoint a receiver over the property of a dissolved company. But this is categorically untrue.

First, as noted above, Cape PLC is a registered public company in Jersey, and it is a going concern. It is not dissolved, and the Jersey online corporate database makes this inescapable: [www.jerseyfsc.org/registry/registry-entities/entity/292339](http://www.jerseyfsc.org/registry/registry-entities/entity/292339).<sup>2</sup> See, Ex. F. Cape PLC is the only company actually identified by name in the appointment order, and its very existence demonstrates the impropriety of the receivership order.

Likewise, the receivership order incorrectly states that Cape PLC is the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.),” suggesting that the receivership is somehow intended to reach whatever companies have existed along this historical line of entities.<sup>3</sup> But that lineage exists, too, and has not dissolved. The

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<sup>2</sup> The Court should take judicial notice of the content of the United Kingdom and Jersey government databases. See *generally* Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are “not subject to reasonable dispute”); *id.* 201(f) (“Judicial notice may be taken at any stage of the proceeding.”); see also *State v. Squires*, 311 S.C. 11, 15, 426 S.E.2d 738, 740 (1992) (taking judicial notice “that the infrared spectroscopy process utilized by [an infrared breath-testing device] has gained general acceptance in the scientific community”).

<sup>3</sup> The receivership order incorrectly recites the corporate structure, but this is beside the point—no matter what entity the Court thought it was appointing Mr. Protopapas to be the receiver over, there is no corporate dissolution, and thus no lawful basis for the appointment.

United Kingdom's public database for corporate registration reveals that Cape Industries Ltd. changed its name to Cape Industries PLC, then to Cape PLC, then to Cape Intermediate Holdings PLC, and currently operates as Cape Intermediate Holdings Ltd.<sup>4</sup> Documents demonstrating this corporate lineage are attached as Exhibit F, which the United Kingdom makes publicly available for free and can be located within minutes by a simple search of the internet: <https://find-and-update.company-information.service.gov.uk/company/00040203/filing-history>. Significantly, the motion to appoint the receiver in the *Park* Lawsuit was not addressed to or served upon Cape Intermediate Holdings Ltd., and the order appointing the receiver did not reference that entity.

At bottom, no entity over which the Court attempted to appoint Mr. Protopapas as a receiver has dissolved. The Court's statements on this point are incorrect based on indisputable facts contained in government records that are readily available to anyone with internet access. The appointment order should be vacated immediately.

**No Service of Park.** The receivership order lists Cape PLC's "fail[ure] to answer this case" as an additional reason to appoint Mr. Protopapas as a receiver. Nothing in the law allows this to be a basis for a court to seize private property through a receivership appointment. But even if the law did allow it, there is nothing in the record to indicate that Cape PLC or any other entity that is conceivably

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<sup>4</sup> Cape Intermediate Holdings Ltd. was identified as a defendant in the *Park* case, but was never served. It does not appear anywhere in the motion or order appointing the challenged receivership, and it cannot legitimately be deemed to fall within the scope of the receivership order.

contemplated by the Court’s ambiguous catch-all descriptor “Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates” was ever served with process in *Park*. The lack of service is fatal to the receivership order.

Rules 4 and 4.1, SCRCP, govern service of process for cases in South Carolina state courts. Both require plaintiffs to file proof of service so that a court can evaluate whether it actually has jurisdiction over a defendant. *Id.* 4(g), 4.1(c). The Public Index for *Park* contains pages and pages of entries, but not a single indication that Cape PLC or any other entity potentially within the undefined scope of the phrase “Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates” was ever served with process, or with notice of Mr. Park’s motion to appoint a receiver.<sup>5</sup> (Ex. G.)

A court cannot secure personal jurisdiction over a defendant without proper service of process. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). An order—even a default judgment—“is void if a court acts without personal jurisdiction.” *Id.*

Because the Court had no jurisdiction over the entity or entities for whose assets it attempted to appoint Mr. Protopapas a receiver, the appointment order is void as a matter of law. It should be vacated and the receivership appointment dissolved accordingly.

## **II. The receivership order is void as a matter of constitutional law.**

In addition to failing to meet the plain language of South Carolina Code § 15-65-10 for when a receiver may be appointed, the appointment order should be dissolved because it unlawfully purports to have an extraterritorial effect.

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<sup>5</sup> Cape Intermediate Holdings Ltd. was also never served in *Park* despite being listed as a defendant.

The appointment order purports to vest Mr. Protopapas with “the power and authority [to] fully administer *all assets* of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be.” (Appointment Order at 1 (emphasis added).) But Cape PLC is a Jersey company that has nothing to do with South Carolina, “Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates” likewise have nothing to do with South Carolina, and there’s nothing anywhere in the record to suggest otherwise.

Standing alone, the absence of proof of any property within South Carolina voids the receivership appointment. *See Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 293, 185 S.E. 731, 737 (1936) (reversing the appointment of a receiver where there was a “total failure of any proof” that the foreign company “has property in this state”).

Moreover, a South Carolina state court cannot lawfully take assets away from foreign businesses (over which it has no personal jurisdiction) and give them to a South Carolina receiver to “fully administer.” The South Carolina receivership statute acknowledges this in-state-only limitation on the reach of a receivership. *See* S.C. Code Ann. § 15-65-10(4) (limiting a receiver’s ability to marshal only “the property within this State of foreign corporations”).

Such a limitation is rooted in the constitutional requirement that a state law cannot have extraterritorial effect; to do otherwise would run afoul of, at least, the Commerce



Clause, which gives Congress alone the authority to regulate interstate and international commerce:

The South Carolina Supreme Court has written repeatedly that South Carolina statutes have no extraterritorial effect because the general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction.

\* \* \* \* \*

The principle that state laws may not generally operate extraterritorially is one of constitutional magnitude. One state may not “project its legislation” into another, as the Commerce Clause “precludes the application of a state statute to commerce that takes place wholly outside of the State’s borders, whether or not the commerce has effects within the State.”

*Carolina Trucks & Equip., Inc. v. Volvo Trucks of N.A., Inc.*, 492 F3d 484, 489–90 (4th Cir. 2007) (cleaned up).

A receiver’s ability to marshal property across state or national lines undoubtedly involves interstate or foreign commerce, as Congress itself has limited when such authority exists and has made such a remedy available only through the federal courts. 28 U.S.C. §§ 754, 3103. By attempting to displace federal receivership law with a South Carolina statute, the receivership order runs afoul of the Supremacy Clause as well.

Finally, attempting to enforce a South Carolina receivership statute against an entity or entities over which it has no personal jurisdiction also violates the Due Process Clause. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–92, 611 S.E.2d 505, 508 (2005). And authorizing a receiver to seize all of a private company’s assets without any notice and without any compensation (and without any lawful basis) also violates not only due process, but also likely constitutes an unlawful taking, an excessive fine, and a

violation of equal protection, given that the Receiver purportedly operates as an extension of the court.

Because the appointment order purports to give a South Carolina receiver authority over property that is not located in and has no relationship to South Carolina, and purports to do so without any notice to or jurisdiction over the impacted foreign companies, it is unconstitutional on its face and should be vacated for this additional reason.

### **III. Bad-faith conduct should void the receivership.**

A final basis for vacating the receivership order is the bad-faith conduct of the Receiver, who at all times is subject to this Court's oversight and supervision. To date, there has been zero liability found against Cape PLC in any South Carolina court, including in the now-"fully resolved" *Park* case from which the appointment order stems.

Yet, the Receiver filed a third-party complaint in *Tibbs* through which he attempts to create liability for Cape PLC and then transfer the very liabilities he creates to dozens of third-party defendants, including the instant movant. The law prohibits attempts at "self-piercing," like that urged by the Receiver here. *See, e.g., SCE&G v. UGI Utils., Inc.*, Case No. 2:06-cv-2627-CWH, 2012 U.S. Dist. LEXIS 61487, at \*169–70 (D.S.C. Apr. 11, 2012) (explaining that as a general matter, "the corporate veil is never pierced for the benefit of the corporation or its stockholders," and observing that "[s]elf-piercing claims are rare and often rejected out of hand" (quoting 18 Am. Jur. 2d *Corporations* § 46)).

The Receiver's efforts to generate liability for Cape PLC directly defy the Court's charge that he "protect the interests of Cape whatever they may be." (Appointment Order at 1.). That outrageous conduct should void the current appointment order.

What's more, the Receiver's third-party complaint argues that these third-party defendants should be chastised for allegedly assisting Cape PLC in avoiding liabilities in the United States. The judiciary is not a vehicle for opining on whether a legal result comports with one's subjective, abstract view of justice; its jurisdiction extends only to resolving legal disputes in actual cases or controversies, and one company "complaining" that it has no liabilities and "blaming" others for helping it avoid liabilities does not present a justiciable claim. *See Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81–82, 742 S.E.2d 371, 373–74 (2013) (vacating a trial court's declaratory judgment due to the absence of an actual case or controversy, which rendered the trial court without subject matter jurisdiction).

The bad-faith conduct does not end there. The Receiver has attempted to graft his third-party complaint onto a routine asbestos lawsuit. But Rule 14, SCRCP, "may be used only when the substantive law permits the defendant to shift some or all of his liability [on the principal claim] to the impleaded party." *Gathings v. Robertson Brokerage Co., Inc.*, 295 S.C. 112, 117, 367 S.E.2d 423, 426 (Ct. App. 1988). The Receiver cannot legitimately claim that Cape PLC has any liability to the Tibbs family that should be shifted to any of the third-party defendants for an obvious reason: the Tibbs family alleges that their exposure to asbestos ended in the "early 1980s," but Cape PLC did not even exist until 2011. *Compare* Compl. ¶¶ 109–15

(describing the Tibbs family’s potential exposure to asbestos as occurring between the 1930s and the 1980s), *with* Ex. H, Jersey Financial Services Commission, “Cape PLC,” at [www.jerseyfsc.org/registry/registry-entities/entity/292339](http://www.jerseyfsc.org/registry/registry-entities/entity/292339) (identifying April 19, 2011, as Cape PLC’s date of corporate registration). This mismatch makes any putative third-party pleading frivolous on its face.

These efforts to ignore controlling, settled points of law in order to create liability for Cape PLC lead to the unavoidable conclusion that the Receiver cannot lawfully continue to serve. *See generally Cudd*, 172 S.C. at 91–92, 172 S.E.2d at 788–89 (reinforcing that only someone “untrammelled in his relations, entirely indifferent between the parties, and absolutely fair and impartial” can serve as a receiver). The Court should not permit such abuse of process to fester. This receivership should be dissolved and the order appointing the Receiver vacated without delay.<sup>6</sup>

### **CONCLUSION**

This receivership is based on factual errors obvious on the face of the order appointing the Receiver. It runs contrary to both the South Carolina Code and the United States Constitution. And the Receiver’s conduct since being appointed demonstrates the impropriety of this receivership continuing. Accordingly, the Court should dissolve the receivership and vacate its order appointing Mr. Protopapas as receiver over Cape PLC.

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<sup>6</sup> Subject to and without waiving its personal jurisdiction objection, the movants respectfully reserve the right to recover all costs, fees, expenses, and damages associated with this proceeding, including from *inter alia* Keith W. Park, the party who sought to create this unlawful receivership in the first place. *See* S.C. Code Ann. § 15-65-90 (allowing a party opposing a receivership to recover “his actual damages by reason of such receivership” from “the party or parties having procured such receiver”).

Respectfully submitted, August 21, 2023.

**RICHARDSON, PLOWDEN &  
ROBINSON, PA**

/s/ Steven J. Pugh

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Sparrows Offshore, LLC; ArranCo US, LLC;  
and Hawk Bidco (US) Inc.*

# EXHIBIT A

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS FOR  
THE FIFTH JUDICIAL CIRCUIT

Docket No.: 2021CP4002727

KEITH W. PARK, INDIVIDUALLY  
AND AS THE PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF ISABELLA PARK,

**AMENDED SUMMONS**

Plaintiff,

**(Non Jury)**

vs.

ARMSTRONG INTERNATIONAL,  
INC. ET AL,

Defendant,

---

CAPE, PLC, BY AND THROUGH ITS  
DULY APPOINTED RECEIVER,  
PETER D. PROTOPAPAS,

Third-Party Plaintiff,

vs.

LOCKE LORD, LLP,

Third-Party Defendant.

**TO: THE ABOVE-NAMED THIRD-PARTY DEFENDANT:**

**YOU ARE HEREBY SUMMONED** and required to answer the Amended Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to said Amended Complaint upon the subscribers at 1722 Main Street, Suite 200, Columbia, SC 29201, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Amended Complaint.

Respectfully Submitted,

HARLING & WEST, LLC

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ATTORNEYS FOR THIRD-PARTY  
PLAINTIFF

Columbia, South Carolina  
August 8, 2023



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS FOR  
THE FIFTH JUDICIAL CIRCUIT

Docket No.: 2021CP4002727

KEITH W. PARK, INDIVIDUALLY  
AND AS THE PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF ISABELLA PARK,

**AMENDED COMPLAINT**

Plaintiff,

**(Non Jury)**

vs.

ARMSTRONG INTERNATIONAL,  
INC. ET AL,

Defendant,

---

CAPE, PLC, BY AND THROUGH ITS  
DULY APPOINTED RECEIVER,  
PETER D. PROTOPAPAS,

Third-Party Plaintiff,

vs.

LOCKE LORD, LLP,

Third-Party Defendant.

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COMES NOW CAPE, PLC, by and through its duly appointed Receiver, Peter D. Protopapas (“Plaintiff” or “Cape”), complaint of the third-party defendant, Locke Lord, LLP, (“Defendant” or “Locke Lord”), who through undersigned counsel respectfully shows unto the Court as follows:

### **PARTIES**

1. The Receiver is a lawyer who was appointed as Receiver of Cape, PLC, (and its affiliate, North American Asbestos Corporation), by Order on March 16, 2023, and who maintains his principal place of business in Richland County, South Carolina.
2. The Receiver is a court appointed officer tasked with marshaling the assets of Cape and its affiliates.
3. Pursuant to Court Order, the Receiver controls the Attorney client privilege of Cape and its affiliates. **See Exhibit A, 3/16/2023 Order Appointing Receiver.**
4. Defendant is a limited liability partnership organized under the laws of the State of Delaware with its principal place of business in the State of Texas.
5. The amount in controversy is under \$75,000.00.

### **JURISDICTION**

6. This Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §36-2-803, Article V of the Constitution of the State of South Carolina, and the Court's plenary powers.
7. In particular, Defendant purported to represent Cape and its affiliates in matters impacting the asbestos litigation in South Carolina.

### **VENUE**

8. Plaintiff is informed and believes that venue is proper in Richland County, South Carolina.

### **FACTS**

9. Defendant is a law firm that represented Cape and/or its affiliates in connection with asbestos-related matters impacting the South Carolina asbestos litigation.

10. As part of his job as Receiver, Plaintiff wrote to Defendant for the production of Cape and its affiliates' files.
11. On March 20, 2023, Plaintiff wrote to Defendant and provided its Firm Chair with a copy of the Order of Appointment. Plaintiff requested "Cape and its affiliates" files (whether in hard copy or electronic format). **See Exhibit B, March 20, 2023, e-mail, and attachment.**
12. After not having heard back from Defendant, Plaintiff followed up on his request on April 11, 2023. **See Exhibit C, April 11, 2023, email.**
13. Defendant law firm claims:

"Throughout our more than 135-year history, we've cultivated partnerships with a broad range of public and private companies, from Fortune 500 leaders to startups and emerging businesses. Our team can design strategic solutions that meet your long-term goals no matter how large or small your matter, apply our established tradition of responsive, personalized service."

**See Exhibit D, Defendant website at [www.lockelord.com/about-us](http://www.lockelord.com/about-us)**
14. Defendant law firm, however, ignored Plaintiff – who stands in the shoes of Defendant's former Client Cape and its affiliates and controls the attorney client privilege of Cape and its affiliates – requests causing unnecessary and costly delay.
15. Defendant also asserts that: "Corporate responsibility is also an important part of Locke Lord's mission[.]" **See Exhibit D, Defendant website at [www.lockelord.com/about-us](http://www.lockelord.com/about-us).**
16. On April 17, 2023, Defendant advised Plaintiff "we have determined that the paper files of NAAC were destroyed pursuant to our document retention policy. As a result, we have no responsive records or documents pertaining to your request." **See Exhibit E, April 17, 2023, email.**

17. On July 18, 2023, Plaintiff deposed a Rule 30(b)(6) designee of Defendant regarding Capes files and Cape's relationship with Defendant. **See Exhibit F, Notice of Rule 30(b)(6) deposition.**
18. Defendant's designee testified it was in possession of documents and information related to Cape's file.
19. Defendant's designee testified it was not providing Plaintiff with these documents and information because a lawsuit had been filed.
20. Defendant's designee testified Plaintiff would have to pursue written discovery to obtain Cape's files.
21. Defendant's designee testified it had destroyed files related to Cape in 2021 and 2022.
22. Defendant's designee testified it did not know the contents of the files that were destroyed in 2021 and 2022.
23. Defendant's designee testified Defendant is in possession of financial information regarding Cape.
24. Defendant's designee testified it is in possession of matter numbers and matter descriptions related to Cape.
25. Defendant has made no meaningful effort to locate Plaintiff's files.
26. Defendant has ignored Plaintiff's interests by refusing to provide him with his files and thereby causing delay and increased costs.

**FOR A FIRST CAUSE OF ACTION**  
**(Declaratory Judgment)**

27. The foregoing allegations are realleged and reincorporated as if fully set forth herein verbatim to the extent not inconsistent herewith.

28. Defendant is in possession of Plaintiff's legal files and other information regarding its representation of Cape.
29. Defendant has delayed and impeded, and continues to delay and impede, Plaintiff's access to Plaintiff's files.
30. Defendant has placed its interest ahead of Plaintiff's interests regarding Plaintiff's files.
31. Defendant believes it is not required to provide Plaintiff his files.
32. Defendant has destroyed Plaintiff's files without notice to or consent from Cape.
33. Pursuant to S.C. Code Ann. §15-53-10, et seq, Plaintiff seeks a declaration of the legal relationship between Plaintiff and Defendant.
34. Plaintiff also seeks a further declaration that Plaintiff is entitled to Cape and its affiliates' files and information related to these files.
35. Plaintiff seeks a declaration that Defendant is required to cooperate with the Plaintiff in providing information regarding Defendant's past representation of Cape and its affiliates.
36. Plaintiff seeks a declaration that Defendant is required to provide Plaintiff with all information in its possession regarding Cape's files.
37. Plaintiff seeks a declaration that Defendant has engaged in the spoliation of evidence.
38. Plaintiff seeks a declaration that Defendant has violated its duties to Plaintiff regarding providing Plaintiff with all information in its possession regarding Cape's files.

**FOR A SECOND CAUSE OF ACTION**  
**Accounting**

39. The foregoing allegations are realleged and reincorporated as if fully set forth herein verbatim to the extent not inconsistent herewith.
40. A confidential or fiduciary relationship exists between Cape and Defendant, as Defendant has served as Cape's attorney for many years.

41. During this representation, Cape has entrusted money or property to Defendant, thereby creating a duty to account.
42. Defendant has failed to account to Cape as it has not provided Plaintiff with any financial records or files despite being requested to do so.
43. Plaintiff is without an adequate remedy at law to obtain this information from Defendant as Defendant has refused to provide it to Plaintiff.
44. Plaintiff seeks an accounting from Defendant for all money or property entrusted to Defendant during Defendant's representation of Cape.

WHEREFORE, Cape and its affiliates, by and through their duly appointed Receiver, demands judgment against Defendant as follows:

- A. For Plaintiff's costs, expenses, and attorneys' fees for bringing this action;
- B. For an Order requiring Defendant to turn over to Plaintiff, Plaintiff's files in their entirety;
- C. For an Order requiring Defendant to answer Plaintiff's questions regarding Defendant's past representation of Plaintiff;
- D. For an Order stating Defendant has engaged in the spoliation of evidence;
- E. For an Order stating Defendant has violated its duties to Plaintiff regarding its files;
- F. For an Order compelling Defendant to account to Plaintiff for all property and money entrusted to Defendant during the course of its representation; and

G. For such other and further relief as the Court may deem just and proper,  
including pre-judgment and post-judgment interest as provided by  
South Carolina law.

Respectfully submitted,

HARLING & WEST, LLC

s/W. Jonathan Harling  
W. Jonathan Harling, Esquire  
SC Bar 16658  
Harling & West, LLC  
1722 Main Street Suite 200  
Columbia, SC 29201  
Phone: 803.252.2050  
Fax: 800.762.4915  
[jharling@harlingandwest.com](mailto:jharling@harlingandwest.com)

Brian M. Barnwell, Esquire  
SC Bar 78249  
Rikard & Protopapas, LLC  
2110 N. Beltline Blvd.  
Columbia, SC 29204  
Phone: 803.978.6111  
Fax: 803.978.6112  
[bb@rplegalgroup.com](mailto:bb@rplegalgroup.com)

ATTORNEYS FOR THIRD-PARTY  
PLAINTIFF

Columbia, South Carolina  
August 8, 2023

|                                                |   |                                     |
|------------------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                        | ) | IN THE COURT OF COMMON PLEAS        |
|                                                | ) |                                     |
| COUNTY OF RICHLAND                             | ) | FOR THE FIFTH JUDICIAL CIRCUIT      |
|                                                | ) |                                     |
| <b>KEITH W. PARK</b> , individually and as the | ) | <b>C/A NO. 2021-CP-40-02727</b>     |
| Personal Representative of the Estate of       | ) |                                     |
| <b>ISABELLA PARK</b> ,                         | ) | <i>In Re:</i>                       |
|                                                | ) | Asbestos Personal Injury Litigation |
| Plaintiffs,                                    | ) | Coordinated Docket                  |
|                                                | ) |                                     |
| v.                                             | ) |                                     |
|                                                | ) | <b><u>ORDER</u></b>                 |
| <b>ARMSTRONG INTERNATIONAL, INC.,</b>          | ) |                                     |
| et al.                                         | ) |                                     |
|                                                | ) |                                     |
| Defendants.                                    | ) |                                     |

---

Plaintiffs have moved this Court to appoint a Receiver over Cape PLC, pursuant to S.C. Code §15-65-10(4)-(5). This Court finds that the application is meritorious under the applicable statute 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 this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.

Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law with the power and authority fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be. This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape’s insurance carriers.



In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Respondent's property, to: 1) collect all accounts receivable of Respondent and all rents due to the Respondent from any tenant; 2) to change locks to all premises at which any property is situated; 3) open any mail addressed to the defendant and addressed to any business owned by the Respondent; redirect the delivery of any mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver; 4) endorse and cash all checks and negotiable instruments payable to Respondent, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Respondents; 6) hire any person or company to move and store the property of Respondent; 7) to insure any property belonging to the Respondents (but not the obligation); 8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendants; 9) obtain from any landlord, building owner or building manager where the Respondent or the Respondent's business is a tenant, copies of the Respondent's lease, lease application, credit application, payment history and copies of Respondent's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; and 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Respondent may be situated, and to review and obtain copies of all documents related to same.

Based on the Court's experience in other receivership matters, and in an effort to streamline these proceedings, the Court expects the Receiver to investigate the existence of all insurance coverages potentially available to the company in receivership. The Receiver will provide potential insurers with lists of work sites, contractors, and insurance brokers and agents to facilitate

the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of the company in receivership or any company for whom the company in receivership did work as an "additional insured" under coverage written to another entity). The Court expects all insurers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

The Court further orders that, as the Receiver Court, that the Receiver or Cape may not be sued outside this Court without obtaining the Receiver's consent or an order of this Court prior to doing so.

AND IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

**Case Caption:** Isabella Park , plaintiff, et al vs Armstrong International Inc ,  
defendant, et al

**Case Number:** 2021CP4002727

**Type:** Order/Appointment of Receiver

So Ordered

Jean H. Toal

Electronically signed on 2023-03-16 11:28:55 page 4 of 4

ELECTRONICALLY FILED - 2023 Mar 17 8:28 AM - RICHLAND - COMMON PLEAS - CASE#2021CP4002727  
ELECTRONICALLY FILED - 2023 Aug 09 11:08 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4002739

**From:** [Lindsay Valek](#)  
**To:** [dtaylor@lockelord.com](mailto:dtaylor@lockelord.com)  
**Cc:** [Peter Protopapas](#)  
**Subject:** Sent on behalf of Peter D. Protopapas, Receiver for Cape  
**Date:** Monday, March 20, 2023 1:37:00 PM  
**Attachments:** [2023.03.20 Receiver for Cape Ltr to Locke Lord Requesting Files.pdf](#)  
[image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

---

Dear Mr. Taylor,

Attached please find correspondence from Peter D. Protopapas, Receiver for Cape, PLC.

Best regards,

Lindsay H. Valek

**Lindsay H. Valek**  
Paralegal



Phone: 803.978.6111  
Mobile: 803.360.7391  
Fax: 803.978.6112  
[lindsay@rplegalgroup.com](mailto:lindsay@rplegalgroup.com)  
[rplegalgroup.com](http://rplegalgroup.com)

2110 N. Beltline Blvd.  
Columbia, SC 29204



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ELECTRONICALLY FILED - 2023 Apr 12 12:03 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4002727  
ELECTRONICALLY FILED - 2023 Aug 09 11:08 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4002739

PETER D. PROTOPAPAS, RECEIVER  
2110 N. Beltline Blvd., Columbia, SC 29204 – 803.978.6111

---

March 20, 2023

VIA EMAIL ONLY [dtaylor@lockelord.com](mailto:dtaylor@lockelord.com)  
Mr. Davis Taylor, Firm Chair  
Locke Lord, LLP

Re: Cape, PLC / NAAC

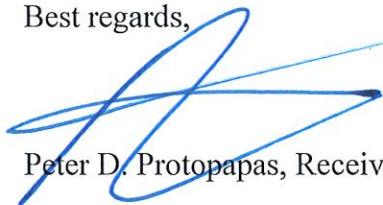
Dear Mr. Taylor,

I am the Court Appointed Receiver for Cape, PLC as successor in interest to Cape Industries, Ltd., f/k/a Cape Asbestos Company Ltd. A copy of the Order of Appointment is enclosed.

I understand from the records in my possession that you and your firm were retained at some point for North American Asbestos Corporation. See enclosed letter dated 10/26/1977. Also enclosed is a letter from NAAC reflecting on its letterhead that it was the “U.S. Subsidiary, The Cape Asbestos Company Limited, London.”

Please accept this letter as my request for a complete copy of all of Cape and NAAC’s files, including all native, electronic files, correspondence in any form with any carrier and all and billing statements on behalf of Cape or NAAC, its parents, affiliates or subsidiaries as it relates to your representation of Cape or NAAC in the above referenced matter and any other matters for which you represented Cape or NAAC and which are in the possession, custody or control of you or your law firm, Locke Lord (f/k/a Lord Bissell & Brook). I am, of course, more than happy to reimburse you for the cost of copying these materials and would prefer electronic transfer if possible. Thank you in advance for your prompt attention to this matter.

Best regards,



Peter D. Protopapas, Receiver

|                                                    |   |                                     |
|----------------------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                            | ) | IN THE COURT OF COMMON PLEAS        |
|                                                    | ) |                                     |
| COUNTY OF RICHLAND                                 | ) | FOR THE FIFTH JUDICIAL CIRCUIT      |
| <br><b>KEITH W. PARK</b> , individually and as the | ) | <b>C/A NO. 2021-CP-40-02727</b>     |
| Personal Representative of the Estate of           | ) |                                     |
| <b>ISABELLA PARK</b> ,                             | ) | <i>In Re:</i>                       |
|                                                    | ) | Asbestos Personal Injury Litigation |
| Plaintiffs,                                        | ) | Coordinated Docket                  |
|                                                    | ) |                                     |
| v.                                                 | ) |                                     |
|                                                    | ) | <b><u>ORDER</u></b>                 |
| <b>ARMSTRONG INTERNATIONAL, INC.</b> ,             | ) |                                     |
| et al.                                             | ) |                                     |
|                                                    | ) |                                     |
| Defendants.                                        | ) |                                     |

Plaintiffs have moved this Court to appoint a Receiver over Cape PLC, pursuant to S.C. Code §15-65-10(4)-(5). This Court finds that the application is meritorious under the applicable statute 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 this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.

Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law with the power and authority fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be. This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape’s insurance carriers.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Respondent's property, to: 1) collect all accounts receivable of Respondent and all rents due to the Respondent from any tenant; 2) to change locks to all premises at which any property is situated; 3) open any mail addressed to the defendant and addressed to any business owned by the Respondent; redirect the delivery of any mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver; 4) endorse and cash all checks and negotiable instruments payable to Respondent, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Respondents; 6) hire any person or company to move and store the property of Respondent; 7) to insure any property belonging to the Respondents (but not the obligation); 8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendants; 9) obtain from any landlord, building owner or building manager where the Respondent or the Respondent's business is a tenant, copies of the Respondent's lease, lease application, credit application, payment history and copies of Respondent's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; and 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Respondent may be situated, and to review and obtain copies of all documents related to same.

Based on the Court's experience in other receivership matters, and in an effort to streamline these proceedings, the Court expects the Receiver to investigate the existence of all insurance coverages potentially available to the company in receivership. The Receiver will provide potential insurers with lists of work sites, contractors, and insurance brokers and agents to facilitate

the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of the company in receivership or any company for whom the company in receivership did work as an "additional insured" under coverage written to another entity). The Court expects all insurers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

The Court further orders that, as the Receiver Court, that the Receiver or Cape may not be sued outside this Court without obtaining the Receiver's consent or an order of this Court prior to doing so.

AND IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]





Richland Common Pleas

**Case Caption:** Isabella Park , plaintiff, et al vs Armstrong International Inc ,  
defendant, et al  
**Case Number:** 2021CP4002727  
**Type:** Order/Appointment of Receiver

So Ordered

Jean H. Toal

Electronically signed on 2023-03-16 11:28:55 page 4 of 4

LORD, BISSELL & BROOK

115 SOUTH LA SALLE STREET  
 CHICAGO, ILLINOIS 60603

(312) 443-0700  
 CABLE: LOWIRCO CGO  
 TELE: 25-3070

WASHINGTON OFFICE  
 21 DUPONT CIRCLE, N.W.  
 WASHINGTON, D.C. 20036  
 (202) 833-3031

STEPHEN A. MILWID  
 (312) 443-0208

October 26, 1977

OCT. 27 1977

A. J. Penna, Esq.  
 Group Solicitor  
 Cape Industries Limited  
 114 Park Street  
 London W1Y 4AB, England

RE: North American Asbestos Corporation -  
 Products Liability Insurance Coverage

Dear Tony:

The following is a list of all coverages, policy numbers and limits still available to North American Asbestos Corporation after loss payments made by certain of the insurers with respect to the Tyler claims.

| <u>Insurer</u>  | <u>Policy No.</u> | <u>Term</u> | <u>Limit of Liability</u>                                     |
|-----------------|-------------------|-------------|---------------------------------------------------------------|
| Zurich Ins. Co. | 84-12-406         | 3-19-63/66  | \$100,000 each person/<br>\$300,000 annual aggregate products |
| Zurich Ins. Co. | 84-98-643         | 3-19-66/67  | \$100,000 each person/<br>\$300,000 annual aggregate products |
| Centennial      | 291-63-20-91      | 3-19-67/68  | \$500,000 aggregate product                                   |
| Westchester     | PCL 556753        | 3-19-67/68  | \$500,000 umbrella excess of \$500,000                        |

3-19-68 to 3-19-70 No Coverage. Centennial and Westchester coverage exhausted by Tyler payments.

CAPE000738



CORD, BISSELL & BROOK

A. J. Penna, Esq.

October 26, 1977

Page Two

|                |              |                                |                                                    |
|----------------|--------------|--------------------------------|----------------------------------------------------|
| St. Paul F & M | 512 XA 1244  | 3-19-70/72                     | \$450,000 umbrella                                 |
| Centennial     | 291-64-57-44 | 3-19-72/73                     | \$500,000 aggregate products                       |
| St. Paul F & M | 512 XA 1244  | 3-19-72/73                     | \$1,000,000 umbrella excess<br>of \$500,000        |
| Centennial     | 291-65-51-91 | 3-19-73<br>canceled<br>7-12-74 | \$500,000 annual aggregate<br>products             |
| INA            | RWP90839     | 7-12-74<br>canceled<br>3-1-75  | \$500,000 annual aggregate<br>products             |
| INA            | RWP83W375    | 3-1-75<br>canceled<br>3-31-76  | \$500,000 annual aggregate<br>products             |
| St. Paul F & M | 512 XA 3553  | 3-19-73/76                     | \$1,000,000 annual umbrella<br>excess of \$500,000 |

There apparently is an earlier policy issued by Zurich than the one first listed above since the copy of the Zurich policy No. 84-12-406 that has been located indicates it was a renewal of Zurich comprehensive general policy No. 81-50-265. The Zurich policies were written through the brokerage firm of Wineman Brothers Inc., which is no longer in existence. We will put Zurich on notice of its potential involvement in some of the pending cases under the first two policies listed above as well as policy No. 81-50-265.

Very truly yours,

Stephen A. Milwid

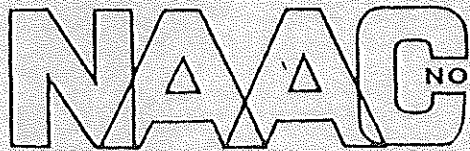
SAM/ap

bcc: Mr. C. G. Morgan

CAPE000739



BLIND COPY, Mr. Charles Cogliandro, The Calabrian Company,  
141 Broadway, New York, N. Y. ✓



NORTH AMERICAN ASBESTOS CORPORATION

U. S. Subsidiary, The Cape Asbestos Company Limited, London

BOARD OF TRADE BUILDING, CHICAGO 4, ILL. • CABLES: NORAMCO, CHICAGO • PHONE: WABASH 2-1339

January 28, 1960

Commodity Credit Corporation  
Washington 25, D. C.

Attention: Mr. Thomas R. Rawlings, Director  
Barter and Stockpile Division

Gentlemen:

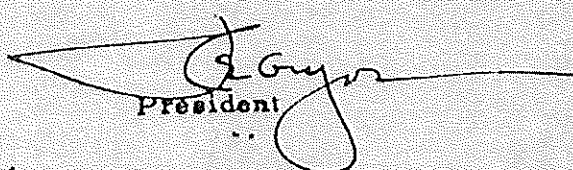
We have offered to the Calabrian Company, 141 Broadway, New York City, 15,000 tons of Amosite Asbestos (Grades D3, DX, M, and K3) and up to 20,000 tons Grade S Blue Crocidolite Asbestos for supply to the Stockpile in exchange for agricultural commodities.

No other firm or individual is authorized to offer any Amosite or Blue Crocidolite asbestos produced by our parent organization, The Cape Asbestos Co. Ltd., London, or by any of its affiliated companies.

The grades of long fiber amosite in our offering to the Calabrian Company are all in strict accordance with National Stockpile Specification P-4-R2 dated May 7, 1959. For your guidance, we wish to mention that The Cape Asbestos Co. Ltd. and its affiliates, while producing approximately 90 per cent of the world's supply of all grades of amosite asbestos, are virtually the sole producers of the longer fiber grades meeting the Stockpile specification.

Very truly yours,

NORTH AMERICAN ASBESTOS CORPORATION

  
President

RECryor/mig

EXHIBIT A

ELECTRONICALLY FILED - 2023 APR 12 12:03 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4002727  
ELECTRONICALLY FILED - 2023 APR 12 12:03 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4002727

A  
C

**From:** [Lindsay Valek](#)  
**To:** [dtaylor@lockelord.com](mailto:dtaylor@lockelord.com)  
**Cc:** [Peter Protopapas](#)  
**Subject:** Follow Up FW: Sent on behalf of Peter D. Protopapas, Receiver for Cape  
**Date:** Tuesday, April 11, 2023 12:48:00 PM  
**Attachments:** [2023.03.20 Receiver for Cape Ltr to Locke Lord Requesting Files.pdf](#)  
[image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

---

Mr. Taylor,

I am following up on the below. If I have missed a previous response, my apologies.

Thank you,

Lindsay

---

**From:** Lindsay Valek  
**Sent:** Monday, March 20, 2023 1:37 PM  
**To:** [dtaylor@lockelord.com](mailto:dtaylor@lockelord.com)  
**Cc:** Peter Protopapas <[pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)>  
**Subject:** Sent on behalf of Peter D. Protopapas, Receiver for Cape

Dear Mr. Taylor,

Attached please find correspondence from Peter D. Protopapas, Receiver for Cape, PLC.

Best regards,

Lindsay H. Valek

**Lindsay H. Valek**  
Paralegal



Phone: 803.978.6111  
Mobile: 803.360.7391  
Fax: 803.978.6112  
[lindsay@rplegalgroup.com](mailto:lindsay@rplegalgroup.com)  
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Columbia, SC 29204



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**Jonathan Harling**

**To:** Jonathan Harling  
**Subject:** Fwd: Cape vs. Locke Lord, LLP (Sent on behalf of Brian M. Barnwell)

**From:** Doineau, Emma <[edoineau@lockelord.com](mailto:edoineau@lockelord.com)>  
**Sent:** Monday, April 17, 2023 5:59:40 PM  
**To:** Brian Barnwell <[BB@rplegalgroup.com](mailto:BB@rplegalgroup.com)>  
**Cc:** Lindsay Valek <[Lindsay@rplegalgroup.com](mailto:Lindsay@rplegalgroup.com)>; Raggio, Sarah H. <[Sarah.Raggio@lockelord.com](mailto:Sarah.Raggio@lockelord.com)>  
**Subject:** RE: Cape vs. Locke Lord, LLP (Sent on behalf of Brian M. Barnwell)

Mr. Barnwell,

This email follows up on our email to you last Thursday. After further investigation of our paper archives, we have determined that the paper files of NAAC were destroyed pursuant to our document retention policy. As a result, we have no responsive records or documents pertaining to your request.

Sincerely,

Emma T. Doineau  
Assistant General Counsel  
**Locke Lord LLP**  
713.226.1462  
615.336.4860 (M)

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---

**From:** Doineau, Emma  
**Sent:** Thursday, April 13, 2023 2:08 PM  
**To:** Brian Barnwell <[BB@rplegalgroup.com](mailto:BB@rplegalgroup.com)>  
**Cc:** 'Lindsay Valek' <[Lindsay@rplegalgroup.com](mailto:Lindsay@rplegalgroup.com)>  
**Subject:** RE: Cape vs. Locke Lord, LLP (Sent on behalf of Brian M. Barnwell)

Dear Mr. Barnwell,

I received an email from Ms. Valek yesterday attaching a copy of a lawsuit filed against Locke Lord in order to obtain a copy of a potential client file dating back from the 1970s. I was quite surprised to see that it was filled with disparaging remarks about our firm and, upon closer inspection, the support attached consisted of two emails sent by Ms. Valek to the Chair of the firm less than a month ago. Yesterday's email is the first notice that Locke Lord's Office of General Counsel has received in connection with this request.

The Order you attached to your pleading indicates that you serve as receiver to Cape Industries Ltd., formerly known as Cape Asbestos Company Ltd. and "its subsidiaries and global affiliates." Our initial research indicates that Cape Industries Ltd. was a former client of an attorney who left the firm. Other than the former client notation in our systems, the firm does not have any records belonging to Cape Industries Ltd.

We also did initial research on the October 26, 1977 communication attached to your pleading, which relates to North American Asbestos Corporation ("NAAC"). Our systems show that NAAC was a former client of an attorney who left the firm in 1985, and that the files for NAAC were sent to another firm on or around February 22, 1985. There is an

indication that some records may still exist in our paper archives for this former client, but further investigation will be required to confirm. Before we are able to undertake further research on the existence of any NAAC records in our archives, we will need documentation showing that NAAC is a subsidiary or global affiliate of Cape Industries Ltd. and/or Cape Asbestos Company Ltd., and thus covered by the Order. Upon receipt of such documentation evidencing that you stand in the shoes of our former client NAAC, we are happy to provide NAAC's files to you.

In order to avoid unnecessary costs, expenses, and further delay arising from internal processes for handling lawsuits filed against the firm, we ask that you non-suit or dismiss your pleading.

Please feel free to contact me directly at 713-226-1462 should you wish to discuss this matter. Please note that the firm reserves all rights with respect to service of process of the complaint, and will provide a response to your query regarding acceptance of service upon receipt of your reply.

Sincerely,

Emma T. Doineau  
Assistant General Counsel  
**Locke Lord LLP**  
713.226.1462  
615.336.4860 (M)

View My [BIO](#) | Connect on [LinkedIn](#) | Visit [lockelord.com](#)

 Please consider the environment before printing this e-mail.

---

**From:** Lindsay Valek <[Lindsay@rplegalgroup.com](mailto:Lindsay@rplegalgroup.com)>

**Sent:** Wednesday, April 12, 2023 11:25 AM

**To:** Taylor, David <[dtaylor@lockelord.com](mailto:dtaylor@lockelord.com)>; Doineau, Emma <[edoineau@lockelord.com](mailto:edoineau@lockelord.com)>

**Cc:** Brian Barnwell <[BB@rplegalgroup.com](mailto:BB@rplegalgroup.com)>; Danny Nieto <[danny@rplegalgroup.com](mailto:danny@rplegalgroup.com)>

**Subject:** Cape vs. Locke Lord, LLP (Sent on behalf of Brian M. Barnwell)

**\*\* External Email -- Sender: [Lindsay@rplegalgroup.com](mailto:Lindsay@rplegalgroup.com) \*\***

Good morning. Please see attached and advise if you will accept service or if you would prefer we proceed via process server.

Thank you,

Lindsay H. Valek  
Paralegal  
Rikard & Protopapas, LLC  
2110 N. Beltline Blvd.  
Columbia, SC 29204  
803.978.6111  
[lindsay@rplegalgroup.com](mailto:lindsay@rplegalgroup.com)

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ELECTRONICALLY FILED - 2023 Aug 23:5:04 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

# Locke Lord

## About us

Locke Lord is a premier full-service Am Law 100 law firm that has earned a solid reputation for complex litigation, regulatory and transactional work on behalf of clients in important and growing industry sectors around the world.

Throughout our more than 135-year history, we've cultivated partnerships with a broad range of public and private companies, from Fortune 500 leaders to startups and emerging businesses. Our team can design strategic solutions that meet your long-term goals no matter how large or small your matter, applying our established tradition of responsive, personalized service.

At Locke Lord, our diverse and inclusive culture of collegiality and collaboration — core values of the Firm — across all of our offices and practices is ultimately reflected in our client experience by culminating in a deep understanding of our clients' businesses.

Corporate responsibility is also an important part of Locke Lord's mission as we reach out to the communities we serve in meaningful partnerships and pro bono work.

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Firm Accolades

MANSFIELD  
CERTIFICATION  
PLUS 2022

HRC  
CORPORATE  
EQUALITY INDEX  
2022

CHAMBERS  
USA  
2022

U.S. NEWS –  
BEST  
LAWYERS®  
BEST LAW FIRMS  
2023

THE TIMES  
BEST LAW  
FIRMS  
2020

BTI  
CLIENT SERVICE  
A-TEAM  
2023

THE LEGAL  
500 UK  
2022

THE BEST  
LAWYERS IN  
AMERICA®  
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BTI  
MOST  
RECOMMENDED  
LAW FIRMS  
2021

ISO 27701  
CERTIFICATION

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## Locke Lord Earns 2022 Mansfield Certification Plus From Diversity Lab for Commitment to Diversity and Inclusion

Locke Lord has achieved Mansfield Certification Plus status for 2022 from Diversity Lab, recognizing the Firm for reaching targets designed to boost the representation of diverse lawyers considered for a variety of roles and opportunities within the Firm.

