

RECEIVED

Sep 05 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting Circuit Court Judge

Civil Action No. 2023-CP-40-01759

Appellate Case No.
2024-001446

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.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC;

Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC,

Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff / Respondent

v.

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

Third-Party Defendants,

of which

Mohed Altrad, Altrad Investment Authority S.A.S, Arranco US LLC, Hawk Bidco (US) Inc., Sparrows Offshore, LLC, Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation are the

Appellants.

MOTION TO DISMISS AND EXPEDITE

Prior to Friday, August 30, 2024, there were nine (9) improper and frivolous interlocutory appeals pending in this case, *John A. Tibbs v. Asbestos Corporation Limited, et al.*, 2023-CP-40-01759. All of the interlocutory appeals that this Court has considered have been dismissed. Those not yet considered, until recently, have been held in abeyance due to attempts to improperly remove this case.¹ The improper removal was swiftly rejected by the federal court, and the case was remanded promptly after briefing. *See* Remand Order in *Tibbs v. 3M Co.*, No. 3:24-cv-3771-MGL, ECF No. 75 (D.S.C. Aug. 13, 2024). Appellants Mohed Altrad and Altrad Investment Authority S.A.S. (together, “Altrad Owners Third-Party Defendants”); Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (together, “Altrad Sparrows Third-Party Defendants”); and Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation (together, “Charter Third-Party Defendants”) (collectively, “Third-Party Defendants” or “Appellants”) have now launched the latest round of frivolous appeals by filing three new Notices of Appeal on Friday, August 30, 2024, from the circuit court’s scheduling order. The trial in this

¹ *See, e.g.*, Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, and 2023-002011 (Orders, June 18, 2024 and July 1, 2024) (denying petition for rehearing from dismissal of initial appeals of order denying motion to dismiss and dissolve receivership); Appellate Case No. 2024-000524 (Order, May 3, 2024) (denying petition for rehearing from dismissal of second set of appeals of order granting the Receiver’s motion to compel discovery responses); Appellate Case Nos. 2024-001063, 2024-001064, 2024-001065 (third set of notices of appeal of the circuit court’s interlocutory orders awarding discovery sanctions). All appeals arising out of the *Tibbs* case were held in abeyance for over two months due to an improper removal of the *Tibbs* action to which Appellants consented. The United States District Court for the District of South Carolina remanded the case to the circuit court on August 13, 2024. *Tibbs v. 3M Co.*, No. 3:24-cv-3771-MGL, ECF No. 75 (D.S.C. Aug. 13, 2024). The level of coordination amongst the Third-Party Defendants cannot be overstated. Indeed, although the three sets of Appellants are each represented by different counsel, the Notices of Appeal filed by the Altrad Sparrows Third-Party Defendants and the Charter Third-Party Defendants are nearly identical, including four identical footnotes in each Notice and nearly verbatim language in the bodies of the Notices themselves. *See also* Letter of Jonathan M. Robinson filed with the Court on September 3, 2024 in response to Appellants’ unsuccessful attempt to delay their Petition for Cert in Appellate Case Nos. 2023-002009, 2023-002010, 2023-002011.

case is scheduled for December 9, 2024. It is clear Appellants' purpose in consenting to the improper removal and their pursuit of successive improper appeals (including the latest round of appeals) is to delay and avoid trial.

Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, Respondent Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, ("Cape") by and through its duly appointed Receiver Peter D. Protopapas ("the Receiver"), respectfully requests this Court dismiss the August 30, 2024 Notices of Appeal (the "August 2024 Notices"). Appellants cast this latest round of appeals as "mode of trial" appeals and, for the first time on appeal, claim they have been deprived of their constitutional right to a jury trial.

Summary dismissal is appropriate where, as here, Appellants do not possess a right to a jury trial on any of the Receiver's claims, the Scheduling Order is not immediately appealable, and Appellants clearly waived any right to pursue this line of argument, *even expressly acknowledging on the record that the case would be tried in a bench trial*, which is fatal to this appeal. South Carolina law is clear that the causes of action for (1) unjust enrichment, (2) constructive trust, (3) alter ego and veil-piercing liability, and (4) accounting are equitable claims that are not triable to a jury. However, Appellants nonetheless appealed the June 20, 2024 Scheduling Order of the Honorable Jean Hoefer Toal setting a non-jury trial for December 9, 2024 (the "Scheduling Order"). Third-Party Defendants' August 2024 Notices once again contravene well-established caselaw governing appealability and seek inappropriate review of a Scheduling Order.

It is abundantly clear that this appeal is simply another attempt in a long line of recent attempts by Appellants to abuse South Carolina rules of procedure to subvert justice and delay

circuit court rulings on important matters of South Carolina law.² Given Appellants’ sustained pattern and practice of using our appellate courts to delay the adjudication of this matter, the Receiver respectfully requests that while the Court considers this Motion to Dismiss, it holds in abeyance all other briefing and submission deadlines.

PROCEDURAL BACKGROUND

The Receiver filed this action against Appellants on June 30, 2023, asserting claims for (1) unjust enrichment, (2) constructive trust, (3) alter ego and veil-piercing liability, and (4) accounting, all of which are equitable claims. (App. 59-64). Accordingly, the Receiver did not make a jury demand.

On September 20, 2023, the circuit court issued an order setting the case for trial during the April 15, 2024 trial term. (App. 69).

In the wherefore clause in their respective January 2, 2024 Answers, each Appellant prayed for “a trial by jury on all issues so triable” or “trial by jury of all issues raised in the Third-Party Complaint.” (App. 132, 195, 258). No Appellant identified any particular issues that would be triable by a jury—because there are none. Further, no Appellant sought the entry of a new scheduling order resetting the April 2024 trial as a jury trial.

In his April 4, 2024 pre-trial hearing status report, the Receiver reiterated his clear understanding that the April 15, 2024 proceeding would be “non-jury trial,” which no Appellant

² The latest round of appeals repeats the failed strategy Pennsylvania National Mutual Casualty Insurance, Co. (“Penn National”) employed when it delayed its trial for nearly a year by filing a frivolous mode of trial appeal. See Appellate Case Nos. 2022-001722, 2023-001079. The Court of Appeals dismissed Penn National’s appeal, and on November 7, 2023, the South Carolina Supreme Court denied the Petition for Certiorari in *Covil Corp. v Penn. Nat’l Mut. Cas. Ins. Co.*, 2023-001079. After numerous delays, the case against Penn National was finally tried on November 27 and 28, 2023, and is now on appeal again.

objected to or otherwise disputed. (App. 260, 263, 265). Despite being obligated to submit a pretrial hearing status report, no Appellant submitted one.

At the April 10, 2024 pre-trial hearing, at which counsel for each Appellant appeared, the circuit court stated that the Receiver's claims against Appellants would be tried in a non-jury setting. (App. 402) (4/10/24 Tr. at 136:20-22: "So I turn to those representing the third parties in this nonjury piece of Tibbs for your commentary."). Appellants did not object to the circuit court's pronouncement of a bench trial in this matter.

The circuit court then reluctantly postponed the non-jury trial due to Appellants' refusal to participate in discovery and invited the parties to submit a proposed scheduling order. (App. 422-23) (4/10/24 Tr. at 156:14–157:9: "I don't have any choice, I don't suppose, except to continue these matters, and I'm going to do that" and requesting parties to resolve discovery and scheduling disputes and "if they can't be resolved, [submit] some schedule for trial."). Appellants did not participate in the argument on an appropriate trial schedule or otherwise submit a proposed scheduling order.

On April 9, 2024, the Charter Appellants filed a memorandum in opposition to the Receiver's Motion to Preadmit Exhibits admitting the trial in this case was "**a bench trial of equitable claims.**" (App. 432) (Charter Memo. p. 3) (emphasis added). On April 19, 2024, the Altrad Appellants and the Sparrows Appellants filed memoranda in opposition using the same language and admitting this action involved "**a bench trial of equitable claims.**" (App. 441, 468) (Altrad Memo. p. 4; Sparrows Memo. p. 4) (emphasis added).

At an April 25, 2024 hearing to discuss what sanctions were warranted for Appellants' complete failures to participate in discovery, counsel for Altrad Owners Third-Party Defendants openly admitted that the Receiver's claims would rightly be tried without a jury: "***Given that this***

is a bench trial, I don't know how you can have an adverse inference in a bench trial. *The judge is the decider.*" (App. 534) (4/25/24 Tr. at 43:2–4) (emphases added). Neither he nor counsel for the other Appellants objected to a non-jury trial at this hearing, and none of the other Appellants' counsel objected to or otherwise corrected this remark.

