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July 18, 2024

**VIA Electronic Filing—ctappfilings@sccourts.org**

The Honorable Jenny Abbott Kitchings  
Clerk of the Court of Appeals of South Carolina  
1220 Senate Street  
Columbia, South Carolina 29201

**RECEIVED**  
**Jul 18 2024**  
**SC Court of Appeals**

RE: *John A. Tibbs and Margaret B. Tibbs v. Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas v. ArranCo US, LLC, et al.*

Civil Action No.: 2023-CP-40-01759  
Appellate Case Nos.: 2023-002006, 2023-002007, 2023-002009, 2023-002010, 2023-002011, 2024-000524, 2024-000916, 2024-001063, 2024-001064, 2024-001065

Dear Ms. Kitchings:

By correspondence dated July 1, 2024 and July 2, 2024 (copies attached), we, the undersigned, as well as counsel for Respondent in the above-referenced appellate case numbers, notified this Court that a notice of removal was filed by Anglo American PLC in the matter underlying certain appeals. Please allow this correspondence to serve as our additional clarification that our prior notification as to abeyance was intended in only the matters listed above and in the respective matters listed in the July 1, 2024 prior correspondences remitted to this Court which we understand to be impacted by Anglo American PLC’s removal. The following chart sets forth the parties to the above-referenced appeals, as reflected in C-Track.

Appellate Case No.	Appellants/Parties	Respondent
2023-002006	Altrad Investment Authority S.A.S.; Mohed Altrad	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
2023-002007	ArranCo US, LLC; Hawk Bidco US, Inc.; Sparrows Offshore, LLC	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
2023-002009	ESAB Corporation	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
2023-002010	Charter Consolidated Ltd.	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
2023-002011	Central Mining & Investment Corporation Ltd.	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
2024-000524	Altrad Investment Authority S.A.S.; Mohed Altrad; ArranCo US, LLC; Hawk Bidco US, Inc.; Sparrows Offshore, LLC; ESAB Corporation; Charter Consolidated Ltd.; Central Mining & Investment Corporation Ltd.	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
2024-000916	Altrad Investment Authority S.A.S.; Mohed Altrad; ArranCo US, LLC; Hawk Bidco US, Inc.; Sparrows Offshore, LLC; ESAB Corporation; Charter Consolidated Ltd.; Central Mining & Investment Corporation Ltd	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
2024-001063	Altrad Investment Authority S.A.S.; Mohed Altrad	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
2024-001064	ArranCo US, LLC; Hawk Bidco US, Inc.; Sparrows Offshore, LLC	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
2024-001065	ESAB Corporation; Charter Consolidated Ltd.; Central Mining & Investment Corporation Ltd	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

Anglo American PLC’s Opposition to Plaintiff’s Motion to Remand, filed by Anglo American PLC on July 16, 2024 as the removing defendant in 3:24-CV-03771-MGL (ECF 45), indicates in footnote three that: “As set forth in this opposition brief, the Tibbs Plaintiffs’ claims against Cape were dismissed on June 12, 2023, and Anglo American plc has only removed the Receiver’s lawsuit.”

Accordingly, the undersigned understand the removal to hold in abeyance the matters related to Cape PLC. Because the Cape PLC case against various out-of-state defendants is independent of the John A. and Margaret B. Tibbs lawsuit against Asbestos Corporation Limited, our prior correspondence did not state, and was not intended to reflect, an understanding that the Anglo American PLC removal has any effect on pending appeals not listed above.

We appreciate the Court’s consideration of these matters. If we can provide the Court with any additional information, please do not hesitate to call on us. By copy to opposing counsel, we are informing them of this communication.

Sincerely,



Steven J. Pugh  
**ATTORNEY FOR ARRANCO US, LLC;  
HAWK BIDCO US, INC.; SPARROWS  
OFFSHORE, LLC**

By: /s/ M. Todd Carroll  
**WOMBLE BOND DICKINSON (US) LLP  
ATTORNEY FOR MOHED ALTRAD AND ALTRAD  
INVESTMENT AUTHORITY S.A.S.**

By: /s/ A. Victor Rawl, Jr.  
**GORDON REES SCULLY MANSUKHANI, LLP  
ATTORNEY FOR CHARTER CONSOLIDATED LTD.,  
ESAB CORPORATION, AND CENTRAL MINING AND  
INVESTMENT CORPORATION LTD**

cc: All Counsel of Record (via email w/attch.)  
Honorable Jean H. Toal (via email w/attch.)  
Eva Diaz (via email w/attch.)