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## Locke Lord Chair David Taylor Speaks to Bloomberg Law on What Sets Locke Lord Apart, Challenges and Opportunities in the Legal Space, Leadership Convictions, Career Advice and More

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## Locke Lord Receives Perfect Score in Human Rights Campaign Foundation's Corporate Equality Index for Sixth Consecutive Year

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ELECTRONICALLY FILED - 2023 Apr 12 12:03 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4002727  
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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS FOR  
THE FIFTH JUDICIAL CIRCUIT

Docket No.: 2021CP32001122

KEITH W. PARK, INDIVIDUALLY  
AND AS THE PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF ISABELLA PARK,

Plaintiff,

vs.

ARMSTRONG INTERNATIONAL,  
INC. ET AL.,

Defendant,

**THIRD-PARTY PLAINTIFF'S AMENDED  
NOTICE OF DEPOSITION PURSUANT  
TO RULE 30(b)6 OF LOCKE LORD, LLP**

CAPE, PLC, BY AND THROUGH ITS  
DUTLY APPOINTED RECEIVER,  
PETER D. PROTOPAPAS,

Third-Party Plaintiff,

vs.

LOCKE LORD, LLP

Third-Party Defendant.

**TO: T. RICHMOND MCPHERSON, III, ESQUIRE, ATTORNEY FOR THIRD-  
PARTY DEFENDANT LOCKE LORD, LLP:**

PLEASE TAKE NOTICE, the undersigned will take the deposition of the person(s) designated by Defendant pursuant to Rule 30(b)(6), SCRCF, as having the most knowledge of the areas listed below on July 18, 2023, commencing at 10:00 a.m. CDT at the law offices of Locke Lord, LLP, JPMorgan Chase Tower, 600 Travis, Suite 2800, Houston, Texas, and continuing day to day thereafter until such examination is completed and may occur over several days if more

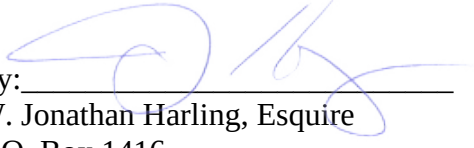
than one person is necessary to provide the information requested. This deposition may be videotaped, and Plaintiff provides notice to Defendant that the deposition may be used at the time of trial. For the purposes of this deposition notice, “You” and “Your” refer to Locke Lord, LLP, and its predecessors in interest. For the purposes of this deposition notice, “Cape” refers to Cape, PLC, and its predecessors in interest. Please designate the officers, directors, managing agents, or persons who consent to testify on behalf of the Third-Party Defendant at these depositions that are the most familiar with:

1. The methods used to research and locate information and documents related to Cape.
2. Your relationship with Cape.
3. Your corporate history.
4. Your policies, practices, procedures, and/or protocols that apply to Your search for documents and information related to Cape.
5. To the extent not included in the proceeding topics, your onsite, offsite and/or third-party document retention policies from 1933 through the present.
6. To the extent not included in the proceeding topics, your onsite, offsite and/or third-party document destruction policies from 1933 through the present.
7. The individuals most knowledgeable regarding your search efforts to locate the requested information related to Cape.
8. All documents reflecting the number of people and amount of time You spent researching and trying to locate information and documents related to Cape.
9. All non-privileged communications concerning Your efforts to research and locate information and documents related to Cape.

10. All documents You sent to, or received from, any third-party concerning Your efforts and their efforts to locate information and documents related to Cape.

Respectfully submitted,

HARLING & WEST, LLC  
Attorney for the Third-Party Plaintiff

By:   
W. Jonathan Harling, Esquire  
P.O. Box 1416  
Columbia, SC 29201  
Phone: 803-252-2060  
Fax: 800-762-4915  
Email: [jharling@harlingandwest.com](mailto:jharling@harlingandwest.com)

Columbia, South Carolina  
July 3, 2023

# EXHIBIT B



STATE OF SOUTH CAROLINA     ) IN THE COURT OF COMMON PLEAS  
                                          )   
                                          ) FOR THE FIFTH JUDICIAL CIRCUIT  
  
IN RE: SOUTH CAROLINA         )  
ASBESTOS LITIGATION            ) ASBESTOS TRIAL DOCKETING ORDER AS  
                                          ) OF December 1, 2021

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**DOCKETING ORDER**

This Order is designed to set forth trial dates from February 2022 through December 2022.

The trial settings are as follows:

**FEBRUARY 14, 2022**           (previously ordered but modified)  
Bunsen Formy-Duval by Rita Gore-Charleston County 2018-CP-10-01016-deceased  
mesothelioma

Henry Cessna by Clarence Cessna-Charleston County 2018-CP-10-05113-deceased lung cancer

James Dunbar-Richland County 2020-CP-40-04911-living mesothelioma

Lubert White by Linda White-Richland County 2019-CP-40-02858-deceased mesothelioma

Robert Aspray by Ophelia Aspray Davis-Richland County 2019-CP-40-04667-deceased  
mesothelioma

Edward Morgan-Richland County 2020-CP-40-05731-living lung cancer

**APRIL 18, 2022**  
Jerry Campbell-Richland County 2021-CP-40-02286-living mesothelioma

Stephen Horton-Richland County 2020-CP-40-05526-living lung cancer

Waymon Sims by Eunice Sims-Richland County 2020-CP-40-05935-deceased lung cancer

Billy Horne by Julie Horne-Richland County 2021-CP-40-01821-deceased mesothelioma

Bobby Warren by Cynthia Warren-Charleston County 2018-CP-10-05817-deceased  
mesothelioma

Mary McBrayer by Angela Hood-Charleston County 2020-CP-10-03946-deceased mesothelioma

**JUNE 20, 2022**

Wilbur Wilson-Richland County 2021-CP-40-02119-deceased mesothelioma

Steven Hoyle Bostian-Richland County 2021-CP-40-04877-living mesothelioma

Isabella Park (d)-Richland County 2021-CP-40-02727-deceased mesothelioma

Galen Garren-Richland County 2021-CP-40-02703-living lung cancer

**AUGUST 29, 2021**

Tommy Wannamaker-Orangeburg County 2021-CP-38-00240-deceased mesothelioma

Charles Shipman by Anna Marie Pritchett-Richland County 2021-CP-40-03415-deceased mesothelioma

Jack Taylor-Richland County 2020-CP-40-06134-deceased lung cancer

James Kennon by Susan McCarty-Richland County 2021-CP-40-03955-deceased lung cancer

Vonnie Agner by Tommy Agner-Richland County 2021-CP-40-05068- deceased mesothelioma

**OCTOBER 24, 2022**

Curtis Bolton-Spartanburg County 2021-CP-42-02480-living mesothelioma

Jerry Kirkland by Rebecca Kirkland-Spartanburg County 2021-CP-42-02770-deceased mesothelioma

**DECEMBER 5, 2022**

Dorothy Goodwin by Joe Goodwin-Richland County 2020-CP-40-04613-deceased peritoneal mesothelioma

Open Block for newly filed cases

|                                   |   |                                |
|-----------------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS   |
|                                   | ) |                                |
| COUNTY OF RICHLAND                | ) | FOR THE FIFTH JUDICIAL CIRCUIT |
|                                   | ) |                                |
| Isabella Park,                    | ) | C/A No.: 2021-CP-40-02727      |
|                                   | ) |                                |
| Plaintiffs,                       | ) |                                |
|                                   | ) |                                |
| v.                                | ) | DOCKETING ORDER                |
|                                   | ) |                                |
| Armstrong International, Inc., et | ) |                                |
| al.,                              | ) |                                |
|                                   | ) |                                |
| Defendants.                       | ) |                                |
|                                   | ) |                                |
|                                   | ) |                                |

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By Order of the South Carolina Supreme Court dated May 28, 2019, the undersigned was appointed to serve as the Chief Judge for Administrative Purposes over all asbestosis and asbestos litigation filed within the South Carolina state court system, which includes the issuance of scheduling orders and scheduling cases for trial. The instant matter is an asbestos litigation case pending in Richland County, South Carolina.

**IT IS HEREBY ORDERED** that this case shall begin trial in the Court of the Common Pleas, Richland County, South Carolina beginning on June 20, 2022.

**AND IT IS SO ORDERED.**

*[Signature appears on the following page.]*



Richland Common Pleas

**Case Caption:** Isabella Park vs Armstrong International Inc , defendant, et al

**Case Number:** 2021CP4002727

**Type:** Order/Scheduling Order

So Ordered

Jean H. Toal

Electronically signed on 2021-12-01 15:14:46 page 4 of 4

# EXHIBIT C

**From:** Theile McVey <tmcvey@kassellaw.com>  
**Sent:** Friday, June 3, 2022 8:24 AM  
**To:** Weeks, Maya J.; Devon Martinez-Rector; Ben Braly; Jason Johnson; Melissa Varela; Elizabeth Moultrie; angela.strickland@bowmanandbrooke.com; Brianna.Arnone@bowmanandbrooke.com; Ashley Lord; wac@roecassidy.com; Dmoore@RoeCassidy.com; vsheets@roecassidy.com; SingewaldC@WhiteandWilliams.com; ccollier@hpylaw.com; spugh@richardsonplowden.com; CMcQueen@RichardsonPlowden.com; jthoensen@RichardsonPlowden.com; wharte@richardsonplowden.com; mwhite@richardsonplowden.com; djones@richardsonplowden.com; louis@milliganlawfirm.com; Jackie@milliganlawfirm.com; TPeck@foxrothschild.com; sgflynn@foxrothschild.com; Ncherry@foxrothschild.com; Dcarnes@foxrothschild.com; kkolb@foxrothschild.com; atwilley@foxrothschild.com; JLee@rshc-law.com; drheney@gwblawfirm.com; wmaurides@gwblawfirm.com; dwhite@gwblawfirm.com; rtate@gwblawfirm.com; ctowers@gwblawfirm.com; Robert.meriwether@nelsonmullins.com; Jase.glenn@nelsonmullins.com; Mark.phillips@nelsonmullins.com; David.traylor@nelsonmullins.com; Susan.collings@nelsonmullins.com; Carolyn.blackwell@nelsonmullins.com; Linda.wilson@nelsonmullins.com; Mitch.brown@nelsonmullins.com; Matt.bogan@nelsonmullins.com; Nick.charles@nelsonmullins.com; O'Neill, Elizabeth; McLeod, Yancey; Carroll, Todd; Baker, Charles; Sullivan, Kimberly; WBD.SCASBESTOS; ashley.brathwaite@elliswinters.com; CovilParalegal@elliswinters.com; Tara.Sullivan@klgates.com; KLgates\_SC\_Asbestos@klgates.com; skozick@kernodelaw.com; mmcdonald@hsblawfirm.com; dconner@hsblawfirm.com; sfrick@hsblawfirm.com; tfreedle@hsblawfirm.com; angela.strickland@bowmanandbrooke.com; Brianna.arnone@bowmanandbrooke.com; Ashley.Lord@bowmanandbrooke.com; Kim.Rothrock@bowmanandbrooke.com; wac@roecassidy.com; Dmoore@RoeCassidy.com; vsheets@roecassidy.com; SingewaldC@WhiteandWilliams.com; Ryanh@whiteandwilliams.com; Chris.Collier@lewisbrisbois.com; spugh@richardsonplowden.com; CMcQueen@RichardsonPlowden.com; jthoensen@RichardsonPlowden.com; MWhite@RichardsonPlowden.com; louis@milliganlawfirm.com; Jackie@milliganlawfirm.com; tdougall@dougallfirm.com; wcollins@dougallfirm.com; mkalwajtys@dougallfirm.com; JLee@rshc-law.com; drheney@gwblawfirm.com; wmaurides@gwblawfirm.com; kpredersoli@gwblawfirm.com; dwhite@gwblawfirm.com; rtate@gwblawfirm.com; jlaffitte@gwblawfirm.com; ctowers@gwblawfirm.com; amillerosborne@gwblawfirm.com; jdedman@gwblawfirm.com; ejones@gwblawfirm.com; pholland@gwblawfirm.com; Robert.meriwether@nelsonmullins.com; Jase.glenn@nelsonmullins.com; David.traylor@nelsonmullins.com; Mark.phillips@nelsonmullins.com; Deirdre.mccool@nelsonmullins.com; Susan.collings@nelsonmullins.com; Kelli.eargle@nelsonmullins.com; Trish.koester@nelsonmullins.com; Carolyn.blackwell@nelsonmullins.com; Linda.wilson@nelsonmullins.com; Jo.lyons@nelsonmullins.com; mitch.brown@nelsonmullins.com; matt.bogan@nelsonmullins.com; nick.charles@nelsonmullins.com; jenny.jordan@nelsonmullins.com; erika.fedolini@nelsonmullins.com; jack.slosson@nelsonmullins.com; O'Neill, Elizabeth; McLeod, Yancey; Carroll, Todd; Baker, Charles; WBD.SCASBESTOS; Wells, Sarah; Robusto, Matt; leslie.packer@elliswinters.com; ashley.brathwaite@elliswinters.com; curtis.shipley@elliswinters.com; joe.hammond@elliswinters.com; CovilParalegal@elliswinters.com; Tara.Sullivan@klgates.com; Kim.Taylor@klgates.com; skozick@kernodelaw.com; mmcdonald@hsblawfirm.com; dconner@hsblawfirm.com; sfrick@hsblawfirm.com; tfreedle@hsblawfirm.com; sturner@hsblawfirm.com; cshytle@mcguirewoods.com; bchubb@mcguirewoods.com; edimond@mcguirewoods.com; ckiger@smithlaw.com; aries@smithlaw.com; cbona@smithlaw.com; mmontgomery@robinsongray.com; rhutchens@robinsongray.com; BLaffitte@robinsongray.com; carlpierce@piercesloan.com; pattiwilliams@piercesloan.com; bensmoot@piercesloan.com; carsonparker@piercesloan.com; Jameskennedy@piercesloan.com; elizabethtaylor@piercesloan.com;

**To:**

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**Subject:**

RE: June Pretrial Hearing

**Attachments:**

Proposed Agenda for Motions Hearing for June 2022 Block.docx



Chief Justice Toal: This morning we are delivering to you and Maya notebooks for the hearing on Monday, June 6th. The notebooks contain the motions for summary judgment and responses, the Plaintiffs' External (tmcvey@kassellaw.com<mailto:tmcvey@kassellaw.com>)

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Chief Justice Toal:

This morning we are delivering to you and Maya notebooks for the hearing on Monday, June 6th. The notebooks contain the motions for summary judgment and responses, the Plaintiffs' motions in limine and the Nash motion. By way of update, the Park and Garren cases have both fully resolved. The remaining Defendants in Wannamaker and Wilson are listed below. I am also attaching a proposed agenda. Please let me know if you have any questions or concerns. Best, Theile

#### 1. Wannamaker

- \* Ethyl
- \* Santee Cooper (South Carolina Public Service Authority)

#### 1. Wilson

- \* Research Cottrell
- \* Whittaker, Clark & Daniel

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Subject: June Pretrial Hearing

Hi All:

The pretrial hearing for the June trial block, including Wannamaker v. 3M Company et. al., will be held on June 6th, 2022 at the Richland County courthouse. An agenda will be sent out prior to the hearing that will confirm time and courtroom.

Please send a copy of all motions to Chief Justice Toal and I. Chief Justice Toal prefers that motions binders be sent to her home address (please reach out to me individually for her home address if needed) and motions can be sent to me at the Senate Street address below my signature.

The court is providing a court reporter for this hearing.

Thank you,

Maya J. Weeks, M.A., J.D.  
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# EXHIBIT D

|                                                |   |                                     |
|------------------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                        | ) | IN THE COURT OF COMMON PLEAS        |
|                                                | ) |                                     |
| COUNTY OF RICHLAND                             | ) | FOR THE FIFTH JUDICIAL CIRCUIT      |
|                                                | ) |                                     |
| <b>KEITH W. PARK</b> , individually and as the | ) | <b>C/A NO. 2021-CP-40-02727</b>     |
| Personal Representative of the Estate of       | ) |                                     |
| <b>ISABELLA PARK</b> ,                         | ) | <i>In Re:</i>                       |
|                                                | ) | Asbestos Personal Injury Litigation |
| Plaintiffs,                                    | ) | Coordinated Docket                  |
|                                                | ) |                                     |
| v.                                             | ) |                                     |
|                                                | ) |                                     |
| <b>ARMSTRONG INTERNATIONAL, INC.</b> ,         | ) |                                     |
| et al.                                         | ) |                                     |
|                                                | ) |                                     |
| Defendants.                                    | ) |                                     |

### **MOTION TO APPOINT RECEIVER**

Plaintiffs, pursuant to S.C. Code §§ 15-65-10(4) and (5), move this Court to appoint a receiver over Cape PLC and its subsidiaries, affiliates, successors, and assigns. Cape PLC is a defendant in the above-captioned action.

### **BACKGROUND**

Cape PLC is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.<sup>1</sup>) (“Cape Asbestos”) and its subsidiaries and global affiliates (collectively, “Cape” or the “Company”), which were and are private companies organized and existing under the laws of the United Kingdom, with its principal place of business in England. At all times relevant, Cape was involved in all elements of the global asbestos industry, but in particular mining many thousands of tons of raw asbestos fiber in South Africa and then selling it to the most dominant manufacturers of asbestos-containing products in the United States—substantial quantities of

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<sup>1</sup> Effective July 1, 1974, Cape Asbestos Company Ltd. changed its name to Cape Industries Ltd. **Ex.1**, CAPE000308 (certificate of incorporation on change of name).



which were used in South Carolina. Cape also concocted a scheme to avoid its legal responsibilities to persons injured from using those end products because, startlingly, Cape deemed itself as having—in its own words—no “moral responsibility” to those end users. Rather than defending its conduct in front of juries in the United States, Cape decided to simply accept default judgments in asbestos lawsuits and ultimately flee the country, knowing that nearly all the Company’s assets were in jurisdictions (namely, the U.K., South Africa, and Lichtenstein) where judgments in those lawsuits could not be enforced. Although Cape stiff-armed its creditors in the United States—namely, workers exposed to asbestos mined by Cape—and absconded to London and South Africa, certain of its insurance assets presumably remain. The appointment of a receiver to marshal Cape’s assets and satisfy claims is therefore the appropriate remedy, as explained below.

**A. Cape Establishes American Presence and Operations Through NAAC.**

At its peak, from mines in Apartheid-era South Africa, Cape produced approximately 90%<sup>2</sup> of the world’s supply of amosite asbestos, including asbestos imported and used in South Carolina.

For the “purpose of expediting and facilitating the movement” of asbestos from South African mines, on October 14, 1953, Cape Asbestos Company Ltd. (a U.K. entity) established the North American Asbestos Corporation (“NAAC”), a direct subsidiary that was part of the Company’s “mining division” and domiciled in Illinois.<sup>3</sup> NAAC had both marketing and distribution roles: (i) serving as Cape’s sales agency in the United States, with sole authority to offer Cape products and responsibility for transmitting information about customer needs to Cape mines, and (ii) ensuring proper distribution of asbestos products and that shipments from Africa

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<sup>2</sup> *Hammond v. North American Asbestos Corp.*, 454 N.E. 2d 210, (Ill. 1983)(confirming that Cape Asbestos supplies 90% of the world’s supply of amosite asbestos and virtually the sole supplier of longer fiber grades).

<sup>3</sup> See **Ex. 2**, CAPE000110–12 (1982 court filing describing NAAC’s history); **Ex. 3**, CAPE000177 (identifying NAAC as the sole U.S.-based entity of the Cape mining division); **Ex. 4**, CAPE000869 (1973 letter describing NAAC as “a division of Cape Asbestos Co. Ltd., with corporate offices in London”).



made it “all the way through to the customer’s plant,” including, on information and belief, to plants in South Carolina or through South Carolina ports.<sup>4</sup> NAAC “effect[ively] . . . put the Mines at every U.S. port” (**Ex. 5**, CAPE000988–89) and by 1970 was the “largest U.S. importer of Amphibole Fibres,” which were “re-distributed from . . . warehouse locations in East Coast, Gulf Coast and West Coast Ports” (**Ex. 6**, CAPE000878–79).

Over its history, NAAC was “essentially a one-man operation” consisting of an operational lead supported by four office clerical personnel (overseen by a board of directors made up of largely of Company lawyers or other Cape executives, until all Cape officials resigned in 1975 as a “sensible precaution” in light of U.S. litigation).<sup>5</sup> In coordination with the global Cape network, however, NAAC sold asbestos to Cape’s numerous American-based clients, including, but not limited to, the U.S. Government, Keene Corporation (f/k/a Baldwin-Ehret-Hill), Carey, Fibreboard, GAF (f/k/a Ruberoid), Owens Corning, Johns-Manville and Pittsburgh Corning. **Ex. 7**, CAPE000994–95. These companies were giants among asbestos product manufacturers, and on information and belief, their products were used extensively in South Carolina. In addition, NAAC tried to influence public and corporate opinion about the safety of asbestos, including, but not limited to, rebutting emerging medical critiques of its safety.<sup>6</sup>

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<sup>4</sup> See **Ex. 8**, CAPE000263–66 (describing intended business of NAAC); **Ex. 9**, CAPE000333 (1975 Cape Asbestos cover letter of NAAC director resignations); **Ex. 10**, CAPE000729 (appointment announcement describing NAAC as “specialize[d] in marketing and distribution of Blue and Amosite asbestos in the United States, Canada, Mexico and the Caribbean”); **Ex. 5**, CAPE000988–89 (1969 NAAC memorandum describing customer services).

<sup>5</sup> See **Ex. 2**, CAPE000110–12 (describing NAAC’s lean staffing); **Ex. 11**, CAPE001514 (“Despite the volume of sales and profits of NAAC, our operation is a very small one, with only a total of 5 employees”); **Ex. 12**, CAPE001528 (six directors in 1970).

<sup>6</sup> See, e.g., **Ex. 13**, CAPE000130 (1977 Cape Asbestos Fibres Limited prioritizing efforts of Asbestos International Association to “organise a body of medical opinion that is prepared to stand up” to critical opinions).

and Bob Hutcheson. This organisation is getting along well in spite of the inevitable difficulty of correlating the views of representatives of so many different countries. It is clear to me that one of our first tasks must be to try to organise a body of medical opinion that is prepared to stand up to Selikoff.

Cape Asbestos, moreover, dominated NAAC's decision-making, with NAAC, for example, unable to "borrow one dollar without [Cape Asbestos's] approval" and routinely forced to withdraw cash from the United States to pay dividends to Cape Asbestos (minimizing the assets on NAAC's balance sheet).<sup>7</sup>

### **B. Cape Accepts Default Judgements and Liquidates NAAC to Evade Claimants.**

After the onset of asbestos-related product liability litigation in the 1970s, Cape became especially concerned with its own liability.<sup>8</sup> Thus, Cape Asbestos went through tortured machinations to make it *appear* it was reducing oversight over NAAC, but in reality, NAAC continued to operate as a mere division or instrumentality under Cape's domination and control.<sup>9</sup>

In addition, Cape began to engage in a campaign of litigation avoidance by refusing to accept process or appear in any proceedings in the United States, including failing to respond to

<sup>7</sup> See, e.g., **Ex. 14**, CAPE001507 (1976 letter noting borrowing limit); **Ex. 15**, CAPE000261–62 (1959 letter suggesting that Cape was "extremely cautious" in picking NAAC personnel who would "fit into [the Company's] scheme of things . . . without causing embarrassment all around"); **Ex. 16**, CAPE000816 (1976 board minutes showing payment of \$250,000 dividend); **Ex. 17**, CAPE000931–32 (NAAC President stating in 1956 that NAAC "think[s] of ourselves as being part of a coordinated group with responsibilities to the whole, even though this may mean subordinating other and more profitable interests of NAAC," and expressing offense at being called "commission agents," which "implies an independent, lack of responsibility, and an emphasis on local self-interest").

<sup>8</sup> See, e.g., **Ex. 18**, CAPE000351–56 (1975 lawyer letter referring to "attempt to limit NAAC's and Cape's exposure to future United States litigation").

<sup>9</sup> See **Ex. 19**, CAPE000123 (NAAC discouraging Cape visits to the U.S. in 1978 or else negate "maneuvers" related to "continued problems with product liability litigation"); **Ex. 20**, CAPE000152 (1975 letter suggesting to "disassociate the Parent Company as fully as possible from the operating companies"); **Ex. 21**, CAPE000154 (1975 letter raising whether to "do something to change the identity of NAAC in order to avoid exposing the company unnecessarily," while doing "everything possible to maintain a successful selling operation in the United States"); **Ex. 22**, CAPE000166–67 (1974 NAAC letter suggesting that "no one from Cape be an officer of NAAC since we want it to be as independent as possible in order to avoid any contention that it is the alter ego of Cape and that Cape is doing business in the United States"); **Ex. 9**, CAPE000333 (1975 Cape Asbestos letter stating "that it would be a sensible precaution against Cape's involvement in any future proceedings for [Cape personnel] to resign from the N.A.A.C. Board," and enclosing resignation letters).

the Second Amended Summons in this action, as properly served pursuant to Article 10 of the Hague Convention on March 8, 2022 *See Exhibit A*.<sup>10</sup> According to Cape executives, this strategy was warranted because they “really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of [a] US product liability cult.” Piercing the Corporate Veil: Cape Industries and Multinational Corporate Liability for a Toxic Hazard, 1950-2004; Tweeddale and Flynn, *Enterprise & Society*, June 2007, Vol.8 No. 2 pp.268-296 (1977 letter from Cape’s counsel) attached as **Ex. 25**.

Ultimately, to avoid paying damages to workers whom were made sick or killed by using its asbestos, Cape resolved to liquidate NAAC, effective January 31, 1978. *See, e.g., Ex. 26*, CAPE001035 (April 1978 letter noting liquidation and requesting Cape Asbestos official to stop sending accounting memoranda to former NAAC officials, “for safety’s sake”). Existing debts of NAAC were paid, with remaining assets transferred upstream to NAAC’s direct parent company at the time, Cape Industries Overseas Ltd. (a U.K. entity wholly owned by Cape Industries Ltd.). *See Ex. 27*, CAPE000593 (noting conveyance of assets). NAAC’s liquidation was central to Cape’s litigation-avoidance strategy, based on legal advice that no British or South African court would enforce a judgment against a Cape entity if it never appeared again in the United States.<sup>11</sup>

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<sup>10</sup> *See Ex. 23*, CAPE000550–51 (NAAC personnel opining in 1978 “that it is most unlikely that any plaintiff would bother to pursue collection of any default judgments against Cape”); **Ex. 24**, CAPE000702 (NAAC counsel in 1979 confirming receipt of correspondence stating that “U.K. and South African lawyers confirm that any resulting judgments will not be enforceable against Cape’s U.K. and South African assets” and that “the potential loss of all NAAC’s outstanding assets is not material in the Cape Group context”).

<sup>11</sup> *See, e.g., Ex. 28*, CAPE000141–43 (1975 legal letter advising Cape on default-judgment risk); **Ex. 29**, CAPE000566 (1978 memorandum agreeing that it would be in the “best interests of Cape companies other than NAAC” to make “no response” to litigation); **Ex. 30**, CAPE000617–19 (summarizing 1984 deposition testimony regarding litigation strategy).

Yet, Cape continued to contemplate schemes to facilitate the sale of asbestos to U.S. customers while minimizing its product-liability risk.<sup>12</sup> For example, Continental Products Corporation (using the same physical address as NAAC in Chicago, Illinois) was formed to “act as a commission agent for the future sales of asbestos from South Africa” in the United States, with South African mines selling to a new Lichtenstein subsidiary called Associated Mines Company, which in turn sold asbestos to the United States under its own invoices. **Ex. 32**, CAPE000386; *see also* **Ex. 33**, CAPE000531 (announcement of Continental Products Corporation as “Agent to handle the North American requirements for Amosite and Crocidolite asbestos fibre”). The express “purpose of this corporate arrangement [was] to eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to lawsuits brought against it under theories of strict liability concerning products liability on the sale of asbestos in the United States.” **Ex. 34**, CAPE000377–79.

### **C. A Receiver Can Marshal Cape’s Assets to Satisfy Claims.**

Asbestos claimants have been generally unsuccessful in recovering against Cape entities (except for a single instance in which Cape contributed to the settlement of certain asbestos claims brought in Texas). Indeed, due to its complex scheme to liquidate NAAC and not respond to litigation, Cape left its creditors—namely, the thousands of people it exposed to asbestos—without any meaningful entity to proceed against and, apparently, disposed of its United States-based assets without regard to those creditors. Now, apparently, all that potentially remains of Cape in the United States is its historical insurance coverage.

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<sup>12</sup> *See, e.g.*, **Ex. 31**, CAPE000728 (1977 meeting memorandum “to discuss liquidation of NAAC and formation of new off-shore company to service North American market”).

Plaintiffs request that this Court appoint a receiver to marshal Cape’s assets, including insurance coverage, and that the receiver be granted such further and other powers as may be appropriate, including, but not limited to, the acceptance of service of claims, retaining counsel, making claims against insurance policies that may exist, and otherwise wholly administer all of the assets and attendant business of Cape.

### **LAW AND ARGUMENT**

South Carolina Code § 15-65-10(4) states that:

A receiver may be appointed by a judge of the circuit court, either in or out of court:  
... (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations ....

It is undisputed that Cape, through its complex scheme and 1978 liquidation of its American subsidiary, NAAC, has intentionally fled the United States to avoid its liabilities and obligations to its creditors and to the extent it ever properly qualified itself to do business in South Carolina has forfeited those rights. *See, e.g.*, Black’s Law Dictionary (11th ed. 2019), *forfeiture* (“loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty”) Thus, appointment of a receiver over Cape and its affiliates is appropriate under subsection (4).

South Carolina Code §15-65-10(5), moreover, states that:

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 ....

Section 15-65-10(5) reflects an “old practice” of equity and “important principle of law” to correct injustice, particularly “when a debtor is trying to defeat his creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts.” *Va.-Carolina Chem. Co. v. Hunter*, 66 S.E. 177, 179 (S.C. 1909). Thus, if a business “disposes of large resources” but “leaves ... debts unpaid”—while “set[ting]

creditors at arm's length by refusing . . . to take any interest in the satisfaction of their claims"—then there is a prima facie case of fraud warranting appointment of a receiver. *Id.* at 180 (citing *Miller v. Hughes*, 12 S.E. 419 (S.C. 1890)). It is respectfully submitted that the appointment of a receiver over Cape and its affiliates is appropriate under subsection (5) because Cape engaged in an intentional scheme to defraud its creditors by refusing to appear or accept service in the United States after being faced with substantial asbestos-related liabilities.

Section 15-65-20 requires that notice of this application be provided to the party to the action whose property is sought to be put in the hands of the receiver. Plaintiffs, concurrently herewith, have provided copies of this motion to Cape PLC.<sup>13</sup>

### **CONCLUSION**

For the foregoing reasons, the appointment of a receiver for Cape for all purposes, including, but not limited to, marshaling available assets of Cape and its subsidiaries, successors, and assigns, is appropriate. Plaintiffs request that this Court issue an order appointing a receiver as soon as practicably possible and for such other and further relief to which they may be entitled. Plaintiffs respectfully suggest that Peter Protopapas be appointed the receiver over Cape.

Respectfully submitted,

s/ Aaron D. Chapman

Aaron D. Chapman (SC Bar No. 104485)

Charles W. Branham, III (To be Admitted *PHV*)

**DEAN OMAR BRANHAM SHIRLEY, LLP**

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Other email: [tgilliland@dobslegal.com](mailto:tgilliland@dobslegal.com)

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

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<sup>13</sup> Plaintiffs have placed into the hands of DHL, an international carrier, a copy of this motion and its exhibits, for delivery to the same address at which service was perfected.

**KASSEL MCVEY ATTORNEYS AT LAW**

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Columbia, South Carolina 29202-1476

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[jrutkoski@kassellaw.com](mailto:jrutkoski@kassellaw.com)

Other email: [emoultrie@kassellaw.com](mailto:emoultrie@kassellaw.com)

**ATTORNEYS FOR PLAINTIFF**

March 6, 2023,  
Dallas, Texas.

# EXHIBIT E



|                                                |   |                                     |
|------------------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                        | ) | IN THE COURT OF COMMON PLEAS        |
|                                                | ) |                                     |
| COUNTY OF RICHLAND                             | ) | FOR THE FIFTH JUDICIAL CIRCUIT      |
|                                                | ) |                                     |
| <b>KEITH W. PARK</b> , individually and as the | ) | <b>C/A NO. 2021-CP-40-02727</b>     |
| Personal Representative of the Estate of       | ) |                                     |
| <b>ISABELLA PARK</b> ,                         | ) | <i>In Re:</i>                       |
|                                                | ) | Asbestos Personal Injury Litigation |
| Plaintiffs,                                    | ) | Coordinated Docket                  |
|                                                | ) |                                     |
| v.                                             | ) |                                     |
|                                                | ) | <b><u>ORDER</u></b>                 |
| <b>ARMSTRONG INTERNATIONAL, INC.,</b>          | ) |                                     |
| et al.                                         | ) |                                     |
|                                                | ) |                                     |
| Defendants.                                    | ) |                                     |

---

Plaintiffs have moved this Court to appoint a Receiver over Cape PLC, pursuant to S.C. Code §15-65-10(4)-(5). This Court finds that the application is meritorious under the applicable statute 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 this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.

Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law with the power and authority fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be. This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape’s insurance carriers.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Respondent's property, to: 1) collect all accounts receivable of Respondent and all rents due to the Respondent from any tenant; 2) to change locks to all premises at which any property is situated; 3) open any mail addressed to the defendant and addressed to any business owned by the Respondent; redirect the delivery of any mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver; 4) endorse and cash all checks and negotiable instruments payable to Respondent, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Respondents; 6) hire any person or company to move and store the property of Respondent; 7) to insure any property belonging to the Respondents (but not the obligation); 8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendants; 9) obtain from any landlord, building owner or building manager where the Respondent or the Respondent's business is a tenant, copies of the Respondent's lease, lease application, credit application, payment history and copies of Respondent's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; and 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Respondent may be situated, and to review and obtain copies of all documents related to same.

Based on the Court's experience in other receivership matters, and in an effort to streamline these proceedings, the Court expects the Receiver to investigate the existence of all insurance coverages potentially available to the company in receivership. The Receiver will provide potential insurers with lists of work sites, contractors, and insurance brokers and agents to facilitate

the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of the company in receivership or any company for whom the company in receivership did work as an "additional insured" under coverage written to another entity). The Court expects all insurers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

The Court further orders that, as the Receiver Court, that the Receiver or Cape may not be sued outside this Court without obtaining the Receiver's consent or an order of this Court prior to doing so.

AND IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

**Case Caption:** Isabella Park , plaintiff, et al vs Armstrong International Inc ,  
defendant, et al  
**Case Number:** 2021CP4002727  
**Type:** Order/Appointment of Receiver

So Ordered

Jean H. Toal

Electronically signed on 2023-03-16 11:28:55 page 4 of 4

# EXHIBIT F



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CAPE INTERMEDIATE HOLDINGS LIMITED

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Registered office address

6-7 Lyncastle Way Barleycastle Lane, Appleton, Warrington, England, WA4 4ST

Company status

Active

Company type

Private limited Company

Incorporated on

28 December 1893

## Accounts

Next accounts made up to **31 August 2023**  
 due by **31 May 2024**

Last accounts made up to **31 August 2022**

## Confirmation statement

Next statement date **21 September 2023**  
due by **5 October 2023**

Last statement dated **21 September 2022**

## Nature of business (SIC)

- 70100 - Activities of head offices

## Previous company names

| Name                                   | Period                    |
|----------------------------------------|---------------------------|
| CAPE INTERMEDIATE HOLDINGS PLC         | 27 Jun 2011 - 19 Dec 2013 |
| CAPE PUBLIC LIMITED COMPANY            | 01 Aug 1989 - 27 Jun 2011 |
| CAPE INDUSTRIES PUBLIC LIMITED COMPANY | 28 Dec 1893 - 01 Aug 1989 |

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|-------------|-------------|------------------------------------------------------------------------------------------------------------------|-----------------|
| 23 Dec 2013 | RESOLUTIONS | Resolutions <ul style="list-style-type: none"><li>• RES12 - Resolution of varying share rights or name</li></ul> | (1 page)        |
| 19 Dec 2013 | RESOLUTIONS | Resolutions <ul style="list-style-type: none"><li>• RES02 - Resolution of re-registration</li></ul>              | (1 page)        |
| 19 Dec 2013 | MAR         | <b>Re-registration</b> of Memorandum and Articles                                                                | (93 pages)      |
| 19 Dec 2013 | CERT10      | <b>Certificate of re-registration from Public Limited Company to Private</b>                                     | (1 page)        |
| 19 Dec 2013 | RR02        | <b>Re-registration from a public company to a private limited company</b>                                        | (2 pages)       |
| 29 Jun 2011 | MEM/ARTS    | <b>Memorandum and Articles of Association</b>                                                                    | (107 pages)     |



|             |             |                                                                                                                                                                                                                                                                                                                                                         |             |
|-------------|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 29 Jun 2011 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                                                                                                             | (1 page)    |
|             |             | <ul style="list-style-type: none"> <li>• RES10 - <b>Resolution of allotment of securities</b></li> <li>• RES01 - <b>Resolution of Memorandum and/or Articles of Association</b></li> </ul>                                                                                                                                                              |             |
| 27 Jun 2011 | CERTNM      | Company name changed cape PUBLIC LIMITED COMPANY\certificate issued on 27/06/11                                                                                                                                                                                                                                                                         | (2 pages)   |
|             |             | <ul style="list-style-type: none"> <li>• RES15 - <b>Change company name resolution on 2011-06-24</b></li> </ul>                                                                                                                                                                                                                                         |             |
| 27 Jun 2011 | CONNOT      | <b>Change of name</b> notice                                                                                                                                                                                                                                                                                                                            | (2 pages)   |
| 02 Jun 2011 | MEM/ARTS    | <b>Memorandum and Articles of Association</b>                                                                                                                                                                                                                                                                                                           | (107 pages) |
| 02 Jun 2011 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                                                                                                             | (4 pages)   |
|             |             | <ul style="list-style-type: none"> <li>• RES13 - Company business 25/05/2011</li> </ul>                                                                                                                                                                                                                                                                 |             |
| 15 Apr 2011 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                                                                                                             | (1 page)    |
|             |             | <ul style="list-style-type: none"> <li>• RES09 - <b>Resolution of authority to purchase a number of shares</b></li> </ul>                                                                                                                                                                                                                               |             |
| 06 Dec 2010 | MEM/ARTS    | <b>Memorandum and Articles of Association</b>                                                                                                                                                                                                                                                                                                           | (105 pages) |
| 25 May 2010 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                                                                                                             | (130 pages) |
|             |             | <ul style="list-style-type: none"> <li>• RES10 - <b>Resolution of allotment of securities</b></li> <li>• RES13 - Company info 20/05/2010</li> <li>• RES01 - <b>Resolution of Memorandum and/or Articles of Association</b></li> </ul>                                                                                                                   |             |
| 27 May 2009 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                                                                                                             | (110 pages) |
|             |             | <ul style="list-style-type: none"> <li>• RES01 - <b>Resolution of Memorandum and/or Articles of Association</b></li> </ul>                                                                                                                                                                                                                              |             |
| 27 May 2009 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                                                                                                             | (108 pages) |
|             |             | <ul style="list-style-type: none"> <li>• RES04 - <b>Resolution of increasing authorised share capital</b></li> <li>• RES01 - <b>Resolution of Memorandum and/or Articles of Association</b></li> <li>• RES09 - <b>Resolution of authority to purchase a number of shares</b></li> <li>• RES10 - <b>Resolution of allotment of securities</b></li> </ul> |             |

|                |             |                                                                                                                                                                                                                                                                 |             |
|----------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 21 Jan<br>2009 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                     | (3 pages)   |
|                |             | <ul style="list-style-type: none"> <li>• RES10 - <b>Resolution of allotment of securities</b></li> <li>• RES09 - <b>Resolution of authority to purchase a number of shares</b></li> <li>• RES11 - <b>Resolution of removal of pre-emption rights</b></li> </ul> |             |
| 26 Jun<br>2008 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                     | (1 page)    |
|                |             | <ul style="list-style-type: none"> <li>• RES09 - <b>Resolution of authority to purchase a number of shares</b></li> </ul>                                                                                                                                       |             |
| 26 Jun<br>2008 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                     | (1 page)    |
|                |             | <ul style="list-style-type: none"> <li>• RES11 - <b>Resolution of removal of pre-emption rights</b></li> </ul>                                                                                                                                                  |             |
| 26 Jun<br>2008 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                     | (1 page)    |
|                |             | <ul style="list-style-type: none"> <li>• RES10 - <b>Resolution of allotment of securities</b></li> </ul>                                                                                                                                                        |             |
| 10 Mar<br>2008 | MEM/ARTS    | <b>Memorandum and Articles of Association</b>                                                                                                                                                                                                                   | (125 pages) |
| 22 Oct<br>2007 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                     | (1 page)    |
|                |             | <ul style="list-style-type: none"> <li>• RES01 - <b>Resolution of Memorandum and/or Articles of Association</b></li> </ul>                                                                                                                                      |             |
| 10 Aug<br>2007 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                     | (1 page)    |
|                |             | <ul style="list-style-type: none"> <li>• RES13 - Cncl prem acct 30/07/07</li> </ul>                                                                                                                                                                             |             |
| 03 Aug<br>2007 | MEM/ARTS    | <b>Memorandum and Articles of Association</b>                                                                                                                                                                                                                   | (126 pages) |
| 12 Jul<br>2007 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                     |             |
|                |             | <ul style="list-style-type: none"> <li>• RES11 - <b>Resolution of removal of pre-emption rights</b></li> </ul>                                                                                                                                                  |             |