In fact, on May 13, 2024, Appellants filed separate objections to the Receiver's proposed order on the discovery sanctions motion. Each Appellant admitted and relied on the fact that this action was a bench trial to object to the circuit court's ability to pre-admit exhibits. (App. 565) (Altrad Obj. p. 3, n.1), (Charter Obj. p. 6 (App. 586), and (Sparrows Obj. p. 23), (App. 620).

On May 23, 2024, the circuit court granted the Receiver's Motion to Pre-Admit Exhibits as a sanction for Appellants' abject failure to participate in discovery. In its decision, the circuit court expressly stated that "[i]t is well established in South Carolina *that judges sitting without a jury* have wide latitude 'to admit all evidence' and then 'evaluate the evidence and ascertain the truth.'" (App. 642) (citation omitted). Appellants appealed this decision without raising objections to a non-jury trial and without filing a motion to reconsider asserting their purported jury rights. Appellants failed to raise this issue to the circuit court, and once again waived their ability to argue now that they are entitled to a jury trial.

On June 20, 2024, the circuit court issued the currently-appealed-from Scheduling Order, setting the case for a non-jury trial on December 9, 2024. (App. 648). Appellants did not object to the Receiver's proposed date *or file a motion seeking reconsideration of the Scheduling Order*. Appellants never once complained to the circuit court about the Scheduling Order and, instead, filed this appeal more than two months later, on August 30, 2024.³

³ The matter was stayed from June 28, 2024, to August 13, 2024, after Appellants consented to an improper removal of the case in violation of the *Barton* doctrine, which was just recently reaffirmed by the Fourth Circuit in another case involving this very Receiver in another

Despite the non-appealability of the Scheduling Order and Appellants' repeated waiver of any argument to their purported entitlement to a jury trial, Appellants nonetheless claim they have a constitutional right to a jury trial "on all issues so triable," without identifying what issues or causes of action are triable by a jury. (Appellants' August 2024 Notices).

Appellants' appeal is utterly without merit. The underlying Scheduling Order stems from the circuit court's efforts to move this litigation forward, despite Appellants' best (and repeated) efforts to stymie any progress.

ARGUMENT

The Court should expeditiously grant the Receiver's Motion to Dismiss because Appellants do not possess the right to a jury trial on any of the Receiver's claims, the Scheduling Order is not immediately appealable, and in any event, Appellants have repeatedly waived their ability to argue they are entitled to a jury trial.

I. None of the Receiver's Claims are Triable by a Jury

First, the Scheduling Order is not appealable because Appellants are clearly not entitled to a jury trial in this matter. *See C & S Real Estate Servs. v. Massengale*, 290 S.C. 299, 300, 350 S.E.2d 191, 192 (1986) (granting a motion to dismiss an appeal where the appellant did not have a right to a jury trial); *Brown v. Greenwood Sch. Dist. 50 Bd. of Trustees*, 344 S.C. 522, 524–25, 544 S.E.2d 642, 643 (Ct. App. 2001) (dismissing an appeal from an order transferring a case to a non-jury roster because there was no right to a jury trial).

Rather, South Carolina courts recognize that the Receiver's causes of action are equitable in nature and are not triable by a jury. "Generally, the relevant question in determining the right to

receivership as well as some of the same counsel representing the Altrad Appellants in this appeal. *See Protopapas v. Travelers Cas. & Sur. Co.*, 94 F.4th 351, 360 (4th Cir. 2024).

trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions.” *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997); *see also Barrett v. Miller*, 283 S.C. 262, 264, 321 S.E.2d 198, 199 (Ct. App. 1984) (“Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff.”); *McDaniel v. Kendrick*, 386 S.C. 437, 441, 688 S.E.2d 852, 855 (Ct. App. 2009) (“An action to declare a constructive trust is an action in equity.”); *Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008) (“In general, equitable principles govern the veil-piercing remedy,” and “[i]n applying South Carolina’s veil-piercing doctrine, as all forms of equitable relief, the equities of both sides are to be considered, and each case must be decided on its own particular facts.” (internal quotation marks and citations omitted)); *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 144, 382 S.E.2d 915, 917 (1989) (“An accounting is essentially an equitable remedy.”) (internal citations omitted));⁴ *O’Neal v. Pearson*, No. 2007-UP-340, 2007 WL 8327921, at *3 (S.C. Ct. App. July 6, 2007) (observing the claims for constructive trust and accounting, among other claims, “are all equitable actions”).

Appellants have failed to identify any specific factual issues in this action that would give them a right to a jury trial. Even in their late-filed Notices of Appeal, Appellants did not identify any specific factual issues or causes of action in this case that are triable by a jury. *See S.C. Dep’t of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301–02, 641 S.E.2d 903, 907 (2007) (noting an issue is not preserved for appellate review unless it is “raised to the trial court with

⁴ The Supreme Court of South Carolina went on to say in *Rogers*: “Equitable jurisdiction for an accounting may also be invoked (1) in actions involving long and complicated accounts where it would not be practicable for a jury to comprehend the issues and correctly make adjustment, and (2) when there is a need for discovery.” *Id.* Both elements are present in *Tibbs*, making the Receiver’s accounting claim especially necessary to be tried by the circuit court, rather than by a jury.

sufficient specificity” (quoting Jean Hoefer Toal et al., Appellate Practice in South Carolina 57 (2d ed. 2002))).

II. The Circuit Court’s Scheduling Order Is Not Appealable

Second, the Receiver has found no authority that a scheduling order is appealable (because it is not). *See Johnson ex rel. D’Andre G. v. Chaudhry*, No. 2013-UP-176, 2013 WL 8508086, at *1 (S.C. Ct. App. May 1, 2013) (dismissing as non-appealable an appeal from a denial of a motion to extend deadlines in a scheduling order).

Third, this issue is not properly preserved for this Court’s review because Appellants never addressed it with the circuit court. As discussed herein, the reason it’s not preserved is that Appellants, in hearings and numerous pleadings before the circuit court, admitted this action was a bench trial. For instance, Appellants never proposed their own scheduling order, moved for reconsideration of the circuit court’s issuance of the June 20, 2024 Scheduling Order, or otherwise contested the circuit court’s decision to try the case as a bench trial. Instead, they appealed the Scheduling Order without raising any arguments to the circuit court and providing it with the opportunity to address their purported demand for a jury trial. “In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court. In other words, the trial court must be given an opportunity to resolve the issue before it is presented to the appellate court.” *Winkler v. State*, 418 S.C. 643, 662, 795 S.E.2d 686, 697 (2016) (quoting *In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004)).

III. Appellants Waived Their Ability to Argue Their Entitlement to a Jury Trial

Finally, even if (1) Appellants were entitled to a jury trial (they are not), (2) a scheduling order were appealable (it is not), and (3) Appellants had tried to obtain relief from the circuit court

before appealing (they plainly did not), Appellants waived their ability to contest a bench trial numerous times and *even admitted it on the record before the circuit court*:

- After the Receiver deliberately chose not to demand a trial by jury in his Complaint, on September 20, 2023, the circuit court issued an order setting the case for trial during the April 15, 2024 trial term. (App. 69).
- In its respective January 2, 2024 Answer, each Appellant vaguely demanded a trial by jury (App. 132, 195, 258) without identifying any issues that would be triable by a jury or requesting the issuance of a new scheduling order that converted the April 15, 2024 bench trial to a jury trial.
- No Appellants objected to or otherwise disputed the Receiver’s contention in his April 4, 2024 pre-trial hearing status report that the trial would be a non-jury trial. (App. 260, 263, 265).
- At the April 10, 2024 pre-trial hearing, the circuit court stated that the Receiver’s claims against the Appellants would be tried in a non-jury setting. (App. 402). No Appellant objected at the hearing.
- The circuit court reluctantly postponed trial due to the third-party defendants’ refusal to participate in discovery and directed the parties to submit proposed scheduling orders. (App. 422-23). No Appellant did so.
- On April 9, 2024, and April 19, 2024, Appellants filed separate memoranda and all admitted this action involved “**a bench trial of equitable claims.**” (App. 432, 441, 468).
- At an April 25, 2024 hearing on the Receiver’s motion for discovery sanctions against Appellants for their complete failure to participate in discovery, counsel for the Altrad Owners Appellants expressly admitted that the Receiver’s claims would rightly be tried without a jury: “***Given that this is a bench trial***, I don’t know how you can have an adverse inference in a bench trial. ***The judge is the decider.***” (App. 534) (4/25/24 Tr. at 43:2–4) (emphases added). Neither he nor counsel for any of the other Appellants objected to a non-jury trial at this hearing or otherwise attempted to correct this clear and unequivocal statement.
- On May 13, 2024, Appellants filed separate objections to the Receiver’s proposed order on the Motion to Pre-Admit Exhibits relying on the fact that this action is a bench trial. As they did at the April 25, 2024 hearing, the Altrad Appellants again argued in their objections that the Receiver “cannot rely on the latitude normally afforded to judges regarding admitting evidence **in a bench trial**” because the presumption could not apply if the judge pre-admitted exhibits. (App. 565) (Altrad Obj. p. 3, n.1) (emphasis added). In their objections, the Charter Appellants stated: “The Opposition was premised on . . . the fact that it would be inappropriate for **a court, engaging in a bench trial**, to award an adverse inference closely mirroring the third-party claims pleaded and the prayer for relief sought before litigation on the merits occurs.” (App. 586) (Charter Obj. p. 6) (emphasis

added). In their objections, the Sparrows Appellants stated: “Contrary to the attempted characterization of such adverse inferences as an ‘intermediate form of relief,’ if entered **in this bench trial setting**, ...” (App. 620) (Sparrows Obj. p. 23) (emphasis added).