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July 1, 2024

**VIA Electronic Filing—ctappfilings@sccourts.org**

The Honorable Jenny Abbott Kitchings  
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Columbia, South Carolina 29201

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**Jul 01 2024**

**SC Court of Appeals**

RE: *John A. Tibbs and Margaret B. Tibbs v. Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas v. ArranCo US, LLC, et al.*

Civil Action No.: 2023-CP-40-01759

Appellate Case Nos.: 2023-002006, 2023-002007, 2023-002009,  
2023-002010, 2023-002011, 2024-000524,  
2024-000916, 2024-001063, 2024-001064,  
2024-001065

Dear Ms. Kitchings:

We have received the attached Notice of Removal which was filed in the United States District Court for the District of South Carolina and has been assigned Case Number 3:24-cv-03771-MGL. This Notice was filed with both the District Court and the Circuit Court, on Friday, June 28, 2024, by Anglo American plc, De Beers plc, De Beers UK Limited, De Beers Centenary AG, and De Beers Consolidated Mines Proprietary Limited, who are named in the lower court action from which the above-referenced appeals arise.

Our understanding is pursuant to 28 U.S.C. § 1446, upon removal, “the State court shall proceed no further unless and until the case is remanded.” Pursuant to *Limehouse v. Hulsey*, the Supreme Court has held that this divestiture of state-court jurisdiction extends to matters pending on appeal as well. See *Limehouse v. Hulsey*, 404 S.C. 93, 109, 744 S.E.2d 566, 575 (2013); *Ward v. Resol. Tr. Corp.*, 972 F.2d 196, 198 (8th Cir. 1992) (“After removal, only the federal district court could restore jurisdiction to the state

courts. Thus, the state court of appeals could proceed no further, making its dismissal of the state appeal void.” (citations omitted)).

Accordingly, on behalf of ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC—and on behalf of and with permission from the respective counsel for Mohed Altrad, Altrad Investment Authority S.A.S., ESAB Corporation, Central Mining and Investment Corp., Ltd., and Charter Consolidated Ltd. (as reflected by the signatures of the undersigned)—we respectfully request this Court hold the above-referenced matters in abeyance until the case is resolved in the District Court or the District Court has entered a certified remand order.

We appreciate the Court’s consideration of these matters. If we can provide the Court with any additional information, please do not hesitate to let us know. By copy to opposing counsel, we are informing them of this communication.

Sincerely,



Steven J. Pugh

By: /s/ M. Todd Carroll  
WOMBLE BOND DICKINSON (US) LLP

**ATTORNEY FOR MOHED ALTRAD AND  
ALTRAD INVESTMENT AUTHORITY S.A.S.**

By: /s/ A. Victor Rawl, Jr.  
GORDON REES SCULLY MANSUKHANI, LLP

**ATTORNEY FOR CHARTER CONSOLIDATED LTD.,  
ESAB CORPORATION, AND CENTRAL MINING AND  
INVESTMENT CORPORATION LTD**

cc: All Counsel of Record (via email w/ attach.)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

CAPE PLC, individually and as successor in interest to CAPE ASBESTOS COMPANY LIMITED, by and through its duly appointed Receiver, Peter D. Protopapas,

Plaintiff,

vs.

ANGLO AMERICAN PLC, individually and as successor in interest to ANGLO AMERICAN CORPORATION OF SOUTH AFRICA LTD.; DE BEERS PLC; DE BEERS CENTENARY AG; DE BEERS CONSOLIDATED MINES LTD.; DE BEERS S.A.; 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,

Defendants.

Civil Action No. 3:24-cv-03771-MGL

**NOTICE OF REMOVAL**

Defendant Anglo American plc (the “Removing Defendant”), through undersigned counsel, files this Notice of Removal of the above-captioned action from the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, to the United States District Court for the District of South Carolina, Columbia Division, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and Local Civil Rules 83.IV.01–02, on the grounds set forth below.

### **BACKGROUND**

1. Removal is proper in this case because there is complete diversity of citizenship between the parties, the amount in controversy exceeds \$75,000, and no defendant is a citizen of South Carolina. Removal is timely because it has been effected within thirty days of the Removing Defendant learning that there is complete diversity between the parties and within one year of the filing of this lawsuit. The Removing Defendant has obtained consent to remove from all defendants whose consent is required.