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| 12 Jul 2007 | RESOLUTIONS | Resolutions <ul style="list-style-type: none"><li>• RES09 - Resolution of authority to purchase a number of shares</li></ul>  |                 |
| 12 Jul 2007 | RESOLUTIONS | Resolutions <ul style="list-style-type: none"><li>• RES01 - Resolution of Memorandum and/or Articles of Association</li></ul> | (2 pages)       |
| 23 May 2007 | MEM/ARTS    | Memorandum and Articles of Association                                                                                        | (124 pages)     |

|             |             |                                                                                                                            |             |
|-------------|-------------|----------------------------------------------------------------------------------------------------------------------------|-------------|
| 23 May 2007 | RESOLUTIONS | Resolutions                                                                                                                |             |
|             |             | <ul style="list-style-type: none"> <li>• RES11 - <b>Resolution of removal of pre-emption rights</b></li> </ul>             |             |
| 23 May 2007 | RESOLUTIONS | Resolutions                                                                                                                |             |
|             |             | <ul style="list-style-type: none"> <li>• RES04 - <b>Resolution of increasing authorised share capital</b></li> </ul>       |             |
| 23 May 2007 | RESOLUTIONS | Resolutions                                                                                                                | (2 pages)   |
|             |             | <ul style="list-style-type: none"> <li>• RES01 - <b>Resolution of Memorandum and/or Articles of Association</b></li> </ul> |             |
| 04 Jul 2006 | RESOLUTIONS | Resolutions                                                                                                                | (1 page)    |
|             |             | <ul style="list-style-type: none"> <li>• RES11 - <b>Resolution of removal of pre-emption rights</b></li> </ul>             |             |
| 27 Apr 2006 | MEM/ARTS    | <b>Memorandum and Articles of Association</b>                                                                              | (110 pages) |
| 25 Apr 2006 | RESOLUTIONS | Resolutions                                                                                                                | (3 pages)   |
|             |             | <ul style="list-style-type: none"> <li>• RES01 - <b>Resolution of Memorandum and/or Articles of Association</b></li> </ul> |             |
| 23 Jul 2005 | MEM/ARTS    | <b>Memorandum and Articles of Association</b>                                                                              | (7 pages)   |
| 23 Jul 2005 | RESOLUTIONS | Resolutions                                                                                                                |             |
|             |             | <ul style="list-style-type: none"> <li>• RES13 - App scheme 11/07/05</li> </ul>                                            |             |
| 23 Jul 2005 | RESOLUTIONS | Resolutions                                                                                                                |             |
|             |             | <ul style="list-style-type: none"> <li>• RES12 - <b>Resolution of varying share rights or name</b></li> </ul>              |             |
| 23 Jul 2005 | RESOLUTIONS | Resolutions                                                                                                                |             |
|             |             | <ul style="list-style-type: none"> <li>• RES11 - <b>Resolution of removal of pre-emption rights</b></li> </ul>             |             |
| 23 Jul 2005 | RESOLUTIONS | Resolutions                                                                                                                |             |
|             |             | <ul style="list-style-type: none"> <li>• RES10 - <b>Resolution of allotment of securities</b></li> </ul>                   |             |
| 23 Jul 2005 | RESOLUTIONS | Resolutions                                                                                                                |             |
|             |             | <ul style="list-style-type: none"> <li>• RES04 - <b>Resolution of increasing authorised share capital</b></li> </ul>       |             |

|             |             |                                                                                                                            |                                  |
|-------------|-------------|----------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| 23 Jul 2005 | RESOLUTIONS | Resolutions                                                                                                                | (104 pages)                      |
|             |             | <ul style="list-style-type: none"> <li>• RES01 - <b>Resolution of Memorandum and/or Articles of Association</b></li> </ul> |                                  |
| 08 Jul 2005 | RESOLUTIONS | Resolutions                                                                                                                |                                  |
|             |             | <ul style="list-style-type: none"> <li>• RES11 - <b>Resolution of removal of pre-emption rights</b></li> </ul>             |                                  |
| 08 Jul 2005 | RESOLUTIONS | Resolutions                                                                                                                | (2 pages)                        |
|             |             | <ul style="list-style-type: none"> <li>• RES10 - <b>Resolution of allotment of securities</b></li> </ul>                   |                                  |
| 13 Jul 2004 | RESOLUTIONS | Resolutions                                                                                                                |                                  |
|             |             | <ul style="list-style-type: none"> <li>• RES11 - <b>Resolution of removal of pre-emption rights</b></li> </ul>             |                                  |
| 13 Jul 2004 | RESOLUTIONS | Resolutions                                                                                                                |                                  |
|             |             | <ul style="list-style-type: none"> <li>• RES10 - <b>Resolution of allotment of securities</b></li> </ul>                   |                                  |
| 13 Jul 2004 | RESOLUTIONS | Resolutions                                                                                                                | (2 pages)                        |
|             |             | <ul style="list-style-type: none"> <li>• RES09 - <b>Resolution of authority to purchase a number of shares</b></li> </ul>  |                                  |
| 13 Aug 2003 | RESOLUTIONS | Resolutions                                                                                                                | (1 page)                         |
|             |             | <ul style="list-style-type: none"> <li>• RES09 - <b>Resolution of authority to purchase a number of shares</b></li> </ul>  |                                  |
| 14 Oct 2002 | RESOLUTIONS | Resolutions                                                                                                                | (1 page)                         |
|             |             | <ul style="list-style-type: none"> <li>• RES13 - Market purchases 08/10/02</li> </ul>                                      |                                  |
| 14 Oct 2002 | RESOLUTIONS | Resolutions                                                                                                                | <a href="#">Request Document</a> |
|             |             | <ul style="list-style-type: none"> <li>• RES11 - <b>Resolution of removal of pre-emption rights</b></li> </ul>             |                                  |

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CAPE INTERMEDIATE HOLDINGS LIMITED

Company number **00040203**

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| Date        | Type        | Description                                                                                                                   | View / Download                  |
|-------------|-------------|-------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| 14 Oct 2002 | RESOLUTIONS | Resolutions <ul style="list-style-type: none"><li>• RES10 - Resolution of allotment of securities</li></ul>                   | (1 page)                         |
| 10 Aug 2002 | RESOLUTIONS | Resolutions <ul style="list-style-type: none"><li>• RES01 - Resolution of Memorandum and/or Articles of Association</li></ul> | (2 pages)                        |
| 11 Jun 2001 | RESOLUTIONS | Resolutions <ul style="list-style-type: none"><li>• RES09 - Resolution of authority to purchase a number of shares</li></ul>  | (1 page)                         |
| 11 Jun 2001 | RESOLUTIONS | Resolutions <ul style="list-style-type: none"><li>• RES11 - Resolution of removal of pre-emption rights</li></ul>             | <a href="#">Request Document</a> |



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|             |             |                                                                                                                                       |                                  |
|-------------|-------------|---------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| 11 Jun 2001 | RESOLUTIONS | Resolutions                                                                                                                           | <a href="#">Request Document</a> |
|             |             | <ul style="list-style-type: none"> <li>• RES10 - Resolution of allotment of securities</li> </ul>                                     |                                  |
|             |             | This document is not currently available online. You can request to add the document to the company's filing history, which costs £3. |                                  |
| 11 Jun 2001 | RESOLUTIONS | Resolutions                                                                                                                           | (2 pages)                        |
|             |             | <ul style="list-style-type: none"> <li>• RES01 - Resolution of Memorandum and/or Articles of Association</li> </ul>                   |                                  |
| 11 Jun 2001 | RESOLUTIONS | Resolutions                                                                                                                           | (1 page)                         |
|             |             | <ul style="list-style-type: none"> <li>• RES09 - Resolution of authority to purchase a number of shares</li> </ul>                    |                                  |
| 11 Jun 2001 | RESOLUTIONS | Resolutions                                                                                                                           | (1 page)                         |
|             |             | <ul style="list-style-type: none"> <li>• RES10 - Resolution of allotment of securities</li> </ul>                                     |                                  |
| 11 Jun 2001 | RESOLUTIONS | Resolutions                                                                                                                           | <a href="#">Request Document</a> |
|             |             | <ul style="list-style-type: none"> <li>• RES09 - Resolution of authority to purchase a number of shares</li> </ul>                    |                                  |
|             |             | This document is not currently available online. You can request to add the document to the company's filing history, which costs £3. |                                  |
| 11 Jun 2001 | RESOLUTIONS | Resolutions                                                                                                                           | (1 page)                         |
|             |             | <ul style="list-style-type: none"> <li>• RES08 - Resolution of authority to purchase own shares out of capital</li> </ul>             |                                  |
| 11 Jun 2001 | RESOLUTIONS | Resolutions                                                                                                                           | (1 page)                         |
|             |             | <ul style="list-style-type: none"> <li>• RES10 - Resolution of allotment of securities</li> </ul>                                     |                                  |
| 08 Jun 1998 | RESOLUTIONS | Resolutions                                                                                                                           | (1 page)                         |
|             |             | <ul style="list-style-type: none"> <li>• SRES11 - Special resolution of removal of pre-emption rights</li> </ul>                      |                                  |
| 01 May 1995 | RESOLUTIONS | Resolutions                                                                                                                           | (2 pages)                        |
|             |             | <ul style="list-style-type: none"> <li>• SRES11 - Special resolution of removal of pre-emption rights</li> </ul>                      |                                  |

|             |             |                                                                                                                                                                                                                                                                      |                                  |
|-------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| 01 May 1995 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                          | (2 pages)                        |
|             |             | <ul style="list-style-type: none"> <li>• ORES10 - <b>Ordinary resolution of allotment of securities</b></li> </ul>                                                                                                                                                   |                                  |
| 20 Sep 1991 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                          | (1 page)                         |
|             |             | <ul style="list-style-type: none"> <li>• ORES13 - <b>Ordinary resolution</b></li> </ul>                                                                                                                                                                              |                                  |
| 05 Aug 1991 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                          | <a href="#">Request Document</a> |
|             |             | <ul style="list-style-type: none"> <li>• SRES11 - <b>Special resolution of removal of pre-emption rights</b></li> </ul> <p>This document is not currently available online. You can request to add the document to the company's filing history, which costs £3.</p> |                                  |
| 05 Aug 1991 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                          | (2 pages)                        |
|             |             | <ul style="list-style-type: none"> <li>• ORES10 - <b>Ordinary resolution of allotment of securities</b></li> </ul>                                                                                                                                                   |                                  |
| 30 Jul 1990 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                          | <a href="#">Request Document</a> |
|             |             | <ul style="list-style-type: none"> <li>• SRES11 - <b>Special resolution of removal of pre-emption rights</b></li> </ul> <p>This document is not currently available online. You can request to add the document to the company's filing history, which costs £3.</p> |                                  |
| 30 Jul 1990 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                          | <a href="#">Request Document</a> |
|             |             | <ul style="list-style-type: none"> <li>• ORES10 - <b>Ordinary resolution of allotment of securities</b></li> </ul> <p>This document is not currently available online. You can request to add the document to the company's filing history, which costs £3.</p>      |                                  |
| 30 Jul 1990 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                          | (2 pages)                        |
|             |             | <ul style="list-style-type: none"> <li>• ORES04 - <b>Ordinary resolution of increasing authorised share capital</b></li> </ul>                                                                                                                                       |                                  |
| 03 Aug 1989 | RESOLUTIONS | Resolutions                                                                                                                                                                                                                                                          | (1 page)                         |
|             |             | <ul style="list-style-type: none"> <li>• ORES04 - <b>Ordinary resolution of increasing authorised share capital</b></li> </ul>                                                                                                                                       |                                  |

|             |             |                                                                                                                                                                                                                                                                                          |                                  |
|-------------|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| 31 Jul 1989 | CERTNM      | Company name changed cape industries public LIMITED c<br>ompany\certificate issued on 01/08/89                                                                                                                                                                                           | (3 pages)                        |
| 11 Aug 1988 | RESOLUTIONS | Resolutions <ul style="list-style-type: none"> <li>• SRES10 - <b>Special resolution of allotment of securities</b></li> </ul> <p>This document is not currently available online. You can request to add the document to the company's filing history, which costs £3.</p>               | <a href="#">Request Document</a> |
| 11 Aug 1988 | RESOLUTIONS | Resolutions <ul style="list-style-type: none"> <li>• SRES01 - <b>Special resolution of adoption of Memorandum of Association</b></li> </ul> <p>This document is not currently available online. You can request to add the document to the company's filing history, which costs £3.</p> | <a href="#">Request Document</a> |
| 11 Aug 1988 | RESOLUTIONS | Resolutions <ul style="list-style-type: none"> <li>• ERES13 - <b>Extraordinary resolution</b></li> </ul>                                                                                                                                                                                 | (41 pages)                       |

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CAPE INTERMEDIATE HOLDINGS LIMITED

Company number **00040203**

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|-------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 16 Sep 1987 | RESOLUTIONS | Resolutions <ul style="list-style-type: none"><li>• <b>SRES11 - Special resolution of removal of pre-emption rights</b></li></ul> | (1 page)        |
| 08 Aug 1986 | RESOLUTIONS | Resolutions <ul style="list-style-type: none"><li>• <b>SRES11 - Special resolution of removal of pre-emption rights</b></li></ul> | (3 pages)       |
| 12 Nov 1981 | CERT5       | <b>Certificate of re-registration from Private to Public Limited Company</b>                                                      | (1 page)        |
| 07 Jun 1976 | MEM/ARTS    | <b>Memorandum and Articles of Association</b>                                                                                     | (51 pages)      |
| 01 Jul 1974 | CERTNM      | Company name changed\certificate issued on 01/07/74                                                                               | (2 pages)       |

01 Jan  
1900

NEWINC

**Incorporation**

(30 pages)

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No. of Certificate 40203 CH 39224

Form No. 25.



32710

28 DEC 1893

*Cape Asbestos Company Limited*

~~COMPANY LIMITED~~

STATEMENT of the Nominal Capital made pursuant to s. 11 of 51 Vict.,  
cap. 8, Customs and Inland Revenue Act, 1888. (NOTE.—The Stamp Duty on the  
Nominal Capital is Two Shillings for every £100 or fraction of £100.)

This statement is to be filed with the Memorandum of Association, or other Document,

in the Company is registered.

presented for registration by

*Nicholas Abrahamson Sons & Co*

*A. Old Secury & Co*

EXHIBIT 2

App. 252

ELECTRONICALLY FILED - 2023 Aug 21 5:04 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

The NOMINAL CAPITAL of the Cape Asbestos

\_\_\_\_\_  
Company, Limited,

is £ 55,000 —, divided into 55,000 shares of £ 1 —

each.

Signature Michael Abrahamson for  
and Secy etc

Description Solicitor

Date 28 Dec 1993

This statement should be signed by an Officer of the Company.

THE  
CAPE ASBESTOS COMPANY,  
LIMITED.

---

Memorandum  
AND  
Articles of Association.

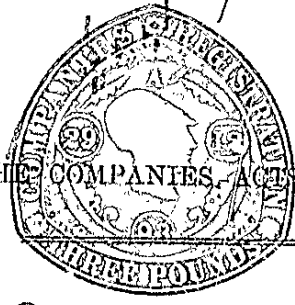
---

Registered the      day of December, 1893.

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Printed by the Angus Printing Company, Limited, Temple Avenue and Tudor Street, E.O.

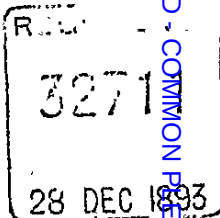




Memorandum of Association  
OF  
THE CAPE ASBESTOS  
COMPANY, LIMITED.



1. The name of the Company is "THE CAPE ASBESTOS COMPANY, LIMITED."
2. The Registered Office of the Company will be situate in England.
3. The objects for which the Company is established are:



- (1) To purchase, take on lease, hire, or otherwise acquire, any asbestos or other mines, quarries, workings, rocks, or any lands or hereditaments of any tenure containing, or supposed to contain, asbestos or other minerals in South Africa, Canada, Italy, or elsewhere, and any interest therein, and any concessions, grants, leases, licences, rights, and privileges in relation thereto which the Company may think capable of being profitably worked, and in particular to acquire and take over, work, and turn to account the Farms Kogas, Hounsloew, Schalkdrift, and certain mining rights over the Farm Schalkputs, all situate in the district of Hay, Griqualand West, in the Colony of the Cape of Good Hope, in South Africa.
- (2) To carry on the business of mining and working for asbestos and other minerals, and purchasing and acquiring, selling and dealing in the same, and manufacturing and dealing in asbestos goods and goods connected with the utilisation of asbestos, and goods or any other material capable of being used for similar purposes or objects to those for which asbestos goods can be used, and any other products of the mines and property of the Company, or derived in the course of the dressing, preparation, or treatment of asbestos, or other minerals or substances.
- (3) To carry on the businesses of manufacturers, producers, and importers of, and dealers in, india-rubber, gutta-percha, caoutchouc, and other similar substances and all kinds of vulcanized and elastic goods and articles, waterproof clothing, cloth, fabrics, and materials, and other

articles, materials, goods, and commodities capable of being produced or manufactured from, or of being used for the same purposes as india-rubber, gutta-percha, and similar substances, or their respective products, and the businesses of cloth manufacturers, clothiers, and outfitters, and of manufacturers of and dealers in telegraph and other cables and wires, and appliances, tubing, valves, plugs, straps, packing for steam and other engines, pipes, fittings, bands, bandages, surgical and other medical instruments and appliances, veterinary appliances, horse-shoes, receptacles and vessels for gases, acids, and other substances, balloons, and other goods of a similar description, and any other articles and things which are usually or may conveniently be manufactured or dealt in by persons carrying on any of the said businesses, or manufacturing or dealing in any of the articles and things herein specified, or any similar articles and things.

- (4) To introduce and sell any goods, materials, articles, or appliances, and generally to manufacture, purchase, sell, deal in and supply all kinds of goods, articles, appliances, or things which can be advantageously made or dealt in by the Company, and to carry on operations or business of any nature, including that of contractors, miners, manufacturers, merchants, planters, which the Company may from time to time deem it expedient to carry on in connection with any of its main businesses for the time being, or which may seem calculated or capable of being conducted so as directly or indirectly to benefit the Company.
- (5) To establish or continue, and to regulate and maintain, in England and elsewhere, agencies for the sale of any of the articles manufactured or sold by the Company, and to enter into, rescind, and vary contracts with any agents, travellers, or other persons employed by the Company, on the terms of remunerating them by payments in proportion to the profits of all or any part of the Company's business, or on the terms of the Company sharing any part of the business of such agents, or the profits derived therefrom, or any other terms.
- (6) To purchase, take on lease, or in exchange, hire, charter, or otherwise acquire all such factories, buildings, engines, plant, machinery, tools, implements, ships, vessels, barges, stock-in-trade, and all and any real and personal property, easements, licences, rights, and privileges as may be required or useful for any of the purposes of the Company.
- (7) To promote, form, constitute, float, lend money to, assist, and control any companies, partnerships, associations, or undertakings whose objects include the acquisition of all or any part of the assets and liabilities of this Company, or are similar, analogous, or subsidiary to any of the objects of this Company, or which may tend, directly or indirectly, to benefit this Company.

- (8) To construct, carry out, and maintain, work, manage, or control works and conveniences of all kinds, and in particular roads, highways, causeways, bridges, tramways, railway branches or sidings, canals, water works, drainage works, irrigation works, watercourses, hydraulic works, stamps, furnaces, crushing mills, residences, stores, factories, warehouses, and other works or conveniences conducive to the Company's interests, and to contribute to, subsidise, or otherwise assist or take part in any such operations.
- (9) To apply for, purchase, or otherwise acquire any trade marks, designs, patents, *brevets d'invention*, concessions, and the like, conferring an exclusive or non-exclusive or limited right to use, and to obtain any secret or other information as to, any invention which may seem capable of being used for any of the purposes of the Company, or the acquisition of which may seem calculated, directly or indirectly, to benefit this Company, and to use, exercise, develop, grant licences in respect of, or otherwise turn to account the property, rights, and information so acquired.
- (10) To purchase or otherwise acquire, take over, and undertake all or any part of the business, property, and liabilities of any person or persons, or company carrying on in South Africa, England, Italy, France or elsewhere, any business which this Company is authorised to carry on, or possessed of property suitable for the purposes of this Company.
- (11) To acquire, by purchase or otherwise, and hold any shares, stocks, bonds, obligations, debentures, securities, negotiable or otherwise, or any interest of or in any English, or other companies, associations, or undertakings, capable of being managed or conducted so as, directly or indirectly, to benefit the business of the Company; also to advance money on any such shares, stocks, bonds, obligations, debentures, securities of, or other interest in, such companies, associations, or undertakings, and to accept such shares or stocks, bonds, obligations, debentures, or securities, as partial or full security for payment due to the Company, but so that such shares, stocks, bonds, obligations, debentures, or securities shall be fully paid up and involve no liability to the Company.
- (12) To make donations to such persons and in such cases, and either of cash or other assets, as the Company may think, directly or indirectly, conducive to any of its other objects, or otherwise expedient.
- (13) To amalgamate with any other company, and to enter into partnership or into any arrangement for sharing profits, union of interests, reciprocal concession, or co-operation with any person, partnership, company, or association.

- (14) To sell the undertaking of the Company or any part thereof for such consideration as the Company may think fit, and in particular for shares, debentures, or securities of any other Company.
- (15) To obtain any Acts or decrees of any Parliament or legislative body for enabling the Company to carry any of its objects into effect or for effecting any modification of the Company's constitution, and to oppose any proceedings or applications in Parliament or elsewhere which may seem, directly or indirectly, contrary to the interests of the Company.
- (16) To raise or borrow, or secure the payment of money in such manner and on such terms as may seem expedient, and in particular by the issue of debentures or bonds or debenture stock, perpetual or otherwise, and if thought fit to charge or secure any such securities upon the undertaking and property and rights, present or future, of the Company, including the uncalled capital or otherwise.
- (17) To invest and deal with the moneys of the Company not immediately required upon such securities and in such manner as may from time to time be determined.
- (18) To draw, accept, endorse, and issue any bills of exchange, promissory notes, warrants to bearer, and other negotiable or transferable instruments.
- (19) To lend money to such parties and on such terms as may seem expedient, and in particular to customers of and persons having dealings with the Company, and to guarantee the performance of contracts by members of or persons having dealings with the Company.
- (20) To pay all expenses of and incident to the formation of the Company, and to remunerate any parties for services rendered or to be rendered in placing or assisting to place, or guaranteeing the placing of any shares in the Company's capital, or any debentures, debenture stock, or other securities of the Company, or in or about the formation of the Company or the conduct of its business.
- (21) To do all or any of the above things in any part of the world, and either as principals, agents, contractors, or otherwise, and either alone or in conjunction with others, and either by or through agents, sub-contractors, trustees, or otherwise,
- (22) To enter into and carry into effect, with or without modification, the Agreement referred to in Clause 3 of the Company's Articles of Association.
- (23) To procure the Company to be registered, incorporated, or recognised, and to establish a local Register of Shareholders in South Africa, or elsewhere abroad, and to allocate any number of the shares of the

Company to such local Register, and to take such steps as may be necessary to give the Company the same rights and privileges in South Africa or elsewhere abroad as are possessed by local companies or partnerships of a similar nature, and to acquire a foreign domicile, and to have a local office and staff in South Africa and elsewhere abroad.

(24) To sell, improve, manage, develop, lease, exchange, mortgage, dispose of, turn to account, or otherwise deal with all or any of the property and rights of the Company.

(25) To distribute any of the assets of the Company among the Members in specie.

(26) To do all such other things as are incidental or conducive to the attainments of the above objects, and so that the word "company" in this clause shall be deemed to include any partnership or other body of persons, whether incorporated or not incorporated, and whether domiciled in the United Kingdom or elsewhere, and so that the objects set forth in each paragraph of this clause shall have the widest possible construction, and shall be in no wise limited or restricted by reference to or inference from the terms of any other paragraph of the clause.

4. The liability of the Members is limited.

5. The capital of the Company is £55,000, divided into 55,000 shares of £1 each, with power to increase or reduce, and with power from time to time to issue any shares of the original or new capital with any preferential, special, or qualified rights or conditions attached thereto, and upon subdivision of a share to apportion the right to participate in profits in any manner as between shares resulting from such division, and to pay dividends in cash or in any other manner authorised by the regulations of the Company.



WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

| Names, Addresses and Descriptions of Subscribers.                                  | Number of Shares.<br>taken by<br>each Subscriber. |
|------------------------------------------------------------------------------------|---------------------------------------------------|
| <i>Bernie Lord George Timmer</i><br>35 Warrington Road, W. London                  | one                                               |
| <i>Eliastanis, &amp; Milner E.C.</i><br>Bulwer                                     | one                                               |
| <i>William Arthur Otill Woods</i><br>9 Cannon Street Road E.<br>Clerk.             | one.                                              |
| <i>Edmund Robert Tymin</i><br>62 Lombard Street E.C.<br>Secretary DE Beersford, L. | one                                               |
| <i>William Tugby</i><br>Highfield,<br>Beacons Road.<br>Forest Hill<br>Merchant     | one.                                              |
| <i>Herbert Hill Mackenzie</i><br>113 Finchurch Street<br>Merchant                  | one                                               |
| <i>George Henry Payne</i><br>40 Norwood Road<br>Beacons Hill, Merchant             | one                                               |

Dated this 27 day of December, 1893.

Witness to the above Signatures:—

*George Lark*  
Wk to Messrs Michael Abrahamson & Co  
of Old Ferry Isl  
Berkshire

402.03 Cnd 20777/3

THE COMPANIES ACTS, 1862 to 1890.



## Articles of Association

OF

# The Cape Asbestos Company, LIMITED.

RECORDED  
32712  
28 DEC 1899

### I.—PRELIMINARY.

1. The regulations contained in Table "A" of the First Schedule to "The Companies Act, 1862," shall not apply to this Company.

2. In these Articles, unless there be something in the subject or context inconsistent therewith :—

Words denoting the singular number only include the plural number and *vice versa*.

Words denoting the masculine gender only include the feminine gender.

Words denoting persons include corporations.

"Month" means calendar month.

"In writing" means written or printed, or partly written and partly printed.

"The Directors" means the Directors for the time being of the Company.

3. The Directors shall forthwith enter into, on behalf of the Company, an Agreement with The Cape Mineral Syndicate in the terms of the draft, which, for the purpose of identification, has been signed by two of the signatories hereto, being the Agreement mentioned in paragraph 22 of Clause 3 of the Company's Memorandum of Association; and shall carry the same into effect with full power, nevertheless, at any time, and from time to time, to agree to any modification thereof; and it is expressly declared that every Member shall be deemed to have notice of the contents of the said Agreement, and to sanction the same, and that the validity of the said Agreement or anything done thereunder shall not be impeached by reason that the Directors are interested in the property they sold to the Company, or entitled to participate in the consideration for such sale or for

any other reason do not constitute an independent Board, nor shall any of such Directors be accountable for any profit made by them respectively upon or in respect of such sale.

## II.- CAPITAL.

### 1.—SHARES.

4. The shares of the original capital of the Company, subject to the provisions of the said Agreement, may be allotted, or otherwise disposed of, to such persons and for such consideration, and upon such terms and conditions as the Board may determine.

5. The Board may make arrangements on the issue of any shares for a difference between the holders of such shares in the amount of calls to be paid, and the time of payment of such calls.

6. If several persons are registered as joint holders of any share their liability in respect thereof shall be several as well as joint. The executors or administrators of a deceased member, not being a joint holder, and in the case of the death of a joint holder, the survivor or survivors shall alone be recognised by the Company as having any title to the shares registered in the name of the deceased Member, but nothing herein contained shall be taken to release the estate of a deceased joint holder from any liability on shares held by him jointly with any other person.

7. The Company shall not be bound by or be compelled in any way to recognise, even when having notice thereof, any other right in respect of a share than an absolute right thereto in the registered holder thereof for the time being, or such other rights in case of transmission thereof as are hereinafter mentioned.

8. The funds of the Company shall not be expended in the purchase of, or lent upon the security of its own shares.

### 2.—CERTIFICATES OF SHARES.

9. Every Member shall be entitled without payment to one certificate under the Common Seal of the Company, specifying the shares held by him, and the amount paid up thereon.

10. The certificate of shares registered in the names of joint holders shall be delivered to the holder whose name stands first in the Register of Members.

11. If a certificate be worn out, destroyed, or lost, it may be renewed upon payment of one shilling (or such less sum as the Company in General Meeting may prescribe) upon the production of such evidence of its having been worn out, destroyed, or lost as the Board may consider satisfactory, and upon such indemnity being given with or without security as the Board may require.



## 3.—CALLS ON SHARES.

12. The Board may from time to time (subject to any terms upon which any shares may have been issued) make such calls as they think fit upon the Members in respect of all moneys unpaid on their shares, provided that twenty-one days' notice at least be given of each call, and that no call shall exceed one-fourth of the nominal amount of a share, or be made payable within two months after the last preceding call was payable. Each member shall be liable to pay the calls so made, and any money payable on any share under the terms of allotment thereof, to the persons and at the times and places appointed by the Board.

13. A call shall be deemed to have been made at the time when the resolution of the Board authorising such call was passed.

14. If any call payable in respect of any share, or any money payable on any share under the terms of allotment thereof, be not paid on or before the day appointed for payment, the holder or allottee of such share shall be liable to pay interest upon such call or money from such day until it is actually paid at any rate fixed by the Board, not exceeding £10 per cent. per annum.

15. The Board may, if they think fit, receive from any Member willing to advance the same all or any part of the money unpaid upon any of the shares held by him beyond the sums actually called for, upon such terms, as to interest or otherwise, as the Board may determine.

## 4.—TRANSFER AND TRANSMISSION OF SHARES.

16. The transfer of any share in the Company not represented by a warrant to bearer shall be in writing in the usual common form, and shall be signed by the transferor and transferee. There shall be paid to the Company in respect of the registration of any transfer, such fee, not exceeding two shillings and sixpence, as the Board deem fit.

17. The Board may, without assigning any reason, decline to register any transfer of shares not fully paid up made to any person not approved by them, or any transfer of shares whether fully paid up or not, made by any Member jointly or alone indebted or under any liability to the Company, or by any Member who shall have entered into any contract, obligation, or engagement with the Company, whilst and so long as such contract obligation or engagement remains unperformed or unfulfilled on his part.

18. The instrument of transfer shall be lodged with the Company, accompanied by the certificate of the shares comprised therein, and such evidence as the Board may require to prove the title of the transferor.

19. Any person becoming entitled to a share in consequence of the death or bankruptcy of a Member may, subject to the regulations hereinbefore contained, be registered as a Member upon production of the share certificate and such evidence of title as may be required by the Board, or may, subject to the said regulations,

instead of being registered himself, transfer such share. There shall be paid to the Company in respect of any registration on transmission such fee, not exceeding two shillings and sixpence, as the Board deem fit.

#### 5.—LIEN ON SHARES.

20.—The Company shall have a first and paramount lien on all shares, and on the dividends declared or payable in respect thereof, for all moneys due to (including calls made, even though the time appointed for their payment may not have arrived) and liabilities or engagements subsisting with the Company from or on the part of the registered holder or any of the registered holders thereof, either alone or jointly with any other person, and may enforce such lien by sale or forfeiture of all or any of the shares on which the same may attach.

#### 6.—FORFEITURE AND SURRENDER OF SHARES.

21. If any Member fail to pay any call or money payable under the terms of allotment of a share on the day appointed for payment thereof, the Board may, at any time while the same remains unpaid, serve a notice on him, requiring him to pay the same, together with any interest that may have accrued thereon, and any expenses that may have been incurred by the Company by reason of such non-payment.

22. The notice shall name a further day, not being less than seven days from the service of the notice, on or before which such call or other money, and all interest and expenses that have accrued by reason of such non-payment, are to be paid, and the place where payment is to be made, and shall state that, in the event of non-payment on or before the day, and at the place appointed, the share in respect of which such payment is due will be liable to be forfeited.

23. If the requisitions of any such notice as aforesaid are not complied with, the share in respect of which such notice has been given may at any time thereafter, before payment of all money due thereon with interest and expenses shall have been made, be forfeited by a resolution of the Board to that effect.

24. Any share forfeited shall be deemed to be the property of the Company, and may be held, reallocated, sold, or otherwise disposed of in such manner as the Board think fit, and in case of reallocation, with or without any money paid thereon by the former holder being credited as paid up; but the Board may at any time before any share so forfeited shall have been reallocated, sold, or otherwise disposed of, annul the forfeiture thereof upon such conditions as they may think fit.

25. Any Member whose shares have been forfeited shall, notwithstanding such forfeiture, be liable to pay to the Company all calls, or other money, interest, and expenses owing in respect of such shares at the time of forfeiture, together with interest thereon from the time of forfeiture until payment at the rate of £10 per cent. per annum.

26. The Board may accept the surrender of any share by way of compromise of any question as to the holder being properly registered in respect thereof. Any share so surrendered may be disposed of in the same manner as a forfeited share.

27. In the event of the reallocation or sale of a forfeited or surrendered share, or the sale of any share to enforce a lien of the Company, a certificate in writing under the Common Seal of the Company that the share has been duly forfeited, surrendered, or sold in accordance with the regulations of the Company, shall be sufficient evidence of the facts therein stated as against all persons claiming the share. A certificate of proprietorship shall be delivered to the purchaser or allottee, and he shall be registered in respect thereof, and thereupon he shall be deemed the holder of the share, discharged from all calls or other money, interest, and expenses due prior to such purchase or allotment, and he shall not be bound to see to the application of the purchase money or consideration, nor shall his title to the share be affected by any irregularity in the forfeiture, surrender, or sale.

#### 7.—SHARE WARRANTS TO BEARER.

28. The Board may issue, under the Common Seal of the Company, share warrants to bearer in respect of any fully paid-up shares, and all shares, while represented by warrants, shall be transferable by delivery of the warrants relating thereto.

29. Any person applying to have a share warrant issued to him shall at the time of application pay, if so required by the Board, the stamp duty (if any) payable in respect thereof, or if the Company shall previously have compounded for such stamp duty, then such sum (if any) as the Board may determine in respect of the amount payable by the Company for such composition, and also such fee, not exceeding one shilling for each share warrant, as the Board shall from time to time fix.

30. Subject to the provisions of these Articles and of the Companies Act, 1867, the bearer of a share warrant shall be deemed to be a Member of the Company to the full extent, but he shall not be entitled to attend or vote at any General Meeting, or to sign a requisition for a meeting, or join in convening a meeting, unless two clear days previously he shall have deposited the warrant relating to the shares in respect of which he proposes to vote or act at the Registered Office of the Company. No shares represented by warrants shall be reckoned in the qualification of a Director.

31. The Company shall deliver to a Member depositing a share warrant in the manner above mentioned a certificate stating his name and address, and the number of shares represented by such share warrant, and the certificate shall entitle him to attend and vote at a General Meeting in respect of the shares specified therein, either in person or by proxy, in the same way in all respects as if he were a registered Member. Upon delivery up of the certificate the Company shall return the share warrant in respect of which such certificate shall have been given.

32. No person as bearer of a share warrant shall be entitled to exercise any of the rights of a Member (save as hereinbefore expressly provided in respect of General Meetings) without producing such share warrant and stating his name, address, and occupation.

33. The Company shall not be bound by, or be compelled in any way to recognise, even when having notice thereof, any other right in respect of the share represented by a share warrant, than an absolute right thereto in the bearer thereof for the time being.

34. The Board may provide, by coupons or otherwise, for the payment of the future dividends on the share included in any share warrant, and the delivery up of a coupon shall be a good discharge to the Company for the dividend thereby represented.

35. If any share warrant be worn out, destroyed, or lost, it may be renewed on payment of one shilling (or such less sum as the Company in General Meeting may prescribe), upon the production of such evidence of its having been worn out, destroyed, or lost, and of the title of the person claiming the share represented by it, as the Board may consider satisfactory, and upon such indemnity, with or without security, as the Board may require.

36. If the bearer of a share warrant shall surrender it to be cancelled, together with all outstanding dividend coupons issued in respect thereof, and shall therewith deposit with the Company an application in writing, signed by him in such form and authenticated in such manner as the Board require, requesting to be registered as a Member in respect of the shares specified in the said share warrant, and stating in such application his name, address, and occupation, he shall be entitled to have his name entered as a Member in the Register of Members of the Company in respect of the share specified in the share warrant so surrendered.

#### 8.—CONSOLIDATION AND SUB-DIVISION OF SHARES.

37. The Company may consolidate and sub-divide its shares, or any of them, into shares of a larger or smaller amount.

38. The special resolution whereby any share is sub-divided may determine that, as between the holders of the shares resulting from such sub-division, one of such shares shall have any preference over the other or others, and that the profits applicable to the payment of dividends thereon shall be appropriated accordingly.

#### 9.—INCREASE AND REDUCTION OF CAPITAL.

39. The Board may, with the sanction of a General Meeting of the Company, from time to time increase the capital of the Company by the issue of new shares.

40. Such new shares shall be of such amount, and shall be issued for such consideration, on such terms and conditions, and with such preference or priority as regards dividends or in the distribution of assets, or as to voting or otherwise over

other shares of any class, whether then already issued or not, or as shares to be deferred to any other shares with regard to dividends or in the distribution of assets, as the Company in General Meeting may direct, and subject to or in default of any such direction, the provisions of these Articles shall apply to the new capital in the same manner in all respects as to the original capital of the Company.

41. The Company may by special resolution reduce its capital by paying off capital, cancelling capital which has been lost or is unrepresented by available assets, reducing the liability on the shares, cancelling shares not taken or agreed to be taken by any person, or otherwise as may seem expedient, and capital may be paid off upon the footing that it may be called up again or otherwise.

### III.—MEETINGS OF MEMBERS.

#### I.—CONVENING OF GENERAL MEETINGS.

42. The first General Meeting shall be held at such time (not being more than four months after the registration of the Company) and at such place as the Board may determine. Subsequent General Meetings shall be held once in every year at such time and place as may be prescribed by the Company in General Meeting, and if no other time or place is so prescribed, a General Meeting shall be held once in every year at such time and place as may be determined by the Board.

43. The above-mentioned General Meetings shall be called Ordinary General Meetings; all other meetings shall be called Extraordinary General Meetings.

44. The Board may, whenever they think fit, and they shall upon the receipt of a requisition made in writing by five or more Members holding together at least one-tenth of the issued capital, convene an Extraordinary General Meeting.

45. Such a requisition shall express the object of the Extraordinary General Meeting proposed to be called, and shall be left at the Registered Office of the Company.

46. Upon the receipt of a requisition, the Board shall forthwith proceed to convene an Extraordinary General Meeting, to be held within one month from the date of the receipt of the requisition. In default the requisitionists, or any other five or more Members holding one-tenth of the issued capital, may themselves convene an Extraordinary General Meeting, to be held on such day and at such place, in London, as the persons convening the same may determine. In case at any such Extraordinary General Meeting a resolution capable of being confirmed as a special resolution shall be passed, the requisitionists, or any Members holding the required amount of capital, may in like manner, but without a further requisition, convene the Extraordinary General Meeting necessary to confirm the same.

47. Seven days' notice of any General Meeting (exclusive both of the day on which the notice is served or deemed to be served, and of the day of the meeting), specifying the day, hour, and place of the meeting, shall be given to the Members



in manner hereinafter mentioned, or in such other manner as may from time to time be prescribed by the Company in General Meeting, but the non-receipt of such notice by any Member shall not invalidate the proceedings at any General Meeting.

48. The notice convening an Ordinary General Meeting shall state the general nature of any business intended to be transacted thereat, other than declaring dividends, electing Directors and Auditors, and voting their remuneration, and considering the accounts presented by the Board and the reports of the Board and the Auditors. The notice convening an Extraordinary General Meeting shall state the general nature of the business intended to be transacted thereat.

## 2.—PROCEEDINGS AT GENERAL MEETINGS.

49. Five members personally present shall be a quorum at a General Meeting.

50. If within half an hour from the time appointed for the meeting a quorum be not present, the meeting, if convened upon the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to such day in the next week, and to such place as may be appointed by the Chairman.

51. At any adjourned meeting the Members present and entitled to vote, whatever their number or the number of shares held by them, shall have power to decide upon all matters which could properly have been disposed of at the meeting from which the adjournment took place.

52. The Chairman of the Board shall preside as Chairman at every General Meeting of the Company.

53. If at any General Meeting the Chairman is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as Chairman, the Directors present shall choose one of their number to act, and if there be no Director chosen who shall be willing to act, the Members present shall choose one of their number to act as Chairman.

54. The Chairman may, with the consent of the meeting, adjourn any General Meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

55. Every question submitted to a General Meeting shall be decided, in the first instance, by a show of hands, and in the case of an equality of votes the Chairman shall, both on a show of hands and at a poll, have a casting vote, in addition to the vote or votes to which he may be entitled as a Member.

56. At any General Meeting, unless a poll is demanded, a declaration by the Chairman that a resolution has been passed or lost, and an entry to that effect in the minute book of the Company, shall be sufficient evidence of the fact, and in the

case of a resolution requiring any particular majority, that it was passed by the majority required, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

57. A poll may be demanded in writing upon any question (other than the election of a Chairman of a meeting) by any five Members personally present and entitled to vote, and holding or representing as proxy shares in the Company of the nominal amount of not less than £5,000.

58. If a poll is demanded it shall be taken in such manner, at such place, and either immediately or at such other time, within fourteen days thereafter, as the Chairman shall before the conclusion of the meeting direct, and the result of such poll shall be deemed to be the resolution of the Company in General Meeting as at the date of taking the poll.

59. The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

### 3.—VOTES AT GENERAL MEETINGS.

60. Subject to any special terms as to voting upon which new capital may be issued, every Member shall have one vote in respect of each ten shares held by him.

61. Votes may be given either personally or by proxy.

62. If any Member be of unsound mind he may vote by his committee, *curator bonis*, or other legal curator.

63. If two or more persons be jointly entitled to a share, any one of such persons may vote at any meeting either personally or by proxy in respect thereof as if he were solely entitled thereto, and if more than one of such joint holders be present at any meeting, either personally or by proxy, that one of such persons so present whose name stands first in the Register of Members in respect of such share shall alone be entitled to vote in respect thereof.

64. No Member shall be entitled to be present or to vote either personally or by proxy at any General Meeting or upon any poll, or to exercise any privilege as a Member unless all calls or other money due and payable in respect of any share of which he is the holder have been paid, and no Member shall be entitled to vote at any meeting held after the expiration of three months from the registration of the Company in respect of any registered share that he has acquired by transfer, unless he has been registered as the holder thereof for at least three months previously to the time of holding the meeting at which he proposes to vote.

65. The instrument appointing a proxy, whether for a specified meeting or otherwise, shall be in writing under the hand of the appointer, or if such appointer be a Corporation, under its Common Seal, in such form as the Board may from time to time approve, or in the form set forth in Table A, or as near thereto as the circumstances will admit.

66. No person shall be appointed a proxy who is not a Member of the Company or otherwise entitled to vote, provided that where a Corporation is the registered holder of shares of the Company the proxy may be any Member of such Corporation, and such proxy shall, during the continuance of his appointment, be taken in virtue thereof to be a Member of the Company in respect of the number of shares held by the Corporation by whom he is appointed for all purposes except the transfer of such shares, or the giving receipts for any dividend thereon.

67. The instrument appointing a proxy shall be deposited at the Registered Office of the Company not less than two clear days before the day for holding the meeting at which the person named in such instrument proposes to vote.

#### IV.—DIRECTORS.

##### I.—NUMBER AND APPOINTMENT OF DIRECTORS.

68. Until otherwise determined by a General Meeting the number of Directors shall not be less than three nor more than nine.

69. The continuing Directors or Director, if only one, may act, notwithstanding any vacancies in the Board. Provided that if the number of the Board be less than the prescribed minimum, the remaining Directors or Director shall forthwith appoint an additional Director or Directors to make up such minimum, or convene a General Meeting of the Company for the purpose of making such appointment.

70.—The Board may at any time and from time to time appoint any qualified person as a Director, either to fill a casual vacancy or as an addition to the Board, but so that the number of Directors shall not at any time be more than the maximum number hereinbefore provided, nor such other less number as may from time to time be fixed as the maximum by the Company in General Meeting.

71. No person other than a retiring Director shall be elected a Director (except as a first Director or a Director appointed by the Board) unless at least four and not more than seven clear days' notice shall have been left at the Registered Office of the Company of the intention to propose him, together with a notice in writing by himself of his willingness to be elected.

72. The first Directors shall be the persons who shall be appointed in writing by a majority of the subscribers to the Memorandum of Association, and for this purpose no meeting of such subscribers shall be necessary. Until the first Directors shall have been appointed the said subscribers shall be deemed to be the Directors for all purposes, save that Clauses 73 and 74 hereof shall not be made to apply.

##### 2.—QUALIFICATION AND REMUNERATION OF DIRECTORS.

73. The qualification of a Director shall be the holding of shares of the Company of the nominal amount of £200. A first Director may act before acquiring his qualification, but shall in any case acquire the same within three



months from his appointment, and unless he shall do so he shall be deemed to have agreed to take the said shares from the Company, and the same shall be forthwith allotted to him accordingly.