- On May 23, 2024, the circuit court granted the Receiver’s Motion to Pre-Admit Exhibits as a discovery sanction for Appellants’ failure to participate in discovery. In its decision, the circuit court expressly stated that “[i]t is well established in South Carolina *that judges sitting without a jury* have wide latitude ‘to admit all evidence’ and then ‘evaluate the evidence and ascertain the truth.’” (App. 642) (citation omitted). Appellants appealed this decision without raising their purported jury rights to the circuit court. Thus, Appellants waived their right to now contest the subsequent scheduling order setting a bench trial.
- On June 20, 2024, the circuit court issued the appealed-from Scheduling Order, setting the case for a non-jury trial on December 9, 2024. (App. 648). Appellants did not raise any objections or file a motion seeking reconsideration of the Scheduling Order. At no point did Appellants raise any arguments to the circuit court that they believed they were entitled to a jury trial or identify what issues they believed entitled them to a jury trial.

The above timeline clearly outlines the myriad opportunities that Appellants were required to contest a bench trial in this matter and belies their assertion that they acted in a timely manner. Appellants’ admissions on the record at the April 25, 2024 hearing and in various filings before the circuit court that this case would be tried in a bench trial wholly undermines this appeal. Appellants are not now permitted to now take a contrary position. Instead, they have waived their argument to a jury trial.

CONCLUSION

This action is set for a non-jury trial on December 9, 2024. These notices of appeal are another attempt by Appellants to frivolously delay the trial—Appellants’ fourth set of improper appeals in the past year in this case. Appellants are not entitled to a jury trial in this matter, the Scheduling Order is not appealable, Appellants failed to preserve any issues for this Court’s review, and Appellants waived their ability to argue for a jury trial. Appellants’ attempt to appeal the Scheduling Order despite their multiple admissions in filings before the circuit court that a bench trial was appropriate is a flagrant violation of South Carolina appellate procedure and makes it clear that these notices of appeal were solely interposed for the purpose of delaying the trial in

violation of Rule 269 of the South Carolina Appellate Court Rules. This appeal should be dismissed, and this type of continued behavior should not be tolerated. The Receiver requests any other relief this Court deems appropriate. Because time is of the essence, the Receiver respectfully requests this Court require an expedited response to this Motion to Dismiss.

Respectfully Submitted,

By: /s/ Jonathan M. Robinson

Jonathan M. Robinson

G. Murrell Smith, Jr

Shanon N. Peake

SMITH | ROBINSON, LLC

3200 Devine Street

Columbia, SC 29205

jon@smithrobinsonlaw.com

murrell@smithrobinsonlaw.com

shanonp@smithrobinsonlaw.com

(803) 254-5445

John T. Lay, Jr., SC Bar No. 64526

Gallivan, White & Boyd, P.A.

1201 Main Street, Suite 1200

PO Box 7368 (29202)

Columbia, SC 29201

jlay@gwblawfirm.com

(803) 779-1833

September 5, 2024

RECEIVED

Sep 05 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting Circuit Court Judge

Civil Action No. 2023-CP-40-01759

Appellate Case Nos.
2024-001446

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.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC;

Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC,

Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff / Respondent

v.

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

Third-Party Defendants,

of which

Mohed Altrad, Altrad Investment Authority S.A.S, Arranco US LLC, Hawk Bidco (US) Inc., Sparrows Offshore, LLC, Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation are the

Appellants.

APPENDIX TO MOTION TO DISMISS AND EXPEDITE

INDEX

Third-Party Summons & Complaint	1
September 20, 2023 Docketing Order	68
Answer of Charter Third-Party Defendants	72
Answer of Altrad Third-Party Defendants	133
Answer of Sparrows Third-Party Defendants	196
The Receiver's Pre-Trial Status Report	259
April 10, 2024 Pre-Trial Hearing Transcript	267
Charter Third-Party Defendants' Memorandum in Opposition to The Receiver's Motion for Adverse Inference	430
Altrad Third-Party Defendants' Memorandum in Opposition to The Receiver's Motion for Sanctions	438
Sparrows Third-Party Defendants' Memorandum in Opposition to The Receiver's Motion for Sanctions	465
April 25, 2024 Hearing Transcript	492
Altrad Third-Party Defendants' Objections to the Receiver's Proposed Order	563
Charter Third-Party Defendants' Objections to the Proposed Order	581
Sparrows Third-Party Defendants' Objections to the Proposed Order	598
May 23, 2024 Order Grant the Receiver's Motion to Pre-Admit Exhibits	639
June 20, 2024 Order Scheduling Trial Date	648

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY; 4520 CORP., INC.; A.O.
SMITH CORPORATION; A.W. HESTERTON
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.;
BARRETT'S 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.; LOWSERVE
CORPORATION; FLOWSERVE US INC.;
FLUOR CONSTRUCTORS

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

SUMMONS

INTERNATIONAL; FLUOR
 CONSTRUCTORS INTERNATIONAL, INC.;
 FLUOR DANIEL SERVICES; ORPORATION
 FLUOR ENTERPRISES, INC.; FMC
 CORPORATION; FOSTER WHEELER
 ENERGY CORPORATION; GARDNER
 DENVER NASH, LLC; GENERAL BOILER
 CASING COMPANY, INC.; GENERAL
 CABLE CORPORATION GENERAL CABLE
 INDUSTRIES, INC.; GENERAL ELECTRIC
 COMPANY; GOULD ELECTRONICS INC.;
 GOULDS PUMPS, INCORPORATED;
 GOULDS PUMPS LLC; GREAT BARRIER
 INSULATION CO.; GRINNELL LLC;
 HAJOCA CORPORATION; HOWDEN
 NORTH AMERICA INC.; HPC INDUSTRIAL
 SERVICES, LLC; IMO INDUSTRIES INC.
 ITT LLC; JOY GLOBAL UNDERGROUND
 MINING LLC; K-MAC SERVICES
 INCORPORATED; METROPOLITAN LIFE
 INSURANCE COMPANY; MINE SAFETY
 APPLIANCES COMPANY, LLC; MP
 SUPPLY, INC.; THE NASH ENGINEERING
 COMPANY; OCCIDENTAL CHEMICAL
 CORPORATION; PARAMOUNT GLOBAL;
 PATTERSON PUMP COMPANY; PECW
 HOLDING COMPANY; PFIZER INC.;
 PIEDMONT INSULATION, INC.; PLASTICS
 ENGINEERING COMPANY; PRESNELL
 INSULATION CO., INC.; REDCO
 CORPORATION; RILEY POWER INC.;
 ROCKWELL AUTOMATION, INC.; RSCC
 WIRE & CABLE LLC; SCHNEIDER
 ELECTRIC USA, INC.; SEQUOIA
 VENTURES INC.; SPIRAX SARCO, INC.;
 SPX CORPORATION; STAFFORD
 INSULATION COMPANY; STANDARD
 INSULATION COMPANY OF N. C., INC.;
 STARR DAVIS COMPANY, INC.; STARR
 DAVIS COMPANY OF S.C., INC.; STERLING
 FLUID SYSTEMS (USA) LLC; TE WIRE &
 CABLE LLC; THERMO ELECTRIC
 COMPANY, INC.; UNION CARBIDE
 CORPORATION; VALVES AND CONTROLS
 US, INC.; VELAN VALVE CORP.; VIKING
 PUMP, INC.; VISTRA INTERMEDIATE

COMPANY LLC; THE WILLIAM POWELL COMPANY; WIND UP, LTD.; YUBA HEAT TRANSFER LLC; and ZURN INDUSTRIES, LLC,

Defendants.