2. This lawsuit was instituted by plaintiff Peter D. Protopapas, in his purported capacity as receiver for Cape plc (“Plaintiff”), by the filing of a Summons and Complaint on June 30, 2023, in the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, Civil Action No. 2023-CP-40-01759. The action remains pending in that court.

3. Three months prior, on April 5, 2023, John A. Tibbs and his wife, Margaret B. Tibbs, filed a complaint in the Court of Common Pleas asserting product liability claims against Cape plc and other defendants based upon Mr. Tibbs’ alleged exposure to asbestos and subsequent diagnosis with lung cancer.

4. Cape plc did not appear in the *Tibbs* action. Cape plc is a solvent entity organized and headquartered in the Bailiwick of Jersey. Cape plc has no assets in South Carolina, and no judgment has been entered against Cape plc in the *Tibbs* action. Cape has never consented to the

appointment of a receiver over it or its assets in this action (or any other action in South Carolina) and has never authorized Plaintiff to assume Cape plc's legal defense or assert causes of action on its behalf. The South Carolina receivership statute, S.C. Code § 15-65-10, does not provide for the appointment of a receiver over a solvent, foreign entity such as Cape plc that has no assets in the State and against which no judgment has been entered in South Carolina.

5. On March 17, 2023, in an unrelated asbestos action, *Park v. Armstrong International Inc.*, Civil Action No. 2021-CP-40-02727, the Court of Common Pleas entered an order appointing Plaintiff receiver over Cape plc, solely for purposes of that litigation, on the basis that Cape plc was insolvent (it was not), had “forfeited its charter” (it had not), and had failed to appear in the *Park* action. By filing claims outside the lawsuit in which Plaintiff was appointed receiver and to which Plaintiff's appointment was limited (*Park*), and by bringing claims against defendants who have no connection to, or property in, South Carolina, Plaintiff is acting *ultra vires* and attempting to take property he has no right to take.

6. On June 30, 2023, Plaintiff, purporting to act on Cape plc's behalf, filed this action against the defendants as a third-party action derivative of the *Tibbs* plaintiffs' claims against Cape plc pursuant to Rule 14 of the South Carolina Rules of Civil Procedure. Plaintiff's complaint asserts novel claims for relief that rely on “self” veil-piercing by Cape plc. Specifically, Plaintiff alleges that sometime beginning in the 1970s, Cape Asbestos Company Limited (“Cape Asbestos”)—an entity incorporated in 1893 in the United Kingdom, different from (and not the predecessor in interest to) Cape plc—conspired to divert its assets outside the United States and beyond the reach of U.S. asbestos judgment creditors, and that the dozens of defendants named in the complaint are all Cape plc's alter egos and therefore are complicit in that scheme. Based upon these false and unsubstantiated allegations, Plaintiff seeks to recover from the defendants, on an

unjust enrichment theory, the value of a hypothetical judgment that has never been entered against Cape plc. Plaintiff's theory of relief would require the court to pierce multiple layers of corporate separation between Cape plc and defendants who have no connection to South Carolina and, indeed, no connection to either Cape plc or the entity once known as Cape Asbestos except for (at most) a historical, indirect shareholding interest in Cape Asbestos.<sup>1</sup>

7. By asserting its claims against the defendants under the guise of a third-party action derivative of the *Tibbs*' first-party claims against Cape plc, Plaintiff led the defendants to believe it was impossible to remove Plaintiff's lawsuit to federal court, because "a third-party counterclaim defendant is not a 'defendant' who can remove" under 28 U.S.C. § 1441(a). *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. \_\_\_, 139 S.Ct. 1743, 1750 (2019).

8. However, on June 18, 2024, Plaintiff produced to the Removing Defendant in discovery an agreement between Plaintiff and counsel for the *Tibbs* plaintiffs dated June 12, 2023 (**Exhibit A**; the "Dismissal Agreement"). Pursuant to the Dismissal Agreement, Plaintiff agreed to toll the statute of limitations on the *Tibbs* plaintiffs' claims against Cape plc in exchange for the *Tibbs* plaintiffs' agreement to **dismiss their claims against Cape plc**.