74. The Board shall be entitled to receive, by way of remuneration, such sum, either of fixed amount or dependent wholly or partly on the profits of the Company, as the Company in General Meeting may from time to time determine. Such remuneration shall be divided among the directors in such proportion as they shall from time to time agree, or, in default of agreement, equally.

### 3.—POWERS OF DIRECTORS.

75. The business of the Company shall be managed by the Board, who may pay all expenses of or incident to the formation and registration of the Company, and the issue of any of its capital, including brokerage and commissions for obtaining applications for or placing shares. The Board may exercise all the powers of the Company, subject, nevertheless, to the provisions of any Acts of Parliament or of these Articles, and to such regulations (being not inconsistent with any such provisions or these Articles) as may be prescribed by the Company in General Meeting, but no regulations made by the Company in General Meeting shall invalidate any prior act of the Board which would have been valid if such regulations had not been made.

76. Without restricting the generality of the foregoing powers, the Board may do the following things:—

- (A) Establish local Boards, Committees, or agencies and local offices in South Africa, Italy, or elsewhere, and appoint any persons to be members of such Boards or Committees, with such powers and authorities, under such regulations, for such period, and at such remuneration as they may deem fit, and may from time to time revoke any such appointment.
- (B) Appoint, from time to time, any one or more of their number to be Managing Director or Managing Directors, on such terms as to remuneration, and with such powers and authorities, and for such period as they deem fit, and may revoke such appointment.
- (C) Appoint any person or persons to hold in trust for the Company any property belonging to the Company, or in which it is interested, or for any other purposes, and execute and do all such deeds and things as may be requisite in relation to any such trust.
- (D) Appoint, in order to execute any instrument or transact any business abroad (including the establishment and maintenance of a local Register or local Registers of Shareholders), any person or persons the attorney or attorneys of the Board or the Company with such powers as they deem fit, including power (subject to such conditions

as the Board may impose) to approve or reject transfers and issue certificates for shares, and power to appear before all proper authorities, and make all necessary declarations so as to enable the Company's operations to be validly carried on abroad.

- (E) Borrow or raise any sum or sums of money on such security, and upon such terms as to interest or otherwise, as they may deem fit, and for the purpose of securing the same and interest, or for any other purpose create, issue, make and give respectively any perpetual or redeemable debentures or debenture stock, or any mortgage or charge on the undertaking or the whole or any part of the property, present or future, or uncalled capital of the Company, and any debentures, debenture stock, and other securities may be made assignable free from any equities between the Company and the person to whom the same may be issued; provided that the Board shall not, without the sanction of a General Meeting of the Company, so borrow or raise any sum of money which will make the amount borrowed or raised by the Company, and then outstanding, exceed the nominal amount for the time being of the capital of the Company, and so that every debenture, debenture stock certificate, mortgage, or other charge shall be under the Common Seal of the Company.
- (F) Make, draw, accept, endorse, and negotiate respectively promissory notes, bills, cheques, or other negotiable instruments, provided that every promissory note, bill, cheque, or other negotiable instrument made, drawn, or accepted shall be signed by such person or persons as the Board may appoint for the purpose.
- (G) Invest or lend the funds of the Company not required for immediate use in or upon such securities as they deem fit (other than shares of the Company), and from time to time to transpose any investment.
- (H) Grant to any Director required to go abroad, or to render any other extraordinary service, such special remuneration for the services rendered as they think proper.
- (I) Execute in favour of any Director or other person, who may incur or be about to incur, any personal liability on behalf or for the benefit of the Company, such mortgages or charges on the undertaking, or the whole or any part of the property, present or future, or uncalled capital of the Company, as they think fit, and any such mortgage or charge may contain a power of sale and such other powers, covenants, and provisions as shall be agreed on.
- (J) Sell, let, exchange, or otherwise dispose of, absolutely or conditionally all or any part of the property, privileges, and undertaking of the Company, upon such terms and conditions, and for such consideration as they may think fit.

- (k) Exercise the powers of "The Companies' Seals Act, 1864," and "The Companies' (Colonial Registers) Act, 1883," which powers are hereby given to the Company.

#### 4.—PROCEEDINGS OF DIRECTORS.

77. The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and may determine the quorum necessary for the transaction of business. Until otherwise fixed, the quorum shall be two Directors. The Chairman, or any two Directors, may at any time summon a meeting of the Board.

78. Questions arising at any meeting of the Board shall be decided by a majority of votes. In case of an equality of votes at any meeting attended by more than two Directors, the Chairman shall have a second or casting vote.

79. A meeting of the Board at which a quorum is present may exercise all or any of the powers, authorities, and discretions hereby vested in the Directors or the Board.

80. The Board may elect a Chairman of their meetings, and determine the period for which he is to hold office, but if no such Chairman be elected, or if at any meeting he be not present at the time appointed for holding the same, the Directors present shall choose some one of their number to be Chairman of such meeting.

81. The Board may delegate any of their powers, other than the powers to borrow and make calls, to Committees consisting of such Member or Members of their body as they think fit. Any Committee so formed shall in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed on it by the Board.

82. The meetings and proceedings of any such Committee, consisting of two or more Members, shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Board, so far as the same are applicable thereto, and are not superseded by any regulations made by the Board under the last preceding clause.

83. All acts done by a meeting of the Board or of a Committee of the Board, or by any person acting as Director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

84. The Board shall cause Minutes to be made, in books provided for the purpose, of all resolutions and proceedings of General Meetings and of meetings of the Board or Committees of the Board, and any such Minutes, if signed by any person purporting to be the Chairman of the meeting to which they relate, or at which they are read, shall be received as conclusive evidence of the facts therein stated. A resolution signed by all the Directors shall be as valid and effectual as if it had been passed at a meeting of Directors duly called and constituted.

#### 5.—DISQUALIFICATIONS OF DIRECTORS.

85. The office of Director shall be vacated—

- (A) If he hold any office or place of profit under the Company other than herein authorised.
- (B) If he become of unsound mind, bankrupt, or compound with his creditors.
- (C) If he cease to hold the due qualification.
- (D) If he send in a written resignation to the Board.
- (E) If he be absent from the Board Meetings continuously for six months without the consent of the Board.

86. No Director shall be disqualified by his office from contracting with the Company, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested be avoided, nor shall any Director so contracting or being so interested be liable to account to this Company for any profit realised by such contract or arrangement by reason of such Director holding that office, or of the fiduciary relation thereby established; provided nevertheless that no such Director shall vote as a Director in respect of any such contract or arrangement, and that the nature of his interest must be disclosed by him at the meeting of the Board at which the contract or arrangement is determined on, if his interest then exist, or in any other case at the first meeting of the Board after the acquisition of his interest, but this proviso shall not apply to the agreement mentioned in Clause 3 of these Articles.

#### 6.—RETIREMENT AND REMOVAL OF DIRECTORS.

87. At the Ordinary General Meeting in the year 1895, and at the Ordinary General Meeting in every subsequent year, one-third of the Directors for the time being, or if their number be not a multiple of three, then the number nearest to one-third shall retire from office. A Managing Director holding that office for an unexpired term shall not be subject to retirement under this clause, or be taken into account in ascertaining the number of Directors to retire.

88. The Directors to retire shall be those who have been longest in office. In case of equality in this respect, the Directors to retire, unless they agree amongst themselves, shall be determined by lot.

89. A retiring Director shall be eligible for re-election.

90. The Company at the General Meeting at which any Directors shall retire shall, subject to any resolution reducing the number of Directors, fill up the vacated office by appointing a like number of persons.

91. If at any meeting at which Directors ought to be elected the places of any retiring Directors are not filled up, then, subject to any resolution reducing the number of Directors, the retiring Directors, or such of them as have not had their places filled up and may be willing to act, shall be deemed to have been re-elected.

92. The Company in General Meeting may by an extraordinary resolution remove any Director (other than a Managing Director holding that office for an unexpired term) before the expiration of his period of office, and may by an ordinary resolution appoint another qualified person in his stead. The person so appointed shall hold office during such time only as the Director in whose place he is appointed would have held the same if he had not been removed, but this provision shall not prevent him from being eligible for re-election.

#### 7.—INDEMNITY OF DIRECTORS, &c.

93. Every Director, officer, or servant of the Company shall be indemnified out of its funds against all costs, charges, expenses, losses, and liabilities incurred by him in the conduct of the Company's business, or in the discharge of his duties; and no Director or officer of the Company shall be liable for the acts or omissions of any other Director or officer or by reason of his having joined in any receipt for money not received by him personally, or for any loss on account of defect of title to any property acquired by the Company, or on account of the insufficiency of any security in or upon which any moneys of the Company shall be invested, or for any loss incurred through any banker, broker, or other agent, or upon any ground whatever other than his own wilful acts or defaults.

#### V.—ACCOUNTS AND DIVIDENDS.

##### 1.—ACCOUNTS.

94. The Board shall cause accounts to be kept of the assets and liabilities, receipts and expenditure of the Company.

95. The books of accounts shall be kept at the Registered Office of the Company, or at such other place or places as the Board think fit. Except by the authority of the Board, or of a General Meeting, no Member shall be entitled as such to inspect any books or papers of the Company other than the Registers of Members and of Mortgages.

96. The cost to the Company of, and incident to, the acquisition by purchase of any property, although of a wasting nature, may be treated as a capital expenditure, and spread over a series of years, or otherwise treated as the Board may determine, and the amount of such expenditure for the time being outstanding may, for the purpose of calculating the profits of the Company for dividends, be reckoned as an asset.

97. At the Ordinary General Meeting in every year (after the first Ordinary General Meeting) the Board shall submit to the Members a balance sheet and profit and loss account, made up to as recent a date as practicable, and audited as hereinafter provided, accompanied by a report from the Board on the transactions of the Company during the period covered by such accounts.

## 2.—AUDIT.

98. Once at least in every year after the year in which the Company is incorporated the accounts of the Company shall be examined, and the correctness of the balance sheet and profit and loss account ascertained by an Auditor or Auditors.

99. The Auditors may be Members of the Company; but no Director or other officer of the Company shall be eligible during his continuance in office.

100. The first Auditors shall be appointed by the Board; subsequent Auditors shall be appointed by the Company at the Ordinary General Meeting in each year.

101. The remuneration of the first Auditors shall be fixed by the Board; that of subsequent Auditors shall be fixed by the Company in General Meeting.

102. Any Auditor shall be eligible for re-election on his quitting office.

103. If any casual vacancy occurs in the office of Auditor, it may be filled up by the Board, or the Board may call an Extraordinary General Meeting for the purpose of supplying the same.

104. The Auditors shall have at their request a list delivered to them of all books kept by the Company, and shall at all reasonable times have access to the books and accounts of the Company. They shall also be supplied with a copy of the balance sheet and profit and loss account, and it shall be their duty to examine the same with the books, accounts, and vouchers relating thereto.



105. The Auditors shall certify to the Members as to the correctness of the balance sheet and profit and loss account, and may make such report to the Members thereon as they think proper.

### 3.—RESERVE FUND.

106. The Board may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a Reserve Fund, to meet contingencies, or for equalising dividends, or for repairing or maintaining any property of the Company, or for any other purposes of the Company, and the same may be applied accordingly from time to time in such manner as the Board shall determine, and the Board may without placing the same to reserve carry over any profits which they think it not prudent to divide.

### 4.—DIVIDENDS.

107. The Company in General Meeting may declare a dividend to be paid to the Members according to their rights and interests in the profits, but no larger dividend shall be declared than is recommended by the Board.

108. Subject to any priorities that may be given upon the issue of any new shares, the profits of the Company in each year available for distribution (having regard to the provisions hereinbefore contained as to a Reserve Fund) shall be divisible among the Members in proportion to the amounts paid up on the shares held by them respectively.

109. When in the opinion of the Board the position of the Company permits, interim dividends may be paid to the Members on account of the dividend for the then current year.

110. The Board may retain any dividends on which the Company has a lien, and may apply the same in or towards satisfaction of the debts or liabilities, or hold the same until due performance of the obligations or engagements in respect of which the lien exists.

111. All dividends shall belong and be paid (subject to the Company's lien) to those Members who shall be on the Register at the date at which such dividend shall be declared, notwithstanding any subsequent transfer or transmission of shares. No dividend shall bear interest against the Company.

112. Any dividend may be paid by cheque sent through the post to the registered address of the Member or person entitled, or in case of joint holders to that one of them first named in the Register in respect of such shares. Every such cheque shall be made payable to the order of the person to whom it is sent.

113. Any General Meeting declaring a dividend may by the same or a subsequent resolution authorise the Directors to pay such dividend wholly or in part by the distribution of specific assets, and in particular paid-up shares in the Company's capital, or debentures of the Company, or shares, stock, or debentures of any other Company, or partly in one mode and partly in the other, and the Directors may if they think fit give effect to such resolution, and where any difficulty arises in regard to the distribution they may settle the same as they think expedient, and in particular may issue fractional certificates, and may fix the value for distribution of such specific assets or any part thereof, and may determine that cash payments shall be made to any Members upon the footing of the value so paid, in order to adjust the rights of all parties, and may vest any such specific assets in trustees upon such trusts for the persons entitled to the dividend as may seem expedient to the Directors. Where requisite a proper contract shall be filed in accordance with Section 25 of the Companies Act, 1867.

## VI.—NOTICES.

114. A notice may be served by the Company upon any Member either personally or by posting it in a prepaid letter addressed to such Member at his registered address.

115. Any Member whose registered address is not in the United Kingdom, ~~Belgium~~, or France may name an address for service within the United Kingdom, ~~Belgium~~, or France, and all notices served at such address shall be deemed to be well served.

116. Any notice, if served by post, shall be deemed to have been served on the day after the day on which it was posted, and in proving such service it shall be sufficient to prove that the notice was properly addressed and posted.

117. All notices directed to be given to the Members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the Register of Members, and a notice so given shall be sufficient notice to all the holders of such share.

118. Every executor, administrator, committee, or trustee in bankruptcy or liquidation, shall be absolutely bound by every notice so given as aforesaid, if sent to the last registered address of such Member, notwithstanding that the Company may have notice of the death, lunacy, bankruptcy, or disability of such Member.

119. As regards Members who have no registered address or address for service in the United Kingdom, a notice posted up in the Registered Office, or the offices in ~~Paris and Brussels~~ of the Company, shall be deemed to be duly served upon them at the expiration of twenty-four hours after it has been so posted.



120. All notices shall be deemed to have been served upon the holders of share warrants if they shall have been advertised once in two daily newspapers, and the Company shall not be bound to serve any notice on the holders of share warrants in any other manner, and a notice convening a General Meeting so advertised need not specify the purposes for which the meeting is convened, and in this respect Clause 48 hereof shall be regarded as qualified accordingly.

## VII.—WINDING UP.

121.—The Liquidator on any winding up (whether voluntary, under supervision, or compulsory) may, with the sanction of an extraordinary resolution, divide among the contributories, in specie, any part of the assets of the Company, and may with the like sanction vest any part of the assets in the Company in trustees upon such trusts for the benefit of the contributories as the Liquidator with the like sanction shall think fit.

122. Any such Liquidator may (irrespective of the powers conferred upon him by the Companies Acts and as an additional power) with the consent of a special resolution sell the undertaking of the Company, or the whole or any part of its assets, for shares fully or partly paid up, or the obligations of or other interest in any other Company, and may by the contract of sale agree for the allotment to the Members direct of the proceeds of sale in proportion to their respective interests in the Company, and in case the shares of this Company shall be of different classes, may arrange for the allotment in respect of preference shares of this Company of obligations of the purchasing company, or of shares of the purchasing company with any preference or priority over, or with a larger amount paid up than the shares allotted in respect of ordinary shares of this Company, and may further by the contract limit a time at the expiration of which shares, obligations, or other interest, not accepted or required to be sold, shall be deemed to have been refused and be at the disposal of the Liquidator or the purchasing company.

123. Upon any sale under the last preceding Article, or under the power given by Section 161 of the Companies Act, 1862, no Member shall be entitled to require the Liquidator either to abstain from carrying into effect the sale or the resolution authorising the same or to purchase such Member's interest in this Company; but in case any Member shall be unwilling to accept the shares, obligations, or interest to which, under such sale, he would be entitled, he may within fourteen days of the passing of the resolution authorising the sale, by notice in writing to the Liquidator, require him to sell such shares, obligations, or interest, and thereupon the same shall be sold in such manner as the Liquidator may think fit, and the net proceeds shall be paid over to the Member requiring such sale.

---

 NAMES AND ADDRESSES OF SUBSCRIBERS.
 

---

✓ Benno Carl Georg Linnert  
35 Warrington Crescent. W. Pitt. N. M. M.

✓ Eliastannis, 8 Minnis E.C. - put down

✓ William Arthur Esild Woods.  
9 Cannon Street Road. C. Chert.

✓ Edmund Robert Tyman  
2 Lombard Street E.C.

Secretary DE Klen (vol. 107)

✓ William Buzey  
Highfield  
Beeson Road.

Trusts Merchant

✓ Robert Hill Mackenzie  
113 Finch Street Merchant.

✓ George Henry Payne Merchant  
46 Norwood Road  
Heme Hill SE.

Dated this 24<sup>th</sup> day of December, 1893.

Witness to the above signatures.

George Cook

John Is Mero<sup>m</sup> Michael Abrahamson Sons & Co  
9 Old Jersey St  
Publicans

DUPLICATE FOR THE FILE.



No. 40203 C.

N.L. 39727

# Certificate of Incorporation

OF THE

*Asbesto Company Limited*

I hereby Certify,

That the

*Asbesto Company Limited*

is this day Incorporated under the Companies' Acts, 1862 to 1893, and that the Company is **Limited**.

Given under my hand at London this *Twenty-eighth* day of *December* One

Thousand Eight Hundred and Ninety *three*.

Fees and Deed Stamps £ *18.15* -

Stamp Duty on Capital £ *55* -

*Ernest Heave*

Assistant Registrar of Joint Stock Companies.

Certificate received by

*Ernest Martin Esq*

*Michael Abraham Esq*

*Robert Henry Esq*

Date *30<sup>th</sup> Dec 1893*

EXHIBIT 2

App. 281

CV 402034  
/251  
40-31  
3727

ELECTRONICALLY FILED - 2023 Aug 21 5:04 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

The Companies Acts 1948 to 1967

COMPANY LIMITED BY SHARES

## Special Resolution

OF

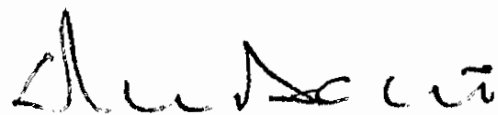
## THE CAPE ASBESTOS COMPANY LIMITED

Passed 14th May, 1974

AT the ANNUAL GENERAL MEETING of the above-named Company  
duly convened, and held on the 14th May, 1974, the following SPECIAL  
RESOLUTION was passed :—

"That the name of the company be changed to CAPE  
INDUSTRIES LIMITED."

Dated this 14th May, 1974.



R. H. DENT,  
Chairman of the Meeting.

11



**CERTIFICATE OF INCORPORATION  
ON CHANGE OF NAME**

No. 40203 / 252

I hereby certify that

**THE CAPE ASBESTOS COMPANY LIMITED**

having by special resolution and with the approval of the Secretary of State changed  
its name, is now incorporated under the name of

**CAPE INDUSTRIES LIMITED**

(Given effect to by Statute of 1948)

1st JULY 1974

*N Taylor*  
N. TAYLOR

Assistant Registrar of Companies

C.172

# FILE COPY



## CERTIFICATE OF INCORPORATION ON RE-REGISTRATION AS A PUBLIC COMPANY

No. 40203 / 295

I hereby certify that

CAPE INDUSTRIES PUBLIC LIMITED COMPANY

has this day been re-registered under the Companies Acts 1948 to 1980 as a public company, and that the company is limited.

Dated at Cardiff the

12TH NOVEMBER 1981

A handwritten signature in ink, likely belonging to the Assistant Registrar of Companies.

Assistant Registrar of Companies

Company No. 40203



THE COMPANIES ACT 1985  
COMPANY LIMITED BY SHARES

SPECIAL RESOLUTIONS

of

CAPE INDUSTRIES PLC  
(passed on 25th July 1989)

At the Annual General Meeting of the Company duly convened and held on 25th July 1989 the following resolutions were duly passed as Special Resolutions:-

SPECIAL RESOLUTIONS

THAT:-

1. The name of the company be changed to Cape Public Limited Company.
2. The directors be and they are hereby empowered pursuant to Section 95 of the Companies Act 1985 to allot equity securities (within the meaning of Section 94 of the said Act) pursuant to the authority conferred by an ordinary resolution of the company passed on 30th July 1986 as if Section 89(1) of the Companies Act 1985 did not apply to such allotment provided that this power shall be limited:
  - (i) to the allotment of equity securities in connection with a rights issue in favour of ordinary and (if appropriate) preference shareholders where the equity securities respectively attributable to the interests of all such holders are proportionate (as nearly as may be) to the respective numbers of ordinary shares or, if appropriate, preference shares held or deemed to be held by them but subject to such exclusions or other arrangements as the directors may deem necessary or expedient to deal with legal or practical problems in respect of overseas holders, fractional entitlements or otherwise; and



EXHIBIT 5

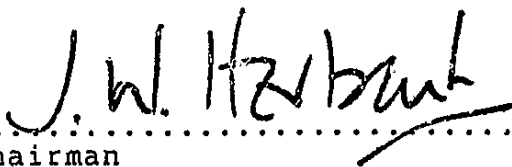
App. 285



- 2 -

(ii) to the allotment (otherwise than pursuant to sub-paragraph (i) above) of equity securities up to an aggregate nominal value of £664,100;

provided that the authority shall expire at the conclusion of the next annual general meeting of the company unless and to the extent that such authority is renewed or extended prior to or at such meeting and save that the company may before such expiry make an offer or agreement which would or might require equity securities to be allotted after such expiry and the directors may allot equity securities in pursuance of such offer or agreement as if the power conferred hereby had not expired.

  
.....  
Chairman

- 2 -



**FILE COPY**



**CERTIFICATE OF INCORPORATION  
ON CHANGE OF NAME**

No. 40203

I hereby certify that

**CAPE INDUSTRIES PUBLIC LIMITED COMPANY**

having by special resolution changed its name,  
is now incorporated under the name of

**CAPE PUBLIC LIMITED COMPANY**

Given under my hand at the Companies Registration Office,  
Cardiff the 1 AUGUST 1989

*A. M. Evans.*  
A. M. EVANS

an authorised officer

Company No 40203

**The Companies Act 2006**  
**COMPANY LIMITED BY SHARES**  
**SPECIAL RESOLUTIONS**

of  
**CAPE PLC**  
**("Old Cape" or the "Company")**

**Passed on 24 June 2011**

At a Annual General Meeting of the above-named Company duly convened and held on 24 June 2011 at the offices of the Company at 9 The Square, Stockley Park, Uxbridge, Middlesex UB11 1FW, the following Resolutions were duly passed in the case of Resolution no 4 as an ordinary resolution and in the case of Resolutions nos 5 and 6 as special resolutions -

**Ordinary resolution**

- 4 THAT the Directors be and are hereby generally and unconditionally authorised (in Full substitution for any existing such powers) for the purposes of section 551 of the Companies Act 2006 (the 'Act') to exercise all the powers of the Company to allot the following ordinary shares in the Company or grant rights to subscribe for or convert any securities into ordinary shares ('Rights') up to a maximum aggregate nominal amount of £237,410, provided that this authority shall expire (unless previously revoked, varied or extended by the Company in a general meeting) on the conclusion of the next Annual General Meeting of the Company after the passing of this resolution or 15 months from the date of this resolution, whichever is earlier, save that the Company may before such expiry make an offer or agreement which would or might require ordinary shares to be allotted or Rights to be granted after such expiry and the Directors may allot ordinary shares or grant Rights in pursuance of such offer or agreement notwithstanding that the authority conferred hereby has expired

**Special resolutions**

- 5 THAT the name of the Company be changed to Cape Intermediate Holdings plc
- 6 THAT with effect from the passing of this resolution, the articles of association of the Company be hereby amended by the adoption and inclusion of the following new Article 75 (in place of the existing Article 75):
- "75 Unless and otherwise determined by the Company by ordinary resolution, there shall be no maximum number of Directors, but the number of Directors shall not be less than two"

  
**CHAIRMAN**

11156655 1

MONDAY



LD1 27/06/2011 17  
COMPANIES HOUSE



**FILE COPY**

**CERTIFICATE OF INCORPORATION  
ON CHANGE OF NAME**

Company No. 40203

The Registrar of Companies for England and Wales hereby certifies that  
under the Companies Act 2006:

**CAPE PUBLIC LIMITED COMPANY**

a company incorporated as public limited by shares; having its registered  
office situated in England/Wales; has changed its name to:

**CAPE INTERMEDIATE HOLDINGS PLC**

Given at Companies House on **27th June 2011**



# RR02

## Application by a public company for re-registration as a private limited company

A fee is payable with this form  
Please see 'How to pay' on the last page

**What this form is for**  
You may use this form to  
re-register a public company as a  
private limited company

**X What this form is NOT for**  
You cannot use this form to  
re-register a public company as a  
private limited company following  
a court order reducing capital, a  
cancellation of shares or a reduction  
of capital due to re-denomination

THURSDAY



LD1 19/12/2013  
COMPANIES HOUSE

ELECTRONICALLY FILED - 2023 AND 21:50:41 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

### 1 Company details

Company number 4 0 2 0 3

Company name in full Cape Intermediate Holdings plc

**Filing in this form**  
Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

### 2 Re-registration

The above company applies to be re-registered as a private limited company by  
the name of

Full name of  
re-registered company Cape Intermediate Holdings Limited

**Name**  
Please insert the full name of the  
company including the appropriate  
name ending for a private limited  
company

and for that purpose delivers the following documents for registration

- 1 A copy of the special resolution that the company should re-register as a  
private limited company (unless previously delivered)
- 2 A printed copy of the articles as proposed to be amended

### 3 Statement of compliance

I am signing this form on behalf of the company and confirm that the  
requirements of Part 7 of the Companies Act 2006 as to re-registration as a  
private limited company have been complied with

Signature

Signature

X *Richard Allen* X

**Societas Europaea**  
If the form is being filed on behalf  
of a Societas Europaea (SE) please  
delete 'director' and insert details  
of which organ of the SE the person  
signing has membership

**Person authorised**  
Under either section 270 or 274 of  
the Companies Act 2006

This form may be signed by  
Director, Secretary, Person authorised, CIC manager

RR02

Application by a public company for re-registration as a private limited company

**Presenter information**

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

|               |                         |
|---------------|-------------------------|
| Contact name  | Jenna Beever            |
| Company name  | Lawrence Graham LLP     |
| Address       | 4 More London Riverside |
| Post town     | London                  |
| County/Region |                         |
| Postcode      | S E 1 2 A U             |
| Country       | UK                      |
| DX            | 132076 London Bridge 4  |
| Telephone     | 020 7759 6977           |

**Checklist**

We may return forms completed incorrectly or with information missing

Please make sure you have remembered the following

- ☐ The company name and number match the information held on the public Register
- ☐ You have provided details in section 2 of the new company name following re-registration
- ☐ You have provided the supporting documentation as required in section 2 of the form
- ☐ You have signed the form
- ☐ You have provided the correct fee

**Important information**

Please note that all information on this form will appear on the public record

**How to pay**

A fee of £20 is payable to Companies House in respect of an application to re-register

Make cheques or postal orders payable to 'Companies House'

**Where to send**

You may return this form to any Companies House address, however for expediency we advise you to return it to the appropriate address below

**For companies registered in England and Wales**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

**For companies registered in Scotland**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

**For companies registered in Northern Ireland**  
The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1

**Further information**

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

# EXHIBIT G



# Richland County Fifth Judicial Circuit Public Index



[Richland County Home Page](#) [Online Payments](#) [Public Index](#) [City of Columbia Municipal Ct](#) [S.C. Judicial Department](#) [Summary Ct Dockets](#)

Switch View

**Isabella Park , plaintiff, et al vs Armstrong International Inc , defendant, et al**

|                             |                   |                          |                              |                           |            |
|-----------------------------|-------------------|--------------------------|------------------------------|---------------------------|------------|
| <b>Case Number:</b>         | 2021CP4002727     | <b>Court Agency:</b>     | Richland County Common Pleas | <b>Filed Date:</b>        | 06/04/2021 |
| <b>Case Type:</b>           | Common Pleas      | <b>Case Sub Type:</b>    | Special-Comp/Oth 699         | <b>File Type:</b>         | Jury       |
| <b>Status:</b>              | Assigned To Judge | <b>Assigned Judge:</b>   | Toal, Jean Hoefer            |                           |            |
| <b>Disposition:</b>         |                   | <b>Disposition Date:</b> |                              | <b>Disposition Judge:</b> |            |
| <b>Original Source Doc:</b> |                   | <b>Original Case #:</b>  |                              |                           |            |
| <b>Judgment Number:</b>     |                   | <b>Court Roster:</b>     |                              |                           |            |

**Case Parties**   **Judgments**   **Tax Map Information**   **Associated Cases**   **Actions**   **Financials**

| Name                        | Description                                                    | Type   | Motion Roster | Begin Date       | Completion Date | Documents                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------|----------------------------------------------------------------|--------|---------------|------------------|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cape Plc                    | NEF(08-16-2023 12:10:34 PM)<br>Service/Acceptance Of Servic... | Filing |               | 08/16/2023-12:32 |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Cape Plc                    | Service/Acceptance Of Service on Lock Lord Llp on Lock Lord    | Filing |               | 08/16/2023-12:10 |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Cape Plc                    | NEF(08-09-2023 11:38:32 AM)<br>Amended/Amended Summons And ... | Filing |               | 08/09/2023-11:52 |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Cape Plc                    | Amended/Third Party Summons And Complaint                      | Filing |               | 08/09/2023-11:38 |                 |             |
| Cape Plc                    | NEF(06-09-2023 04:03:25 PM)<br>Service/Affidavit Of Service    | Filing |               | 06/09/2023-16:13 |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Cape Plc                    | Service/Affidavit Of Service on Lock Lord Llp                  | Filing |               | 06/09/2023-16:03 |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Great Barrier Insulation Co | NEF(05-24-2023 01:09:01 PM)<br>Stipulation Of Dismissal        | Filing |               | 05/25/2023-08:57 |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Great Barrier Insulation Co | Stipulation Of Dismissal as to Great Barrier Insulation Co     | Filing |               | 05/24/2023-13:09 |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Cape Plc                    | NEF(05-23-2023 09:38:07 AM)<br>Notice/Notice of Appearance     | Filing |               | 05/23/2023-09:38 |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Cape Plc                    | Notice/Notice of Appearance                                    | Filing |               | 05/23/2023-09:38 |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Robertshaw Controls Co      | NEF(05-10-2023 03:36:29 PM)                                    | Filing |               | 05/10/2023-15:56 |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

## EXHIBIT G

ELECTRONICALLY FILED - 2023 Aug 21 5:04 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

App. 294



|                                   |                                                              |        |  |                  |  |                                                                                       |
|-----------------------------------|--------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
| Southern Insulation Inc           | Stipulation Of Dismissal /Southern Insulation, Inc.          | Filing |  | 11/29/2022-14:21 |  |     |
| Flowserve Corporation             | NEF(11-21-2022 10:44:45 AM) Stipulation Of Dismissal         | Filing |  | 11/21/2022-14:03 |  |    |
| Flowserve Corporation             | Stipulation Of Dismissal as to Flowserve Corporation         | Filing |  | 11/21/2022-10:44 |  |    |
| Honeywell International Inc       | NEF(11-15-2022 02:30:12 PM) Stipulation Of Dismissal         | Filing |  | 11/16/2022-09:35 |  |    |
| Honeywell International Inc       | Stipulation Of Dismissal as to Honeywell International       | Filing |  | 11/15/2022-14:30 |  |    |
| William Powell Company            | NEF(11-11-2022 03:59:52 PM) Stipulation Of Dismissal         | Filing |  | 11/14/2022-14:12 |  |    |
| William Powell Company            | Stipulation Of Dismissal as to William Powell Company        | Filing |  | 11/11/2022-15:59 |  |    |
| Goodyear Tire & Rubber Company    | NEF(10-26-2022 08:49:54 AM) Stipulation Of Dismissal         | Filing |  | 10/26/2022-10:22 |  |    |
| Goodyear Tire & Rubber Company    | Stipulation Of Dismissal/Goodyear Tires and Rubber Co.       | Filing |  | 10/26/2022-08:49 |  |    |
| Grinnell Llc                      | NEF(10-14-2022 03:12:31 PM) Stipulation Of Dismissal         | Filing |  | 10/17/2022-11:24 |  |   |
| York International Corporation    | NEF(10-14-2022 03:14:40 PM) Stipulation Of Dismissal         | Filing |  | 10/17/2022-11:23 |  |  |
| Goulds Pumps Incorporated         | NEF(10-14-2022 03:10:16 PM) Stipulation Of Dismissal         | Filing |  | 10/17/2022-11:21 |  |  |
| Carrier Corporation               | NEF(10-14-2022 03:07:08 PM) Stipulation Of Dismissal         | Filing |  | 10/17/2022-11:20 |  |  |
| York International Corporation    | Stipulation Of Dismissal as to York International Corporatio | Filing |  | 10/14/2022-15:14 |  |  |
| Grinnell Llc                      | Stipulation Of Dismissal as to Grinnell Llc                  | Filing |  | 10/14/2022-15:12 |  |  |
| Goulds Pumps Incorporated         | Stipulation Of Dismissal as to Goulds Pumps                  | Filing |  | 10/14/2022-15:10 |  |  |
| Carrier Corporation               | Stipulation Of Dismissal as to Carrier Corporation           | Filing |  | 10/14/2022-15:07 |  |  |
| 4520 Corp Inc                     | NEF(10-06-2022 11:37:59 AM) Stipulation Of Dismissal         | Filing |  | 10/06/2022-16:30 |  |  |
| 4520 Corp Inc                     | Stipulation Of Dismissal as to 4520 Corp                     | Filing |  | 10/06/2022-11:37 |  |  |
| Foster Wheeler Energy Corporation | NEF(09-28-2022 03:26:45 PM)                                  | Filing |  | 09/29/2022-09:58 |  |  |

**EXHIBIT G**

|                                     |                                                              |        |  |                  |  |                                                                                       |
|-------------------------------------|--------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
|                                     | Stipulation Of Dismissal                                     |        |  |                  |  |                                                                                       |
| Foster Wheeler Energy Corporation   | Stipulation Of Dismissal / Foster Wheeler Energy Corporation | Filing |  | 09/28/2022-15:26 |  |    |
| Daniel International Corporation    | NEF(09-19-2022 01:27:12 PM) Stipulation Of Dismissal         | Filing |  | 09/19/2022-14:24 |  |    |
| Daniel International Corporation    | Stipulation Of Dismissal as to Daniel International Corporat | Filing |  | 09/19/2022-13:27 |  |    |
| Rust International Inc              | NEF(09-13-2022 03:50:18 PM) Stipulation Of Dismissal         | Filing |  | 09/14/2022-10:44 |  |    |
| Rust International Inc              | Stipulation Of Dismissal as to Rust International Inc        | Filing |  | 09/13/2022-15:50 |  |    |
| Rust Engineering & Construction Inc | Stipulation Of Dismissal as to Rust Engineering & Constructi | Filing |  | 09/13/2022-15:50 |  |    |
| General Electric Company            | NEF(08-19-2022 02:25:23 PM) Stipulation Of Dismissal         | Filing |  | 08/22/2022-08:41 |  |    |
| General Electric Company            | Stipulation Of Dismissal as to General Electric Company      | Filing |  | 08/19/2022-14:25 |  |    |
| Cna Holdings Llc                    | NEF(08-04-2022 03:30:27 PM) Stipulation Of Dismissal         | Filing |  | 08/04/2022-15:38 |  |    |
| Cna Holdings Llc                    | Stipulation Of Dismissal / CNA Holdings LLC                  | Filing |  | 08/04/2022-15:30 |  |  |
| Crane Co                            | NEF(08-01-2022 04:15:03 PM) Stipulation Of Dismissal         | Filing |  | 08/02/2022-08:52 |  |  |
| Crane Co                            | Stipulation Of Dismissal as to Crane Co                      | Filing |  | 08/01/2022-16:15 |  |  |
| Becon Construction Company Inc      | NEF(06-23-2022 04:52:18 PM) Stipulation Of Dismissal         | Filing |  | 06/24/2022-08:51 |  |  |
| Becon Construction Company Inc      | Stipulation Of Dismissal as to Becon Construction Company In | Filing |  | 06/23/2022-16:52 |  |  |
| Bwip Inc                            | NEF(06-21-2022 03:17:36 PM) Stipulation Of Dismissal         | Filing |  | 06/21/2022-16:12 |  |  |
| Bwip Inc                            | Stipulation Of Dismissal as to Bwip Inc                      | Filing |  | 06/21/2022-15:17 |  |  |
| Zurn Industries Llc                 | NEF(06-06-2022 03:50:07 PM) Stipulation Of Dismissal         | Filing |  | 06/06/2022-16:53 |  |  |
| Ecodyne Corporation                 | NEF(06-06-2022 03:47:40 PM) Stipulation Of Dismissal         | Filing |  | 06/06/2022-16:52 |  |  |
| Carboline Company                   | NEF(06-06-2022 03:46:11 PM)                                  | Filing |  | 06/06/2022-16:52 |  |  |

**EXHIBIT G**

ELECTRONICALLY FILED - 2023 Aug 21 5:04 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001755

## App. 297

|                                   |                                                             |        |  |                  |  |  |
|-----------------------------------|-------------------------------------------------------------|--------|--|------------------|--|--|
| Park, Keith W                     | Plaintiff's Response In Opposition To Defendant The William | Filing |  | 06/01/2022-20:11 |  |  |
| Starr Davis Company Of Sc Inc     | Stipulation Of Dismissal / Starr Davis Company Inc          | Filing |  | 06/01/2022-16:37 |  |  |
| Park, Keith W                     | Motion/In Limine No. 8                                      | Motion |  | 06/01/2022-16:21 |  |  |
| Park, Keith W                     | Motion/In Limine No. 9                                      | Motion |  | 06/01/2022-16:21 |  |  |
| Park, Keith W                     | Motion/In Limine                                            | Motion |  | 06/01/2022-15:59 |  |  |
| Park, Keith W                     | Motion/In Limine                                            | Motion |  | 06/01/2022-15:59 |  |  |
| Park, Keith W                     | Motion/In Limine                                            | Motion |  | 06/01/2022-15:59 |  |  |
| Park, Keith W                     | Motion/In Limine                                            | Motion |  | 06/01/2022-15:59 |  |  |
| Park, Keith W                     | Motion/In Limine                                            | Motion |  | 06/01/2022-15:59 |  |  |
| Park, Keith W                     | Motion/In Limine                                            | Motion |  | 06/01/2022-15:59 |  |  |
| Park, Keith W                     | Motion/In Limine                                            | Motion |  | 06/01/2022-15:59 |  |  |
| Park, Keith W                     | Motion/In Limine                                            | Motion |  | 06/01/2022-15:59 |  |  |
| Cna Holdings Llc                  | NEF(06-01-2022 10:30:01 AM) Motion/Admission Pro Hac Vic... | Filing |  | 06/01/2022-12:04 |  |  |
| Cna Holdings Llc                  | NEF(06-01-2022 10:18:37 AM) Motion/Admission Pro Hac Vic... | Filing |  | 06/01/2022-11:37 |  |  |
| Cna Holdings Llc                  | Motion/Admission Pro Hac Vice                               | Motion |  | 06/01/2022-10:30 |  |  |
| Cna Holdings Llc                  | Motion/Admission Pro Hac Vice                               | Motion |  | 06/01/2022-10:18 |  |  |
| Fisher Controls International Llc | NEF(05-31-2022 04:03:29 PM) Stipulation Of Dismissal        | Filing |  | 06/01/2022-09:05 |  |  |
| Fisher Controls International Llc | Stipulation Of Dismissal/Fisher Controls International LLC  | Filing |  | 05/31/2022-16:03 |  |  |
| Daniel International Corporation  | NEF(05-31-2022 03:49:43 PM) Notice/Joinder Of Co-Defenda... | Filing |  | 05/31/2022-15:52 |  |  |
| Daniel International Corporation  | Notice/Joinder Of Co-Defendants Motions                     | Filing |  | 05/31/2022-15:49 |  |  |
| Daniel International Corporation  | NEF(05-31-2022 03:39:06 PM) Motion/In Limine                | Filing |  | 05/31/2022-15:42 |  |  |
| Daniel International Corporation  | Omnibus Motions/In Limine No 1-5                            | Motion |  | 05/31/2022-15:39 |  |  |
| Daniel International              | NEF(05-31-2022 03:07:37 PM)                                 | Filing |  | 05/31/2022-15:18 |  |  |

**EXHIBIT G**

| Corporation                          | Motion/In Limine                                             |        |  |                  |  |                                                                                                                                                                                                                                                             |
|--------------------------------------|--------------------------------------------------------------|--------|--|------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Daniel International Corporation     | Motion/In Limine As To Medical And Scientific Articles       | Motion |  | 05/31/2022-15:07 |  |    |
| Park, Keith W                        | NEF(05-27-2022 12:33:36 AM) Notice/Notice of Appearance      | Filing |  | 05/27/2022-00:34 |  |                                                                                                                                                                          |
| Park, Keith W                        | Notice/Notice of Appearance                                  | Filing |  | 05/27/2022-00:33 |  |                                                                                                                                                                                                                                                             |
| Vistra Corp                          | NEF(05-26-2022 08:19:54 AM) Stipulation Of Dismissal         | Filing |  | 05/26/2022-09:04 |  |                                                                                                                                                                          |
| Vistra Corp                          | Stipulation Of Dismissal as to Vistra Corp and Vistra Interm | Filing |  | 05/26/2022-08:19 |  |                                                                                                                                                                          |
| Henry Pratt Company Llc              | NEF(05-25-2022 04:35:00 PM) Stipulation Of Dismissal         | Filing |  | 05/25/2022-16:43 |  |                                                                                                                                                                          |
| Henry Pratt Company Llc              | Stipulation Of Dismissal as to Henry Pratt Company Llc       | Filing |  | 05/25/2022-16:35 |  |                                                                                                                                                                          |
| 3M Company                           | NEF(05-25-2022 12:39:13 PM) Stipulation Of Dismissal         | Filing |  | 05/25/2022-14:43 |  |                                                                                                                                                                          |
| 3M Company                           | Stipulation Of Dismissal as to 3M Company                    | Filing |  | 05/25/2022-12:39 |  |                                                                                                                                                                          |
| Clark Reliance Corporation           | NEF(05-20-2022 02:29:24 PM) Stipulation Of Dismissal         | Filing |  | 05/20/2022-15:14 |  |                                                                                                                                                                          |
| Clark Reliance Corporation           | Stipulation Of Dismissal as to Clark Reliance Corporation    | Filing |  | 05/20/2022-14:29 |  |                                                                                                                                                                        |
| Jerguson Gage & Valve Division       | NEF(05-19-2022 11:46:00 AM) Stipulation Of Dismissal         | Filing |  | 05/19/2022-12:23 |  |                                                                                                                                                                        |
| Jerguson Gage & Valve Division       | Stipulation Of Dismissal as to Clark Reliance Corporation an | Filing |  | 05/19/2022-11:46 |  |                                                                                                                                                                        |
| Riley Power Inc                      | NEF(05-17-2022 12:39:53 PM) Stipulation Of Dismissal         | Filing |  | 05/17/2022-13:41 |  |                                                                                                                                                                        |
| Crane Instrumentation & Sampling Inc | NEF(05-17-2022 12:43:17 PM) Stipulation Of Dismissal         | Filing |  | 05/17/2022-13:40 |  |                                                                                                                                                                        |
| Crane Instrumentation & Sampling Inc | Stipulation Of Dismissal / Defendant Crane Instrumentation & | Filing |  | 05/17/2022-12:43 |  |                                                                                                                                                                        |
| Riley Power Inc                      | Stipulation Of Dismissal / Defendant Riley Power Inc         | Filing |  | 05/17/2022-12:39 |  |                                                                                                                                                                        |
| Fmc Corporation                      | NEF(05-12-2022 03:25:20 PM) Filing/Other                     | Filing |  | 05/13/2022-08:43 |  |                                                                                                                                                                        |
| Fluor Enterprises Inc                | NEF(05-12-2022 03:43:08 PM) Memo/Memo in Support             | Filing |  | 05/12/2022-15:48 |  |                                                                                                                                                                        |
| Daniel International                 | NEF(05-12-2022 03:36:33 PM)                                  | Filing |  | 05/12/2022-15:46 |  |                                                                                                                                                                        |