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

Third-Party Plaintiff,

v.

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,

Third-Party Defendants.

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Original Third-Party Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said Third-Party Complaint upon the subscribers at Post Office Box 7368, Columbia, South Carolina 29202, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Third-Party Complaint.

[Signature page follows]

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: /s/ John T. Lay, Jr.

John T. Lay, Jr., SC Bar No. 64526

Gray T. Culbreath, SC Bar No. 11907

Lindsay A. Joyner, SC Bar No. 77437

Laura W. Jordan, SC Bar No. 100374

Eleanor L. Jones, SC Bar No. 104678

1201 Main Street, Suite 1200

PO Box 7368 (29202)

Columbia, SC 29201

jlay@gwblawfirm.com

gculbreath@gwblawfirm.com

ljoyner@gwblawfirm.com

ljordan@gwblawfirm.com

ejones@gwblawfirm.com

(803) 779-1833

Attorneys for Third-Party Plaintiff

Dated: June 30, 2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY; 4520 CORP., INC.; A.O.
SMITH CORPORATION; A.W. HESTERTON
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.;
BARRETT'S 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.; LOWSERVE
CORPORATION; FLOWSERVE US INC.;
FLUOR CONSTRUCTORS

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

THIRD-PARTY COMPLAINT

INTERNATIONAL; FLUOR
 CONSTRUCTORS INTERNATIONAL, INC.;
 FLUOR DANIEL SERVICES; ORPORATION
 FLUOR ENTERPRISES, INC.; FMC
 CORPORATION; FOSTER WHEELER
 ENERGY CORPORATION; GARDNER
 DENVER NASH, LLC; GENERAL BOILER
 CASING COMPANY, INC.; GENERAL
 CABLE CORPORATION GENERAL CABLE
 INDUSTRIES, INC.; GENERAL ELECTRIC
 COMPANY; GOULD ELECTRONICS INC.;
 GOULDS PUMPS, INCORPORATED;
 GOULDS PUMPS LLC; GREAT BARRIER
 INSULATION CO.; GRINNELL LLC;
 HAJOCA CORPORATION; HOWDEN
 NORTH AMERICA INC.; HPC INDUSTRIAL
 SERVICES, LLC; IMO INDUSTRIES INC.
 ITT LLC; JOY GLOBAL UNDERGROUND
 MINING LLC; K-MAC SERVICES
 INCORPORATED; METROPOLITAN LIFE
 INSURANCE COMPANY; MINE SAFETY
 APPLIANCES COMPANY, LLC; MP
 SUPPLY, INC.; THE NASH ENGINEERING
 COMPANY; OCCIDENTAL CHEMICAL
 CORPORATION; PARAMOUNT GLOBAL;
 PATTERSON PUMP COMPANY; PECW
 HOLDING COMPANY; PFIZER INC.;
 PIEDMONT INSULATION, INC.; PLASTICS
 ENGINEERING COMPANY; PRESNELL
 INSULATION CO., INC.; REDCO
 CORPORATION; RILEY POWER INC.;
 ROCKWELL AUTOMATION, INC.; RSCC
 WIRE & CABLE LLC; SCHNEIDER
 ELECTRIC USA, INC.; SEQUOIA
 VENTURES INC.; SPIRAX SARCO, INC.;
 SPX CORPORATION; STAFFORD
 INSULATION COMPANY; STANDARD
 INSULATION COMPANY OF N. C., INC.;
 STARR DAVIS COMPANY, INC.; STARR
 DAVIS COMPANY OF S.C., INC.; STERLING
 FLUID SYSTEMS (USA) LLC; TE WIRE &
 CABLE LLC; THERMO ELECTRIC
 COMPANY, INC.; UNION CARBIDE
 CORPORATION; VALVES AND CONTROLS

US, INC.; VELAN VALVE CORP.; VIKING PUMP, INC.; VISTRA INTERMEDIATE COMPANY LLC; THE WILLIAM POWELL COMPANY; WIND UP, LTD.; YUBA HEAT TRANSFER LLC; and ZURN INDUSTRIES, LLC,

Defendants.

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

Third-Party Plaintiff,

v.

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,

Third-Party Defendants.

COMES NOW Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd. (“Third-Party Plaintiff”), by and through its duly appointed receiver Peter D. Protopapas (the “Receiver”), complaining of the Third-Party Defendants 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 , and The Sparrows Group LLC (collectively, “Third-Party Defendants”), who through undersigned counsel respectfully shows unto the Court as follows:

INTRODUCTORY STATEMENT

This lawsuit seeks to finally hold accountable three groups of Third-Party Defendants (including their predecessors in interest) who are responsible for the sale and use of asbestos or asbestos-containing products throughout the United States, including in South Carolina, and which caused or materially contributed to thousands of deaths from mesothelioma or other asbestos-related disease, and billions of dollars of past, present, and calculable future damages. For decades, certain of these Third-Party Defendants created sham transactions to feign exits of the asbestos industry in the United States, leaving shells and an absence of insurance coverage to account for their massive liability exposure. And also for decades, they hid behind (or within) byzantine collectives of limited liability and other holding companies internationally, avoiding responsibility while continuing to reap the profits from the sales of asbestos and asbestos-containing products throughout the United States, including in South Carolina. In sum, these three groups of Third-Party Defendants have wreaked havoc in the United States, padded their already massive coffers with blood money on top of blood money, and amused themselves with the supposed ingenuity of their scheme to avoid any responsibility. This lawsuit begins their reckoning.

PARTIES

1. Third-Party Plaintiff, appearing by and through its duly appointed Receiver, who maintains his principal place of business in Richland County, South Carolina, brings this third-party complaint. On March 17, 2023, this Court appointed the Receiver to undertake actions to administer all assets of Third-Party Plaintiff. *See* Cape PLC Receivership Order.

2. The Receiver is informed and believes that Third-Party Defendant Anglo American PLC (individually and as successor in interest to Anglo American Corporation of South Africa Ltd.) is

a corporation organized under the laws of England, United Kingdom, with its principal place of business located in London, England, United Kingdom.

3. The Receiver is informed and believes that Third-Party Defendant De Beers PLC is a corporation organized under the laws of the Bailiwick of Jersey, with its principal place of business located in St. Helier, Jersey.

4. The Receiver is informed and believes that Third-Party Defendant De Beers Centenary AG is a corporation organized under the laws of Switzerland, with its principal place of business in Emmenbrücke, Switzerland.

5. The Receiver is informed and believes that Third-Party Defendant De Beers Consolidated Mines Ltd. is a corporation organized under the laws of the Republic of South Africa, with its principal place of business in Kimberly, Northern Cape, South Africa.

6. The Receiver is informed and believes that Third-Party Defendant De Beers S.A. is a corporation organized under the laws of the Grand Duchy of Luxembourg, with its principal place of business in the Grand Duchy of Luxembourg.

7. The Receiver is informed and believes that Third-Party Defendant De Beers UK Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business in London, England, United Kingdom.

8. The Receiver is informed and believes that Third-Party Defendant De Beers Jewellers Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business in London, England, United Kingdom.

9. The Receiver is informed and believes that Third-Party Defendant De Beers Jewellers US, Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Fairfield County, Connecticut.

10. The Receiver is informed and believes that Third-Party Defendant Anglo American US Holdings Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in New Castle County, Delaware.

11. The Receiver is informed and believes that Third-Party Defendant Element Six US Corp. is a corporation organized under the laws of the State of New York, with its principal place of business in Harris County, Texas.

12. The Receiver is informed and believes that Third-Party Defendant Element Six Technologies US Corp. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Santa Clara County, California.

13. The Receiver is informed and believes that Third-Party Defendant Element Six Technologies (OR) Corp. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Multnomah County, Oregon.

14. The Receiver is informed and believes that Third-Party Defendant First Mode Holdings, Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in King County, Washington.

15. The Receiver is informed and believes that Third-Party Defendant Platinum Guild International (U.S.A.) Jewelry Inc. is a corporation organized under the laws of the State of New York, with its principal place of business in New York County, New York.

16. The Receiver is informed and believes that Third-Party Defendant Lightbox Jewelry Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Kent County, Delaware.

17. The Receiver is informed and believes that Third-Party Defendant Forevermark US Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Fairfield County, Connecticut.

18. The Receiver is informed and believes that Third-Party Defendant Anglo American Crop Nutrients (U.S.A.), LLC is a corporation organized under the laws of the State of Colorado, with its principal place of business in Burleigh County, North Dakota.