9. The Dismissal Agreement demonstrates that at the time Plaintiff filed this lawsuit against the defendants on June 30, 2023, there was no active dispute between Plaintiff and the *Tibbs* plaintiffs. Plaintiff's lawsuit, therefore, is not derivative of any first-party action, is not properly characterized as a third-party action, and was immediately removable at the outset of the case. Defendants did not know the case was removable because Plaintiff failed to disclose that the

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<sup>1</sup> Plaintiff's theory of relief also would do away with the bedrock principle of U.S. corporate law, "deeply ingrained in our economic and legal systems," that "a parent corporation (so-called because of control through ownership of another corporation's stock) is not liable for the acts of its subsidiaries." *United States v. Bestfoods*, 524 U.S. 51, 61 (1988) (citation and internal quotation marks omitted).

*Tibbs* plaintiffs had dismissed their claims against Cape plc (and misled the defendants to believe the suit was still active), and purposely maintained the lawsuit under the guise of a third-party derivative action on the state trial court’s docket to prevent the defendants from removing the lawsuit to federal court.<sup>2</sup>

10. The Removing Defendant is removing the action to this Court now that it is aware this is not a derivative action, but a first-party lawsuit untethered to any claims the *Tibbs* plaintiffs may have once asserted against Cape plc. *See* 28 U.S.C. §§ 1446(b)(3) (permitting removal “within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.”), 1446(c)(1) (permitting removal within “1 year after commencement of the action”—here, June 30, 2024—or later if “the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action”).

11. The amount in controversy in this case exceeds \$75,000, and there is complete diversity between the parties, who include Plaintiff, a South Carolina citizen, and the defendants, who are all either citizens of different States or citizens or subjects of foreign states. Accordingly, this Court has original jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1332(a).

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<sup>2</sup> Indeed, even after the *Tibbs* plaintiffs’ counsel represented in open court that some form of agreement had been reached between the *Tibbs* plaintiffs and Plaintiff with respect to the *Tibbs* plaintiffs’ claims, Plaintiff originally withheld the Dismissal Agreement from disclosure on the basis that the Dismissal Agreement—an agreement between party-opponents that, the defendants would later learn, provided for the dismissal of the very claims upon which Plaintiff’s lawsuit purportedly was based—was “confidential.” As a matter of caution, Removing Defendant has filed the Dismissal Agreement under seal pursuant to a confidentiality order entered by the trial court, but as this Court no doubt can discern, the Dismissal Agreement does not contain any information “protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research, development, or commercial information.” *See* Confidentiality Order for Third Party Action, dated June 6, 2024, at 3.

**THE PARTIES**

12. Plaintiff Peter D. Protopapas, the purported receiver for Cape plc, is a citizen of South Carolina and resides in Columbia, South Carolina.

13. On August 21, 2023, Plaintiff voluntarily dismissed as defendant The Law Debenture Corporation plc.

14. On November 17, 2023, Plaintiff voluntarily dismissed as defendants Platinum Guild International (U.S.A.) Jewelry, Inc., Lightbox Jewelry Inc., Forevermark US Inc., First Mode Holdings Inc., Element Six Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., De Beers Jewellers US, Inc., De Beers Jewellers Ltd., Anglo American US Holdings Inc., and Anglo American Corp Nutrients (U.S.A.), LLC.

15. De Beers plc was formerly known as De Beers S.A. Accordingly, while named as two defendants in the complaint, De Beers S.A. and De Beers plc are the same entity.

16. De Beers Consolidated Mines Limited is now known as De Beers Consolidated Mines Proprietary Limited.

17. Accordingly, the remaining defendants in this action are Anglo American plc, De Beers plc, De Beers Centenary AG, De Beers Consolidated Mines Proprietary Limited, De Beers UK Limited, Charter Consolidated Limited, ESAB Corporation, Central Mining and Investment Corporation Limited, Cape Holdco Limited, Cape Industrial Services Group Limited, Cape UK Holdings Newco Limited, Mohed Altrad, Altrad UK Limited, Altrad Services Limited, Altrad Investment Authority S.A.S., Sparrows Offshore Group Limited, Hawk Bidco (US) Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group LLC.

18. **Anglo American plc** is a corporate entity organized under the laws of England and Wales, United Kingdom, and maintains its principal place of business in London, England, United Kingdom.

19. **De Beers plc** is a corporate entity organized under the laws of the Bailiwick of Jersey and maintains its principal place of business in London, England, United Kingdom.