**EXHIBIT G**

| Corporation                       | Memo/Memo in Support                                         |        |  |                  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------|--------------------------------------------------------------|--------|--|------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Fluor Enterprises Inc             | Memo/Memo in Support of Motion for Summary Judgment          | Filing |  | 05/12/2022-15:43 |  |                                                                                                                                                                                                                                                                                                                                                     |
| Daniel International Corporation  | Memo/Memo in Support Of Motion For Summary Judgment Of Defen | Filing |  | 05/12/2022-15:36 |  |                                                                                                                                                                                                                                                                                                                                                     |
| Fmc Corporation                   | WITHDRAWAL OF MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS FMC  | Filing |  | 05/12/2022-15:25 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Vistra Intermediate Company Llc   | NEF(05-10-2022 12:30:24 PM) Motion/Summary Judgment          | Filing |  | 05/10/2022-12:39 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Vistra Corp                       | NEF(05-10-2022 12:21:03 PM) Motion/Summary Judgment          | Filing |  | 05/10/2022-12:37 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Vistra Intermediate Company Llc   | Amended Motion/Summary Judgment                              | Motion |  | 05/10/2022-12:30 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Vistra Intermediate Company Llc   | Memo/Memo in Support of Amended Motion for Summary Judg      | Filing |  | 05/10/2022-12:30 |  |         |
| Vistra Corp                       | Memo/Memo in Support of Amended Motion for Summary Judgment  | Filing |  | 05/10/2022-12:21 |  |         |
| Vistra Corp                       | Amended Motion/Summary Judgment                              | Motion |  | 05/10/2022-12:21 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Cna Holdings Llc                  | NEF(05-02-2022 03:05:48 PM) Motion/Summary Judgment          | Filing |  | 05/02/2022-15:12 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Spirax Sarco Inc                  | NEF(05-02-2022 02:58:01 PM) Motion/Summary Judgment          | Filing |  | 05/02/2022-15:07 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Cna Holdings Llc                  | Motion/Summary Judgment                                      | Motion |  | 05/02/2022-15:05 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Cna Holdings Llc                  | Memo/Memo in Support of Motion/Summary Judgment              | Filing |  | 05/02/2022-15:05 |  |                                                                                                                                                                                                                                                                                                                                             |
| Clark Reliance Corporation        | NEF(05-02-2022 02:55:08 PM) Motion/Summary Judgment          | Filing |  | 05/02/2022-15:03 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Spirax Sarco Inc                  | Memo/Memo in Support of Motion/Summary Judgment              | Filing |  | 05/02/2022-14:58 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Spirax Sarco Inc                  | Motion/Summary Judgment                                      | Motion |  | 05/02/2022-14:58 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Clark Reliance Corporation        | Motion/Summary Judgment                                      | Motion |  | 05/02/2022-14:55 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Clark Reliance Corporation        | Memo/Memo in Support of Motion/Summary Judgment              | Filing |  | 05/02/2022-14:55 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Foster Wheeler Energy Corporation | NEF(05-02-2022 02:45:26 PM) Motion/Summary Judgment          | Filing |  | 05/02/2022-14:50 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

**EXHIBIT G**

|                                   |                                                        |        |  |                  |  |  |
|-----------------------------------|--------------------------------------------------------|--------|--|------------------|--|--|
| Great Barrier Insulation Co       | NEF(05-02-2022 02:41:36 PM)<br>Motion/Summary Judgment | Filing |  | 05/02/2022-14:47 |  |  |
| Foster Wheeler Energy Corporation | Memo/Memo in Support of Motion for Summary Judgment    | Filing |  | 05/02/2022-14:45 |  |  |
| Foster Wheeler Energy Corporation | Motion/Summary Judgment                                | Motion |  | 05/02/2022-14:45 |  |  |
| Great Barrier Insulation Co       | Motion/Summary Judgment                                | Motion |  | 05/02/2022-14:41 |  |  |
| Great Barrier Insulation Co       | Memo/Memo in Support of Motion/Summary Judgment        | Filing |  | 05/02/2022-14:41 |  |  |
| Zurn Industries Llc               | NEF(05-02-2022 02:17:53 PM)<br>Motion/Summary Judgment | Filing |  | 05/02/2022-14:27 |  |  |
| York International Corporation    | NEF(05-02-2022 02:14:56 PM)<br>Motion/Summary Judgment | Filing |  | 05/02/2022-14:18 |  |  |
| Zurn Industries Llc               | Motion/Summary Judgment                                | Motion |  | 05/02/2022-14:17 |  |  |
| William Powell Company            | NEF(05-02-2022 02:11:32 PM)<br>Motion/Summary Judgment | Filing |  | 05/02/2022-14:15 |  |  |
| York International Corporation    | Motion/Summary Judgment                                | Motion |  | 05/02/2022-14:14 |  |  |
| Grinnell Llc                      | NEF(05-02-2022 02:08:36 PM)<br>Motion/Summary Judgment | Filing |  | 05/02/2022-14:12 |  |  |
| Goulds Pumps Incorporated         | NEF(05-02-2022 02:04:44 PM)<br>Motion/Summary Judgment | Filing |  | 05/02/2022-14:11 |  |  |
| William Powell Company            | Motion/Summary Judgment                                | Motion |  | 05/02/2022-14:11 |  |  |
| Ecodyne Corporation               | NEF(05-02-2022 02:00:07 PM)<br>Motion/Summary Judgment | Filing |  | 05/02/2022-14:10 |  |  |
| Carrier Corporation               | NEF(05-02-2022 01:56:40 PM)<br>Motion/Summary Judgment | Filing |  | 05/02/2022-14:09 |  |  |
| Grinnell Llc                      | Motion/Summary Judgment                                | Motion |  | 05/02/2022-14:08 |  |  |
| Goulds Pumps Incorporated         | Motion/Summary Judgment                                | Motion |  | 05/02/2022-14:04 |  |  |
| Ecodyne Corporation               | Motion/Summary Judgment                                | Motion |  | 05/02/2022-14:00 |  |  |
| Carrier Corporation               | Motion/Summary Judgment                                | Motion |  | 05/02/2022-13:56 |  |  |
| Vistra Intermediate Company Llc   | NEF(05-02-2022 12:53:53 PM)<br>Motion/Summary Judgment | Filing |  | 05/02/2022-13:11 |  |  |
| Vistra Corp                       | NEF(05-02-2022 12:49:25 PM)<br>Motion/Summary Judgment | Filing |  | 05/02/2022-13:10 |  |  |
| Vistra Intermediate Company Llc   | Motion/Summary Judgment                                | Motion |  | 05/02/2022-12:53 |  |  |
| Vistra Intermediate               | Memo/Memo in Support of Motion For                     | Filing |  | 05/02/2022-12:53 |  |  |

**EXHIBIT G**



| Company Llc                        | Summary Judgment                                             |        |  |                  |  |                                                                                       |
|------------------------------------|--------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
| Vistra Corp                        | Memo/Memo in Support of Motion For Summary Judgment          | Filing |  | 05/02/2022-12:49 |  |    |
| Vistra Corp                        | Motion/Summary Judgment                                      | Motion |  | 05/02/2022-12:49 |  |    |
| Riley Power Inc                    | NEF(05-02-2022 10:42:53 AM) Motion/Summary Judgment          | Filing |  | 05/02/2022-10:47 |  |    |
| Riley Power Inc                    | Memo/Memo in Support of Motion For Summary Judgment          | Filing |  | 05/02/2022-10:42 |  |    |
| Riley Power Inc                    | Motion/Summary Judgment                                      | Motion |  | 05/02/2022-10:42 |  |    |
| Dana Companies Llc                 | NEF(05-02-2022 10:33:12 AM) Motion/Summary Judgment          | Filing |  | 05/02/2022-10:36 |  |    |
| Dana Companies Llc                 | Motion/Summary Judgment                                      | Motion |  | 05/02/2022-10:33 |  |    |
| Dana Companies Llc                 | Memo/Memo in Support of Motion For Summary Judgment          | Filing |  | 05/02/2022-10:33 |  |    |
| Fisher Controls International Llc  | NEF(04-29-2022 05:24:35 PM) Notice/Other                     | Filing |  | 05/02/2022-09:22 |  |    |
| Fisher Controls International Llc  | NOTICE OF WITHDRAWAL AS ATTORNEY OF RECORD FOR DEFENDANT FIS | Filing |  | 04/29/2022-17:24 |  |    |
| Carboline Company                  | NEF(04-28-2022 04:40:57 PM) Stipulation Of Dismissal         | Filing |  | 04/28/2022-16:56 |  |    |
| Carboline Company                  | Stipulation Of Dismissal Defendant Carboline Company         | Filing |  | 04/28/2022-16:40 |  |  |
| 4520 Corp Inc                      | NEF(04-27-2022 04:26:10 PM) Motion/Summary Judgment          | Filing |  | 04/27/2022-16:35 |  |  |
| 4520 Corp Inc                      | Memo/Memo in Support Of Its Motion For Summary Judgment      | Filing |  | 04/27/2022-16:26 |  |  |
| 4520 Corp Inc                      | Motion/Summary Judgment                                      | Motion |  | 04/27/2022-16:26 |  |  |
| Armstrong International Inc        | NEF(04-26-2022 06:31:29 PM) Motion/Summary Judgment          | Filing |  | 04/27/2022-08:50 |  |  |
| Gardner Denver Inc                 | NEF(04-26-2022 06:29:50 PM) Motion/Summary Judgment          | Filing |  | 04/27/2022-08:48 |  |  |
| Schneider Electric Systems Usa Inc | NEF(04-26-2022 06:27:49 PM) Motion/Summary Judgment          | Filing |  | 04/27/2022-08:47 |  |  |
| Flowserve Corporation              | NEF(04-26-2022 04:47:54 PM) Motion/Summary Judgment          | Filing |  | 04/27/2022-08:19 |  |  |
| Armstrong International Inc        | Memo/Memo in Support Of Its Motion For Summary Judgment      | Filing |  | 04/26/2022-18:31 |  |  |
| Armstrong International Inc        | Motion/Summary Judgment                                      | Motion |  | 04/26/2022-18:31 |  |  |

**EXHIBIT G**



|                                      |                                                     |        |  |                  |  |  |
|--------------------------------------|-----------------------------------------------------|--------|--|------------------|--|--|
| Gardner Denver Inc                   | Motion/Summary Judgment                             | Motion |  | 04/26/2022-18:29 |  |  |
| Gardner Denver Inc                   | Memo/Memo in Support of Motion for Summary Judgment | Filing |  | 04/26/2022-18:29 |  |  |
| Schneider Electric Systems Usa Inc   | Memo/Memo in Support of Motion for Summary Judgment | Filing |  | 04/26/2022-18:27 |  |  |
| Schneider Electric Systems Usa Inc   | Motion/Summary Judgment                             | Motion |  | 04/26/2022-18:27 |  |  |
| Flowserve Corporation                | Motion/Summary Judgment                             | Motion |  | 04/26/2022-16:47 |  |  |
| Flowserve Corporation                | Memo/Memo in Support of Motion for Summary Judgment | Filing |  | 04/26/2022-16:47 |  |  |
| Covil Corporation                    | NEF(04-26-2022 02:54:44 PM) Motion/Summary Judgment | Filing |  | 04/26/2022-15:22 |  |  |
| Covil Corporation                    | Motion/Summary Judgment                             | Motion |  | 04/26/2022-14:54 |  |  |
| Goodyear Tire & Rubber Company       | NEF(04-26-2022 01:42:22 PM) Motion/Summary Judgment | Filing |  | 04/26/2022-14:07 |  |  |
| Rust Engineering & Construction Inc  | NEF(04-26-2022 01:38:21 PM) Motion/Summary Judgment | Filing |  | 04/26/2022-14:05 |  |  |
| Goodyear Tire & Rubber Company       | Motion/Summary Judgment                             | Motion |  | 04/26/2022-13:42 |  |  |
| Rust Engineering & Construction Inc  | Memo/Memo in Support                                | Filing |  | 04/26/2022-13:38 |  |  |
| Rust Engineering & Construction Inc  | Motion/Summary Judgment                             | Motion |  | 04/26/2022-13:38 |  |  |
| Rust Engineering & Construction Inc  | Notice/Notice of Appearance                         | Filing |  | 04/26/2022-13:38 |  |  |
| Crane Instrumentation & Sampling Inc | NEF(04-26-2022 12:44:14 PM) Motion/Summary Judgment | Filing |  | 04/26/2022-12:49 |  |  |
| Henry Pratt Company Llc              | NEF(04-26-2022 12:39:16 PM) Motion/Summary Judgment | Filing |  | 04/26/2022-12:47 |  |  |
| Southern Insulation Inc              | NEF(04-26-2022 12:26:27 PM) Motion/Summary Judgment | Filing |  | 04/26/2022-12:46 |  |  |
| Crane Instrumentation & Sampling Inc | Motion/Summary Judgment                             | Motion |  | 04/26/2022-12:44 |  |  |
| Henry Pratt Company Llc              | Memo/Memo in Support of Motion for Summary Judgment | Filing |  | 04/26/2022-12:39 |  |  |
| Henry Pratt Company Llc              | Motion/Summary Judgment                             | Motion |  | 04/26/2022-12:39 |  |  |
| Fmc Corporation                      | NEF(04-26-2022 11:16:22 AM) Motion/Summary Judgment | Filing |  | 04/26/2022-12:26 |  |  |
| Southern Insulation Inc              | Memo/Memo in Support of Motion for Summary Judgment | Filing |  | 04/26/2022-12:26 |  |  |
| Southern Insulation Inc              | Motion/Summary Judgment                             | Motion |  | 04/26/2022-12:26 |  |  |
| Fmc Corporation                      | Motion/Summary Judgment                             | Motion |  | 04/26/2022-11:16 |  |  |

ELECTRONICALLY FILED -- 2023 Aug 21 5:04 PM -- RICHLAND -- COMMON PLEAS -- CASE#2023CP4001759

**EXHIBIT G**

|                                   |                                                                |        |  |                  |  |                                                                                       |
|-----------------------------------|----------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
| Fluor Enterprises Inc             | NEF(04-26-2022 10:45:48 AM)<br>Motion/Summary Judgment         | Filing |  | 04/26/2022-11:15 |  |     |
| Daniel International Corporation  | NEF(04-26-2022 10:42:59 AM)<br>Motion/Summary Judgment         | Filing |  | 04/26/2022-11:11 |  |    |
| Fluor Daniel Services Corporation | Motion/Summary Judgment                                        | Motion |  | 04/26/2022-10:45 |  |    |
| Daniel International Corporation  | Motion/Summary Judgment                                        | Motion |  | 04/26/2022-10:42 |  |    |
| Daniel International Corporation  | Notice/Notice of Appearance                                    | Filing |  | 04/26/2022-10:42 |  |                                                                                       |
| Spx Cooling Technologies Inc      | NEF(04-25-2022 03:55:09 PM)<br>Stipulation Of Dismissal        | Filing |  | 04/25/2022-16:18 |  |    |
| Spx Cooling Technologies Inc      | Stipulation Of Dismissal as to Spx Cooling Technologies Inc    | Filing |  | 04/25/2022-15:55 |  |    |
| Hok Group Inc                     | NEF(04-12-2022 03:49:31 PM)<br>Stipulation Of Dismissal        | Filing |  | 04/12/2022-16:50 |  |    |
| Hok Group Inc                     | STIPULATION OF DISMISSAL WITHOUT PREJUDICE OF DEFENDANT HOK    | Filing |  | 04/12/2022-15:49 |  |    |
| Fisher Controls International Llc | NEF(02-18-2022 10:41:40 AM)<br>Notice/Notice of Appearance     | Filing |  | 02/18/2022-10:42 |  |   |
| Fisher Controls International Llc | Notice/Notice of Appearance                                    | Filing |  | 02/18/2022-10:41 |  |                                                                                       |
| Honeywell International Inc       | NEF(01-26-2022 02:56:16 PM)<br>Motion/Dismiss                  | Filing |  | 01/26/2022-16:37 |  |  |
| Honeywell International Inc       | Motion/Dismiss For Lack Of Personal Jurisdiction               | Motion |  | 01/26/2022-14:56 |  |  |
| Honeywell International Inc       | Notice/Notice of Appearance                                    | Filing |  | 01/26/2022-14:56 |  |                                                                                       |
| Vistra Corp                       | NEF(01-11-2022 12:56:47 PM)<br>Answer/Answer To Amended Com... | Filing |  | 01/11/2022-12:59 |  |  |
| Vistra Corp                       | NEF(01-11-2022 12:55:09 PM)<br>Motion/Dismiss                  | Filing |  | 01/11/2022-12:58 |  |  |
| Vistra Intermediate Company Llc   | NEF(01-11-2022 12:53:37 PM)<br>Answer/Answer To Amended Com... | Filing |  | 01/11/2022-12:57 |  |  |
| Vistra Intermediate Company Llc   | NEF(01-11-2022 12:51:39 PM)<br>Motion/Dismiss                  | Filing |  | 01/11/2022-12:57 |  |  |
| Vistra Corp                       | Answer/Answer To 2nd Amended Complaint of Vistra Corp          | Filing |  | 01/11/2022-12:56 |  |  |
| Vistra Corp                       | Motion/Dismiss With Prejudice                                  | Motion |  | 01/11/2022-12:55 |  |  |
| Vistra Intermediate Company Llc   | Answer/Answer To 2nd Amended Complaint of Vistra Intermediat   | Filing |  | 01/11/2022-12:53 |  |  |

**EXHIBIT G**

|                                   |                                                              |        |  |                  |  |                                                                                       |
|-----------------------------------|--------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
| Vistra Intermediate Company Llc   | 2nd Amended Motion/Dismiss                                   | Motion |  | 01/11/2022-12:51 |  |     |
| Henry Pratt Company Llc           | NEF(01-07-2022 05:10:22 PM) Answer/Answer To Amended Com...  | Filing |  | 01/10/2022-08:39 |  |    |
| Fisher Controls International Llc | Answer/Answer To Amended Complaint of Fisher Controls Intern | Filing |  | 01/07/2022-17:10 |  |    |
| Henry Pratt Company Llc           | Answer/Answer To Amended Complaint of Henry Pratt Company LI | Filing |  | 01/07/2022-17:10 |  |    |
| Ecodyne Corporation               | NEF(01-07-2022 04:21:49 PM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-16:34 |  |    |
| Zurn Industries Llc               | NEF(01-07-2022 04:28:24 PM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-16:33 |  |    |
| York International Corporation    | NEF(01-07-2022 04:27:02 PM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-16:32 |  |    |
| William Powell Company            | NEF(01-07-2022 04:25:49 PM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-16:29 |  |    |
| Zurn Industries Llc               | Answer/Answer To Amended Complaint of Zurn Industries Llc    | Filing |  | 01/07/2022-16:28 |  |    |
| Goulds Pumps Incorporated         | NEF(01-07-2022 04:23:08 PM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-16:27 |  |   |
| Grinnell Llc                      | NEF(01-07-2022 04:24:20 PM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-16:27 |  |  |
| York International Corporation    | Answer/Answer To Amended Complaint of York International Cor | Filing |  | 01/07/2022-16:27 |  |  |
| William Powell Company            | Answer/Answer To Amended Complaint of William Powell Company | Filing |  | 01/07/2022-16:25 |  |  |
| Grinnell Llc                      | Answer/Answer To Amended Complaint of Grinnell Llc           | Filing |  | 01/07/2022-16:24 |  |  |
| Goulds Pumps Incorporated         | Answer/Answer To Amended Complaint of Goulds Pumps Incorpora | Filing |  | 01/07/2022-16:23 |  |  |
| Carrier Corporation               | NEF(01-07-2022 04:19:09 PM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-16:22 |  |  |
| Ecodyne Corporation               | Answer/Answer To Amended Complaint of Ecodyne Corporation    | Filing |  | 01/07/2022-16:21 |  |  |
| Carboline Company                 | NEF(01-07-2022 04:17:25 PM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-16:21 |  |  |
| Carrier Corporation               | Answer/Answer To 2nd Amended Complaint Carrier Corporation   | Filing |  | 01/07/2022-16:19 |  |  |

ELECTRONICALLY FILED -- 2023 Aug 21 5:04 PM -- RICHLAND -- COMMON PLEAS -- CASE#2023CP4001759

**EXHIBIT G**

|                                      |                                                              |        |  |                  |  |                                                                                       |
|--------------------------------------|--------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
| Carboline Company                    | Answer/Answer To 2nd Amended Complaint of Carboline Company  | Filing |  | 01/07/2022-16:17 |  |     |
| Bwip Inc                             | NEF(01-07-2022 03:42:01 PM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-16:02 |  |    |
| Bwip Inc                             | Answer/Answer To Amended Complaint of Bwip Inc               | Filing |  | 01/07/2022-15:42 |  |    |
| Great Barrier Insulation Co          | NEF(01-07-2022 02:42:52 PM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-14:46 |  |    |
| Great Barrier Insulation Co          | Answer/Answer To 2nd Amended Complaint of Great Barrier Insu | Filing |  | 01/07/2022-14:42 |  |    |
| Schneider Electric Systems Usa Inc   | NEF(01-07-2022 02:20:01 PM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-14:30 |  |    |
| Hok Group Inc                        | Answer/Answer To Amended Complaint of Hok Group Inc          | Filing |  | 01/07/2022-14:20 |  |    |
| Armstrong International Inc          | Answer/Answer To Amended Complaint of Armstrong Internationa | Filing |  | 01/07/2022-14:20 |  |    |
| Schneider Electric Systems Usa Inc   | Answer/Answer To Amended Complaint of Schneider Electric Sys | Filing |  | 01/07/2022-14:20 |  |    |
| Gardner Denver Inc                   | Answer/Answer To Amended Complaint of Gardner Denver Inc     | Filing |  | 01/07/2022-14:20 |  |    |
| Covil Corporation                    | NEF(01-07-2022 02:09:37 PM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-14:15 |  |   |
| Covil Corporation                    | Answer/Answer To Amended Complaint of Covil Corporation      | Filing |  | 01/07/2022-14:09 |  |  |
| Robertshaw Controls Co               | NEF(01-07-2022 12:36:02 PM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-12:42 |  |  |
| Robertshaw Controls Co               | Answer/Answer To 2nd Amended Complaint of Robertshaw Control | Filing |  | 01/07/2022-12:36 |  |  |
| 3M Company                           | NEF(01-07-2022 11:46:15 AM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-12:19 |  |  |
| 3M Company                           | Answer/Answer To 2nd Amended Complaint of 3M Company         | Filing |  | 01/07/2022-11:46 |  |  |
| Sterling Fluid Systems Usa Llc       | NEF(01-07-2022 11:21:34 AM) Answer/Answer To Amended Com...  | Filing |  | 01/07/2022-11:40 |  |  |
| Fluor Daniel Services Corporation    | Answer/Answer To Amended Complaint of Fluor Daniel Services  | Filing |  | 01/07/2022-11:21 |  |  |
| Fluor Constructors International Inc | Answer/Answer To Amended Complaint of Fluor Constructors Int | Filing |  | 01/07/2022-11:21 |  |  |
| Fmc Corporation                      | Answer/Answer To Amended Complaint of Fmc Corporation        | Filing |  | 01/07/2022-11:21 |  |  |
| Fluor Enterprises Inc                | Answer/Answer To Amended Complaint of                        | Filing |  | 01/07/2022-11:21 |  |  |

**EXHIBIT G**

|                                                |                                                                         |               |  |                         |  |                                                                                       |
|------------------------------------------------|-------------------------------------------------------------------------|---------------|--|-------------------------|--|---------------------------------------------------------------------------------------|
|                                                | <b>Fluor Enterprises Inc</b>                                            |               |  |                         |  |                                                                                       |
| <b>Sterling Fluid Systems Usa Llc</b>          | <b>Answer/Answer To Amended Complaint of Sterling Fluid Systems</b>     | <b>Filing</b> |  | <b>01/07/2022-11:21</b> |  |    |
| <b>Union Carbide Corporation</b>               | <b>Answer/Answer To Amended Complaint of Union Carbide Corporat</b>     | <b>Filing</b> |  | <b>01/07/2022-11:21</b> |  |    |
| <b>Daniel International Corporation</b>        | <b>Answer/Answer To Amended Complaint of Daniel International C</b>     | <b>Filing</b> |  | <b>01/07/2022-11:21</b> |  |    |
| <b>Cna Holdings Llc</b>                        | <b>NEF(01-06-2022 04:30:39 PM) Answer/Answer To Amended Com...</b>      | <b>Filing</b> |  | <b>01/06/2022-16:44</b> |  |    |
| <b>Cna Holdings Llc</b>                        | <b>Answer/Answer To Amended Complaint of Cna Holdings Llc</b>           | <b>Filing</b> |  | <b>01/06/2022-16:30</b> |  |    |
| <b>Flowserve Corporation</b>                   | <b>NEF(01-06-2022 03:27:53 PM) Answer/Answer To Amended Com...</b>      | <b>Filing</b> |  | <b>01/06/2022-15:42</b> |  |    |
| <b>Rust International Inc</b>                  | <b>Answer/Answer To 2nd Amended Complaint of Rust International</b>     | <b>Filing</b> |  | <b>01/06/2022-15:27</b> |  |    |
| <b>Flowserve Corporation</b>                   | <b>Answer/Answer To 2nd Amended Complaint of Flowserve Corp</b>         | <b>Filing</b> |  | <b>01/06/2022-15:27</b> |  |    |
| <b>Rust Engineering &amp; Construction Inc</b> | <b>Answer/Answer To 2nd Amended Complaint of Rust Engineering &amp;</b> | <b>Filing</b> |  | <b>01/06/2022-15:27</b> |  |    |
| <b>Southern Insulation Inc</b>                 | <b>NEF(01-06-2022 02:31:29 PM) Answer/Answer To Amended Com...</b>      | <b>Filing</b> |  | <b>01/06/2022-14:35</b> |  |    |
| <b>Southern Insulation Inc</b>                 | <b>Answer/Answer To 2nd Amended Complaint of Southern Insulatio</b>     | <b>Filing</b> |  | <b>01/06/2022-14:31</b> |  |  |
| <b>Dana Companies Llc</b>                      | <b>NEF(01-06-2022 01:45:12 PM) Answer/Answer To Amended Com...</b>      | <b>Filing</b> |  | <b>01/06/2022-13:51</b> |  |  |
| <b>Dana Companies Llc</b>                      | <b>Answer/Answer To Amended Complaint of Dana Companies Llc</b>         | <b>Filing</b> |  | <b>01/06/2022-13:45</b> |  |  |
| <b>Riley Power Inc</b>                         | <b>NEF(01-06-2022 01:30:56 PM) Answer/Answer To Amended Com...</b>      | <b>Filing</b> |  | <b>01/06/2022-13:41</b> |  |  |
| <b>Riley Power Inc</b>                         | <b>Answer/Answer To Second Amended Complaint of Riley Power Inc</b>     | <b>Filing</b> |  | <b>01/06/2022-13:30</b> |  |  |
| <b>Spx Cooling Technologies Inc</b>            | <b>NEF(01-04-2022 02:22:48 PM) Answer/Answer To Amended Com...</b>      | <b>Filing</b> |  | <b>01/04/2022-14:25</b> |  |  |
| <b>Spx Cooling Technologies Inc</b>            | <b>Answer/Answer To Amended Complaint of Spx Cooling Technologi</b>     | <b>Filing</b> |  | <b>01/04/2022-14:22</b> |  |  |
| <b>Crane Co</b>                                | <b>NEF(01-04-2022 11:22:34 AM) Answer/Answer To Amended Com...</b>      | <b>Filing</b> |  | <b>01/04/2022-11:27</b> |  |  |
| <b>Crane Co</b>                                | <b>Answer/Answer To 2nd Amended Complaint of Crane Co</b>               | <b>Filing</b> |  | <b>01/04/2022-11:22</b> |  |  |
| <b>Clark Reliance Corporation</b>              | <b>NEF(01-03-2022 12:32:22 PM) Answer/Answer To Amended Com...</b>      | <b>Filing</b> |  | <b>01/04/2022-09:22</b> |  |  |

**EXHIBIT G**

|                                      |                                                                |        |  |                  |  |  |
|--------------------------------------|----------------------------------------------------------------|--------|--|------------------|--|--|
| 4520 Corp Inc                        | NEF(01-03-2022 11:06:00 AM)<br>Answer/Answer To Amended Com... | Filing |  | 01/04/2022-09:14 |  |  |
| Crane Instrumentation & Sampling Inc | NEF(01-03-2022 09:43:04 AM)<br>Answer/Answer To Amended Com... | Filing |  | 01/04/2022-09:07 |  |  |
| Clark Reliance Corporation           | Answer/Answer To Amended Complaint of Clark Reliance Corpora   | Filing |  | 01/03/2022-12:32 |  |  |
| 4520 Corp Inc                        | Answer/Answer To Amended Complaint of 4520 Corp Inc            | Filing |  | 01/03/2022-11:06 |  |  |
| Crane Instrumentation & Sampling Inc | Answer/Answer To Amended Complaint of Crane Instrumentation    | Filing |  | 01/03/2022-09:43 |  |  |
| Park, Isabella                       | ADR/Alternative Dispute Resolution (Workflow)                  | Action |  | 12/31/2021-09:59 |  |  |
| Goodyear Tire & Rubber Company       | NEF(12-30-2021 02:24:41 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/30/2021-14:30 |  |  |
| Goodyear Tire & Rubber Company       | Answer/Answer To Amended Complaint of Goodyear Tire & Rubber   | Filing |  | 12/30/2021-14:24 |  |  |
| Flowserve Corporation                | NEF(12-30-2021 02:06:52 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/30/2021-14:16 |  |  |
| Flowserve Corporation                | Answer/Answer To Amended Complaint Of Flowserve Corporation    | Filing |  | 12/30/2021-14:06 |  |  |
| Clark Reliance Corporation           | NEF(12-29-2021 01:27:33 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/29/2021-13:46 |  |  |
| General Electric Company             | Answer/Answer To Amended Complaint of General Electric Compa   | Filing |  | 12/29/2021-13:27 |  |  |
| Clark Reliance Corporation           | Answer/Answer To Amended Complaint of Clark Reliance Corpora   | Filing |  | 12/29/2021-13:27 |  |  |
| Spirax Sarco Inc                     | Answer/Answer To Amended Complaint of Spirax Sarco Inc         | Filing |  | 12/29/2021-13:27 |  |  |
| Foster Wheeler Energy Corporation    | Answer/Answer To Amended Complaint of Foster Wheeler Energy    | Filing |  | 12/29/2021-13:27 |  |  |
| Becon Construction Company Inc       | NEF(12-28-2021 11:22:46 AM)<br>Answer/Answer To Amended Com... | Filing |  | 12/29/2021-09:19 |  |  |
| Becon Construction Company Inc       | Answer/Answer To Second Amended Complaint of Becon Construct   | Filing |  | 12/28/2021-11:22 |  |  |
| Park, Isabella                       | NEF(12-23-2021 12:58:40 PM)<br>Amended/Amended Summons And ... | Filing |  | 12/23/2021-13:18 |  |  |
| Park, Isabella                       | Amended/2nd Amended Summons And Complaint                      | Filing |  | 12/23/2021-12:58 |  |  |
| Park, Isabella                       | Add Party to Case                                              | Filing |  | 12/23/2021-12:58 |  |  |
| Hok Group Inc                        | NEF(12-22-2021 07:02:15 PM)                                    | Filing |  | 12/23/2021-10:19 |  |  |

**EXHIBIT G**

|                                     |                                                                |        |  |                  |  |  |
|-------------------------------------|----------------------------------------------------------------|--------|--|------------------|--|--|
|                                     | Notice/Notice of Appearance                                    |        |  |                  |  |  |
| Park, Isabella                      | NEF(12-23-2021 09:03:34 AM)<br>Order/Leave to Amend            | Filing |  | 12/23/2021-09:03 |  |  |
| Park, Isabella                      | Order/Leave to Amend                                           | Order  |  | 12/23/2021-09:03 |  |  |
| Hok Group Inc                       | Notice/Notice of Appearance                                    | Filing |  | 12/22/2021-19:02 |  |  |
| Hok Group Inc                       | Answer/Answer To Amended Complaint of Hok Group Inc            | Filing |  | 12/22/2021-19:02 |  |  |
| Park, Isabella                      | NEF(12-22-2021 02:27:40 PM)<br>Order/Approval Of Settlement    | Filing |  | 12/22/2021-14:28 |  |  |
| Park, Isabella                      | Order/Approval Of Settlement                                   | Order  |  | 12/22/2021-14:27 |  |  |
| Rust Engineering & Construction Inc | NEF(12-22-2021 10:16:35 AM)<br>Answer/Answer To Amended Com... | Filing |  | 12/22/2021-10:31 |  |  |
| Rust Engineering & Construction Inc | Answer/Answer To Amended Complaint of Rust Engineering & Con   | Filing |  | 12/22/2021-10:16 |  |  |
| Rust International Inc              | Answer/Answer To First Amended Complaint of Rust Internation   | Filing |  | 12/22/2021-10:16 |  |  |
| Daniel International Corporation    | NEF(12-22-2021 08:32:06 AM)<br>Notice/Notice of Appearance     | Filing |  | 12/22/2021-08:51 |  |  |
| Daniel International Corporation    | Answer/Answer To Amended Complaint of Daniel International C   | Filing |  | 12/22/2021-08:32 |  |  |
| Daniel International Corporation    | Notice/Notice of Appearance                                    | Filing |  | 12/22/2021-08:32 |  |  |
| Park, Isabella                      | NEF(12-17-2021 03:44:00 PM)<br>Motion/Leave to Amend           | Filing |  | 12/17/2021-15:55 |  |  |
| Park, Isabella                      | Add Party to Case                                              | Filing |  | 12/17/2021-15:44 |  |  |
| Park, Keith W                       | Motion/Leave to Amend                                          | Motion |  | 12/17/2021-15:44 |  |  |
| Park, Isabella                      | NEF(12-13-2021 11:40:26 AM)<br>Petition/No Filing Fee          | Filing |  | 12/13/2021-12:03 |  |  |
| Park, Isabella                      | PETITION FOR APPROVAL OF WRONGFUL DEATH AND SUVIVOR SETTLEME   | Filing |  | 12/13/2021-11:40 |  |  |
| Gardner Denver Inc                  | NEF(12-02-2021 10:47:01 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/03/2021-08:13 |  |  |
| Gardner Denver Inc                  | Answer/Answer To Amended Complaint of Gardner Denver Inc       | Filing |  | 12/02/2021-22:47 |  |  |
| Armstrong International Inc         | Answer/Answer To Amended Complaint of Armstrong Internationa   | Filing |  | 12/02/2021-22:47 |  |  |
| Schneider Electric Systems Usa Inc  | Answer/Answer To Amended Complaint of Schneider Electric Sys   | Filing |  | 12/02/2021-22:47 |  |  |

**EXHIBIT G**



|                                |                                                                |        |  |                  |  |                                                                                       |
|--------------------------------|----------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
| Great Barrier Insulation Co    | NEF(12-02-2021 04:52:20 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/02/2021-16:55 |  |     |
| Great Barrier Insulation Co    | Answer/Answer To Amended Complaint of Great Barrier Insulati   | Filing |  | 12/02/2021-16:52 |  |    |
| Robertshaw Controls Co         | NEF(12-02-2021 03:57:56 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/02/2021-16:01 |  |    |
| 3M Company                     | NEF(12-02-2021 03:47:11 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/02/2021-15:58 |  |    |
| Robertshaw Controls Co         | Answer/Answer To Amended Complaint of Robertshaw Controls Co   | Filing |  | 12/02/2021-15:57 |  |    |
| 3M Company                     | Answer/Answer To Amended Complaint of 3M Company               | Filing |  | 12/02/2021-15:47 |  |    |
| Clark Reliance Corporation     | NEF(12-02-2021 02:27:51 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/02/2021-14:32 |  |    |
| Clark Reliance Corporation     | Answer/Answer To Amended Complaint of Clark Reliance Corpora   | Filing |  | 12/02/2021-14:27 |  |    |
| Covil Corporation              | NEF(12-02-2021 01:39:59 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/02/2021-13:56 |  |    |
| Zurn Industries Llc            | NEF(12-02-2021 01:36:47 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/02/2021-13:56 |  |  |
| York International Corporation | NEF(12-02-2021 01:33:30 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/02/2021-13:55 |  |  |
| William Powell Company         | NEF(12-02-2021 01:30:44 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/02/2021-13:54 |  |  |
| Grinnell Llc                   | NEF(12-02-2021 01:28:32 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/02/2021-13:53 |  |  |
| Covil Corporation              | Answer/Answer To Amended Complaint of Covil Corporation        | Filing |  | 12/02/2021-13:39 |  |  |
| Zurn Industries Llc            | Answer/Answer To Amended Complaint of Zurn Industries Llc      | Filing |  | 12/02/2021-13:36 |  |  |
| York International Corporation | Answer/Answer To Amended Complaint of York International Cor   | Filing |  | 12/02/2021-13:33 |  |  |
| Goulds Pumps Incorporated      | NEF(12-02-2021 01:26:26 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/02/2021-13:32 |  |  |
| Ecodyne Corporation            | NEF(12-02-2021 01:22:51 PM)<br>Answer/Answer To Amended Com... | Filing |  | 12/02/2021-13:31 |  |  |
| William Powell Company         | Answer/Answer To Amended Complaint of William Powell Company   | Filing |  | 12/02/2021-13:30 |  |  |

**EXHIBIT G**



|                                 |                                                              |        |  |                  |  |                                                                                       |
|---------------------------------|--------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
| Grinnell Llc                    | Answer/Answer To Amended Complaint of Grinnell Llc           | Filing |  | 12/02/2021-13:28 |  |     |
| Vistra Corp                     | NEF(12-02-2021 01:12:41 PM) Answer/Answer                    | Filing |  | 12/02/2021-13:27 |  |    |
| Goulds Pumps Incorporated       | Answer/Answer To Amended Complaint of Goulds Pumps Incorpora | Filing |  | 12/02/2021-13:26 |  |    |
| Carrier Corporation             | NEF(12-02-2021 01:12:16 PM) Answer/Answer To Amended Com...  | Filing |  | 12/02/2021-13:24 |  |    |
| Vistra Corp                     | NEF(12-02-2021 01:10:32 PM) Motion/Dismiss                   | Filing |  | 12/02/2021-13:23 |  |    |
| Ecodyne Corporation             | Answer/Answer To Amended Complaint of Ecodyne Corporation    | Filing |  | 12/02/2021-13:22 |  |    |
| Carboline Company               | NEF(12-02-2021 01:09:53 PM) Answer/Answer To Amended Com...  | Filing |  | 12/02/2021-13:19 |  |    |
| Vistra Intermediate Company Llc | NEF(12-02-2021 01:02:02 PM) Answer/Answer                    | Filing |  | 12/02/2021-13:14 |  |    |
| Vistra Intermediate Company Llc | NEF(12-02-2021 12:59:52 PM) Motion/Dismiss                   | Filing |  | 12/02/2021-13:12 |  |    |
| Vistra Corp                     | Answer/Answer To First Amended Complaint Of Vistra Corp      | Filing |  | 12/02/2021-13:12 |  |    |
| Carrier Corporation             | Answer/Answer To Amended Complaint of Carrier Corporation    | Filing |  | 12/02/2021-13:12 |  |   |
| Vistra Corp                     | Motion/Dismiss With Prejudice                                | Motion |  | 12/02/2021-13:10 |  |  |
| Carboline Company               | Answer/Answer To Amended Complaint of Carboline Company      | Filing |  | 12/02/2021-13:09 |  |  |
| Vistra Corp                     | NEF(12-02-2021 01:07:49 PM) Notice/Notice of Appearance      | Filing |  | 12/02/2021-13:08 |  |  |
| Vistra Corp                     | Notice/Notice of Appearance                                  | Filing |  | 12/02/2021-13:07 |  |  |
| Vistra Intermediate Company Llc | Answer/Answer of Vistra Intermediate Company Llc             | Filing |  | 12/02/2021-13:02 |  |  |
| Vistra Intermediate Company Llc | Motion/Dismiss And The Alternative Motion For More Definite  | Motion |  | 12/02/2021-12:59 |  |  |
| Riley Power Inc                 | NEF(12-02-2021 12:22:57 PM) Answer/Answer To Amended Com...  | Filing |  | 12/02/2021-12:31 |  |  |
| Dana Companies Llc              | NEF(12-02-2021 12:17:55 PM) Answer/Answer To Amended Com...  | Filing |  | 12/02/2021-12:30 |  |  |
| Riley Power Inc                 | Answer/Answer To Amended Complaint of Riley Power Inc        | Filing |  | 12/02/2021-12:22 |  |  |
| Dana Companies Llc              | Answer/Answer To Amended Complaint of DCO Llc's              | Filing |  | 12/02/2021-12:17 |  |  |
| Cna Holdings Llc                | NEF(12-02-2021 12:09:03 PM)                                  | Filing |  | 12/02/2021-12:16 |  |  |