19. The Receiver is informed and believes that Third-Party Defendant Charter Consolidated Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business located in Essex, England, United Kingdom.

20. The Receiver is informed and believes that Third-Party Defendant ESAB Corporation is a corporation organized under the laws of the State of Delaware, with its principal place of business in Montgomery County, Maryland.

21. The Receiver is informed and believes that Third-Party Defendant Central Mining & Investment Corporation Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business located in Essex, England, United Kingdom.

22. The Receiver is informed and believes that Third-Party Defendant Cape Holdco Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business in Warrington, England, United Kingdom.

23. The Receiver is informed and believes that Third-Party Defendant The Law Debenture Corporation PLC is a corporation organized under the laws of England, United Kingdom, with its principal place of business in London, England, United Kingdom.

24. The Receiver is informed and believes that Third-Party Defendant Cape Industrial Services Group Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business in Warrington, England, United Kingdom.

25. The Receiver is informed and believes that Third-Party Defendant Mohed Altrad is an individual who resides in Montpelier, France.

26. The Receiver is informed and believes that Third-Party Defendant Altrad UK Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business in Warrington, England, United Kingdom.

27. The Receiver is informed and believes that Third-Party Defendant Cape UK Holdings NewCo Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business in Warrington, England, United Kingdom.

28. The Receiver is informed and believes that Third-Party Defendant Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.) is a corporation organized under the laws of England, United Kingdom, with its principal place of business in Warrington, England, United Kingdom.

29. The Receiver is informed and believes that Third-Party Defendant Altrad Investment Authority S.A.S. is a corporation organized under the laws of France, with its principal place of business in Florensac, France.

30. The Receiver is informed and believes that Third-Party Defendant Sparrows Offshore Group Ltd. is a corporation organized under the laws of Scotland, United Kingdom, with its principal place of business in Aberdeen, Scotland, United Kingdom.

31. The Receiver is informed and believes that Third-Party Defendant Hawk BidCo US Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Harris County, Texas.

32. The Receiver is informed and believes that Third-Party Defendant Arranco US, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in New Castle County, Delaware.

33. The Receiver is informed and believes that Third-Party Defendant Sparrows Offshore, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Harris County, Texas.

34. The Receiver is informed and believes that Third-Party Defendant The Sparrows Group LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Harris County, Texas.

35. The Receiver believes that one or more additional companies were likewise involved in the alleged acts described herein and are liable for the same alleged harms under the same or similar theories of liability ("Additional Third-Party Defendants"). Those Additional Third-Party Defendants may include one or more companies operated or managed by organizations located in the United States, United Kingdom, South Africa, Luxembourg, Lichtenstein, Switzerland, or other jurisdictions, which have been used to obfuscate responsibilities with and control over Cape PLC during the relevant period alleged herein, which were or are alter ego entities of Cape PLC,

or which otherwise facilitated, took part in, or benefited from the liability-avoidance scheme described herein. When the identities of these Additional Third-Party Defendants become known to Third-Party Plaintiff, this Complaint may be amended *nunc pro tunc* to state the identities of such Additional Third-Party Defendants.

JURISDICTION

36. This Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803, Article V of the Constitution of the State of South Carolina, and the Court's plenary powers. This Court appointed Peter D. Protopapas as Receiver of Third-Party Plaintiff.

37. Upon information and belief, each of the Third-Party Defendants is subject to this Court's jurisdiction because, among other things, this action arises from the acts of each Third-Party Defendant, and/or their agents, co-conspirators, predecessors in interest, and/or amalgamated corporate parents: (i) transacting business in the State; (ii) contracting to supply services or things in the State; (iii) committing a litany of tortious acts in whole or in part in the State; (iv) causing injuries and deaths in the State by acts or omissions outside the State, while regularly conducting or soliciting business, engaging in a persistent course of conduct, or deriving substantial revenue from goods used or consumed or services rendered in the State; (v) having an interest in, using, or possessing real property in the State; (vi) entering into a contract to be performed in whole or in part by either party in the State; and/or (vii) producing, manufacturing, or distributing goods with the reasonable expectation (or in this case, the actual knowledge) that those goods are to be used or consumed in the State and were so used or consumed. *See* S.C. Code §§ 36-2-803(A)(1)–(5), (7)–(8).

VENUE

38. Venue is proper in this Court as it is the Receiver Court with cases pending and anticipated new filings in this Court. Further, on March 3, 2019, pursuant to the Order of the Supreme Court of South Carolina, Order Number 2017-03-03-01, the Honorable Jean H. Toal was appointed to have jurisdiction in all circuits in the State to dispose of all pretrial matters and motions, as well as trials, arising out of asbestos and asbestos litigation filed within the state court system. Thus, the Honorable Jean H. Toal will have jurisdiction over this matter.

FACTUAL BACKGROUND

39. Although this complaint arises out of events commencing many decades ago and continuing for decades, those events led to and resulted in asbestos-related disease that continues to be diagnosed in and suffered by residents of South Carolina to this day. As described in detail below, Third-Party Defendants (including their predecessors in interest) are directly responsible for injuries caused by these events, especially by the sale and use of asbestos or asbestos-containing products throughout the United States, including in South Carolina.

40. Cape PLC is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates (collectively, “Cape”), which was and is a private company organized and existing under the laws of the United Kingdom, with its principal place of business in England. At all times relevant, Cape was deeply involved in all elements 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—substantial quantities of which were used in South Carolina.

41. Cape’s historic operations involved a complex scheme to sell millions and millions of dollars of asbestos—knowing with certainty that it would kill and maim tens of thousands of Americans—while, at the same time, developing and executing on a ploy to escape any legal or financial responsibility to the people harmed by intentionally depleting its U.S.-based subsidiary of attachable assets. It is sadly unsurprising that Cape, acting with various other foreign entities, concocted this scheme, because Cape boldly admitted that it had no “moral responsibility” to the people injured or killed by Cape’s asbestos products. CAPE000486. Executing on that scheme, Cape allowed default judgments against it in asbestos lawsuits across the United States, and simply absconded, leaving no assets for recovery. Ultimately, as averred below, Cape and its affiliated domestic and foreign entities got extraordinarily wealthy off the suffering and deaths of tens of thousands, and then cheated the system to escape responsibility for its and their tortious misconduct.

42. How does a company like Cape pull off such a scheme? Because Cape was part of a South African mining empire that enjoyed unparalleled political power, resource wealth, commercial and legal deviousness, and wholesale antipathy towards ethical business practices and any decent concept of responsibility. More specifically, Cape was the industrial gem of the Anglo and De Beers mining houses, which were controlled by the powerful Oppenheimer family of Johannesburg. *See, e.g.,* Laurie Flynn, *Studded with Diamonds and Paved with Gold: Miners, Mining Companies and Human Rights in Southern Africa* 180 (1992) [hereinafter, “Flynn (1992)”] (“Cape Industries, a British-registered part of Harry Oppenheimer’s Anglo American empire . . . [was] among the biggest asbestos producers from the beginning . . .”).

43. As averred herein, those Third-Party Defendants are responsible for a scheme that included, without limitation, the following acts:

- a. Failing to follow corporate formalities among affiliated entities, with a select few entities and individuals dominating the management and operations of Cape and its parent company, Charter Consolidated Ltd.;
- b. Leveraging that common ownership and control of numerous mining and other investment entities to effectively dominate the South African economy and global market for certain forms of asbestos;
- c. Creating and operating a byzantine web of entities with the deliberate purpose of avoiding public scrutiny and escaping the liabilities of the affiliated companies and their shareholders;
- d. Siphoning funds from entities within that web, including Cape's sole American subsidiary, to maximize the financial return to Cape's overseas owners, eliminate liabilities, and escape responsibility by neutralizing the risk of asset attachment by tort creditors; and
- e. Destroying corporate records and publicly misrepresenting the nature of Cape's business and liability-avoidance scheme in the United States, all designed to avoid responsibility to the tens of thousands of people injured by Cape asbestos.

44. Each of the named Third-Party Defendants facilitated and caused Cape's U.S.-based sales and liability-avoidance scheme, or otherwise acted as successors in interest to or beneficiaries of entities involved in that scheme, and, thus, are responsible for the alleged bodily injury underlying the claims against Cape PLC across the United States, including specifically in South Carolina.