20. **De Beers Centenary AG** is a corporate entity organized under the laws of Switzerland and maintains its principal place of business in Emmenbrücke, Switzerland.

21. **De Beers Consolidated Mines Proprietary Limited** is a corporate entity organized under the laws of the Republic of South Africa and maintains its principal place of business in Kimberley, Northern Cape, South Africa.

22. **De Beers UK Limited** is a corporate entity organized under the laws of England, United Kingdom, and maintains its principal place of business in London, England, United Kingdom.

23. **Charter Consolidated Limited** is a corporate entity organized under the laws of England, United Kingdom, and maintains its principal place of business in Essex, England, United Kingdom.

24. **ESAB Corporation** is a corporate entity organized under the laws of Delaware and maintains its principal place of business in North Bethesda, Maryland.

25. **Central Mining and Investment Corporation Limited** is a corporate entity organized under the laws of England, United Kingdom, and maintains its principal place of business in Essex, England, United Kingdom.

26. **Cape Holdco Limited** is a corporate entity organized under the laws of England, United Kingdom, and maintains its principal place of business in Warrington, England, United Kingdom.

27. **Cape Industrial Services Group Limited** is a corporate entity organized under the laws of England, United Kingdom, and maintains its principal place of business in Warrington, England, United Kingdom.

28. **Cape UK Holdings Newco Limited** is a corporate entity organized under the laws of England, United Kingdom, and maintains its principal place of business in Warrington, England, United Kingdom.

29. **Mohed Altrad** is a citizen of France and is domiciled in Montpellier, France.

30. **Altrad UK Limited** is a corporate entity organized under the laws of England, United Kingdom, and maintains its principal place of business in Warrington, England, United Kingdom.

31. **Altrad Services Limited** is a corporate entity organized under the laws of England, United Kingdom, and maintains its principal place of business in Warrington, England, United Kingdom.

32. **Altrad Investment Authority S.A.S.** is a corporate entity organized under the laws of France and maintains its principal place of business in Montpellier, France.

33. **Sparrows Offshore Group Limited** is a corporate entity organized under the laws of Scotland, United Kingdom, and maintains its principal place of business in Aberdeen, Scotland, United Kingdom.

34. **Hawk Bidco (US) Inc.** is a corporate entity organized under the laws of Delaware and maintains its principal place of business in Texas.

35. **ArranCo US, LLC**, is a limited liability company organized under the laws of Delaware whose member is a citizen of Scotland, United Kingdom.

36. **Sparrows Offshore, LLC**, is a limited liability company organized under the laws of Delaware whose member is a citizen of Scotland, United Kingdom.

37. **The Sparrows Group LLC** was a limited liability company organized under the laws of Delaware. On May 22, 2024, The Sparrows Group LLC was cancelled for failure to appoint a registered agent. This defendant no longer exists.

#### **BASIS FOR REMOVAL**

38. This is a civil action where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. *See* 28 U.S.C. §§ 1332(a).

39. This action is between a citizen of a State, on the one hand, and citizens of different States and citizens or subjects of foreign states, on the other hand. *See* 28 U.S.C. §§ 1332(a)(1)–(2).

40. Upon information and belief, none of the defendants in this action is a citizen of South Carolina. *See* 28 U.S.C. § 1441(b)(2). Upon information and belief, none of the citizens or subjects of foreign states in this action are lawfully admitted for permanent residence in the United States and domiciled in the State of South Carolina. *See* 28 U.S.C. §§ 1332(a)(2).

41. Based upon the above information, this District Court has original jurisdiction of this action pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

42. Pursuant to 28 U.S.C. § 1446, the Removing Defendant files together with this Notice of Removal all process, pleadings, and orders served upon it in this action (**Exhibit B**).

43. Pursuant to 28 U.S.C. § 1446(b)(2)(A), the Removing Defendant has obtained consent to remove this action to this Court from all defendants whose consent to remove is required.