**EXHIBIT G**

|                                      | Answer/Answer                                                |        |  |                  |  |                                                                                       |
|--------------------------------------|--------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
| Cna Holdings Llc                     | Answer/Answer To Amended Complaint of Cna Holdings Llc       | Filing |  | 12/02/2021-12:09 |  |    |
| Henry Pratt Company Llc              | NEF(12-02-2021 10:43:43 AM) Answer/Answer To Amended Com...  | Filing |  | 12/02/2021-10:47 |  |    |
| Fisher Controls International Llc    | Answer/Answer To Amended Complaint of Fisher Controls Intern | Filing |  | 12/02/2021-10:43 |  |    |
| Henry Pratt Company Llc              | Answer/Answer To Amended Complaint of Henry Pratt Company LI | Filing |  | 12/02/2021-10:43 |  |    |
| Fmc Corporation                      | NEF(12-02-2021 09:02:02 AM) Answer/Answer To Amended Com...  | Filing |  | 12/02/2021-09:07 |  |    |
| Sterling Fluid Systems Usa Llc       | Answer/Answer To Amended Complaint of Sterling Fluid Systems | Filing |  | 12/02/2021-09:02 |  |    |
| Union Carbide Corporation            | Answer/Answer To Amended Complaint of Union Carbide Corporat | Filing |  | 12/02/2021-09:02 |  |    |
| Fluor Daniel Services Corporation    | Answer/Answer To Amended Complaint of Fluor Daniel Services  | Filing |  | 12/02/2021-09:02 |  |    |
| Fluor Constructors International Inc | Answer/Answer To Amended Complaint of Fluor Constructors Int | Filing |  | 12/02/2021-09:02 |  |    |
| Fluor Enterprises Inc                | Answer/Answer To Amended Complaint of Fluor Enterprises Inc  | Filing |  | 12/02/2021-09:02 |  |    |
| Fmc Corporation                      | Answer/Answer To Amended Complaint of Fmc Corporation        | Filing |  | 12/02/2021-09:02 |  |  |
| Park, Isabella                       | NEF(12-01-2021 04:22:58 PM) Order/Scheduling Order           | Filing |  | 12/01/2021-16:31 |  |  |
| Southern Insulation Inc              | NEF(12-01-2021 04:22:16 PM) Answer/Amended Answer            | Filing |  | 12/01/2021-16:28 |  |  |
| Park, Isabella                       | Docketing Order                                              | Order  |  | 12/01/2021-16:22 |  |  |
| Southern Insulation Inc              | Amended Answer To Plaintiff's First Amended Complaint of Sou | Filing |  | 12/01/2021-16:22 |  |  |
| Goodyear Tire & Rubber Company       | NEF(12-01-2021 04:11:07 PM) Answer/Answer To Amended Com...  | Filing |  | 12/01/2021-16:21 |  |  |
| Goodyear Tire & Rubber Company       | Answer/Answer To First Amended Complaint of Goodyear Tire &  | Filing |  | 12/01/2021-16:11 |  |  |
| Spx Cooling Technologies Inc         | NEF(12-01-2021 03:28:26 PM) Answer/Answer To Amended Com...  | Filing |  | 12/01/2021-15:47 |  |  |
| Flowserve Corporation                | NEF(12-01-2021 03:16:15 PM) Answer/Answer To Amended Com...  | Filing |  | 12/01/2021-15:45 |  |  |
| Spx Cooling Technologies Inc         | Answer/Answer To First Amended                               | Filing |  | 12/01/2021-15:28 |  |  |

**EXHIBIT G**

|                                      |                                                              |        |  |                  |  |                                                                                       |
|--------------------------------------|--------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
|                                      | Complaint of Spx Cooling Tech                                |        |  |                  |  |                                                                                       |
| Flowserve Corporation                | Answer/Answer To Amended Complaint of Flowserve Corporation  | Filing |  | 12/01/2021-15:16 |  |    |
| Bwip Inc                             | NEF(12-01-2021 01:35:49 PM) Answer/Answer To Amended Com...  | Filing |  | 12/01/2021-13:44 |  |    |
| Bwip Inc                             | Answer/Answer To Amended Complaint of Bwip Inc               | Filing |  | 12/01/2021-13:35 |  |    |
| Southern Insulation Inc              | NEF(12-01-2021 11:26:09 AM) Answer/Answer                    | Filing |  | 12/01/2021-11:32 |  |    |
| Southern Insulation Inc              | Answer/Answer Of Southern Insulation Inc                     | Filing |  | 12/01/2021-11:26 |  |    |
| Great Barrier Insulation Co          | NEF(11-30-2021 12:55:59 PM) Notice/Notice of Appearance      | Filing |  | 11/30/2021-12:56 |  |    |
| Great Barrier Insulation Co          | Notice/Notice of Appearance                                  | Filing |  | 11/30/2021-12:55 |  |                                                                                       |
| Great Barrier Insulation Co          | NEF(11-30-2021 12:54:24 PM) Notice/Notice of Appearance      | Filing |  | 11/30/2021-12:55 |  |    |
| Great Barrier Insulation Co          | Notice/Notice of Appearance                                  | Filing |  | 11/30/2021-12:54 |  |                                                                                       |
| Becon Construction Company Inc       | NEF(11-30-2021 10:24:39 AM) Answer/Answer To Amended Com...  | Filing |  | 11/30/2021-10:32 |  |    |
| Becon Construction Company Inc       | Answer/Answer To First Amended Complaint by Becon Constructi | Filing |  | 11/30/2021-10:24 |  |  |
| Crane Co                             | NEF(11-29-2021 11:32:50 AM) Answer/Answer To Amended Com...  | Filing |  | 11/29/2021-12:34 |  |  |
| Crane Co                             | Answer/Answer To Amended Complaint of Crane Co               | Filing |  | 11/29/2021-11:32 |  |  |
| Spirax Sarco Inc                     | NEF(11-24-2021 01:32:21 PM) Answer/Answer                    | Filing |  | 11/24/2021-13:46 |  |  |
| Spirax Sarco Inc                     | Answer/Answer of Spirax Sarco Inc                            | Filing |  | 11/24/2021-13:32 |  |  |
| Clark Reliance Corporation           | Answer/Answer of Clark Reliance Corporation                  | Filing |  | 11/24/2021-13:32 |  |  |
| General Electric Company             | Answer/Answer of General Electric Company                    | Filing |  | 11/24/2021-13:32 |  |  |
| Foster Wheeler Energy Corporation    | Answer/Answer of Foster Wheeler Energy Corporation           | Filing |  | 11/24/2021-13:32 |  |  |
| 4520 Corp Inc                        | NEF(11-22-2021 10:03:14 AM) Answer/Answer To Amended Com...  | Filing |  | 11/22/2021-10:10 |  |  |
| 4520 Corp Inc                        | Answer/Answer To Amended Complaint                           | Filing |  | 11/22/2021-10:03 |  |  |
| Crane Instrumentation & Sampling Inc | NEF(11-18-2021 08:56:37 AM) Answer/Answer To Amended Com...  | Filing |  | 11/18/2021-09:34 |  |  |

ELECTRONICALLY FILED - 2023 Aug 21 5:04 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

**EXHIBIT G**

|                                      |                                                             |        |  |                  |  |  |
|--------------------------------------|-------------------------------------------------------------|--------|--|------------------|--|--|
| Crane Instrumentation & Sampling Inc | Answer/Answer To Amended Complaint of Crane Instrumentation | Filing |  | 11/18/2021-08:56 |  |  |
| Park, Isabella                       | NEF(11-17-2021 08:36:54 AM) Amended/Amended Summons And ... | Filing |  | 11/17/2021-08:59 |  |  |
| Park, Isabella                       | Amended/Amended Summons And Complaint                       | Filing |  | 11/17/2021-08:36 |  |  |
| Park, Isabella                       | Add Party to Case                                           | Filing |  | 11/17/2021-08:36 |  |  |
| Park, Isabella                       | Add Party to Case                                           | Filing |  | 11/17/2021-08:36 |  |  |
| Park, Isabella                       | NEF(11-12-2021 11:47:14 AM) Order/Amend                     | Filing |  | 11/12/2021-13:05 |  |  |
| Park, Isabella                       | Order/Amend                                                 | Order  |  | 11/12/2021-11:47 |  |  |
| Armstrong International Inc          | NEF(11-10-2021 11:26:26 AM) Notice/Notice of Appearance     | Filing |  | 11/10/2021-11:27 |  |  |
| Armstrong International Inc          | Notice/Notice of Appearance                                 | Filing |  | 11/10/2021-11:26 |  |  |
| Park, Isabella                       | NEF(11-08-2021 10:57:02 AM) Motion/Alter and/or Amend       | Filing |  | 11/08/2021-11:18 |  |  |
| Park, Isabella                       | Motion/Alter and/or Amend                                   | Motion |  | 11/08/2021-10:57 |  |  |
| Clark Reliance Corporation           | NEF(10-01-2021 04:00:19 PM) Notice/Notice of Appearance     | Filing |  | 10/04/2021-09:09 |  |  |
| Clark Reliance Corporation           | NEF(10-01-2021 04:02:13 PM) Notice/Notice of Appearance     | Filing |  | 10/01/2021-16:02 |  |  |
| Clark Reliance Corporation           | Notice/Notice of Appearance                                 | Filing |  | 10/01/2021-16:02 |  |  |
| Clark Reliance Corporation           | Notice/Notice of Appearance                                 | Filing |  | 10/01/2021-16:00 |  |  |
| Clark Reliance Corporation           | Answer/Answer of Clark Reliance Corporation                 | Filing |  | 10/01/2021-16:00 |  |  |
| Clark Reliance Corporation           | NEF(09-09-2021 05:52:56 PM) Motion/Dismiss                  | Filing |  | 09/10/2021-08:37 |  |  |
| Clark Reliance Corporation           | Motion/Dismiss                                              | Motion |  | 09/09/2021-17:52 |  |  |
| Clark Reliance Corporation           | NEF(09-09-2021 05:51:36 PM) Notice/Notice of Appearance     | Filing |  | 09/09/2021-17:52 |  |  |
| Clark Reliance Corporation           | Notice/Notice of Appearance                                 | Filing |  | 09/09/2021-17:51 |  |  |
| Park, Isabella                       | NEF(08-19-2021 11:53:34 AM) Stipulation Of Dismissal        | Filing |  | 08/19/2021-12:19 |  |  |
| Park, Isabella                       | Stipulation Of Dismissal as to Hills McCanna Llc            | Filing |  | 08/19/2021-11:53 |  |  |
| Armstrong International Inc          | NEF(08-06-2021 07:18:28 PM) Notice/Notice of Appearance     | Filing |  | 08/06/2021-19:18 |  |  |

**EXHIBIT G**

|                                      |                                                            |        |  |                  |  |  |
|--------------------------------------|------------------------------------------------------------|--------|--|------------------|--|--|
| Armstrong International Inc          | Notice/Notice of Appearance                                | Filing |  | 08/06/2021-19:18 |  |  |
| Foster Wheeler Energy Corporation    | NEF(07-30-2021 05:28:47 PM)<br>Answer/Answer               | Filing |  | 08/02/2021-08:28 |  |  |
| General Electric Company             | Answer Of General Electric Company                         | Filing |  | 07/30/2021-17:28 |  |  |
| Foster Wheeler Energy Corporation    | Answer Of Foster Wheeler Energy Corporation                | Filing |  | 07/30/2021-17:28 |  |  |
| Crane Instrumentation & Sampling Inc | NEF(07-14-2021 09:36:06 AM)<br>Notice/Notice of Appearance | Filing |  | 07/14/2021-09:40 |  |  |
| Crane Instrumentation & Sampling Inc | Notice/Notice of Appearance                                | Filing |  | 07/14/2021-09:36 |  |  |
| Crane Instrumentation & Sampling Inc | Answer/Answer of Crane Instrumentation & Sampling Inc      | Filing |  | 07/14/2021-09:36 |  |  |
| Gardner Denver Inc                   | NEF(07-12-2021 10:43:11 PM)<br>Notice/Notice of Appearance | Filing |  | 07/13/2021-08:45 |  |  |
| Armstrong International Inc          | Notice/Notice of Appearance                                | Filing |  | 07/12/2021-22:43 |  |  |
| Gardner Denver Inc                   | Answer Of Gardner Denver Inc                               | Filing |  | 07/12/2021-22:43 |  |  |
| Armstrong International Inc          | Answer Of Armstrong International Inc                      | Filing |  | 07/12/2021-22:43 |  |  |
| Schneider Electric Systems Usa Inc   | Answer of Schneider Electric Systems Usa Inc               | Filing |  | 07/12/2021-22:43 |  |  |
| Sterling Fluid Systems Usa Llc       | NEF(07-12-2021 09:01:14 AM)<br>Notice/Notice of Appearance | Filing |  | 07/12/2021-10:51 |  |  |
| Spirax Sarco Inc                     | NEF(07-09-2021 05:52:16 PM)<br>Answer/Answer               | Filing |  | 07/12/2021-10:10 |  |  |
| General Electric Company             | NEF(07-09-2021 05:50:42 PM)<br>Motion/Dismiss              | Filing |  | 07/12/2021-10:09 |  |  |
| Foster Wheeler Energy Corporation    | NEF(07-09-2021 05:47:52 PM)<br>Motion/Dismiss              | Filing |  | 07/12/2021-10:08 |  |  |
| Fmc Corporation                      | NEF(07-12-2021 09:03:49 AM)<br>Notice/Notice of Appearance | Filing |  | 07/12/2021-09:04 |  |  |
| Fmc Corporation                      | Notice/Notice of Appearance                                | Filing |  | 07/12/2021-09:03 |  |  |
| Fmc Corporation                      | NEF(07-12-2021 09:02:29 AM)<br>Notice/Notice of Appearance | Filing |  | 07/12/2021-09:03 |  |  |
| Fmc Corporation                      | Notice/Notice of Appearance                                | Filing |  | 07/12/2021-09:02 |  |  |
| Fmc Corporation                      | Notice/Notice of Appearance                                | Filing |  | 07/12/2021-09:01 |  |  |
| Sterling Fluid Systems Usa Llc       | Answer/Answer of Sterling Fluid Systems Usa Llc            | Filing |  | 07/12/2021-09:01 |  |  |
| Union Carbide Corporation            | Answer/Answer of Union Carbide Corporation                 | Filing |  | 07/12/2021-09:01 |  |  |
| Fmc Corporation                      | Answer/Answer of Fmc Corporation & Peerless Pump           | Filing |  | 07/12/2021-09:01 |  |  |

**EXHIBIT G**

|                                           |                                                            |        |  |                  |  |  |
|-------------------------------------------|------------------------------------------------------------|--------|--|------------------|--|--|
| Fluor Constructors International Inc      | Answer/Answer of Fluor Constructors International Inc      | Filing |  | 07/12/2021-09:01 |  |  |
| Fluor Enterprises Inc                     | Answer/Answer of Fluor Enterprises Inc                     | Filing |  | 07/12/2021-09:01 |  |  |
| Fluor Daniel Services Corporation         | Answer/Answer of Fluor Daniel Services Corporation         | Filing |  | 07/12/2021-09:01 |  |  |
| United States Fidelity & Guaranty Company | NEF(07-09-2021 03:59:57 PM) Notice/Notice of Appearance    | Filing |  | 07/12/2021-08:58 |  |  |
| Spirax Sarco Inc                          | Answer/Answer of Spirax Sarco Inc                          | Filing |  | 07/09/2021-17:52 |  |  |
| General Electric Company                  | Motion/Dismiss for Lack of Personal Jurisdiction           | Motion |  | 07/09/2021-17:50 |  |  |
| Foster Wheeler Energy Corporation         | Motion/Dismiss for Lack of Personal Jurisdiction           | Motion |  | 07/09/2021-17:47 |  |  |
| Foster Wheeler Energy Corporation         | NEF(07-09-2021 05:46:27 PM) Notice/Notice of Appearance    | Filing |  | 07/09/2021-17:47 |  |  |
| Foster Wheeler Energy Corporation         | Notice/Notice of Appearance                                | Filing |  | 07/09/2021-17:46 |  |  |
| Zurn Industries Llc                       | NEF(07-09-2021 03:42:14 PM) Answer/Answer                  | Filing |  | 07/09/2021-16:03 |  |  |
| United States Fidelity & Guaranty Company | Notice/Notice of Appearance                                | Filing |  | 07/09/2021-15:59 |  |  |
| United States Fidelity & Guaranty Company | Motion/Dismiss                                             | Motion |  | 07/09/2021-15:59 |  |  |
| United States Fidelity & Guaranty Company | Memo/Memo in Support                                       | Filing |  | 07/09/2021-15:59 |  |  |
| United States Fidelity & Guaranty Company | Answer/Answer of United States Fidelity & Guaranty Company | Filing |  | 07/09/2021-15:59 |  |  |
| York International Corporation            | NEF(07-09-2021 03:40:21 PM) Answer/Answer                  | Filing |  | 07/09/2021-15:50 |  |  |
| Zurn Industries Llc                       | Answer/Answer of Zurn Industries Llc                       | Filing |  | 07/09/2021-15:42 |  |  |
| Grinnell Llc                              | NEF(07-09-2021 03:35:38 PM) Answer/Answer                  | Filing |  | 07/09/2021-15:42 |  |  |
| William Powell Company                    | NEF(07-09-2021 03:37:30 PM) Answer/Answer                  | Filing |  | 07/09/2021-15:41 |  |  |
| York International Corporation            | Answer/Answer of York International Corporation            | Filing |  | 07/09/2021-15:40 |  |  |
| Goulds Pumps Incorporated                 | NEF(07-09-2021 03:34:08 PM) Answer/Answer                  | Filing |  | 07/09/2021-15:38 |  |  |
| William Powell Company                    | Answer/Answer of William Powell Company                    | Filing |  | 07/09/2021-15:37 |  |  |
| Ecodyne Corporation                       | NEF(07-09-2021 03:31:36 PM) Answer/Answer                  | Filing |  | 07/09/2021-15:37 |  |  |
| Carrier Corporation                       | NEF(07-09-2021 03:29:41 PM) Answer/Answer                  | Filing |  | 07/09/2021-15:36 |  |  |
| Grinnell Llc                              | Answer/Answer of Grinnell Llc                              | Filing |  | 07/09/2021-15:35 |  |  |

**EXHIBIT G**

|                                   |                                                            |        |  |                  |  |                                                                                       |
|-----------------------------------|------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
| Carboline Company                 | NEF(07-09-2021 03:23:51 PM)<br>Answer/Answer               | Filing |  | 07/09/2021-15:34 |  |     |
| Goulds Pumps Incorporated         | Answer/Answer of Goulds Pumps Incorporated                 | Filing |  | 07/09/2021-15:34 |  |    |
| Ecodyne Corporation               | Answer/Answer of Ecodyne Corporation                       | Filing |  | 07/09/2021-15:31 |  |    |
| Carrier Corporation               | Answer/Answer of Carrier Corporation                       | Filing |  | 07/09/2021-15:29 |  |    |
| Carboline Company                 | Answer/Answer of Carboline Company                         | Filing |  | 07/09/2021-15:23 |  |    |
| Goodyear Tire & Rubber Company    | NEF(07-09-2021 02:35:20 PM)<br>Notice/Notice of Appearance | Filing |  | 07/09/2021-15:06 |  |    |
| Henry Pratt Company Llc           | NEF(07-09-2021 02:15:39 PM)<br>Notice/Notice of Appearance | Filing |  | 07/09/2021-14:55 |  |    |
| Goodyear Tire & Rubber Company    | Notice/Notice of Appearance                                | Filing |  | 07/09/2021-14:35 |  |                                                                                       |
| Goodyear Tire & Rubber Company    | Answer/Answer and Jury Demand of Goodyear Tire & Rubber Co | Filing |  | 07/09/2021-14:35 |  |    |
| Fisher Controls International Llc | Answer/Answer of Fisher Controls International Llc         | Filing |  | 07/09/2021-14:15 |  |    |
| Henry Pratt Company Llc           | Answer/Answer of Henry Pratt Company Llc                   | Filing |  | 07/09/2021-14:15 |  |    |
| Henry Pratt Company Llc           | Notice/Notice of Appearance                                | Filing |  | 07/09/2021-14:15 |  |                                                                                       |
| Covil Corporation                 | NEF(07-09-2021 11:05:55 AM)<br>Answer/Answer               | Filing |  | 07/09/2021-11:23 |  |  |
| Riley Power Inc                   | NEF(07-09-2021 10:19:09 AM)<br>Answer/Answer               | Filing |  | 07/09/2021-11:10 |  |  |
| Vistra Intermediate Company Llc   | NEF(07-09-2021 10:12:13 AM)<br>Answer/Answer               | Filing |  | 07/09/2021-11:10 |  |  |
| Vistra Intermediate Company Llc   | NEF(07-09-2021 10:08:36 AM)<br>Motion/Dismiss              | Filing |  | 07/09/2021-11:08 |  |  |
| Covil Corporation                 | Answer/Answer of Covil Corporation                         | Filing |  | 07/09/2021-11:05 |  |  |
| Cna Holdings Llc                  | NEF(07-09-2021 10:14:33 AM)<br>Answer/Answer               | Filing |  | 07/09/2021-11:05 |  |  |
| 3M Company                        | NEF(07-09-2021 09:38:35 AM)<br>Notice/Notice of Appearance | Filing |  | 07/09/2021-10:22 |  |  |
| Riley Power Inc                   | Answer/Answer of Riley Power Inc                           | Filing |  | 07/09/2021-10:19 |  |  |
| Cna Holdings Llc                  | Answer/Answer of Cna Holdings Llc & Celanese Corp          | Filing |  | 07/09/2021-10:14 |  |  |
| Vistra Intermediate Company Llc   | Answer/Answer of Vistra Intermediate Company Llc           | Filing |  | 07/09/2021-10:12 |  |  |
| Vistra Intermediate Company Llc   | Motion/Dismiss                                             | Motion |  | 07/09/2021-10:08 |  |  |
| 3M Company                        | Answer/Answer of 3M Company                                | Filing |  | 07/09/2021-09:38 |  |  |

ELECTRONICALLY FILED -- 2023 Aug 21 5:04 PM -- RICHLAND -- COMMON PLEAS -- CASE#2023CP4001759

**EXHIBIT G**



|                                       |                                                                    |               |  |                         |  |                                                                                       |
|---------------------------------------|--------------------------------------------------------------------|---------------|--|-------------------------|--|---------------------------------------------------------------------------------------|
| <b>3M Company</b>                     | <b>Notice/Notice of Appearance</b>                                 | <b>Filing</b> |  | <b>07/09/2021-09:38</b> |  |                                                                                       |
| <b>Bwip Inc</b>                       | <b>NEF(07-09-2021 08:25:18 AM) Answer/Answer</b>                   | <b>Filing</b> |  | <b>07/09/2021-09:19</b> |  |    |
| <b>Bwip Inc</b>                       | <b>Answer/Answer of BW/IP Inc</b>                                  | <b>Filing</b> |  | <b>07/09/2021-08:25</b> |  |    |
| <b>Bwip Inc</b>                       | <b>NEF(07-09-2021 08:16:56 AM) Notice/Notice of Appearance</b>     | <b>Filing</b> |  | <b>07/09/2021-08:17</b> |  |    |
| <b>Bwip Inc</b>                       | <b>Notice/Notice of Appearance</b>                                 | <b>Filing</b> |  | <b>07/09/2021-08:16</b> |  |                                                                                       |
| <b>Bwip Inc</b>                       | <b>NEF(07-09-2021 08:15:33 AM) Notice/Notice of Appearance</b>     | <b>Filing</b> |  | <b>07/09/2021-08:16</b> |  |    |
| <b>Bwip Inc</b>                       | <b>Notice/Notice of Appearance</b>                                 | <b>Filing</b> |  | <b>07/09/2021-08:15</b> |  |                                                                                       |
| <b>Bwip Inc</b>                       | <b>NEF(07-09-2021 08:14:14 AM) Notice/Notice of Appearance</b>     | <b>Filing</b> |  | <b>07/09/2021-08:14</b> |  |    |
| <b>Bwip Inc</b>                       | <b>Notice/Notice of Appearance</b>                                 | <b>Filing</b> |  | <b>07/09/2021-08:14</b> |  |                                                                                       |
| <b>Becon Construction Company Inc</b> | <b>NEF(07-08-2021 10:45:57 AM) Notice/Notice of Appearance</b>     | <b>Filing</b> |  | <b>07/08/2021-11:08</b> |  |    |
| <b>Becon Construction Company Inc</b> | <b>Notice/Notice of Appearance</b>                                 | <b>Filing</b> |  | <b>07/08/2021-10:45</b> |  |                                                                                       |
| <b>Becon Construction Company Inc</b> | <b>Answer/Answer of Becon Construction Company Inc</b>             | <b>Filing</b> |  | <b>07/08/2021-10:45</b> |  |    |
| <b>Robertshaw Controls Co</b>         | <b>NEF(07-08-2021 09:25:27 AM) Notice/Notice of Appearance</b>     | <b>Filing</b> |  | <b>07/08/2021-10:02</b> |  |  |
| <b>Robertshaw Controls Co</b>         | <b>Notice/Notice of Appearance</b>                                 | <b>Filing</b> |  | <b>07/08/2021-09:25</b> |  |                                                                                       |
| <b>Robertshaw Controls Co</b>         | <b>Answer/Answer of Robertshaw Controls Co</b>                     | <b>Filing</b> |  | <b>07/08/2021-09:25</b> |  |  |
| <b>Spx Cooling Technologies Inc</b>   | <b>NEF(07-07-2021 09:36:49 AM) Answer/Answer</b>                   | <b>Filing</b> |  | <b>07/07/2021-12:12</b> |  |  |
| <b>Spx Cooling Technologies Inc</b>   | <b>Answer/Answer of Spx Cooling Technologies Inc</b>               | <b>Filing</b> |  | <b>07/07/2021-09:36</b> |  |  |
| <b>Dana Companies Llc</b>             | <b>NEF(07-06-2021 12:32:31 PM) Answer/Answer</b>                   | <b>Filing</b> |  | <b>07/06/2021-12:35</b> |  |  |
| <b>Dana Companies Llc</b>             | <b>Answer/Answer of Dana Companies Llc (DCO LLC)</b>               | <b>Filing</b> |  | <b>07/06/2021-12:32</b> |  |  |
| <b>Brenntag Specialties Llc</b>       | <b>NEF(07-02-2021 08:52:47 AM) Notice/Notice of Appearance</b>     | <b>Filing</b> |  | <b>07/02/2021-18:56</b> |  |  |
| <b>Brenntag Specialties Llc</b>       | <b>Notice/Notice of Appearance</b>                                 | <b>Filing</b> |  | <b>07/02/2021-08:52</b> |  |                                                                                       |
| <b>Brenntag Specialties Llc</b>       | <b>Stipulation Of Dismissal as to Brenntag Specialties Llc and</b> | <b>Filing</b> |  | <b>07/02/2021-08:52</b> |  |  |
| <b>Southern Insulation Inc</b>        | <b>NEF(07-01-2021 01:58:48 PM) Notice/Notice of Appearance</b>     | <b>Filing</b> |  | <b>07/01/2021-14:10</b> |  |  |

**EXHIBIT G**



|                                     |                                                             |        |  |                  |  |                                                                                       |
|-------------------------------------|-------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
| Southern Insulation Inc             | Notice/Notice of Appearance                                 | Filing |  | 07/01/2021-13:58 |  |                                                                                       |
| Southern Insulation Inc             | Answer of Southern Insulation Inc                           | Filing |  | 07/01/2021-13:58 |  |    |
| 4520 Corp Inc                       | NEF(06-30-2021 11:59:21 AM) Notice/Notice of Appearance     | Filing |  | 06/30/2021-12:43 |  |    |
| 4520 Corp Inc                       | Notice/Notice of Appearance                                 | Filing |  | 06/30/2021-11:59 |  |                                                                                       |
| 4520 Corp Inc                       | Answer/Answer of 4520 Corp Inc                              | Filing |  | 06/30/2021-11:59 |  |    |
| Metropolitan Life Insurance Company | NEF(06-29-2021 02:26:19 PM) Notice/Notice of Appearance     | Filing |  | 06/29/2021-14:30 |  |    |
| Metropolitan Life Insurance Company | Notice/Notice of Appearance                                 | Filing |  | 06/29/2021-14:26 |  |                                                                                       |
| Metropolitan Life Insurance Company | Answer Of Metropolitan Life Insurance Company               | Filing |  | 06/29/2021-14:26 |  |    |
| Crane Co                            | NEF(06-28-2021 02:53:37 PM) Answer/Answer                   | Filing |  | 06/28/2021-15:13 |  |    |
| Crane Co                            | Notice/Notice of Appearance                                 | Filing |  | 06/28/2021-14:53 |  |                                                                                       |
| Crane Co                            | Answer Of Crane Co                                          | Filing |  | 06/28/2021-14:53 |  |    |
| Flowserve Corporation               | NEF(06-24-2021 04:40:47 PM) Notice/Notice of Appearance     | Filing |  | 06/24/2021-16:52 |  |    |
| Flowserve Corporation               | Notice/Notice of Appearance                                 | Filing |  | 06/24/2021-16:40 |  |                                                                                       |
| Flowserve Corporation               | Answer Of Flowserve Corporation fka Duriron Company Inc     | Filing |  | 06/24/2021-16:40 |  |  |
| General Electric Company            | NEF(06-23-2021 06:22:15 PM) Notice/Notice of Appearance     | Filing |  | 06/23/2021-18:22 |  |  |
| General Electric Company            | Notice/Notice of Appearance                                 | Filing |  | 06/23/2021-18:22 |  |                                                                                       |
| Spx Cooling Technologies Inc        | NEF(06-22-2021 02:48:20 PM) Order/Pro Hac Vice              | Filing |  | 06/22/2021-14:48 |  |  |
| Spx Cooling Technologies Inc        | Order/Pro Hac Vice/Peter N. Borden                          | Order  |  | 06/22/2021-14:48 |  |  |
| Carboline Company                   | NEF(06-21-2021 04:13:42 PM) Notice/Notice of Appearance     | Filing |  | 06/21/2021-16:15 |  |  |
| Carboline Company                   | Notice/Notice of Appearance                                 | Filing |  | 06/21/2021-16:13 |  |                                                                                       |
| Park, Isabella                      | NEF(06-21-2021 12:59:33 PM) Letter/Letter                   | Filing |  | 06/21/2021-12:59 |  |  |
| Park, Isabella                      | Supreme Court Letter admitting pro hac vice for Borden      | Filing |  | 06/21/2021-12:59 |  |  |
| Spx Cooling Technologies Inc        | NEF(06-18-2021 11:50:45 AM) Motion/Admission Pro Hac Vic... | Filing |  | 06/18/2021-12:00 |  |  |
| Spx Cooling Technologies Inc        | Notice/Notice of Appearance                                 | Filing |  | 06/18/2021-11:50 |  |                                                                                       |
| Spx Cooling Technologies Inc        | Application/Application                                     | Filing |  | 06/18/2021-11:50 |  |  |

**EXHIBIT G**

|                                 |                                                              |        |  |                  |  |  |
|---------------------------------|--------------------------------------------------------------|--------|--|------------------|--|--|
| Spx Cooling Technologies Inc    | Motion/Admission Pro Hac Vice                                | Motion |  | 06/18/2021-11:50 |  |  |
| Starr Davis Company Of Sc Inc   | NEF(06-17-2021 02:16:06 PM)<br>Answer/Answer                 | Filing |  | 06/17/2021-14:20 |  |  |
| Starr Davis Company Of Sc Inc   | Answer/Answer of Starr Davis Company Of Sc Inc & Starr Davis | Filing |  | 06/17/2021-14:16 |  |  |
| Cna Holdings Llc                | NEF(06-14-2021 10:22:54 AM)<br>Notice/Notice of Appearance   | Filing |  | 06/14/2021-10:23 |  |  |
| Cna Holdings Llc                | Notice/Notice of Appearance                                  | Filing |  | 06/14/2021-10:22 |  |  |
| Riley Power Inc                 | NEF(06-11-2021 03:40:19 PM)<br>Notice/Notice of Appearance   | Filing |  | 06/11/2021-15:40 |  |  |
| Riley Power Inc                 | Notice/Notice of Appearance                                  | Filing |  | 06/11/2021-15:40 |  |  |
| Dana Companies Llc              | NEF(06-11-2021 10:13:24 AM)<br>Notice/Notice of Appearance   | Filing |  | 06/11/2021-10:13 |  |  |
| Dana Companies Llc              | Notice/Notice of Appearance                                  | Filing |  | 06/11/2021-10:13 |  |  |
| Vistra Intermediate Company Llc | NEF(06-10-2021 02:12:18 PM)<br>Notice/Notice of Appearance   | Filing |  | 06/10/2021-14:12 |  |  |
| Vistra Intermediate Company Llc | Notice/Notice of Appearance                                  | Filing |  | 06/10/2021-14:12 |  |  |
| Vistra Intermediate Company Llc | NEF(06-10-2021 02:10:52 PM)<br>Notice/Notice of Appearance   | Filing |  | 06/10/2021-14:11 |  |  |
| Vistra Intermediate Company Llc | Notice/Notice of Appearance                                  | Filing |  | 06/10/2021-14:10 |  |  |
| Starr Davis Company Of Sc Inc   | NEF(06-10-2021 12:32:53 PM)<br>Notice/Notice of Appearance   | Filing |  | 06/10/2021-12:33 |  |  |
| Starr Davis Company Of Sc Inc   | Notice/Notice of Appearance                                  | Filing |  | 06/10/2021-12:32 |  |  |
| Starr Davis Company Of Sc Inc   | NEF(06-10-2021 12:31:09 PM)<br>Notice/Notice of Appearance   | Filing |  | 06/10/2021-12:31 |  |  |
| Starr Davis Company Of Sc Inc   | Notice/Notice of Appearance                                  | Filing |  | 06/10/2021-12:31 |  |  |
| Covil Corporation               | NEF(06-10-2021 10:43:11 AM)<br>Notice/Notice of Appearance   | Filing |  | 06/10/2021-10:43 |  |  |
| Covil Corporation               | Notice/Notice of Appearance                                  | Filing |  | 06/10/2021-10:43 |  |  |
| Park, Isabella                  | NEF(06-04-2021 01:04:02 PM)<br>Motion/Other                  | Filing |  | 06/04/2021-13:14 |  |  |
| Park, Isabella                  | Motion/Expedite                                              | Motion |  | 06/04/2021-13:04 |  |  |
| Park, Isabella                  | Summons & Complaint                                          | Filing |  | 06/04/2021-09:59 |  |  |

ELECTRONICALLY FILED -- 2023 Aug 21 5:04 PM -- RICHLAND -- COMMON PLEAS -- CASE#2023CP4001759

**EXHIBIT G**

# EXHIBIT H



Home / Registry / Registry entities / CAPE PLC

# CAPE PLC

**Registration Number:** 108031  
**Type:** Registered Company Public  
**Status:** Active  
**Registered on:** 19/04/2011  
**Year End:** 31-Aug  
**Registered Office:** 1st Floor Osprey House, 5-6 Old Street, St. Helier, St. Helier, JE2 3RG, Jersey

Certificate of good standing

- £39.00 ☐
- £72.00 ☐
- £121.00 ☐

Entity Profile

- £0.00 ☐
- £72.00 ☐
- £121.00 ☐

Add selected

Total documents available (28)

Company Annual Accounts 2023

- 09/06/2023
- £0.00 ☐
- £39.00 ☐
- £110.00 ☐

Company Annual Accounts 2022

08/06/2022

£0.00 ☐£39.00 ☐£110.00 ☐

Company Annual Accounts 2022

08/06/2022

£0.00 ☐£39.00 ☐£110.00 ☐

Special Resolution

30/04/2021

£0.00 ☐£39.00 ☐£110.00 ☐

Annual Return

26/02/2020

£0.00 ☐£39.00 ☐£110.00 ☐

Annual Return

08/02/2019

£0.00 ☐£39.00 ☐£110.00 ☐

Annual Return

27/02/2018

£0.00 ☐£39.00 ☐£110.00 ☐

Special Resolution

15/05/2017

£0.00 ☐

£39.00 ☐£110.00 ☐

## Annual Return

30/03/2017

£0.00 ☐£39.00 ☐£110.00 ☐

## Special Resolution

27/05/2016

£0.00 ☐£39.00 ☐£110.00 ☐

## Special Resolution

20/05/2016

£0.00 ☐£39.00 ☐£110.00 ☐

## Special Resolution

20/05/2016

£0.00 ☐£39.00 ☐£110.00 ☐

## Special Resolution

20/05/2016

£0.00 ☐£39.00 ☐£110.00 ☐

## Annual Return

24/02/2016

£0.00 ☐£39.00 ☐

£110.00 ☐

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Annual Return

13/02/2015

£0.00 ☐

£39.00 ☐

£110.00 ☐

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Annual Return

28/02/2014

£0.00 ☐

£39.00 ☐

£110.00 ☐

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Special Resolution

16/05/2013

£0.00 ☐

£39.00 ☐

£110.00 ☐

---

Annual Return

27/02/2013

£0.00 ☐

£39.00 ☐

£110.00 ☐

---

Annual Return

28/02/2012

£0.00 ☐

£39.00 ☐

£110.00 ☐

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Special Resolution

05/10/2011

£0.00 ☐

£39.00 ☐

£110.00 ☐

Capital Reduction and Minute

01/07/2011

£0.00 ☐

£39.00 ☐

£110.00 ☐

Capital Reduction and Minute

30/06/2011

£0.00 ☐

£39.00 ☐

£110.00 ☐

Public Company Prospectus

24/05/2011

£0.00 ☐

£39.00 ☐

£110.00 ☐

Special Resolution

19/05/2011

£0.00 ☐

£39.00 ☐

£110.00 ☐

Public Company Prospectus

16/05/2011

£0.00 ☐

£39.00 ☐

£110.00 ☐

Add selected documents



|                                         |   |                                      |
|-----------------------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA                 | ) | IN THE COURT OF COMMON PLEAS         |
|                                         | ) |                                      |
| COUNTY OF RICHLAND                      | ) | FOR THE FIFTH JUDICIAL CIRCUIT       |
|                                         | ) |                                      |
| John A. Tibbs and Margaret B. Tibbs,    | ) | Civil Action No. 2023-CP-40-01759    |
|                                         | ) |                                      |
| Plaintiffs,                             | ) |                                      |
|                                         | ) |                                      |
| vs.                                     | ) |                                      |
|                                         | ) |                                      |
| 3M Company, <i>et al.</i> ,             | ) |                                      |
|                                         | ) |                                      |
| Defendants.                             | ) |                                      |
|                                         | ) |                                      |
|                                         | ) | <b>THIRD-PARTY DEFENDANTS</b>        |
|                                         | ) | <b>ARRANCO, US, LLC, HAWK</b>        |
|                                         | ) | <b>BIDCO (US) INC., AND SPARROWS</b> |
|                                         | ) | <b>OFFSHORE, LLC'S REPLY IN</b>      |
|                                         | ) | <b>SUPPORT OF MOTION TO</b>          |
|                                         | ) | <b>DISSOLVE THE CAPE PLC</b>         |
|                                         | ) | <b>"RECEIVERSHIP"</b>                |
|                                         | ) | <b>AND</b>                           |
|                                         | ) | <b>MOTION FOR PROTECTIVE</b>         |
|                                         | ) | <b>ORDER AND TO DISSOLVE</b>         |
|                                         | ) | <b>RECEIVERSHIP</b>                  |
|                                         | ) |                                      |
|                                         | ) |                                      |
| 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,                  | ) |                                      |
|                                         | ) |                                      |
| vs.                                     | ) |                                      |
|                                         | ) |                                      |
| Anglo American PLC, <i>et al.</i> ,     | ) |                                      |
|                                         | ) |                                      |
| Third-Party Defendants.                 | ) |                                      |
|                                         | ) |                                      |

Third-Party Defendants ArranCo US, LLC, Hawk Bidco (US) Inc. and Sparrows Offshore, LLC (collectively, "Sparrows Defendants") respectfully submit that the Court must dissolve this receivership because the Receiver admits that the one and only entity named in the order appointing the receiver—Cape PLC—was not served with any papers in the *Park* action. The f/k/a's and n/k/a's used by the Receiver to whitewash these uncorrectable mistakes appear nowhere in the motion seeking appointment of this Receiver or the order granting that motion—a motion and order that have not been served on Cape PLC to this day. The Receiver further admits that Cape PLC and Cape Intermediate Holdings Limited are different companies incorporated in different foreign jurisdictions that were separately named defendants in the *Park* action. Indeed,

the Receiver confirms that Cape PLC was “organized under the laws of the Bailiwick of Jersey in 2011,” is an active foreign company that is not insolvent or dissolved, and is a “holding company of the Cape Group.” Yet the *Park* Second Amended Complaint and the Motion to Appoint Receiver were admittedly **not** served on Cape PLC through its registered agent in Jersey in accordance with the Hague Convention. These facts alone defeat the receivership as a matter of law, as notice of both the *Park* lawsuit and the motion to appoint the receiver are mandatory conditions precedent to the effectiveness of the receivership.

The only response from the Receiver is to pretend that Cape PLC and Cape Intermediate Holdings Limited are the *same defendant*—despite the fact that the *Park* Plaintiffs named them as *separate defendants* in *separate amendments* to the complaint—and to speculate that Cape PLC would not have appeared even if it was properly served. The Court should reject these arguments, which ignore basic notions of due process and justice and violate a laundry list of federal constitutional protections.

Even assuming proper service on Cape PLC (a patently false assumption), the Receiver makes more admissions showing his appointment under § 15-65-10(4) and (5) was unlawful—Cape PLC (and Cape Intermediate Holdings Limited for that matter) are **not** dissolved, they are **not** insolvent, and they do **not** have property in South Carolina. The Receiver argues that appointment under subsection (4) is proper because Cape PLC has “forfeited its corporate rights,” but this is a term of art that refers to a forfeiture action resulting in a final forfeiture judgment by a South Carolina court pursuant to established South Carolina law. *See, e.g.*, S.C. Code Ann. § 39-3-20 (authorizing the Attorney General to “begin an action against such *domestic* corporation to forfeit its charter” for certain antitrust violations (emphasis added)). Here, the Receiver claims a make-believe “forfeiture” over a foreign company, based on the incorrect and unadjudicated

allegations in the motion to appoint the Receiver, and citation to Black’s Law Dictionary. A plaintiff cannot simply cite his own unproven allegations of wrongdoing to trigger the “forfeiture” clause of subsection (4)—that would make a pre-judgment receivership available in every case rather than extraordinary ones. And as for the Receiver’s conclusory argument that appointment under subsection (5) is “in accordance with the existing practice,” there is not one South Carolina case appointing a receiver in circumstances remotely similar to those presented here.<sup>1</sup> This receivership order purporting to seize the foreign assets of an active foreign company without notice is unprecedented, and must be dissolved.

This is an extremely serious case, but the Receiver’s opposition responds with variations of the following three arguments: (1) “it is so because I say it is so,” (2) “the mistakes don’t matter because the opposing parties know what was meant,” and (3) “the mistakes don’t matter because my opponents who never received notice would not have responded anyway.” However, none of these points remedy the fatal defects in the appointment of the receivership. The Receiver concedes every point that should be dispositive of the motion to dissolve the receivership, including the fact

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<sup>1</sup> The one case cited by the Receiver involved the appointment of a receiver over the assets of a *South Carolina citizen*, Mr. Hunter, who owed substantial undisputed debts to multiple persons and engaged in a series of fraudulent transfers to defraud his creditors. *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177, 179 (1909). Cape PLC is not remotely similar to Mr. Hunter. Furthermore, the *Hunter* case supports dissolution of this receivership because it holds that the Court must vacate the appointment of a receiver who is not “entirely impartial” and is acting merely as “the agent of the plaintiff.” *Id.* at 224. The Receiver’s positions in his opposition show that he has entirely abdicated his responsibility to protect Cape PLC’s interests and is “so closely connected with one of the parties in interest” that he cannot continue to serve. *Id.* No Court could view this Receiver as a “disinterested person”—as shown by the fact that he is actively defending the interests of the Plaintiffs that had him appointed. *Id.* Indeed, the Receiver’s “defense” of Cape PLC has consisted of waiving all defenses, admitting liability without any adjudication that “Cape” fibers caused injury to any South Carolina resident—including Park and Tibbs—and then pursuing his “reckoning” against the Third-Party Defendants based on liabilities he seeks to manufacture.

that Cape PLC—the entity over which he was purportedly appointed a receiver—was never served in the *Park* case from which the appointment order came.

On points not conceded, the Receiver makes arguments that are either false on the facts or wrong on the law. The Receiver’s arguments have no basis in South Carolina law, and his opposition brief implies the Court has universal jurisdiction to right any perceived wrong anywhere on the globe, regardless of whether or not the Receiver or the Court has any actual authority to do act.

As the authorities cited by the Receiver make clear, a receivership is reserved for “exceptional” circumstances that allow for assets to be marshalled to the satisfaction of creditors who were prevented, usually in the case of insolvency or dissolution, from adequately preserving their rights. Here, there are no creditors because there is no judgment. Also fatal for the Receiver is the fact that the entity over which he is appointed, Cape PLC, is a going concern, incorporated in 2011, with no assets in South Carolina. The Receiver asks this Court to ignore these admitted omissions and errors in procedure and substance and allow this legal fiction to continue without interference. The Court should decline this invitation.