I. Cape Was Established As Part of a South African Mining Empire.

45. Cape: A De Beers-Affiliated Project. From its beginning, Cape was formed to act in coordination with powerful mining interests in South Africa. Specifically, in 1891, Francis Oats—a director and eventual chairman of De Beers Consolidated Mines Ltd. (collectively with its affiliates and successors in interest, as named as Third-Party Defendants herein, “De Beers”)—formed the Cape Mineral Syndicate to exploit asbestos reserves that had been recently re-discovered in the Orange River Valley in South Africa. Two years later, on December 28, 1893, the Cape Asbestos Company Ltd. was organized in the United Kingdom for the express purpose of: (i) taking over the Cape Mineral Syndicate’s mining operations, and (ii) manufacturing asbestos products in England. As a De Beers-affiliated company, Cape was co-founded by Oats and his close business associate, Ludwig Breitmeyer (also a future De Beers director), while another De Beers director, Rudolf Hinrichsen, was installed as Cape’s first chairman. Jock McCulloch, *African Issues: Asbestos Blues: Labour, Capital, Physicians & the State in South Africa* 43 (Indiana Univ. Press 2002) [hereinafter, “McCulloch (2002)”]. Thus, from its founding, Cape’s operations and ownership were integrated with the interests of De Beers.

46. Wernher, Beit & Co. In the 1890s, Breitmeyer was “a partner in the London [mining finance] firm of Wernher, Beit & Co.,” which—with its branch in South Africa, *i.e.*, Hermann, Eckstein & Co.—“became famous as the Corner House” Group. *Cape Asbestos (1893–1953): The Story of The Cape Asbestos Company Limited* 16 (1953) [hereinafter, “Cape Diamond Jubilee”]; Sir J. Percy Fitzpatrick, *South African Memories* 14 (1932). The Corner House Group was the most powerful mining finance house in South Africa at the time and was founded by London-based “Randlords” Alfred Beit and Julius Wernher. See Martin Meredith, *Diamonds, Gold and*

War: The British, the Boers, and the Making of South Africa 187 (2007) [hereinafter “Meredith (2007)”] (“At first, Eckstein’s office in Johannesburg was called ‘Beit’s building’; but it later became known as Eckstein’s Corner and then as the Corner House; and what it represented was the most powerful group of financiers in southern Africa.”); *id.* at 294 (noting that “foreign mining magnates” such as Wernher and Beit “were dubbed by the British press” as “the Randlords,” who “indulge[d] in luxury lifestyles in Britain” from their fortunes made in Africa).¹

47. Role at De Beers and Cape. The members of the Corner House Group, particularly Alfred Beit, were fundamental to the amalgamation of diamond-mining interests that occurred with the formation of De Beers Consolidated Mines Ltd. in 1888. *See id.* at 247 (“The mastermind behind the amalgamation of the diamond mines in Kimberly was not [Cecil] Rhodes but . . . Alfred Beit – ‘Little Alfred’ – to whom he invariably turned for solutions.”).² In turn, Ludwig Breitmeyer served as alternate director on the De Beers board for Alfred Beit, while being intimately involved in Cape’s founding and becoming Cape’s first long term Chairman (from 1894 until his death in 1930). *See Cape Diamond Jubilee* (1953) at 6, 16 (noting Breitmeyer became Cape’s Chairman

¹ *See also, e.g.,* Sir J. Percy Fitzpatrick, *South African Memories* 157 (1932) (“In few countries . . . did any single business firm bulk as big [as] . . . Wernher, Beit & Co. Their great wealth and power on the diamond fields, where . . . they were the real backers of [Cecil] Rhodes in his great work [e.g., the amalgamation of interests at De Beers], and on the Witwatersrand gold fields, where under the name of H. Eckstein & Co., their position, power and influence were overwhelmingly predominant, made them of necessity a very great factor in [South Africa].”).

² *See also, e.g.,* Sir J. Percy Fitzpatrick, *South African Memories* 27, 33, 90 (1932) (“Alfred Beit has been very generally regarded as the ablest business man South Africa has ever known. He was very much more than just a financier. . . . There can be no doubt whatever that Beit was Rhodes’s financial genius, and without him the great creations which are credited to Rhodes would not have been accomplished. . . . When the big amalgamation was completed and the De Beers Consolidated created, Rhodes, Beit and Wernher were made life-governors with a share in ultimate profits, which . . . proved of enormous value afterwards.”).

after the first one died). In that role, Breitmeyer managed Cape in the company's infancy, while it was funded and controlled by members of the Corner House Group (*i.e.*, the key members of De Beers). *See id.* at 12, 16.

48. Breitmeyer's Personal Rise. While acting as Cape's Chairman, Breitmeyer was part of the Corner House Group's continued dominance over mining in South Africa into the 1920s (until that role was overtaken by a relative newcomer, *see infra* ¶ 49). For example, in 1905, on information and belief, Breitmeyer was involved in the organization of the Central Mining & Investment Corp. Ltd. ("Central Mining") to take over the assets and business interests of Wernher, Beit & Co., which included interests in Cape Asbestos. *See, e.g.,* Duncan Innes, *Anglo American and the Rise of Modern South Africa* 55 (1984) [hereinafter "Innes (1984)"] ("[T]he House of Wernher Beit expanded considerably at this time, changing its name to Central Mining in 1905[.]").³ In 1912, moreover, Breitmeyer became a full-time De Beers director. *See* Hedley A. Chilvers, *The Story of De Beers* 307 (1939) ("BREITMEYER, L. Director from December 5, 1912, to the date of his death, March 13, 1930. Was alternate to A. Beit from May 14, 1888, to June 25, 1889, and from May 18, 1891, to February 6, 1896."); De Beers 1930 Annual Report, at 3 (Oct. 13, 1930) (Sir Ernest Oppenheimer, as the new De Beers Chairman, reporting "regret to record the death . . . of [a] valued friend and colleague, Mr. L. Breitmeyer, who had been a Director of the Company for the past 18 years").

³ *See also* Archives Hub: Papers of the Central Mining and Investment Corporation, <https://archiveshub.jisc.ac.uk/search/archives/780f1a0a-48ec-3e42-8e82-53503070110e>; Company Information: Central Mining & Investment Corporation Limited (The), <https://find-and-update.company-information.service.gov.uk/company/00084511>.

49. The Oppenheimer–Anglo Takeover of De Beers. In or around 1925, at a critical juncture in South African mining history, Breitmeyer sought to take control of De Beers, but was thwarted by Sir Ernest Oppenheimer—who, soon after, became De Beers’ chairman. *See* Hedley A. Chilvers, *The Story of De Beers* 227 (1939) (“Offers for the purchase of the Company’s diamonds were received in 1925 from L. Breitmeyer and friends and from Sir Ernest Oppenheimer and friends for a period of five years from January 1, 1926. The offer of the latter was accepted”); De Beers 1930 Annual Report, at 3 (Oct. 13, 1930) (noting leadership of Oppenheimer). Critical to his success as the new De Beers chairman, Ernest Oppenheimer also controlled the Anglo American Corporation of South Africa Ltd. (collectively with its affiliates and successors in interest, including Anglo American PLC, “Anglo”), which Oppenheimer formed in September 1917 to bring about an “amalgamation between” various mines and other business interests. *See* David Pallister et al., *South Africa Inc.: The Oppenheimer Empire (Revised & Updated Ed.)* 54–55 (Yale Univ. Press 1988) [hereinafter, “Pallister (1988)”].

50. Anglo’s Interest in Cape. In the aftermath of the Oppenheimer-led takeover of De Beers, Breitmeyer maintained his directorship at De Beers and his Chairmanship at Cape. *See, e.g.,* De Beers 1930 Annual Report, at 3 (Oct. 13, 1930) (noting long, continued role as De Beers director); Cape Diamond Jubilee (1953) at 6 (chronology of Cape’s initial leadership). However, Breitmeyer died soon after (in 1930), with Central Mining or other affiliates of the Corner House Group continuing to control Cape.⁴ On information and belief, however, soon after the Oppenheimer-led

⁴ *See, e.g.,* McCulloch (2002) at 8 (observing that by 1944, “the major shareholders [in Cape] were the Central Mining and Investment Corporation of London and the estate of the late Alfred Beit,” who had died nearly four decades prior in 1906); Cape Diamond Jubilee (1953) at 35, 48, 61 (referencing Central Mining and other affiliates of the Corner House Group involved with leadership and operations at Cape).

takeover of De Beers, Anglo and its affiliated entities developed direct and indirect ties (including by assuming contracts and liabilities) in various businesses affiliated with the Corner House Group, including Central Mining and Cape. *See cf.* Hedley A. Chilvers, *The Story of De Beers* 227 (1939) (“The new (Oppenheimer) Syndicate took over in October the stock of diamonds of the old (Breitmeyer) Syndicate and all contracts and liabilities.”). And at minimum, Anglo’s “involvement in Cape Asbestos grew during the Second World War,” because by then, Central Mining had become affiliated as an “Oppenheimer company” and was also Cape’s “majority shareholder.” Geoffrey Tweedale & Laurie Flynn, *Piercing the Corporate Veil: Cape Industries and Multinational Corporate Liability for a Toxic Hazard, 1950–2004*, 8 *Enterprise & Society* 268, 274 (2007) [hereinafter, “Tweedale & Flynn (2007)”. Moreover, by 1949, “Central [Mining] had a majority on the board of directors of Cape,” *id.*, and by 1958 (at the latest), Anglo had executed a “take over [of] Central Mining,” Pallister (1988) at 120.