44. The consent of defendants The Sparrows Group LLC and Sparrows Offshore Group Limited is not required because they are nominal defendants that have no immediately apparent stake in the litigation. *See Hartford Fire Ins. Co. v. Harleysville Mut. Ins. Co.*, 736 F.3d 255, 260 (4th Cir. 2013). Defendant The Sparrows Group LLC, which Plaintiff identifies as a limited liability company organized under the laws of Delaware, is a nominal defendant because it does not exist. The company was registered with the Delaware Secretary of State on March 2, 2023, and cancelled on May 22, 2024, for failure to appoint a registered agent. *See, e.g., Stone v. Bank of N.Y. Mellon*, No. 1:11-CV-00081-RWS, 2011 WL 13119459, at \*5 (N.D. Ga. July 29, 2011) (“Because . . . Popular appears to be a nonexistent entity, which makes it a nominal defendant at best, Defendants did not need Popular’s consent to remove the case.”). Defendant Sparrows Offshore Group Limited is a nominal defendant because it has been in liquidation in the United Kingdom since 2023. *See, e.g., PNC Equip. Fin., LLC v. USA Wheel Tech., Inc.*, No. 1:11cv199, 2012 WL 441172, at \*1 (S.D. Ohio Feb. 10, 2012) (a “bankrupt defendant is a nominal party to the litigation because its assets are under the control of the bankruptcy court” (collecting cases)); *Inman Const. Corp. v. S. Pilot Ins. Co.*, No. 4:06CV169-P-B, 2007 WL 1657422, at \*2 (N.D. Miss. June 5, 2007) (defendants in liquidation “are nominal parties which need not join in a notice of removal filed by another defendant”); *Nickerman v. Remco Hydraulics Inc.*, No. C 06-02555 SI, 2006 WL 2329516, at \*4 n.6 (N.D. Cal. Aug. 9, 2006) (bankrupt corporations have no interest in litigation, and therefore are nominal defendants, because they “they could not respond to plaintiff’s claim of damages if established” (citation omitted) (collecting cases)); *cf. Parson v. Farley*, No.

20-CV-130-JED-JFJ, 2020 WL 12800086, at \*2 (N.D. Okla. Aug. 7, 2020) (distinguishing entity that had not been liquidated, and was merely suspended for failure to pay franchise tax, from “a corporation in bankruptcy” in assessing nominal defendant status (citing *Wallis v. Southern Silo Co., Inc.*, 369 F. Supp. 92 (N.D. Miss. 1973))); *Bellone v. Roxbury Homes Inc.*, 748 F. Supp. 434, 438 (W.D. Va. 1990) (similar).

45. The Sparrows Group LLC and Sparrows Offshore Group Limited also have no immediately apparent stake in the litigation, and therefore are nominal defendants, because Plaintiff makes no allegations against them that would support a claim for relief. With respect to The Sparrows Group LLC, Plaintiff alleges only that the company is owned by Sparrows Offshore Group Limited. (Compl. ¶ 117).<sup>3</sup> With respect to Sparrows Offshore Group Limited, Plaintiff similarly alleges only that “the Altrad Group” acquired Sparrows Offshore Group Limited in 2022. (*Id.*)<sup>4</sup> A parent company’s direct or indirect ownership of a subsidiary, without more, does not give rise to liability under any theory. *See Bestfoods*, 524 U.S. at 61.

46. The consent to remove of The Sparrows Group LLC is not required for the additional reason that this defendant was never served with the summons and complaint. *See, e.g., Barnett v. Hoard*, No. 4:21-00434-SAL-KDW, 2021 WL 6841687, at \*2 (D.S.C. Aug. 9, 2021) (“A defendant need not join in or consent to removal if . . . it had not been served with process at the time the removal petition was filed.” (citation and internal quotation marks omitted)). Plaintiff

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<sup>3</sup> This Court also may take judicial notice of the fact that, contrary to Plaintiff’s allegations, The Sparrows Group LLC does not exist. *See Cobin v. Hearst-Argyle Television, Inc.*, 561 F. Supp. 2d 546, 550–51 (D.S.C. 2008) (“The Court may take ‘judicial notice of matters of public record.’” (quoting *Secretary of State For Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007))).

<sup>4</sup> This Court may similarly take judicial notice, based upon public records, that such allegation is not true: “the Altrad Group” never acquired Sparrows Offshore Group Limited. It is an unrelated entity.

attempted to effect service upon The Sparrows Group LLC via the Corporation Service Company in Wilmington, Delaware. However, for the short time The Sparrows Group LLC existed, its registered agent was a different company, Harvard Business Services, Inc., in Lewes, Delaware.<sup>5</sup>

47. Pursuant to 28 U.S.C. § 1446(d), the Removing Defendant will give written notice of this Notice of Removal to all adverse parties to the action and will file a copy of this Notice of Removal with the clerk of the Court of Common Pleas for the Fifth Judicial District, Richland County, South Carolina.