Accordingly, if the Court does not first grant the pending motions to dismiss for lack of personal jurisdiction, it should grant this motion and dissolve the receivership appointment.<sup>2</sup>

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<sup>2</sup> This Reply is based on the statutes and case law of the State of South Carolina, the motions, exhibits and pleadings filed in this matter, and such other material as may be properly received by the Court in connection therewith. On August 21, 2023, the Sparrows Defendants filed a “Motion to Dissolve the Cape PLC ‘Receivership.’” Then, on September 5, 2023, the Sparrows Defendants filed a “Motion for Protective Order and to Dissolve Receivership.” On October 18, 2023, the Receiver filed memoranda entitled “Third Party Plaintiff’s Omnibus Opposition to Motions to Dissolve by Responding Altrad Third-Party Defendants and Charter Third-Party Defendants” and “Third-Party Plaintiff’s Omnibus Opposition to Motions for Stay of Discovery and for Protective Order by Third-Party Defendants.” This Reply is filed in support of both the Motion to Dissolve

### DISPOSITIVE POINTS CONCEDED BY THE RECEIVER

In his opposition memorandum, the Receiver concedes the following:

1. **Cape PLC** is not the same entity as Cape Intermediate Holdings Limited.<sup>3</sup>
2. **Cape PLC**—the Jersey entity that is the subject of the receivership order—was never served with any pleading or the motion to appoint the receiver in *Park*.<sup>4</sup>
3. Neither the motion to appoint the receiver nor the order appointing the receiver made any reference whatsoever to Cape Intermediate Holdings Limited, and never used the n/k/a acronym that the Receiver misleadingly uses throughout his opposition.<sup>5</sup>
4. The Second Amended Complaint in *Park*—the actual operative pleading—was never served on either **Cape PLC** or Cape Intermediate Holdings Limited.<sup>6</sup>

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the Cape PLC “Receivership” and the Motion for Protective Order and to Dissolve Receivership and in opposition to both Omnibus Opposition responses by the Receiver. The Omnibus Opposition to Motions for Stay of Discovery and for Protective Order by Third-Party Defendants states the Sparrows Defendants filed only “informal requests to stay discovery” and “informal requests for protective order.” Thus, it appears the Receiver concedes to the Sparrows Defendants formal “Motion for Protective Order and to Dissolve Receivership” filed on September 5, 2023.

<sup>3</sup> See Opp. at 3 (conceding that in the *Park* case, Plaintiffs attempted to add Cape Intermediate Holdings Limited “as a defendant, apart from **Cape PLC**”).

<sup>4</sup> See *id.* at 10 (conceding that “there has been no reference to the Jersey entity” in “the underlying *Park* and *Tibbs* Lawsuits, and in this third-party action,” and “the conduct of the 130-year-old Cape entity in England (and not the recently formed holding company in the Bailiwick of Jersey) is at issue”) (emphasis in original).

<sup>5</sup> See *id.* at 20 n.15 (proposing the Court’s “amendment of the Appointment Order to identify Cape Intermediate Holdings Ltd.,” thus conceding that Cape Intermediate Holdings Limited is not identified at all in the current order).

<sup>6</sup> See *id.* at 4 (conceding “Plaintiffs did not serve that specific pleading on Cape,” which the Receiver impermissibly uses as shorthand for both Cape PLC and Cape Intermediate Holdings Limited, which are two separate companies). For reasons unknown, the Receiver also speculates as to why the *Park* Plaintiffs failed to undertake an essential step to joining either of those entities as defendants to litigation. But the reason does not matter; the fact that no service of an operative pleading happened is dispositive, and the Receiver concedes that foundational point—as he must, as the *Park* Plaintiffs confirmed their errors through photographs and sworn testimony from their process server.

5. There is no proof that any complaint was actually included in any mailing made to Cape Intermediate Holdings Limited.<sup>7</sup>
6. The Second Amended Complaint in *Park* was served before the responsive pleading deadline for the First Amended Complaint expired, meaning **Cape PLC** and Cape Intermediate Holdings Limited could not be deemed in default of the superseded First Amended Complaint.<sup>8</sup>
7. Cape Intermediate Holdings Limited was allegedly<sup>9</sup> served by DHL with a motion to appoint a receiver that did not reference Cape Intermediate Holdings Limited at all and purported to seek appointment over a separate Jersey entity—**Cape PLC**.
8. There is no proof that anything was ever served on **Cape PLC** in Jersey. In fact, the Receiver argues that the very entity on whose behalf he purports to act was never involved in the “underlying *Park* and *Tibbs* Lawsuits.”<sup>10</sup>

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<sup>7</sup> See *id.* at 12 (speculating the “*Park* Plaintiffs would have” had a process server include the complaint with a summons, even though the process server himself testified that he only tried to serve “the First Amended Summons”) (emphasis added).

<sup>8</sup> See *id.* at 3-4 (arguing that service of the First Amended Complaint on Cape PLC and Cape Intermediate Holdings Limited was effective on December 16, 2021, but that Plaintiffs filed a Second Amended Complaint “[o]ne week later, on December 23, 2021”).

<sup>9</sup> Neither the Receiver nor the *Park* Plaintiffs have produced a proof of service, or even a delivery confirmation, showing that the motion to appoint the receiver was actually served via DHL on Cape Intermediate Holdings Limited. The only “proof” of this fact is an unsubstantiated allegation of DHL delivery in footnote 13 of the motion to appoint the receiver that was unaccompanied by any supporting exhibit. Thus, the Receiver has no actual proof that Cape Intermediate Holdings Limited was served with the motion to appoint the receiver as required by S.C. Code Ann. § 15-65-20. And again, even assuming Cape Intermediate Holdings Limited was served, nothing in the motion to appoint the receiver referenced that entity.

<sup>10</sup> *Id.* at 10. It is baseless that the *Park* Plaintiffs would seek to have a receiver appointed over **Cape PLC**, and the Receiver would purport to bring claims on behalf of (and waive the personal jurisdiction objections of) **Cape PLC**, yet when faced with the complete impropriety of these actions, the Receiver somehow suggests that the *Park* Plaintiffs, the “Receiver,” and the Court intended to reference a company other than **Cape PLC** in all of their respective filings and orders.

9. The *Park* Plaintiffs represented to the Court in June 2022 that the case was “fully resolved,” nine months before the Court purported to appoint a receiver over **Cape PLC**.<sup>11</sup>
10. The *Park* Plaintiffs never served **Cape PLC** with notice of the motion to appoint a receiver over it.<sup>12</sup>
11. Neither **Cape PLC** nor Cape Intermediate Holdings Limited ever defaulted, nor was any default judgment entered against either company: not in *Park*, and not in any other case in South Carolina.<sup>13</sup>
12. The order appointing the Receiver made no finding that a South Carolina state court has personal jurisdiction over **Cape PLC**, an active Jersey company that has zero connections to this state and is beyond the jurisdictional boundaries of this Court.<sup>14</sup>

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<sup>11</sup> See *id.* (conceding the validity of Ms. Park’s counsel’s message to the Court). The Receiver purports to rewrite counsel’s message to apply only to “defendants who had appeared in the litigation and were scheduled for trial.” *Id.* This is remarkable for several reasons. First, there is no basis for the Receiver to suggest counsel’s phrase “fully resolved” meant anything less than “fully resolved.” Second, there is no plausible reason for the Receiver to try and rewrite the history of a case in which the Receiver was not involved. Third, even if **Cape PLC** was in default in *Park*—and there is absolutely nothing in the record or in reality to suggest that it was—**Cape PLC** would have still been part of the trial group that was “fully resolved” because a jury has to apportion damages among all defendants, including those in default (or assign liability in full to a third party). See Rule 55(b)(2), SCRCP (requiring a jury trial, even in a default setting, on “the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter” when “required by any statute”); S.C. Code Ann. §§ 15-38-15(A), (C), (D) (establishing the statutory process for apportioning damages and liability in cases involving multiple defendants). The Receiver’s attempt to rewrite history fails as a matter of fact and law in light of the unambiguous representation by *Park*’s counsel to the Court.

<sup>12</sup> See *id.* at 5 (conceding the *Park* Plaintiff mailed notice of motion to appoint a receiver over **Cape PLC** to the same incorrect address used when a process server mailed the First Amended Summons); *id.* at 18 (same).

<sup>13</sup> See *id.* at 18 (conceding there is “no entry of a default against **Cape PLC** or a judgment reflecting a liquidated sum due to the *Park* Plaintiffs”).

<sup>14</sup> See *id.* at 20 (conceding that “the Court did not make an explicit finding that it has personal jurisdiction over **Cape PLC**”). The Receiver claims that “[n]o such finding was needed” and pretends that “personal jurisdiction is self-evident.” *Id.* The law directly rejects such a position; personal jurisdiction must be proven with admissible evidence, and the Court cannot constitutionally act over a person or entity over which it lacks personal jurisdiction. See, e.g., *Abdulla v. S. Bank*, 439 S.C. 391, 403–04, 887 S.E.2d 138, 144–45 (Ct. App. 2023) (affirming



13. **Cape PLC** has no assets in South Carolina.<sup>15</sup>

14. The Receiver is working against **Cape PLC** and on behalf of the *Park* Plaintiffs.<sup>16</sup>

This final concession bears further scrutiny. In South Carolina, a receiver's role is as a trustee of the company over which he has been appointed, along with responsibilities to the court and to the company's creditors. *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 217–18, 118 S.E. 303, 304 (1923). But without a judgment in hand, a plaintiff is not a creditor, and South Carolina law requires a receiver to be “entirely impartial” and forbids him from acting as “one of the agents of the plaintiff.” *Va.-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 224, 66 S.E. 177, 180 (1909).

There are no known creditors of Cape PLC in South Carolina—instead the Receiver assumes their existence as a legal fiction. The *Park* Plaintiffs never obtained a judgment against Cape PLC before advising the Court their case was “fully resolved.” The *Tibbs* Plaintiffs likewise have no judgment. Yet, the Receiver seems determined to extract cash from the Third-Party Defendants for both himself and those plaintiffs, undermining Cape PLC—the entity which he is

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dismissal of a defendant for lack of personal jurisdiction when a plaintiff failed to present evidence sufficient to prove that exercising personal jurisdiction over the defendant would comport with the Due Process Clause).

<sup>15</sup> See *id.* at 18–19 (conceding that **Cape PLC** “lacks assets in South Carolina”). The Receiver does add a parenthetical comment, without any evidence or explanation, that **Cape PLC** has “insurance and legal claims” here. *Id.* But this makes no sense—**Cape PLC** has nothing in South Carolina, so there is no conceivable way that it has “insurance” or “legal claims” here. It is on the other side of the Atlantic Ocean and has nothing to do with this state. Further, having been formed in the 21<sup>st</sup> century, there is no reasonable or rational basis for the Receiver to assert that any insurance **Cape PLC** may have in Jersey covers asbestos lawsuits filed in America about products manufactured by other companies.

<sup>16</sup> See, e.g., *id.* at 22 (“In addition, the Receiver’s ability to successfully marshal assets will directly inure to the benefit of the *Park* Plaintiffs, which allege uncompensated harm from Cape’s conduct.”).



duty bound to defend—at every turn along the way. Not only does the Receiver characterize his mission as “a day of reckoning,” his actions in affirmatively waiving defenses available to **Cape PLC** can only be seen as proof of a lack of impartiality and that he has manipulated the function of a receivership to a degree that defies explanation and is unrecognizable as compared to its intended purpose. Such conduct is forbidden and highlights the impropriety of these entire proceedings—but it is consistent with a pattern of imposter “receiverships” in this and other matters.

These concessions render the receivership a nullity, and everything the Receiver purports to do is *ultra vires*. If **Cape PLC** was never served with process in *Park*, then the South Carolina circuit court could never even claim to have acquired personal jurisdiction over **Cape PLC**. And if the South Carolina circuit court had no personal jurisdiction over **Cape PLC**, then it was powerless to appoint a receiver over **Cape PLC**. And if the circuit court was powerless to appoint a receiver over **Cape PLC**, then the receivership is a nullity and the Receiver has no authority to do anything at all, including, but not limited to, to issue discovery.

All of these points are conceded in the Receiver’s opposition brief, and they make the outcome of this motion inescapable: the Receiver’s “day of reckoning” is forfeited and the receivership must be dissolved as a matter of law.

\* \* \* \* \*

#### **FALSE OR MISLEADING STATEMENTS IN THE RECEIVER’S OPPOSITION**

In addition to the dispositive concessions identified above, the Receiver’s memorandum contains a host of other statements and arguments that are either directly false or that appear designed to mislead, including:

1. **Constant use of the phrase “Cape PLC n/k/a Cape Intermediate Holdings Ltd.”**<sup>17</sup> This phrase is a fiction of the Receiver’s opposition memorandum. **Cape PLC** is a standalone Jersey entity that was created in 2011. Even though it was separately named in *Park* (in addition to **Cape PLC**), Cape Intermediate Holdings Limited does not show up anywhere in either (1) the motion to appoint a receiver over **Cape PLC** or (2) the order appointing a receiver over **Cape PLC**. The Receiver cannot whitewash the problems that cripple his supposed appointment by trying to bolt two disparate companies together with an “n/k/a” acronym.
2. **Suggesting the Court can simply rewrite the prior receivership order to correct the myriad errors—several of which are even conceded by the Receiver in his opposition memo.**<sup>18</sup> This is an absurd proposition. Among other obvious defects, if the Court never had jurisdiction over **Cape PLC** or Cape Intermediate Holdings Limited in the first place, then it cannot possibly swap out the entities’ names and somehow retroactively rewrite the defective appointment order. And as if the complete absence of jurisdiction was not enough, South Carolina law specifically prohibits such attempts at issuing orders *nunc pro tunc*. *See, e.g., Ex parte Strom*, 343 S.C. 257, 264–65, 539 S.E.2d 699, 702–703 (2000) (citing numerous cases for the proposition that a court is prohibited from attempting to correct a so-called “error” by issuing an order *nunc pro tunc*). Nor does the Receiver’s repeated citation of South Carolina Code § 33-14-320(c) have anything to do with this situation. That statute is part of the statutory scheme allowing judicial dissolutions over South Carolina corporations; by definition, that law has nothing to do with an active Jersey company. *See* S.C. Code Ann. § 33-1-400(4) (defining “corporation” for purposes of Title 33 as “a corporation for profit, which is not a foreign corporation”).
3. **Repeatedly stating “Cape still has not responded” to the *Park* Second Amended Complaint.**<sup>19</sup> **Cape PLC’s** lack of Answer in the *Park* case is perfectly logical in light of the fact it was never served with the operative complaint. In combination with the fact a South Carolina state court cannot exercise jurisdiction over **Cape PLC**, lack of response is unremarkable.
4. **Pretending the Court can simply disregard the lack of service on Cape PLC, including an incredible argument that requiring a plaintiff to properly serve an international defendant that has no connection to South Carolina “exalt[s] technical form over substance.”**<sup>20</sup> Service is essential to a court’s ability to claim

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<sup>17</sup> *E.g.*, Opp. at 9.

<sup>18</sup> *E.g.*, *id.* at 14–15, 17 n.13, 19–20 n.15.

<sup>19</sup> *E.g.*, *id.* at 15.

<sup>20</sup> *E.g.*, *id.*

personal jurisdiction over a defendant, and everything a court tries to do without personal jurisdiction is void. *See Fin. Fed. Credit, Inc. v. Brown*, 384 S.C. 555, 562, 683 S.E.2d 486, 490 (2009) (“A judgment is void if a court acts without personal jurisdiction. A judgment of a court without jurisdiction of the person or of the subject matter is not entitled to recognition or enforcement in another state, or to the full faith and credit provided for in the federal Constitution.” (quoting *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006), and 50 C.J.S. *Judgments* § 986 (1997))). This is a constitutional requirement, not “technical form over substance.”

5. **Claiming that Cape PLC has “forfeited its corporate rights” based on a “1978 liquidation of its American subsidiary.”**<sup>21</sup> **Cape PLC**—the entity on whose behalf the Receiver purports to speak—did not come into existence until 2011, and it remains an active company that has “forfeited” nothing.<sup>22</sup>
6. **Claiming that Cape PLC has “defraud[ed] its tort creditors.”**<sup>23</sup> **Cape PLC** has no “creditors” in South Carolina. The *Park* Plaintiffs have no judgment against **Cape PLC** (there is not even a motion for entry of default in that case); the *Park* Plaintiffs unequivocally advised the Court that they had “fully resolved” their case over sixteen months ago without any liability attaching to **Cape PLC**. And, there are no other judgment creditors against **Cape PLC** anywhere in South Carolina.

These final two bullet points are critical, as these misleading remarks are seemingly how the Receiver attempts to resuscitate the Court’s statutory authority to create this receivership in the first place. The appointment order cited South Carolina Code §§ 15-65-10(4) and (5), but neither can apply.

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<sup>21</sup> *Id.* at 17.

<sup>22</sup> Even more elemental, a subsidiary’s liquidation does not amount to a parent entity’s own forfeiture of its own corporate rights. *See generally Bank of Augusta v. Earle*, 38 U.S. 519, 541, (1839) (“The rights of a corporation, that is, its corporate rights, are all conferred by its charter, are all of equal authority, and from the same source of power. What are they? To have a corporate name and style. To have a common seal. To have succession. To sue and be sued by its corporate name. To be, by that name, a person in law, capable of contracting. To make by-laws.”).

<sup>23</sup> *E.g., id.* at 17–18.

The Receiver rightly concedes that Section (4) is inapplicable because **Cape PLC** is not “dissolved,” even though the appointment order incorrectly stated that it was.<sup>24</sup> Nor is **Cape PLC** insolvent; it is an active foreign entity incorporated in 2011 in Jersey. But the Receiver suggests that Section (4) may still be applicable because **Cape PLC** “forfeited its corporate rights.” That is false, as explained above, and Section (4) provided no lawful basis for appointing a receiver over **Cape PLC**. While certain South Carolina statutes might authorize the forfeiture of corporate rights in certain circumstances, the Receiver identifies no South Carolina judgment that resulted in the forfeiture of Cape PLC’s corporate rights. The Receiver’s bald assertion that Cape PLC has “forfeited its corporate rights” based on the *unproven allegations* in the Receiver’s own third-party complaint has no support in South Carolina law—that would make pre-judgment receivership appointments available in every case where the plaintiff alleges wrongdoing, contrary to the South Carolina Supreme Court’s admonition that such appointments are reserved for “exceptional” circumstances.

Section (5) is similarly inapplicable. The Receiver identifies no discernible standard for applying this section; he simply claims that a receivership can be created out of whole cloth “to correct injustice” when a “creditor” is being prevented from collecting a debt owed.<sup>25</sup> But that is no standard at all, and it has nothing to do with this case, where no creditors exist.

While the Receiver argues that subsections (4) and (5) do not require entry of default or a default judgment, the Receiver ignores what those subsections **do** require—insolvency, dissolution, forfeiture of corporate rights, or clear guidance from the South Carolina appellate

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<sup>24</sup> *Id.* at 17 n.13.

<sup>25</sup> *Id.* at 17–18.

courts that appointment of a pre-judgment receiver in these circumstances is historically consistent with existing practice. None of those conditions are met here. Furthermore, the duties of a pre-judgment receiver under subsections (4) and (5) are fundamentally different than the duties of a post-judgment receiver; as explained by the South Carolina Supreme Court, a pre-judgment receiver appointed under subsection (5) must be “entirely impartial” precisely because liability has not been established. *Hunter*, 84 S.C. at 224. If the Receiver seeks the benefit of a pre-judgment appointment, he must faithfully discharge the duties of that role. As reflected by the Receiver’s purported waiver of Cape PLC’s personal jurisdiction defense in its opposition (Opp. at 20), however, the Receiver is clearly acting as “one of the agents of the plaintiff,” and is thus unfit to serve under subsections (4) and (5). *See id.*

The Receiver next argues that Park’s filing of the Second Amended Complaint did not render service of the First Amended Complaint “defective” because the Second Amended Complaint did not allege new or additional claims for relief against “Cape.” This argument fails because it ignores the timing of the amendment. The Second Amended Complaint in *Park* was filed well before the responsive pleading deadline for the First Amended Complaint expired, meaning Cape PLC and Cape Intermediate Holdings Limited could not be deemed in default of the superseded First Amended Complaint that was “no longer the operative pleading in the case.” *Schein v. Lamar*, 284 S.C. 252, 255, 325 S.E.2d 573, 574 (Ct. App. 1985). Contrary to the Receiver’s argument, the law is clear in South Carolina that the filing of an amended complaint supersedes the original complaint. *See id.*

Further, the Court should reject the Receiver’s footnote suggestion that it could amend the receivership order to refer to Cape Intermediate Holdings Limited and correct a “misnomer.” As an initial matter, the Receiver’s cited authority relates to amendment of a complaint to correct the

name of a defendant from a d/b/a to a formal legal name when the undisputed d/b/a defendant *actually appeared and litigated the matter*. In contrast, this case involves a proposed amendment of a receivership order where the named entity—Cape PLC—has not appeared, and where the correct name of the entity implicates the due process and notice rights of multiple categories of stakeholders—the Receiver, the entity in receivership, and the Third-Party Defendants that are defending the matter. The Receiver’s contention that the wrong name in the receivership order did not mislead or prejudice anyone is absurd; given the fact that Cape PLC is an active Jersey entity, the Third-Party Defendants did not know until reading the Receiver’s opposition which entity the Receiver believed he was acting for. The Receiver admits that Cape PLC was a former name of a UK entity (but not even the immediately preceding legal name) and the current name of a Jersey entity, both of which occupy different positions on the Cape corporate structure. While the Receiver cites S.C. Code Ann. § 33-14-320(c) in support of its argument that “amendment of appointment order” is permitted, that Code section is limited to a “judicial proceeding brought to dissolve a corporation,” which clearly does not apply here, and that statute only provides that “the power and duties of the receiver or custodian in its appointing order” may be “amended,” not that the actual entity under receivership may be amended.

The Receiver’s argument that there is a justiciable controversy merely highlights how the Receiver is acting as an agent of asbestos plaintiffs, not as an impartial, pre-judgment trustee protecting the interests of Cape PLC (or Cape Intermediate Holdings Limited). The Receiver does not dispute that Park’s counsel sent an email to the Court stating that the lawsuit had been “fully resolved” months before the motion to appoint the Receiver. Instead, the Receiver purports to speak for Park’s counsel and argue that the “fully resolved” statement applied only to “responding defendants”—a qualification found nowhere in the communication itself.

Nor is the Receiver correct that his appointment in the *Park* action is sufficient to deputize him as the Receiver for Cape PLC for any and all future asbestos lawsuits in which Cape PLC is named as a party—including the separate *Tibbs* action. Appointment of a receiver is an exceptional remedy that must be assessed on a case-by-case basis and is contingent on the unique facts and circumstances of a particular case. This is particularly true here—where both Cape PLC and Cape Intermediate Holdings Limited are going concerns. The Receiver cites no South Carolina authority holding that an appointment under Section 15-65-10 applies forever and for all cases.

The Court must reject this perpetual appointment theory because it conflicts with Section 15-65-10 (which calls for a case-by-case analysis), South Carolina precedent (which always reviews the propriety of receivership orders based on the specific facts of the underlying case in which the appointment is made), and because the theory is unconstitutional, particularly in the pre-judgment context seen here. If accepted, it would strip an active foreign company of its ability to defend itself in all future asbestos cases in South Carolina before any finding of liability in even one case. This interpretation would clearly contravene the Dormant Commerce Clause, the Foreign Commerce Clause, the Taking Clause, the Due Process Clause, the Excessive Fines Clause, the Equal Protection Clause, and the Supremacy Clause of the U.S. Constitution. A judicially imposed, pre-judgment takeover of a foreign company—without any identifiable property in South Carolina—violates principles of international comity.

Finally, the appointment order, as well as South Carolina law, does not authorize a Receiver to file a derivative third-party complaint on behalf of a foreign company plaintiff with no assets in the state, against foreign company defendants and individuals. The Receiver does not cite one case from South Carolina with a fact pattern remotely similar to the one presented here. While the Receiver parses the text of the appointment order to argue that the order allows the Receiver to

assert legal claims on Cape PLC's behalf, the order cannot authorize what South Carolina law forbids, and the order says nothing about authorizing a Receiver to assert the peculiar self-piercing claims at issue here—which facially violate the order's mandate to protect Cape PLC's interests whatever they may be.

At bottom, both purported avenues for the Receiver's appointment fail as a matter of law, and this is not subject to legitimate dispute. The receivership should be nullified without delay.

### **CONCLUSION**

The South Carolina Supreme Court has repeatedly cautioned trial courts that appointing a receiver “is a drastic remedy, and should be granted only with reluctance and caution.” *Richland Cty. v. S.C. DOR*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018). At the *Park* Plaintiffs' request, and based on demonstrably incorrect information provided to the Court, the Receiver was appointed over **Cape PLC**, in contravention of the Supreme Court's caution in doing so.

But the Supreme Court's instructions regarding receiverships do not end there. Because receiverships are so highly disfavored—after all, they involve a state court attempting to seize private property and placing it in the hands of a third-party—the Supreme Court has also commanded that the “refusal of revocation [of a receivership], under changed circumstances, is also drastic.” *Vasiliades v. Vasiliades*, 231 S.C. 366, 376, 98 S.E.2d 810, 815 (1957).

There is no basis in the law for a South Carolina state court, at the request of a South Carolina plaintiff, to appoint a South Carolina lawyer to attempt to seize assets of an international company that remains active overseas but that has no connection at all to South Carolina. The Receiver concedes every point that should be dispositive of this issue. The Sparrows Defendants



respectfully request that the Court dissolve the receivership without delay, as it would be “drastic” for the Court to wrongfully allow these proceedings continue.<sup>26</sup>

Respectfully submitted,

**RICHARDSON, PLOWDEN & ROBINSON, PA**

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*Attorneys for Third-Party Defendants ArranCo US,  
LLC, Hawk Bidco (US) Inc., and Sparrows Offshore,  
LLC*

October 23, 2023

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<sup>26</sup> The undersigned Third-Party Defendants do not waive any of their arguments from their initial motion, many of which were unaddressed by the Receiver’s opposition memorandum. They specifically incorporate by reference all of their constitutional, statutory, common law, and fact-based arguments regarding the impropriety of this receivership, as well as any arguments regarding dissolving the receivership put forth by any other third-party defendant. Additionally, by filing this reply, the undersigned third-party defendants do not waive, but instead specifically preserve, their objections based on this Court’s lack of personal jurisdiction over them.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

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

3M COMPANY *et al.*,

Defendants.

In Re:  
Asbestos Personal Injury Litigation  
Coordinated Docket

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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,

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

v.

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

DEBENTURE CORPORATION PLC; CAPE INDUSTRIAL SERVICES GROUP LTD.; MOHED ALTRAD; ALTRAD UK LTD.; CAPE UK HOLDINGS NEWCO LTD.; ALTRAD SERVICES LTD., f/k/a CAPE INDUSTRIAL SERVICES LTD.; ALTRAD INVESTMENT AUTHORITY S.A.S.; SPARROWS OFFSHORE GROUP LTD.; HAWK BIDCO US INC.; ARRANCO US, LLC; SPARROWS OFFSHORE, LLC; THE SPARROWS GROUP, LLC,

Third-Party Defendants.

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

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

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

### **FACTUAL AND PROCEDURAL BACKGROUND OF ORDERS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

##### **A. Cape**

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

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

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

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



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

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

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

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

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

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

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

**B. The Altrad Third-Party Defendants.**

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

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<sup>6</sup> As of 2017, Mohed Altrad “h[e]ld 77.78% of the [company’s] shares.” Ex. 88 (Altrad 2017 Annual Report), at 20. As of August 31, 2022, Mr. Altrad held 77.45% of the company’s shares.

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

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

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

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

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

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

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

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

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

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

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

**C. The Oppenheimer Third-Party Defendants.**

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

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

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

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

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

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

**D. The Charter Third-Party Defendants.**

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

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

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

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

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

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

**I. Cape Was Properly Served in *Park*.**

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



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

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

**A. The Proper Entity Was Served.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **II. The Receiver Was Properly Appointed.**

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

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

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

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

**B. This Court Had Authority to Appoint the Receiver.**

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

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

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



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

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

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

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

Accordingly, the Court finds no valid grounds to dissolve the Cape Receivership, which was proper when imposed, and, as such, Third-Party Defendants’ Motions to Dissolve are denied.<sup>16</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

## **II. Other Equitable Grounds for Exercising Personal Jurisdiction.**

### **A. The Alter Ego Theory of Personal Jurisdiction.**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **III. Grounds for Exercising Personal Jurisdiction Over Cape.**

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

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

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

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

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

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

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

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

**A. The Altrad Third-Party Defendants.**

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

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

**a. Alter Ego Theory.**

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

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

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

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



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

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

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

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

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

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

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

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

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

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<sup>25</sup> See Ex. 87 (Joyner, Lay, and Carroll Email Exchange, dated August 18–20, 2023).

**b. Single Business Enterprise.**

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

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

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

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

**ii. Mohed Altrad.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**a. Alter Ego.**

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

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<sup>28</sup> Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC collectively challenged this Court’s personal jurisdiction over them in a single brief. In support of that brief, each of these



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

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

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

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

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

**b. Single Business Enterprise.**

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

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

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

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

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

## **B. The Oppenheimer Third-Party Defendants.**

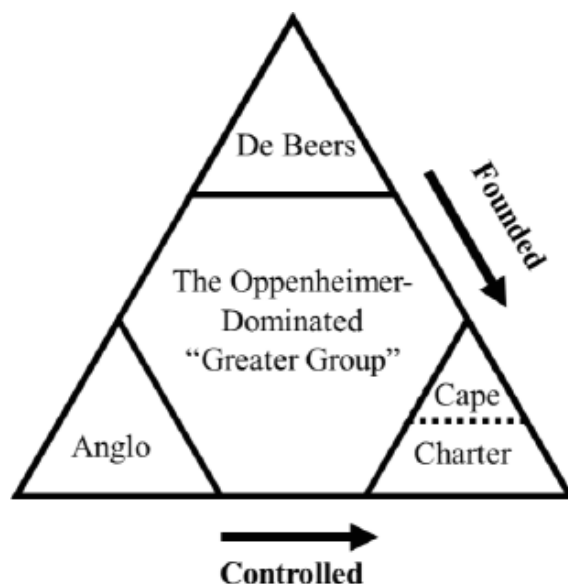
The Court also finds that it has personal jurisdiction over the five Oppenheimer Third-Party Defendants that remain in this action.<sup>30</sup> These Third-Party Defendants include Anglo American PLC (in England), De Beers Consolidated Mines Ltd. (in South Africa), De Beers Centenary AG (in Switzerland),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

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

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

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



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

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

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

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

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

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

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

**i. Anglo American PLC.**

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

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



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

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

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<sup>33</sup> See, e.g., Lynne Duke, *Mining Firm’s Move Splits South Africans*, The Washington Post (Oct. 18, 1998), <https://www.washingtonpost.com/archive/politics/1998/10/18/mining-firms-move-splits-south-africans/fd90b101-ebe7-4de2-a0e9-f17f0793e3dd/> (referencing “restructuring plan that will move the South African and global mining giant’s headquarters to London,” including as “a decision to merge with its offshore natural resources arm, Luxembourg-based Minorco SA,” but with its “major shareholders . . . remain[ing] South African[,] [p]rimary among them [being] the Johannesburg-based De Beers Consolidated Mines Ltd., the world’s largest diamond miner and marketer, as well as the Oppenheimer family which owns De Beers”); Darren Schuettler, *Anglo Merger with Minorco to Create Mining Giant*, J. of Commerce (Oct. 15, 1998), [https://www.joc.com/article/anglo-merger-minorco-create-mining-giant\\_19981015.html](https://www.joc.com/article/anglo-merger-minorco-create-mining-giant_19981015.html) (“Anglo said the deal, which will effectively end the company’s 81-year corporate presence in the country of its birth, was necessary to protect shareholder interests in post-apartheid South Africa.”).

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

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

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

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

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

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

**ii. De Beers Consolidated Mines Ltd.**

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

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

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

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

**iii. De Beers Centenary AG.**

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

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

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

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

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

**iv. De Beers PLC.**

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

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

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

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

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

**v. De Beers UK Ltd.**

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



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

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

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

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

**C. The Charter Third-Party Defendants.**

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

**i. Central Mining.**

**a. Alter Ego.**

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

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

**b. Single Business Enterprise.**

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

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

## ii. Charter

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

### a. Alter Ego.

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

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

**b. Single Business Enterprise.**

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

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

### iii. ESAB.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

\* \* \* \* \*

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

**IT IS SO ORDERED.**

***[JUDGE’S E-SIGNATURE PAGE FOLLOWS]***

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



Richland Common Pleas

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

**Case Number:** 2023CP4001759

**Type:** Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-12-06 10:19:46 page 74 of 74

|                                                |   |                                     |
|------------------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                        | ) | IN THE COURT OF COMMON PLEAS        |
|                                                | ) |                                     |
| COUNTY OF RICHLAND                             | ) | FOR THE FIFTH JUDICIAL CIRCUIT      |
|                                                | ) |                                     |
| <b>KEITH W. PARK</b> , individually and as the | ) | <b>C/A NO. 2021-CP-40-02727</b>     |
| Personal Representative of the Estate of       | ) |                                     |
| <b>ISABELLA PARK</b> ,                         | ) | <i>In Re:</i>                       |
|                                                | ) | Asbestos Personal Injury Litigation |
| Plaintiffs,                                    | ) | Coordinated Docket                  |
|                                                | ) |                                     |
| v.                                             | ) |                                     |
|                                                | ) | <b><u>ORDER</u></b>                 |
| <b>ARMSTRONG INTERNATIONAL, INC.,</b>          | ) |                                     |
| et al.                                         | ) |                                     |
|                                                | ) |                                     |
| Defendants.                                    | ) |                                     |

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Plaintiffs have moved this Court to appoint a Receiver over Cape PLC, pursuant to S.C. Code §15-65-10(4)-(5). This Court finds that the application is meritorious under the applicable statute 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 this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.

Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law with the power and authority fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be. This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape’s insurance carriers.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Respondent's property, to: 1) collect all accounts receivable of Respondent and all rents due to the Respondent from any tenant; 2) to change locks to all premises at which any property is situated; 3) open any mail addressed to the defendant and addressed to any business owned by the Respondent; redirect the delivery of any mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver; 4) endorse and cash all checks and negotiable instruments payable to Respondent, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Respondents; 6) hire any person or company to move and store the property of Respondent; 7) to insure any property belonging to the Respondents (but not the obligation); 8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendants; 9) obtain from any landlord, building owner or building manager where the Respondent or the Respondent's business is a tenant, copies of the Respondent's lease, lease application, credit application, payment history and copies of Respondent's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; and 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Respondent may be situated, and to review and obtain copies of all documents related to same.

Based on the Court's experience in other receivership matters, and in an effort to streamline these proceedings, the Court expects the Receiver to investigate the existence of all insurance coverages potentially available to the company in receivership. The Receiver will provide potential insurers with lists of work sites, contractors, and insurance brokers and agents to facilitate

the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of the company in receivership or any company for whom the company in receivership did work as an "additional insured" under coverage written to another entity). The Court expects all insurers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

The Court further orders that, as the Receiver Court, that the Receiver or Cape may not be sued outside this Court without obtaining the Receiver's consent or an order of this Court prior to doing so.

AND IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

**Case Caption:** Isabella Park , plaintiff, et al vs Armstrong International Inc ,  
defendant, et al

**Case Number:** 2021CP4002727

**Type:** Order/Appointment of Receiver

So Ordered

Jean H. Toal

Electronically signed on 2023-03-16 11:28:55 page 4 of 4

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

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

3M COMPANY *et al.*,

Defendants.

In Re:  
Asbestos Personal Injury Litigation  
Coordinated Docket

\*\*\*\*\*

CAPE PLC, individually and as successor in interest to CAPE ASBESTOS COMPANY LIMITED, by and through its duly appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff,

**THIRD-PARTY PLAINTIFF'S  
OMNIBUS OPPOSITION TO MOTIONS  
TO DISSOLVE BY RESPONDING  
ALTRAD THIRD-PARTY DEFENDANTS  
AND CHARTER THIRD-PARTY  
DEFENDANTS**

v.

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



LTD.; CAPE HOLDCO LTD.; THE LAW  
DEBENTURE CORPORATION PLC; CAPE  
INDUSTRIAL SERVICES GROUP LTD.;  
MOHED ALTRAD; ALTRAD UK LTD.; CAPE  
UK HOLDINGS NEWCO LTD.; ALTRAD  
SERVICES LTD., f/k/a CAPE INDUSTRIAL  
SERVICES LTD.; ALTRAD INVESTMENT  
AUTHORITY S.A.S.; SPARROWS  
OFFSHORE GROUP LTD.; HAWK BIDCO US  
INC.; ARRANCO US, LLC; SPARROWS  
OFFSHORE, LLC; THE SPARROWS GROUP,  
LLC,

Third-Party Defendants.

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Third-Party Plaintiff Peter D. Protopapas, as duly appointed receiver for Cape PLC (the “Receiver” or “Receivership”), by and through undersigned counsel, hereby submits this omnibus response in opposition to the requests to dissolve the Receivership contained in various motions filed by Mohed Altrad, Altrad Investment Authority S.A.S., Hawk BidCo US Inc., Arranco US, LLC, and Sparrows Offshore, LLC (collectively, the “Responding Altrad Third-Party Defendants,” inclusive of what have been identified in the motions as “the Sparrows Defendants”), as well as by Charter Consolidated Ltd. (“Charter”), Central Mining & Investment Corporation Ltd. (“Central Mining”), and ESAB Corporation (collectively, the “Charter Third-Party Defendants”). Because the Receiver has been properly appointed and has stated viable claims for relief, and because this case is properly pending before this Court, these motions should be denied.

### **INTRODUCTION**

This case involves an ongoing scheme perpetuated by or inuring to the benefit of Third-Party Defendants that is many decades old, and that continues to deprive South Carolina citizens of critical assets and financial resources to redress the scourge of asbestos-related disease caused by Third-Party Defendants. In addition to filing serial motions to dismiss and to stay discovery, certain Third-Party Defendants ask the Court to unwind the receivership and preclude this third-party action from proceeding.

Specifically, appearing to advocate on behalf of Cape, the Responding Altrad Third-Party Defendants have filed multiple motions to dissolve the Receivership, with (i) certain U.S. subsidiaries of the Sparrows Group (n/k/a “Altrad Sparrows”) filing motions on August 21 and September 5, with the latter motion also requesting a protective order from discovery, and (ii) Mohed Altrad and the Altrad Investment Authority S.A.S. filing a “Motion to Dissolve the Cape PLC ‘Receivership’” (“Altrad Mot.”) on September 1, and also requesting dissolution of the

receivership in a protective-order motion filed on September 20. In addition, on October 6, each of the Charter Third-Party Defendants filed a virtually identical piggyback motion to dissolve and for a protective order (collectively, “Charter Mot.”), which “joins in, incorporates, and adopts . . . all motions for protective order and motions to dissolve the Cape PLC receivership” and purports to identify (in less than three pages) seven “[g]rounds for dissolution,” by restating arguments from the Altrad Motion. Those motions have been filed on several grounds including that (i) “Cape PLC” was not properly served, (ii) the process for appointing a Cape receivership was defective, and (iii) the third-party action violates the Appointment Order itself and other applicable law.

As explained below, those arguments lack merit, and the motions should be denied.<sup>1</sup>

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### **I. In 2021, the Park Lawsuit Was Filed, Amended, and Served on Cape in England.**

On June 4, 2021, Isabella Park initiated an asbestos personal-injury lawsuit (“Park Lawsuit”) against certain defendants, including Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd. *See* Compl., *Park v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (June 4, 2021) (“Original Compl.”), at 1, 7. Ms. Park sought relief after being “diagnosed with mesothelioma caused by exposure to asbestos dust and fibers” unintentionally “brought home” for years “as a result of her husband’s work with and around asbestos-containing products.”

*Id.* at ¶ 4.

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<sup>1</sup> For the Court’s convenience, the Receiver submits a single omnibus brief in response to all of these dissolution requests in an effort to streamline the number of filings before the Court. Because the September 1 motion repeats arguments from the August 21 motion, while also addressing the filing of proof of service in the Park Lawsuit on August 28 (unintentionally omitted from the motion to appoint a receiver), citations in this omnibus opposition refer only to the September 1 motion (“Altrad Mot.”), except as specifically stated otherwise.



On June 9, 2021, less than five months from her diagnosis, and only five days after filing her lawsuit, Ms. Park passed away. Her son Keith then amended the complaint, individually and as personal representative to Ms. Park’s estate (the “Park Plaintiffs”), to assert a wrongful-death action on November 17, 2021. *See* First Amended Compl., *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Nov. 17, 2021). In so doing, the amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) as a defendant, apart from Cape PLC (which had already been made a defendant in the original complaint), with both defendants (together, “Cape”) identified as successors in interest to Cape Asbestos Company Ltd. *Id.* at 9; *see also id.* at ¶¶ 26–27 (describing Cape’s business).

In December 2021, the Park Plaintiffs served Cape. Specifically, as reflected in an affidavit signed March 8, 2022, an English process server mailed<sup>2</sup> a copy of the complaint and summons to Cape PLC and Cape Intermediate Holdings Ltd.—identifying both “individually and as successors to Cape Asbestos Company Limited.” Ex. A to Notice of Filing of Ommitted [sic.] Exhibit, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Aug. 28, 2023) (“Cape POS Exhibit”), at 1–6, 12–13. As the affidavit explains, “Cape PLC” was the name of the company between August 1, 1989 and June 27, 2011, while “Cape Intermediate Holdings Ltd.” is the company’s current name. *Id.* at 2. The English process server (the affiant) swore that on December 14, 2021, he served “copies of the First Amended Summons in this action on Cape PLC and Cape Intermediate Holdings Limited” at their registered address, with cover letters explaining that the claims were brought against them as successors in interest to Cape Asbestos Company Limited. *Id.* at 2, 5–6. Pursuant to procedural rules in England, the “proceedings [were] deemed to have

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<sup>2</sup> The affidavit indicates that the service copies were contained in an oversize envelope, with a large-letter stamp.

been served” two days after mailing, *i.e.*, on December 16, 2021. *Id.* at 3. The process server also indicated that he emailed materials to an official address designated for the receipt of asbestos-related claims against Cape ([elclaimsaltraduk@altrad.com](mailto:elclaimsaltraduk@altrad.com)). *See id.* at 5–6.



One week later, on December 23, 2021, Plaintiffs filed a Second Amended Complaint, adding allegations and defendants **unrelated to Cape**. *See* Second Amended Compl., *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Dec. 23, 2021). Plaintiffs did not serve that specific pleading on Cape, ostensibly because Cape had already been served with an operative summons and complaint identifying the facts relevant to Cape and the claims asserted against Cape, and no such facts or claims were added in the Second Amended Complaint.