51. Cape as Part of an Empire. In other words, by the middle of the twentieth century, Cape was the asbestos-mining leg of an amalgamated mining empire based out of South Africa that included the De Beers diamond monopoly and mining powerhouse of Anglo associated with the Oppenheimer business dynasty.⁵

52. Benefits of Anglo Affiliation. Cape’s affiliations—especially with Anglo—were key to Cape’s success, because Anglo (i) acted as “South Africa’s largest and most influential corporation,” (ii) dominated the mining industry, and (iii) “ma[de] up the core of the country’s

⁵ While started by Sir Ernest Oppenheimer, leadership at Anglo was passed down to his son, Harry Oppenheimer, who is now succeeded by the founder’s grandson, Nicholas (“Nicky”) Oppenheimer, reportedly the third wealthiest man in Africa. *See* Rob LaFranco *The Forbes Billionaires List: Africa’s Billionaires* (Jan. 30, 2023), <https://www.forbes.com/lists/africa-billionaires/?sh=5a12a2a724d5>.

economy.” Pallister (1988) at 25 (“The old adage that what is good for General Motors in the United States is far more apposite to Anglo and South Africa. Certainly Anglo controls a far greater proportion of the South African economy than [GM] could ever hope to achieve in the USA.”). For example, Central Mining (as controlled by Anglo) leveraged its expertise and methods in gold mining to improve the performance at Cape mines by seconding employees to Cape in South Africa—but with Anglo, not Cape, paying their compensation. *See* McCulloch (2002) at 51–52 (detailing “claims that seconded staff kept their original medical aid and pension entitlements [of Central Mining], and their salaries were paid by the parent company Anglo American”).⁶

53. The Deviousness of Its Business Structure. Exhibiting extraordinary business and legal deviousness, the Oppenheimer family (along with their close associates) structured and coordinated “a web of secret companies” to avoid financial liabilities, including tax liabilities. Pallister (1988) at 25; *see also* Stefan Kanfer, *The Last Empire: De Beers, Diamonds, and the World* 292, 316–17 (1995) [hereinafter, “Kanfer (1995)”] (noting that the Anglo businesses were often investigated for “illegally doing business in the [United] States”). Outwardly, however, the Oppenheimer family and its associates did not acknowledge the true extent of cross-associations between their various companies—which in the aggregate allowed the Oppenheimer family to dominate the South African economy. *See, e.g.,* A.J.W. Owston Tr. 31–32 (Aug. 22, 1984) (Charter executive director and Anglo employee claiming not to know who controls Anglo or De

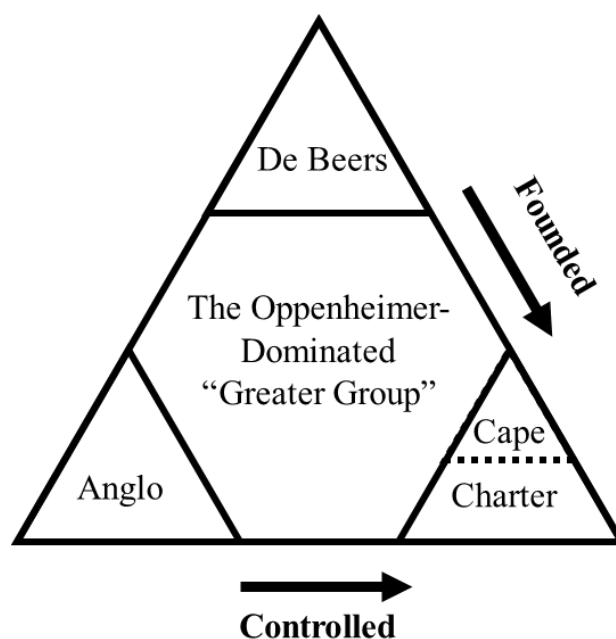
⁶ In turn, in later years (*see infra* ¶ 54), Charter could “call on the comprehensive technical services of Anglo,” which Charter acknowledged “contributed greatly to the examination and evaluation of the many mining and prospecting projects initiated by or brought to” Charter. *See* Charter 1966 Annual Report, at 24 (May 31, 1966).

Beers, but admitting the greater group enjoyed having “inside South Africa dozens of subsidiaries in all kinds of activities”).⁷

54. The Creation of Charter. After World War II, the Oppenheimer family sought to extend its business holdings internationally, including by consolidating companies with ownership and control of Cape. Thus, in 1965, Central Mining merged with two other mining and investment companies (The British South Africa Company and The Consolidated Mines Selection Company Ltd.) to form Charter Consolidated Ltd. (“Charter”). Anglo created Charter to serve as Anglo’s “international investment arm,” Pallister (1988) at 345, thereby creating an Oppenheimer-controlled corporate triumvirate—with Charter being the third of “three essential companies” of what insiders called “the greater group,” *i.e.*, Anglo, De Beers, and Charter. *See* A.J.W. Owston Tr. 31–32, 66 (Aug. 22, 1984); J.A.B. Nichols Tr. 10, 61 (Aug. 29, 1984).⁸

⁷ *See also* Pallister (1988) at 25 (“Technically there are simply two major South African publicly quoted companies, the Anglo American Corporation of South Africa . . . and De Beers Consolidated Mines, with an admitted close working relationship and various cross-holdings with other companies. Because the boards of [Anglo] and De Beers present their companies as independent entities on stock exchanges and to business partners and governments around the world, they can never formally admit that the two operate as inseparable twins.”).

⁸ *See also, e.g., Charter Website: History* (Dec. 12, 2008), https://web.archive.org/web/20081212114613/http://www.charter.ie/chtr_int/about/history/; (noting that “[v]arious companies within the Anglo American Corporation of South Africa have held an interest in Charter Consolidated shares”).



55. Charter’s 1969 “Takeover” of Cape. Although Charter had both direct and indirect interests in Cape from its founding, it purported to only have a minority interest initially, before quickly accumulating shares and acquiring majority ownership by 1969. *See* Charter 1965 Annual Report, at 5 (May 19, 1965) (listing Cape as a “principal interest[]” of Charter at its founding); Charter 1968 Annual Report, at 34 (May 28, 1968) (reporting 19.5% interest in Cape and the “mining and manufacture of asbestos”); Charter 1969 Annual Report, at 7, 25, 31 (June 3, 1969) (reporting 25.3% interest in Cape and efforts to obtain majority ownership through takeover offers to other unidentified Cape shareholders). On information and belief, in 1969 and prior years, Charter or other Anglo-affiliated entities purchased Cape shares from other companies associated (previously) with the Corner House Group, including, without limitation, Rand Mines Ltd., Rand Mines Holdings Ltd., or their affiliates, in which Charter and Anglo also held large ownership interests. *See* Charter 1969 Annual Report, at 28, 32 (June 3, 1969) (noting 15.9% interest in Rand Mines Ltd. and 23.6% interest in Transvaal Consolidated Land & Exploration Company Ltd.).

Indeed, at its founding, Charter touted its close relationship with these and other members of the Corner House Group. *See, e.g.*, Charter 1965 Annual Report, at 7 (May 19, 1965) (noting shared interests involving Charter, Central Mining, and Rand Mines Ltd. under section of report titled “CORNER HOUSE GROUP”); Innes (1984) at 212–13 (stating that “as part of the Corner House Group, Rand Mines had become one of the country’s leading mining houses,” but eventually fell under the control of Anglo by the early 1960s); *see also* Meredith (2007) at 302 (detailing the founding of Rand Mines in 1893, which was formed by the contribution of mining claims and “five existing companies” by H. Eckstein & Co., with “the partners in Eckstein, including Beit and Wernher in London,” receiving shares in the new entity).

56. Charter: A Shell Game. In the end, Charter’s purported “takeover” of Cape was nothing more than a continuation of other Oppenheimer-affiliated entities’ control of Cape over the prior decades,⁹ and serves as only one example of the many corporate shell games used by the Oppenheimer business empire to obscure their financial interests globally.