48. The Removing Defendant reserves all defenses, including without limitation the defense of lack of personal jurisdiction and all other defenses set forth under Federal Rule of Civil Procedure 12(b), and does not waive those defenses by filing of this Notice of Removal.

### **CONCLUSION**

Plaintiff filed this action under the guise of a third-party derivative suit on June 30, 2023. As purported third-party defendants, the defendants believed they could not remove the suit to federal court. On June 18, 2024, the defendants learned for the first time that the first-party claims that allegedly formed the basis for Plaintiff's suit had been dismissed weeks before Plaintiff filed his complaint. Plaintiff's lawsuit therefore is, and has always been, a first-party action removable on the basis of diversity jurisdiction because the amount in controversy exceeds \$75,000, there is complete diversity between the parties, and none of the defendants is a citizen of South Carolina. Having obtained the consent of all defendants whose consent is necessary to remove, Removing Defendant is now removing the action to this Court pursuant to 28 U.S.C. § 1332(a).

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<sup>5</sup> See Defendants ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore LLC's Objections to the Cape plc Receiver's Proposed Order Regarding the Motion to Dissolve the Receivership and Motions to Dismiss for Lack of Personal Jurisdiction, dated December 4, 2023, and Exhibits D and E thereto.

**RICHARDSON PLOWDEN  
& ROBINSON, P.A.**

*/s James H. Elliott, Jr.* \_\_\_\_\_

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*Attorneys for Defendant  
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June 28, 2024  
Mount Pleasant, South Carolina

Reply To: Columbia  
Jon.Robinson@smithrobinsonlaw.com

July 2, 2024

VIA Electronic Filing – ctappfilings@scourts.org  
The Honorable Jenny Abbott Kitchings  
Clerk of Court of Appeals of South Carolina  
1220 Senate Street  
Columbia, South Carolina 29201

**RECEIVED**  
**Jul 02 2024**  
**SC Court of Appeals**

Re: *John A. Tibbs and Margaret B. Tibbs v. Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas v. ArranCo US, LLC, et al.*  
Civil Action No.: 2023-CP-40-01759  
Appellate Case Nos.: 2023-002006, 2023-002007, 2023-002009, 2023-002010, 2023-002011, 2024-000524, 2024-000916, 2024-001063, 2024001064, 2024-001065

Dear Ms. Kitchens,

On June 3, 2024 Appellants filed a Petition for Certiorari regarding their appeal from an interlocutory order granting the Receiver's motions to compel discovery responses of third-party defendants and the 30(b)(6) depositions of third-party defendants Arranco US, LLC and Central Mining & Investment Corporation Ltd. Respondents filed a Return on June 14, 2024 which, in part, outlined a series of successive improper appeals and filings in the instant case and brought to the Court's attention the long-standing egregious conduct of the parties and their counsel across the asbestos docket in multiple cases involving court-appointed Receivers. *See also* Appellate Case Nos. 2023-002006, 2023-002007, 2023-002008, 2023-002009, 2023-002010, 2023-002011, 2024-000342, 2024-000348, 2024-000341, 2024-000337, 2024-000501, 2024-000501, 2024-000674.

It has come to the Receivers attention, that despite recent rulings by the United States District Court for the District of South Carolina and the Fourth Circuit Court of Appeals barring removal of a state court appointed receivership action, several of these same parties have now taken the extraordinary step of removing this case to the United States District Court for the District of South Carolina. *Cape PLC v. Anglo American PLC et al*, 3:24-cv-03771-MGL. This procedural gamesmanship in which the parties are once again attempting to improperly shop another forum to invalidate a Receivership is a violation of the long-established *Barton* doctrine,<sup>1</sup> which bars a party from litigating a claim of or against a court-appointed receiver without first obtaining leave of the appointing court. *See Porter v. Sabin*, 149 U.S. 473, 479–80 (1893). In a recent order remanding an action brought by the Payne & Keller Receivership to state court after Travelers and other insurers attempted to remove it, The Honorable Judge Donald C. Coggins explained:

Albeit old law, *Porter* is clear that it is in the appointing court’s discretion “to decide whether it will determine for itself all claims of or against the receiver, or will allow them to be litigated elsewhere” and that the appointing court “may direct claims in favor of the corporation to be sued on by the receiver in other tribunals, or may leave him to adjust and settle them without suit.” *Porter*, 149 U.S. at 479. *Porter* further states “[t]he reasons are yet stronger for not allowing a suit against a receiver appointed by a state court to be maintained, or the administration by that court of the estate in the receiver’s hands to be interfered with, by a court of the United States, deriving its authority from another government, though exercising jurisdiction over the same territory.” *Id.* at 480.