## **II. In 2022, the Park Lawsuit Was Resolved with Certain Defendants—But Not Cape.**

On June 3, 2022, as part of an update to the Court on various proceedings, counsel for the Park Plaintiffs sent a short email with various updates, including that “the Park and Garren cases have both fully resolved.” Altrad Mot. Ex. 8. Specifically, it appears the Park Lawsuit was “fully resolved” regarding defendants who had appeared in the litigation and were scheduled for trial. Moreover, for months after, through February 2023, the docket reflects that Plaintiffs filed

stipulations of dismissal for those appearing defendants to effectuate their resolutions. **But Plaintiffs never dismissed Cape, and the lawsuit remains active.**

### **III. In 2023, the Court Appointed a Receiver Because of Cape’s Pattern of Avoiding Creditors.**

On March 6, 2023, Plaintiffs filed a motion for “this Court to appoint a receiver over Cape PLC and its subsidiaries, affiliates, successors, and assigns.” Motion to Appoint Receiver, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 6, 2023) (“Appointment Mot.”), at 1. The motion was made pursuant to S.C. Code §§ 15-65-10(4) and (5), on the basis that a named defendant, Cape PLC, “is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)” and, with “its subsidiaries and global affiliates[,] . . . were and are private companies organized and existing under the laws of the United Kingdom, with its principal place of business in England.” *Id.* at 1. Consistent with Cape’s failure to respond to the Park Lawsuit, the Appointment Motion described Cape’s litigation-avoidance strategy—starting nearly 50 years earlier in the late 1970s and continuing—by which Cape “decided to simply accept default judgments in asbestos lawsuits [that] could not be enforced.” *Id.* at 2. Plaintiffs provided notice of the Appointment Motion to Cape by “plac[ing] into hands of DHL, an international carrier, a copy of this motion and its exhibits, for delivery to the same address at which service was perfected.” *Id.* at 8 n.13.

On March 17, 2023, under S.C. Code §§ 15-65-10(4) and (5), the Court granted a request for an expedited ruling on the Appointment Motion and appointed a receiver for Cape PLC, as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.). *See* Order, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) (“Appointment Order”), at 1. Pursuant to that Appointment Order, and “pursuant to the South Carolina Law,” the Receiver has “power and authority fully administer all assets of Cape, accept service on behalf of Cape,

engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape”—in proper satisfaction of claims against Cape—“whatever they may be.” *Id.*

The Appointment Order also authorized “rights, authority and powers with respect to” Cape’s property, including to “obtain from any . . . third party, any financial records belonging to or pertaining to” Cape, including potential insurance coverage related to Cape. *Id.* at 2.

#### **IV. The Receiver Properly Asserted a Third-Party Lawsuit.**

Among other efforts to marshal assets, the Receiver investigated Cape’s historical and current ownership and control. From that, the Receiver identified three groups of entities (and one individual) that were responsible for and/or benefited from Cape’s litigation-avoidance strategy. Thus, on June 30, 2023, the Receiver filed a Third-Party Complaint in this proceeding, *John and Margaret Tibbs v. 3M Company et al.*, No. 2023-CP-4001759 (“Tibbs Lawsuit”), in which Cape PLC (already in receivership) had been named a defendant in April 2023. That pleading asserted third-party equitable claims for unjust enrichment, constructive trust, alter ego and veil-piercing liability, and accounting.

Among the Third-Party Defendants are certain current owners or affiliates of Cape (collectively, “Altrad Third-Party Defendants”),<sup>3</sup> and among that group, two subgroups have emerged: (i) five Responding Altrad Third Party Defendants, which have filed the motions to dissolve at issue, and (ii) seven “Non-Responding Altrad Third-Party Defendants,” which failed to respond to the Third-Party Complaint, despite being served pursuant to Article 10 of the Hague

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<sup>3</sup> The Receiver originally named The Law Debenture Corporation PLC (“Law Debenture”) as an Altrad Third-Party Defendant, based on public information suggesting that it was a “Person with Significant Control” of Cape as of 2016. *See* Third-Party Compl. ¶ 113. After receiving additional information from Law Debenture’s counsel regarding the nature of its “control,” which was based on representing the interests of certain persons in the United Kingdom also injured by Cape asbestos, the Receiver dismissed Law Debenture on August 21, 2023, without prejudice.

Convention, including Altrad UK Ltd.; Cape Industrial Services Ltd., n/k/a Altrad Services Ltd. (since June 1, 2021); Cape Holdco Ltd.; Cape Industrial Services Group Ltd.; Cape UK Holdings Newco Ltd.; Sparrows Offshore Group Ltd.; and The Sparrows Group LLC. Due to those failures to appear, the Receiver filed default motions against those seven entities, with supporting proof of service, from August 18 through 29, 2023.

| ALTRAD AND CAPE-AFFILIATED ENTITIES<br>("ALTRAD THIRD-PARTY DEFENDANTS" OR "ALTRAD")                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Non-Responding (Defaulting) Altrad:</u> <ul style="list-style-type: none"> <li>• Altrad UK Ltd.</li> <li>• Altrad Servs. Ltd.<br/>(f/k/a Cape Indus. Servs. Ltd.)</li> <li>• Cape Holdco Ltd.</li> <li>• Cape UK Holdings NewCo Ltd.</li> <li>• Cape Indus. Servs. Grp. Ltd.</li> <li>• Sparrows Offshore Grp. Ltd.</li> <li>• The Sparrows Grp., LLC</li> </ul> | <u>Responding (Non-Defaulting) Altrad:</u> <ul style="list-style-type: none"> <li>• Mr. Mohed Altrad</li> <li>• Altrad Inv. Auth. S.A.S.</li> <li>• Hawk Bidco US Inc.</li> <li>• Arranco US, LLC</li> <li>• Sparrows Offshore, LLC</li> </ul> |

Of the seven Non-Responding Altrad Third-Party Defendants, five of them (*i.e.*, all except two defaulting "Sparrows" entities<sup>4</sup>) share the same registered office address as Cape PLC, n/k/a Cape Intermediate Holdings Ltd., in Warrington, England at 6-7 Lyncastle Way Barleycastle Lane,

<sup>4</sup> Without explanation, Responding Altrad Third-Party Defendants have asserted in filings with this Court that none of the Responding Altrad Third-Party Defendants has "affiliation or association" with the Sparrows Offshore Group, Ltd. (based in Aberdeen, Scotland) or The Sparrows Group LLC (a Delaware LLC created in March 2023). That contention conflicts with public materials regarding their affiliations, in which Altrad has touted its recent acquisition of the Sparrows Group, which on information and belief includes these two entities. *See, e.g.*, Altrad Press Release, *Altrad Group Agrees to Acquire Sparrows Group* (Mar. 2, 2022), <https://www.altrad.com/en/newsreader/altrad-agrees-to-acquire-sparrows-group.html>. Also notably, (i) within **two weeks** of being served the Third-Party Complaint on July 14, 2023, Sparrows Offshore Group Ltd. passed a resolution to liquidate on July 27, 2023 (while other Sparrows entities continue to operate at the same registered address, including Sparrows Offshore International Group Ltd.), and (ii) after these motions to dissolve were filed, the "Sparrows Group" has been rebranded "Altrad Sparrows."

Appleton Thorn Trading Estate. *See* Ex. 1, AD01 Change of Registered Office Address for Cape Intermediate Holdings Ltd. (June 13, 2023) (showing change of address, from where the Park Lawsuit was served, around June 13). Thus, Cape has been served and put on notice *many times* now about the nature of the underlying asbestos suit filed against it (including by the Tibbs Plaintiffs), along with the South Carolina receivership over it.<sup>5</sup>

Likewise, the Receiver named three entities associated with historical ownership and control of Cape, including when the liability-avoidance scheme was implemented in the 1970s, identified as the “Charter Third-Party Defendants,” including Charter, Central Mining, and ESAB Corporation, which were properly served with a copy of the Third-Party Complaint. *See, e.g.*, Third-Party Compl. ¶ 124 (“On information and belief, ESAB Corporation is currently the parent company of, as well as a successor in interest to, Charter Consolidated Ltd., along with Charter’s subsidiary Central Mining & Investment Corporation Ltd. . . .”); *see also id.* ¶¶ 45–69, 77–105 (detailing the relationship between Charter, Central Mining, and Cape, among other Third-Party Defendants associated with Cape’s historical ownership and control).

Appearing to advocate on behalf of Cape, the Responding Altrad Third-Party Defendants and the Charter Third-Party Defendants have filed multiple motions to dissolve the Receivership. As explained below, those motions lack merit and should be denied.

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<sup>5</sup> Counsel for Mr. Altrad and Altrad Investment Authority S.A.S. stated via email on August 18 and 19, 2023, as well as in other communications, that they also represent one of the defaulting Altrad Third-Party Defendants with the same registered address as Cape, *i.e.*, Altrad UK Ltd. This fact, which further supports the Receiver’s claims against the Altrad Third-Party Defendants, is detailed further in a separately filed omnibus opposition to motions to dismiss under Rules 12(b)(1) and 12(b)(6) filed by certain Third-Party Defendants.

## ARGUMENT

### **I. Cape Was Properly Served in the Park Lawsuit and Failed to Respond.**

Cape was properly served in the Park Lawsuit, as the First Amended Complaint pleaded claims against an English entity existing since 1893, Cape PLC, n/k/a Cape Intermediate Holdings Ltd., for the wrongful death allegedly caused by the company’s historical asbestos business. *See* Cape POS Exhibit. Instead of responding, Cape chose to continue its decades-long practice of ignoring asbestos lawsuits filed against it in the United States—simply accepting defaults ostensibly because it believes defaults entered by this Court cannot be enforced. *See* Third-Party Compl. ¶¶ 89–105. Indeed, Cape’s own disclosures make clear that it **never** intends to respond to U.S. litigation in the future, because that would purportedly “have a materially adverse effect on the financial status of the Group and almost certainly result in insolvency proceedings.” Ex. 2, *Proposals for a Scheme of Arrangement Between Cape PLC et al.* (Mar. 15, 2006), at 65.

#### **A. The proof of service confirms that the relevant Cape entity was properly served.**

Rather than acknowledge the proper service of Cape, and its longstanding, publicly disclosed practice of refusing to respond to U.S. litigation, Altrad now suggests that the incorrect Cape entity has been served. Specifically, Altrad notes that a recently formed entity, Cape PLC, as organized under the laws of the Bailiwick of Jersey in 2011, was not served, and that is the only entity currently existing and going by the name “Cape PLC.” *See* Altrad Mot. at 2–3, 21 (points #1 and #2). But as Cape’s own materials make clear, that Jersey entity was formed recently to act as a “holding company of the Cape Group” for tax purposes, with the new entity being a “Singapore and Jersey tax resident.” Ex. 3, *Cape PLC Recommended Proposals to Establish a New Jersey-Incorporated Holding Company of the Cape Group* (May 9, 2011), at 9, 11, 16. Against a backdrop of decades of ignoring all forms of American pleadings as part of a publicly disclosed

strategy, the notion that a different, recently formed Cape entity in the Bailiwick of Jersey somehow would have treated these service documents differently strains credulity.

To be clear, in both the underlying Park and Tibbs Lawsuits, and in this third-party action, there has been **no** reference to the Jersey entity until Altrad raised it as a defense. And from a basic assessment of relevant filings and pending discovery, it is unambiguous that the conduct of the 130-year-old Cape entity in England (and not the recently formed holding company in the Bailiwick of Jersey) is at issue:

- **Park Lawsuit’s Asbestos Allegations.** While still alive, Ms. Park identified Cape PLC in the caption as a defendant, individually and as successor in interest to Cape Asbestos Company Ltd. *See* Original Compl., at 1, 7. After dying of mesothelioma, amended versions of the complaint were filed to include a wrongful-death claim against Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) and Cape PLC, with both defendants sued as successors in interest to Cape Asbestos Company Ltd. and alleged to be organized under English law. *See, e.g.,* First Amended Compl., at 9. As the First Amended Complaint made clear, the liability alleged against both Cape PLC and Cape Intermediate Holdings Limited was based on Cape’s historical asbestos business, in existence long before the company’s adoption of either name in 1989 and 2013, respectively. *See id.* ¶¶ 26–27.<sup>6</sup>
- **Appointment Motion.** The motion to appoint a receiver also referenced only Cape PLC as “the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)”

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<sup>6</sup> As in the Park Lawsuit, the complaint filed by Plaintiffs John A. Tibbs and Margaret B. Tibbs names Cape PLC as a defendant. *See* Compl., *Tibbs et al. v. 3M Company et al.*, No. 2023-CP-4001759 (Apr. 5, 2023), at 2, 11, 23 (identifying U.K.-based “**CAPE PLC** individually and as successor-in-interest to **CAPE INDUSTRIES LTD. f/k/a CAPE ASBESTOS COMPANY LTD.** and its subsidiaries and global affiliates”).



that is “organized and existing under the laws of the United Kingdom, with its principal place of business in England.” Appointment Mot. at 1.

- **Third-Party Complaint.** The Third-Party Complaint against Altrad (including its various Cape-affiliated subsidiaries) likewise makes clear that “Cape” refers to the entity formed in 1893 in England, and even describes the various nominal changes to Cape’s name over the past half century (*i.e.*, after it began to be sued in the United States for asbestos-related injuries). *See* Third-Party Compl. ¶ 113 (detailing name changes to Cape Asbestos Company Ltd., including operating as Cape PLC from 1989 to 2011 and “re-registering as a private company to become Cape Intermediate Holdings Ltd. in 2013”).
- **Discovery Requests.** Finally, the Receiver served discovery on certain Responding Altrad Third-Party Defendants as early as July 18, 2023—more than one month before the first motion to dissolve was filed—which left no doubt that “Cape PLC” refers to the longstanding English entity, not the recently formed Bailiwick of Jersey entity:

2. “Cape PLC” means the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and affiliated Entities, with any other predecessor or successor in interest, including Cape Industries PLC, Cape Intermediate Holdings PLC, and Cape Intermediate Holdings Ltd.

#### **B. Both the complaint and summons were served on Cape.**

Altrad also argues that service was defective because only a summons, and not a copy of the complaint itself, was served—which it argues is contrary to Rule 4(d)’s requirement that the “summons and complaint must be served together.” *See* Altrad Mot. at 3, 22 (point #5). That contention, however, is erroneously based on what is quite obviously a mere shorthand description

of the document that was served as the “First Amended Summons.” The suggestion that perhaps *only* the summons was served is fanciful.

In the Park Lawsuit, the “First Amended Summons” and “First Amended Complaint” refer to two parts of the same document that was filed on November 17, 2021. The summons consists of the filing’s first 4 pages, and the complaint consists of the filing’s remaining 66 pages.

Pursuant to Rule 4(d)’s obligations, counsel for the Park Plaintiffs would have provided the entire filing—rather than only the first four pages—and directed the process server to mail the entire document. And ostensibly, the process server followed that directive—mailing the entire 70-page filing (not just 4 pages), doing so in an oversize envelope with a large-letter stamp, as photographs in the Cape proof of service show.



Cape POS Exhibit, at 12–13. Accordingly, this argument is equally baseless.<sup>7</sup>

<sup>7</sup> The process server’s cover letter indicates that a copy of the complaint and summons were also emailed to [elclaimsaltraduk@altrad.com](mailto:elclaimsaltraduk@altrad.com). See Cape POS Exhibit, at 5–6. If the summons was sent without the complaint, then Altrad should have that email to prove what was received.

**C. The amendment of the complaint does not render service defective.**

Altrad argues that even if the proper entity and address were served with an operative complaint, service was still defective—and thus the receivership appointment is invalid—because one week later (on December 23, 2021), Plaintiffs filed a Second Amended Complaint. Specifically, Altrad appears to contend that any entry of default (which Altrad contends is necessary for this Receivership) for Cape’s failure to respond to the First Amended Complaint would not be possible, because that complaint was superseded before a default could technically occur. Thus, according to Altrad, that amendment of the complaint effectively voided the notice provided to Cape. *See* Altrad Mot. at 6, 22 (point #12). But that technical, formalistic argument (i) is legally incorrect, and (ii) does not negate that Cape was properly served notice of this proceeding.<sup>8</sup>

*First*, the argument ignores that because Cape became a “part[y] in default for failure to appear,” and because no “new or additional claims for relief [were asserted] against” Cape in the Second Amended Complaint: the rules **did not require** Cape to be served again. Rule 5(a), SCRCP.

*Second*, the argument incorrectly characterizes the filing of the Second Amended Complaint (which asserted no new claims against Cape) as automatically negating the effect of service on Cape of the First Amended Complaint—necessitating a second round of service. In

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<sup>8</sup> The authorities cited by Altrad as supporting its argument that service of the First Amended Complaint was negated by the filing of a subsequent complaint—in reality—offer no such support. *See, e.g., Schein v. Lamar*, 284 S.C. 252, 255, 325 S.E.2d 573, 574 (Ct. App. 1985) (finding “questions as to the sufficiency of the First Amended Complaint are now moot,” given the complaint had been superseded—having no bearing on issues around proper service); *Fawzy v. Wauquiez Boats SNC*, 873 F.3d 451, 455 (4th Cir. 2017) (appeal from Maryland federal court, finding lack of jurisdiction to consider appeal when dismissal order concerned only a superseded complaint and did not address an amended complaint filed the same day).

South Carolina, “courts have long held that in order to establish that service has been properly effected, the plaintiff need only show compliance with the civil rules on service of process.” *McClurg v. Deaton*, 380 S.C. 563, 579, 671 S.E.2d 87, 96 (Ct. App. 2008). In contrast, negating service based on an amendment (especially one in which no new claims are asserted against Cape) would not serve the “principal object of service of process,” *i.e.*, “to give notice to the defendant corporation of the proceedings against it” and to allow the Court to exercise jurisdiction. *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010) (emphasis added) (finding service complied with the law, despite allegations of a technical defect). When, as here, rules on service of process “are followed, there is a presumption of proper service.” *McClurg*, 380 S.C. at 579, 671 S.E.2d at 96. Moreover, as numerous authorities recognize amending a complaint after service does not render original service defective. *See, e.g., Doe v. Unocal Corp.*, 27 F. Supp. 2d 1174, 1180 (C.D. Cal. 1998) (denying a motion to dismiss for “insufficiency of service of process,” when an operative complaint rather than an amended complaint was served, because “[a]n original complaint is only superseded . . . when the amended complaint is properly served, not when it is filed” (citing *Int’l Controls Corp. v. Vesco*, 556 F.2d 665, 669 (2d Cir. 1977))).<sup>9</sup>

*Third*, the Receiver acknowledges that the Appointment Motion contained errors regarding the date of service, as it (i) conflated the date of the supporting affidavit (March 8, 2022) with the

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<sup>9</sup> *See also Thompson v. Victoria Fire & Cas. Co.*, 32 F. Supp. 2d 847, 848 (D.S.C. 1999) (assessing the originally served complaint for purpose of removal, rather than an amended complaint that was not served); *Opus Grp., LLC v. Enomatic Srl*, 2012 WL 13134613, at \*3 (S.D. Fla. Oct. 24, 2012) (denying motion to dismiss based on service of a first amended complaint, after the second amended complaint was filed, given lack of prejudice to the defendant “considering the timing and the [insignificant] differences between the two complaints”); *Crane v. Battelle*, 127 F.R.D. 174, 177–78 (S.D. Cal. 1989) (denying motion to quash service in light of defendant not being able to “seriously contend that there was prejudice to some substantial right of defendant,” when the complaint caption reflected an erroneous name, because the mistake was innocent and there was substantial compliance with procedural rules of service).

effective date of service (December 16, 2021), and (ii) referenced the Second Amended Complaint rather than the First Amended Complaint as what was served. *See* Altrad Mot. at 4–5 (points #7, 9). These technical defects, however, do not negate the operative facts at issue in connection with this motion: namely, that **the proper Cape entity was served** with notice of the Park Lawsuit, and **Cape chose not to respond**, consistent with its longstanding, publicly disclosed avoidance strategy. Indeed, **Cape still has not responded**.

Ultimately, the law does not require this Court to exalt technical form over substance, as Altrad suggests.<sup>10</sup> Accordingly, none of Altrad’s arguments regarding allegedly defective service on its subsidiary, Cape, is valid, and none supports dissolution of the Receivership.<sup>11</sup>

## **II. The Court Appointed the Receiver for Cape with Proper Process and Authority.**

### **A. Proper notice of the Appointment Motion was provided to Cape.**

Using international carrier DHL, the Park Plaintiffs effected delivery of the Appointment Motion at the same registered address in England where service of the First Amended Complaint was previously perfected. *See* Appointment Mot. at 8. There is no basis for Altrad’s argument that Plaintiffs were required to do anything else—including serving the motion pursuant to the Hague Convention. *See* Altrad Mot. at 3, 5, 12, 19–20 (points #4, #10, #31).

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<sup>10</sup> *See, e.g., Jackson v. Beech*, 636 F.2d 831, 835 (D.C. Cir. 1980) (“modern procedural reforms were aimed at eliminating technicalities that preclude the substantive resolution of dispute”); *Dennis v. Escarcega*, 2008 WL 11409449, at \*3 (W.D. Tenn. Oct. 7, 2008) (rejecting arguments based on alleged “technical deficiencies” in denoting a pleading as a complaint, given it contained “sufficient information to place the Defendant on notice of the claims being brought against him”).

<sup>11</sup> This argument also relies on the legal premise that a technical default and default judgment are required to appoint a receiver (and that the purportedly necessary default was avoided by the filing of the Second Amended Complaint). But that argument is also wrong, as discussed *infra* Argument § II.B.

While Rule 4.1, SCRCPP, requires service of the summons and complaint through certain processes for “service of process in foreign countries,” appointment of a receiver is **not** subject to those particularized guidelines. Instead, the law only requires “**notice** of the application,” S.C. Code §§ 15-65-20, 15-65-30 (emphasis added), which undisputedly was provided here. In turn, Altrad fails to explain how a DHL mailing would not provide sufficient notice—but serving pleadings (for a second time) pursuant to the Hague Convention would. Indeed, given Cape’s consistent pattern of not responding to asbestos litigation in the United States—including in this third-party action—such service would have been futile. *See, e.g.*, Rule 1, SCRCPP (providing that South Carolina procedural rules “shall be construed to secure the just, speedy, and inexpensive determination of every action”).<sup>12</sup>

Accordingly, the Court should validate as adequate the notice provided to Cape regarding the Appointment Motion.

**B. The Court followed all necessary steps to appoint a receiver for Cape.**

Altrad also asserts that, even if Cape was properly served and notified of the Appointment Motion, the Court failed because it:

did not perform any of the steps legally necessary to appoint a receiver over Cape PLC for purposes of the Park Lawsuit, including by [i] confirming lawful service of process in the Park Lawsuit, [ii] entering default against Cape PLC, [iii] granting a default judgment against Cape PLC, and [iv] entering judgment against Cape PLC purporting to reflect a liquidated sum of damages due to the Park plaintiffs based on a sufficient factual showing.

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<sup>12</sup> There is also no merit to the Charter Third-Party Defendants’ argument for dissolution because they were “not provided with notice of the [Appointment] Motion prior to the entry of the [Appointment] Order.” (Charter Mot. at 3–4.) Sections 15-65-20 and 15-65-30 did not require that they receive such notice. And once they became implicated by this Receivership, because claims have been asserted against them in the Third-Party Complaint, each of the Charter Third-Party Defendants was promptly served and has been given an opportunity to respond.

Altrad Mot. at 6 (point #11). This argument misconstrues what is required for appointment of a receivership under South Carolina law, especially in the context of a company like Cape, for which a receiver was appointed under two parts of S.C. Code § 15-65-10 that have **no** such prerequisites.

*First*, under subsection (4) of S.C. Code § 15-65-10, this Court has authority to appoint a receiver “either in or out of court . . . [w]hen a corporation has been dissolved, is insolvent or in imminent danger of insolvency or **has forfeited its corporate rights**, and, in like cases, of the property within this State of foreign corporations.” (Emphasis added.) In turn, the Appointment Order was properly made under this subsection because Cape had forfeited its corporate rights based on “its complex scheme and 1978 liquidation of its American subsidiary, NAAC, by which it intentionally fled the United States to avoid its liabilities and obligations to its creditors”—amounting to a “crime, breach of obligation, or neglect of duty” that caused forfeiture of its corporate rights. *See* Appointment Mot. at 6 (quoting Black’s Law Dictionary (11th ed. 2019) to define *forfeiture*).<sup>13</sup>

*Second*, under subsection (5) of S.C. Code § 15-65-10, this Court has authority to appoint a receiver “either in or out of court . . . [i]n such other cases as are provided by law or **may be in accordance with the existing practice**, except as otherwise provided in this Code.” (Emphasis added.) In turn, the Appointment Order was properly made under this subsection based on Cape’s long-running, intentional scheme to defraud its tort creditors by refusing to appear in the United States, including in South Carolina. *See* Appointment Mot. at 7–8. This subsection, reflecting an “old practice” of equity and “important principle of law” to correct injustice, was particularly

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<sup>13</sup> Although the Appointment Order described Cape as dissolved, even though Cape in England is still a going concern, that does not impact the legality of the Receivership. *See* Altrad Mot. at 7, 10, 18–19 (points #13, #24). The Court can simply amend the Appointment Order to clarify that statement, if the Court finds that appropriate. *See* S.C. Code § 33-14-320(c).



applicable to Cape, given its efforts “to defeat [its] creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts.” *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177, 179 (1909) (citing *Miller v. Hughes*, 33 S.C. 530, 12 S.E. 419 (1890)). Because Cape set its numerous tort creditors, including the Park Plaintiffs, “at arm’s length by refusing . . . to take any interest in the satisfaction of their claims,” there was a “prima facie case . . . warranting the appointment of a receiver.” *Id.* at 180.

*Likewise*, although Altrad asserts certain procedural defects (such as with respect to there being no entry of a default against Cape PLC or a judgment reflecting a liquidated sum due to the Park Plaintiffs), those processes are irrelevant to the grounds on which the Receiver for Cape was appointed. *Compare* Altrad Mot. at 6 (point #11) *with* S.C. Code §§ 15-65-10(2), (3) (providing for appointment of receiver in certain situations “[a]fter judgment”).

*Finally*, given that Cape’s default in the Park Lawsuit was part of a longstanding practice by the company (and not a “single purported default,” as Altrad argues), the Appointment Order easily meets the strictures of South Carolina law and provides a compelling need for a receivership. *See* Altrad Mot. at 8 (point #16) (describing the Appointment Order of an Altrad subsidiary/affiliate as “harsh and drastic”); *see also Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 172 S.E. 787 (1934) (distinguishable precedent cited by Altrad, based on the improper appointment of an individual to be *his own* receiver). Indeed, any contention that Cape lacks assets in South Carolina (apart from its insurance and legal claims) is part of Cape’s scheme to defeat tort



creditors—*demonstrating* the necessity of this Receivership and for allowing this third-party action to continue. *See* Third-Party Compl. ¶¶ 41, 43, 65, 79–80, 89–105.<sup>14</sup>

**C. The Court appointed a receiver for the proper Cape entity.**

Despite Altrad’s arguments to the contrary, this Court has appointed a receivership over the correct Cape entity: Cape PLC, n/k/a Cape Intermediate Holdings Ltd., f/k/a Cape Asbestos Company Ltd. at its founding in 1893. (*See supra* Argument § I.A.) It does not matter that the entity—which has continued its liability-avoidance scheme for decades—changed its name from “Cape PLC” in 2011. Indeed, Altrad cannot reasonably argue that Cape lacked proper notice of the proceeding, or was confused by the company at issue, given the allegations in the motion itself.

The South Carolina rules of procedure, including for service of process, “do not turn on parsing strict technicalities or debating murky legal abstractions.” *McCall v. IKON*, 363 S.C. 646, 651, 611 S.E.2d 315, 317 (Ct. App. 2005). When a party is identified “in such terms that every intelligent person understands who is meant, as is the case here, [process] has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else.” *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992) (citation omitted).

At best, as to the appointment of a receiver for “Cape PLC” rather than “Cape Intermediate Holdings Ltd.,” Altrad has raised a “misnomer of a corporation,” which is “immaterial” because

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<sup>14</sup> Relatedly, there is no merit to the Charter Third-Party Defendants’ challenge to the Appointment Order as not “includ[ing] ‘a clause fixing the value of the property’ sought to be placed in the hands of a receiver,” as purportedly required by S.C. Code § 15-65-60. (Charter Mot. at 4.) No such requirement, which is related to posting bonds by a party claiming rights to property, applied to the Cape Appointment Order, including because any bond requirement would necessarily not apply here and would be futile, when the liabilities at issue and amount of assets that may be available, including through uneroded insurance, could not be valued. Moreover, Cape has made no effort to post a bond for the return of property.

“it appears [Cape] could not have been, or was not, misled” or otherwise prejudiced. *Id.* Accordingly, this technicality provides no basis to dissolve the Receivership.<sup>15</sup>

**D. Personal jurisdiction exists for a Cape receivership.**

Altrad also challenges the Appointment Order as unlawful because the Court did not make an explicit finding that it has personal jurisdiction over Cape PLC. No such finding was needed. Indeed, personal jurisdiction is self-evident, given Cape’s large-scale export of asbestos to the United States over decades, knowing it would injure tens of thousands of people, including in South Carolina. *See, e.g.,* Third-Party Compl. ¶ 75 (noting nationwide distribution of certain asbestos, over which Cape had a monopoly, and prior personal jurisdiction ruling in South Carolina with respect to a Cape entity).

The applicable long-arm statute is easily met by the conduct alleged in the Appointment Motion. Specifically, this Court has jurisdiction over Cape as “a person who act[ed] directly or by an agent as to a cause of action arising from” Cape’s (1) “causing tortious injury or death in this State by an act or omission outside this State,” and by “regularly . . . engag[ing] in [a] persistent course of conduct, or deriv[ing] substantial revenue from goods used or consumed or services rendered in this State,” and/or (2) “production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.” S.C. Code §§ 36-2-803(4), (8).<sup>16</sup>

Accordingly, personal jurisdiction clearly exists for purposes of this Receivership.

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<sup>15</sup> The Receiver would have no objection to the Court’s amendment of the Appointment Order to identify Cape Intermediate Holdings Ltd., if the Court finds that appropriate. *See, e.g., Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 (“If it later appears that the true name of the corporation is different . . . , the misnomer is properly a subject of amendment.”); S.C. Code § 33-14-320(c) (permitting amendment of appointment order).

<sup>16</sup> Concurrently with this motion, the Receiver is separately filing two omnibus oppositions to the motions to dismiss filed by each of the Third-Party Defendants.

**E. There is a justiciable controversy.**

The Park Lawsuit (leading to the Cape Receivership) and this third-party action (asserting equitable claims) both present justiciable controversies for the Court’s resolution, as each reveals a “real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” *Pee Dee Elec. Co-op., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). Altrad’s arguments to the contrary are factually and legally incorrect.

*First*, Altrad quotes a single email (presenting the email in isolation) by Plaintiffs’ counsel to argue that the lawsuit had been “completely resolved” months before the Appointment Motion was filed, and no judgment was entered against Cape, so there was no basis to appoint a receiver. *See* Altrad Mot. at 8 (point #17). This overly simplistic recitation of the record does not acknowledge that the Park Lawsuit was resolved only as to **responding defendants**, and not as to Cape, which did not respond; trial had been scheduled but no longer was needed as all responding defendants had agreed to settle the claims against them. Indeed, after updating the Court of the tentative resolution of the claims against responding defendants, it took several more months—through February 2023—to file numerous stipulations of dismissal. During that period, Cape still filed no appearance, and Plaintiffs made no indication that they would dismiss their claims against Cape. Once those stipulations were filed, Plaintiffs filed the Appointment Motion in March 2023, pursuant to subsections (4) and (5) of S.C. Code § 15-65-10, which do not require entry of default or a default judgment (as Altrad incorrectly suggests).

*Second*, Altrad makes a conclusory (and confused) assertion that the Receiver appointed in the Park Lawsuit does not and cannot purport to seek relief on behalf of the Park Plaintiffs. Altrad fails to support this contention factually or legally. And to the extent Altrad means to argue that

the Receiver may not seek third-party relief in the Tibbs Lawsuit, and instead is limited to seeking relief for the Park Lawsuit (*i.e.*, in the action in which the Appointment Motion was filed), that contention would have no basis in the Appointment Order or law. Indeed, as the Appointment Order makes clear, and consistent with other receiverships ordered by this Court, the Receiver acts to marshal assets on behalf of all such creditors against Cape.

*Finally*, Altrad argues that counsel for the Park Plaintiffs filed the Appointment Motion to advance the positions of plaintiffs in unrelated asbestos cases rather than advance interests of clients in the Park Lawsuit. But that argument is illogical. The Park and Tibbs Lawsuits are similar because those plaintiffs—like tens of thousands of Americans, including citizens of South Carolina—have been harmed by Cape’s decades-long asbestos business and liability-avoidance scheme. In addition, the Receiver’s ability to successfully marshal assets will directly inure to the benefit of the Park Plaintiffs, which allege uncompensated harm from Cape’s conduct.

**F. The omission of proof of service from the Appointment Motion has been corrected.**

Altrad argues for dissolution because of a clerical error whereby proof of service was inadvertently not included as an exhibit to the Appointment Motion (even though counsel for the Park Plaintiffs as officers of this Court represented that service had been made and that they intended to include that documentation). That omission, however, was corrected with a notice of filing of the omitted exhibit on August 28, 2023, and does not negate that Cape was properly served. The unintentional “[f]ailure to make proof of service does not affect the validity of the service.” Rule 4.1(c)(2), SCRCP (emphases added).

**III. The Appointment Order and the Law Allow This Third-Party Action.**

Altrad next challenges the assertion of claims against Altrad in the Third-Party Complaint as violating the Appointment Order or the law generally. These arguments lack merit.

**A. The Appointment Order authorizes this third-party action.**

Altrad misreads the Appointment Order in asserting that pursuant to its “plain language,” as well as South Carolina law, the Receivership’s authority is limited to seeking derivative relief and liability connected to the Park Lawsuit—and **not** the Tibbs Lawsuit—and that the Receivership improperly goes beyond the territorial jurisdiction of South Carolina.

As required by S.C. Code § 33-14-320(c), the Appointment Order explicitly “describe[s] the powers and duties of the receiver or custodian in its appointing order,” such as “su[ing] and defend[ing] in his own name as receiver of the corporation in all courts of this State.” In turn, the Receiver was broadly granted “pursuant to the South Carolina Law with the power and authority fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be.” Appointment Order, at 1. Elaborating on those rights further, the Appointment Order states that the Receiver’s rights are “inclusive of, but not limited to, the right and obligation to administer . . . any claims related to the actions or failure to act of Cape’s insurance carriers,” to “obtain from any . . . third party, any financial records belonging to or pertaining to” Cape, and to “hire any person or company necessary to accomplish any right or power under this Order.” *Id.* at 1–2. Pursuant to those powers, the Receiver filed the Third-Party Complaint against Altrad to exercise his duly appointed authority and achieve the objectives of the Appointment Order.

Apart from the Appointment Order, the law authorizes the Receiver to bring the Third-Party Complaint against Altrad. Indeed, “[t]he right to have a receiver appointed is an ancient one,” *Pelzer v. Hughes*, 27 S.C. 408, 3 S.E. 781, 785 (1887), with courts sitting in equity appointing receivers to ensure a fair result, *First Carolinas Joint Stock Land Bank of Columbia v. Knotts*, 191 S.C. 384, 1 S.E.2d 797 (1939). The central function of a receivership is to marshal assets for the

purposes of satisfying creditors, including tort claimants. Indeed, the Supreme Court of the United States recognizes that a “state court, upon . . . hearing or information, . . . may permit its receiver to sue . . . upon any controverted claim,” including the ability to assert “all . . . rights of action.” *Porter v. Sabin*, 149 U.S. 473, 480 (1893). Here, the Receiver has pleaded viable claims to hold Third-Party Defendants accountable for Cape and its liability-avoidance scheme.

In addition, Rule 66, SCRCF, concerns the “Powers of Receiver” and provides that “[i]n addition to the powers conferred by law, every receiver of the property and effects of a debtor shall, unless restricted by order of the court, have general power and authority to sue for and collect the debts, demands and rents belonging to the debtor, and . . . may also sue . . . in the name of the debtor where it is necessary or proper for him to do so.” There is no jurisdictional limit on that authority.

Accordingly, South Carolina law and the Appointment Order authorize the Receiver to bring this third-party action, and there is no basis for its dismissal.

**B. The third-party action does not violate principles of international comity.**

Altrad also argues that the Appointment Order is unlawful as violating principles of international comity, purportedly because it interferes with what it describes as the “exclusive jurisdiction” of the United Kingdom and the Bailiwick of Jersey to manage Cape and claims against Cape. Specifically, Altrad appears to suggest that the United Kingdom has exclusive jurisdiction to address asbestos-related claims against Cape, and that the Bailiwick of Jersey has the exclusive right to exercise oversight of the internal affairs of the Cape entity organized in the

Bailiwick of Jersey. *See* Altrad Mot. at 13 (points #34, #35). This argument is unsupported by facts or law.

As to the purported deference owed to the United Kingdom, Cape vaguely references a “Scheme of Arrangement summarized in Note 32 of Cape PLC’s Annual Report 2022,” which purportedly involved “pre-existing exclusive jurisdiction of the [United Kingdom] courts, which previously exercised jurisdiction over [Cape’s] assets” in 2006. Altrad Mot. at 13 (points #34, #35). Altrad, however, does not elaborate on that purported “exclusive jurisdiction,” or even provide a copy of or link to the report, or a copy or link to the referenced scheme of the arrangement, which—in fact—would refute Altrad’s claim of exclusive jurisdiction. *See, e.g.*, Ex. 2, Proposals for a Scheme of Arrangement Between Cape PLC *et al.* (Mar. 15, 2006), at 65 (“The Scheme *only applies* to UK asbestos-related claims as described in this document. . . . It is possible that the Group may in the future receive such ‘non-UK claims’ and such claims would not be Scheme Claims.” (emphasis added)).

In sum, Altrad provides **no** legal or factual basis to find that a United Kingdom court can completely override this Court because the former somehow has exclusive jurisdiction over Cape’s “massive unpaid responsibility for the death and illness caused by its asbestos products in South Carolina and elsewhere in the United States”—for which “Cape has done nothing.” *See* Third-Party Compl. ¶ 114 (emphasis omitted) (referencing 2006 scheme of arrangement with former employees “compensat[ing] for illness and death resulting overseas”).

In turn, as to the purported deference owed to the Bailiwick of Jersey, the argument fails on its face. No filing has ever referenced the Jersey-formed Cape holding company, until Altrad first raised that red herring as an argument to dissolve the Receivership. In fact, even if claims had been made against that entity, Altrad provides no legal or factual foundation for its argument that

the Receivership “interfere[s] with the pre-existing exclusive jurisdiction of the Jersey courts to exercise oversight and management over the internal affairs of a Jersey company.” Altrad Mot. at 13. The creation of a holding company in the Bailiwick of Jersey in 2011 did not (and could not) somehow absolve Cape of liability to people injured by Cape asbestos in the United States over many decades, including in South Carolina; nor did it deprive this Court of authority to create a receivership for the purpose of addressing that unanswered liability in the United States.

**C. The third-party action does not violate the U.S. Constitution.**

Altrad also vaguely asserts that this Receivership violates the U.S. Constitution, including that the Appointment Order “violates *inter alia* the Dormant Commerce Clause, the Foreign Commerce Clause, the Taking Clause, the Due Process Clause, the Excessive Fines Clause, the Equal Protection Clause, and the Supremacy Clause of the U.S. Constitution.” Altrad Mot. at 14, 24–26. Primarily, however, the constitutional challenge is based on the Receivership purportedly having an unlawful “extraterritorial effect.” *Id.* Altrad makes that argument based on misstatements of the facts and the law (including erroneously asserting that Cape had “nothing to do with South Carolina”), which ignores the widespread harm caused by Cape’s products in South Carolina (and elsewhere in the United States) and the power of the Receivership to marshal assets such as by asserting valuable claims for the benefit of creditors. (*See supra* Argument § III.A.)<sup>17</sup>

These constitutional arguments have no merit.

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<sup>17</sup> The authorities cited by Altrad do not support its argument that the Receivership has an unconstitutional extraterritorial effect or “attempt[s] to displace federal receivership law with a South Carolina statute.” *See, e.g.*, 28 U.S.C. §§ 754, 3103 (federal receivership statutes applicable to receiverships appointed in *federal* court); *Carolina Trucks & Equip., Inc. v. Volvo Trucks of N. Am., Inc.*, 492 F.3d 484, 490 (4th Cir. 2007) (rejecting interpretation of South Carolina statute to prohibit sales of automobiles to South Carolinians outside of the state).



**D. Accusations of “bad faith” and “outrageous conduct” are baseless.**

Altrad argues that the Receivership is (i) seeking to have “manufactured liabilities” passed on to third parties, (ii) acting beyond its authority, with incurable conflicts of interest, and (iii) violating the Appointment Order by not taking “any and all steps necessary to protect the interests of Cape.” Altrad Mot. at 9, 13–14. According to Altrad, on these bases, the Receiver’s filing of the Third-Party Complaint constitutes “bad faith” and “outrageous conduct,” and thus the Receivership should be dissolved. *Id.* at 26–28.

Altrad’s argument tries to turn reality on its head: If Cape had responded to the Park Lawsuit, then it could have offered its own defense and contested liability for the disease and death of Ms. Park. But it did not. Nor did it respond in that action after receiving notice of the motion to appoint a receiver over it. Nor has Cape responded after the Receiver filed the Third-Party Complaint against Cape’s current and historical owners and affiliated entities. Indeed, **five** of the Non-Responding Altrad Third-Party Defendants share—and were served at—**the same registered address of Cape PLC**, n/k/a Cape Intermediate Holdings Ltd. But still: **no response from Cape.**

As has been thoroughly pleaded, the Altrad Third-Party Defendants are alter egos of Cape itself and liable for directing, allowing, facilitating, or benefiting from Cape’s longstanding liability-avoidance scheme. *See* Third-Party Compl. ¶¶ 113–19, 125–41. It is that scheme, with Cape’s decades-long profitmaking, while knowing and hiding the health risks of asbestos, which is **truly** “outrageous.” *See, e.g., id.* ¶¶ 51–105 (describing Cape’s knowledge of asbestos-related disease endemic among its employees, substantial profitmaking, and efforts to influence public, governmental, and industry opinions about the safety of asbestos); *see also id.* ¶¶ 81–82 (describing Cape’s widespread abuse of South African child laborers during Apartheid). Rather

than pursue “manufactured liabilities,” the Receiver seeks basic accountability for Cape’s conduct—a reckoning that is long overdue.

### **CONCLUSION**

For the foregoing reasons, the Court should deny the Responding Altrad Third-Party Defendants’ and the Charter Third-Party Defendants’ motions to dissolve.

Dated: October 18, 2023  
Columbia, South Carolina

**GALLIVAN, WHITE & BOYD, P.A.**

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**CERTIFICATE OF SERVICE**

I, Ashwin R. Sanzgiri, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellants ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC, do hereby certify that I have on this date served the foregoing **RETURN TO MOTION TO DISMISS INTERLOCUTORY APPEALS**, dated May 6, 2024, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated April 24, 2024, on all counsel of record using the primary email addresses listed in the Attorney Information System (if applicable).

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**Subject:** John A. Tibbs v. Asbestos Corporation Limited (Appellate Case No. 2023-002007)  
**Date:** Monday, May 6, 2024 11:10:16 AM  
**Attachments:** [Return to Motion to Dismiss - Sparrows Appellants \(05-06-24\) \(3359126\).pdf](#)  
[Appendix to Return - Sparrows Appellants \(3359044\).pdf](#)

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Good morning,

Please find served upon you the Return to the Motion to Dismiss and Appendix on behalf of Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC in the above-referenced case which we will be filing with the Court of Appeals of South Carolina later today.

Please let me know if you have any questions.

Thank you,

Ashwin

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