Here, the receivership court has appointed a receiver who is attempting to preserve and collect assets of the defunct corporation as part of his fiduciary duty. This Court finds that *Barton*, and its subsequent application in *Porter*, act as a limitation on federal jurisdiction when a state court has previously exercised its authority by appointing a receiver to handle the administration of property; to allow this matter to continue in federal court would directly interfere with the exclusive jurisdiction of the receivership court over this dispute.

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<sup>1</sup> *Barton v. Barbour*, 104 U.S. 126 (1881).

*Protopapas v. Zurich Am. Ins. Co.*, C/A No. 3:21-cv-04086-DCC, 2023 WL 2206640, 2023 U.S. Dist. LEXIS 31931, at \*7–8 (D.S.C. Feb. 24, 2023). Travelers appealed the district court’s order to the United States Court of Appeals for the Fourth Circuit, and the Fourth Circuit dismissed the appeal. *See Protopapas v. Travelers Cas. & Sur. Co.*, 94 F.4th 351, 360 (4th Cir. 2024). In affirming that the federal court lacked jurisdiction over the state court appointed receiver, the Court explained:

Thus, when applying the *Barton* doctrine, the district court plausibly concluded that a federal court lacks jurisdiction over a state receivership or a state-court appointed receiver with respect to assets of the receivership because the state court has exclusive jurisdiction over the assets of the receivership. Exercising federal jurisdiction over a suit by or against a state-appointed receiver, who functions as an “arm” or “executive” of the state-receivership court, would infringe on the state court’s control over the receivership assets — its exclusive jurisdiction. Thus, as a matter of comity, as well as custom, the *Barton* doctrine rests on this exclusivity of the state receivership over the assets before it as a matter of jurisdiction, and indeed we have confirmed as much. *See, e.g., Conway*, 64 F.4th at 545 (noting that “*Barton* concerns subject-matter jurisdiction”); *McDaniel*, 668 F.3d at 156 (noting that “[t]he Supreme Court established in *Barton* that before another court may obtain subject-matter jurisdiction over a suit filed against a receiver for acts committed in his official capacity, the plaintiff must obtain leave of the court that appointed the receiver”).

*Id.* at 13.

The Fourth Circuit ruling has not deterred the parties or their counsel from continuing to ignore precedent. On June 28, 2024, in the wake of (1) multiple failed appeals of various state court interlocutory orders, (2) the Receiver’s request for sanctions in yet another improper appeal and their Petition for Certiorari in the South Carolina Supreme Court, and (3) an Order setting the trial date of this case for December 9, 2024, Appellants removed this case to federal court.

Incredibly, the same counsel which represented Travelers in the *Barton* doctrine appeal to the above-mentioned Fourth Circuit case is now representing a party in the now-removed case and consented to the improper removal of this state court appointed Receivership action in direct violation of the *Barton* doctrine and without leave of the state receivership court that appointed this Receiver. *Tibbs et al, v. Cape, PLC, individually and as successor in interest to Cape Asbestos Company Ltd., by and through its duly appointed Receiver Peter D. Protopapas et al v. Anglo American PLC et al.*, Civil Action No. 2023-CP-40-01759 in the Richland County Court of Common Pleas, *Cape PLC v. Anglo American PLC et al*, [3:24-cv-03771-MGL](#).<sup>2</sup> A Motion to Remand is forthcoming. However, due to the number of (thus far unsuccessful) appeals of multiple interlocutory orders which have clogged our courts and are still pending in various stages at the Court of Appeals and in the Supreme Court, we are notifying the courts of this latest development.

Sincerely,

  
Jonathan M. Robinson

JMR/df

cc: Counsel of record via email  
Chief Justice Toal (Ret.) via E-filing (Civil Action No.: 2023-CP-40-01759)

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<sup>2</sup> Like prior instances of misnaming orders on appeals, the removing parties have unilaterally attempted to recaption the action in the removal.