57. One Main Office for One Enterprise. Similarly, the corporate separation between Charter and Anglo was superficial. By way of example only, Charter and Anglo shared common office space at 40 Holborn Viaduct in London, employed personnel who routinely switched roles between the entities, and each had boards that were dominated by the Oppenheimer family and their business associates/servants. *See, e.g.*, E.G. Rudland Tr. 7–8, 21–22 (Apr. 7, 1981) (describing overlapping personnel and directorships); House of Commons, Expenditure Comm.,

⁹ *See, e.g.*, Charter 1966 Annual Report, at 7 (May 31, 1966) (noting Central Mining “acquired interests in . . . asbestos, . . . besides a number of industrial interests in the United Kingdom”); Charter 1970 Annual Report, at 16 (June 18, 1970) (noting that “there has long been a close association [of Cape] with Charter through one of its forerunners,” *i.e.*, Central Mining).

Session 1973–74, *Fifth Report: Wages and Conditions of African Workers Employed by British Firms in South Africa* 22–23 (Jan. 22, 1974) [hereinafter, “House of Commons Rep.”] (noting that Charter “even allow[s] Anglo American to supply directors for Charter representation on boards”); Peter Schmeisser, *Harry Oppenheimer’s Empire: Going for Gold*, N.Y. Times, Mar. 19, 1989 [hereinafter, “Schmeisser Article”] (noting common office space of De Beers, Anglo, and Charter in London, as well as overlapping directors among the Oppenheimer companies); Charter 1965 Annual Report, at 10 (May 19, 1965) (as part of the Charter merger, there was an “[i]ntegration of the London staffs” of the three merged companies, with the new organization located at 40 Holborn Viaduct); Charter 1966 Annual Report, at 24 (May 31, 1966) (noting merged companies were also combined “with the London staffs of Anglo . . . and Consolidated Share Registrars Limited” to create a “wholly owned subsidiary, Charter Consolidated Services Limited,” which also took over the office lease and “provide[d] staff and services in London, not only for all companies in the Charter . . . group, but also for the Anglo . . . , De Beers and Corner House groups”).

58. Charter’s Role in the Empire. Consistent with this scheme, Charter operated such that its “every move was made in the interests of De Beers and Anglo”—furthering the amalgamated Oppenheimer empire’s effort “to extend [its] grasp to North America,” while allowing it to “unobtrusively buy, spawn or control” varied and sizeable business interests around the world through a “series of . . . cross-holdings.” Kanfer (1995) at 291–92, 315 (describing Charter as one side of a “pyramid” of global business interests).¹⁰

¹⁰ See also, e.g., Schmeisser Article (“The structure of Oppenheimer’s empire is dizzyingly complex and nearly impenetrable to outsiders. He wields his power indirectly, through pyramided holding companies, interlocking shareholdings and a myriad of cross-directorships. As a result of this operating strategy, few people are aware that in the last two decades scores of businesses in

59. Domination of Charter. The Oppenheims consistently sat on Charter’s board of directors after its founding,¹¹ while at the same time dominating Charter’s share ownership.¹² Indeed, Charter’s management was a long continuation of Randlord-style business, in which the “real proprietors” and “owners” of a business (such as the Oppenheimer family) participate primarily in profits, while local affiliated entities (such as Charter and Cape) profit by the grace of the Randlords—with an “unwritten obligation of honour to respect [Randlord] wishes and position.” Sir J. Percy Fitzpatrick, *South African Memories* 90–91 (1932) (Corner House Group representative in Johannesburg detailing this norm between De Beers and Corner House Group members). Thus, it was clear to all, including Members of Parliament, that “[w]here Anglo American lead, Charter Consolidated are prepared to follow.” House of Commons Rep. at 23.

60. Charter’s Investment in South Africa. By the early 1970s, Charter became the largest English corporate investor in South Africa—albeit, one investing primarily in Anglo-affiliated entities, including its own parent Anglo (in which Charter had a 10% equity stake). *Id.* at 22. Uniquely, in contrast to other corporate investors who sought majority ownership (and thus control) over their South African businesses, Charter had a minority stake (usually around 10%)

the United States [and elsewhere] have been founded or purchased with Oppenheimer capital and are managed by Oppenheimer loyalists while maintaining no legal ties to South Africa.”).

¹¹ See, e.g., Charter 1967 Annual Report, at 4 (June 9, 1967) (noting Oppenheimer’s role as chairman, beginning a two-year term in that role); Charter 1971 Annual Report, at 3 (June 1, 1971) (noting Sir Philip Oppenheimer’s role as Deputy Chairman and a member of the executive committee).

¹² See, e.g., Anglo 1979 Annual Report, at 69 (June 22, 1979) (indicating that both Harry and Nicky Oppenheimer had 18,333,268 beneficial shares in Anglo, with the next highest directorship holding being 30,000 shares); Charter 1968 Annual Report, at 10 (May 28, 1968) (indicating that Harry Oppenheimer dominated ownership of Charter with 5,004,600 shares).

in most of its South African investments, with one notable exception: its majority ownership of Cape. *Id.* at 22 & n.1.

61. Charter's Interest in Cape. Charter's "largest industrial subsidiary company" was Cape, with Charter even seconding and compensating key personnel for Cape's management. J.N. Clarke Tr. 14, 17–18 (Apr. 21, 1983); *see also, e.g.*, G.A. Higham Tr. 7–9, 28, 87 (Oct. 3, 1984) (Cape Chairman admitting that Charter had been paying his compensation for years and that he acts as Chairman for "a number of Charter's [other] industrial subsidiaries" as well). In other words, although most of Charter's assets were tied up in minority investment interests—effectively operating as a holding company—Cape was Charter's primary operating company and "principal industrial subsidiary." *See* Charter 1972 Annual Report, at 15 (May 30, 1972) (also emphasizing Cape's profitability). In turn, Charter used its "close association" with other South African companies, namely Anglo, to "exercise . . . influence" in Apartheid-era South Africa, *see* House of Commons Rep. at 22—thereby allowing Cape to profitably mine and export asbestos to the United States for decades.

62. Clear Takeaway, Despite Complexity. Ultimately, although the facts are complex, it is clear that through an "Anglo holding company" (*i.e.*, Charter), Cape and its subsidiaries were part of the "Anglo American Group of Companies"¹³ that dominated the South African mining

¹³ As explained by Anglo, the "term 'group' has a wider meaning in the South African mining industry than its statutory definition of a parent company and its subsidiaries The mining finance houses in South Africa have traditionally operated 'the group system', whereby the parent house not only administers companies that are not necessarily subsidiaries, but provides them with a full range of administrative and technical services and is able, by virtue of its financial strength and standing, to assure them of capital for expansion and development. Thus the Anglo American Corporation Group comprises a large number of companies that are closely linked to [Anglo] but which are not generally subsidiaries or controlled companies as defined in the statutes." Anglo 1974 Annual Report, at 3 (Apr. 28, 1975).

economy during the twentieth century. Innes (1984) at 271, 283 (listing Cape among other Anglo subsidiaries in a published history about Anglo and its importance in South Africa); *see also, e.g.*, Schmeisser Article (reporting that the Oppenheimer family “has dominated the South African economy for nearly half of [the twentieth] century” and that “Anglo American, which accounts for more than 50 percent of the stocks traded on the Johannesburg stock exchange, permeates every conceivable corner of the South African marketplace”).

63. A Profitable Mid-Century Business. In turn, Cape reflected the Oppenheimer empire’s shared commercial interest¹⁴ in the high-growth, highly profitable asbestos industry after World War II. *See, e.g.*, Jock McCulloch & Geoffrey Tweedale, *Defending the Indefensible: The Global Asbestos Industry and Its Fight for Survival* 37 (Oxford Univ. Press 2008) [hereinafter, “McCulloch & Tweedale (2008)”] (observing that “the major [asbestos] companies derived the bulk of their profits from” asbestos mines); Charter 1970 Annual Report, at 12, 16 (June 18, 1970) (reporting a “substantial jump in trading profits for the year . . . due to the inclusion of earnings from Cape Asbestos”).¹⁵

¹⁴ *See, e.g.*, Anglo 1976 Annual Report, at 7 (Mar 25, 1977) (reporting that Anglo had “important interests in the production of . . . asbestos” through Charter); De Beers 1978 Annual Report, at 48–49, 52 (Mar. 30, 1979) (referencing “strengthening [of] De Beers’ earnings base,” which through Anglo and Charter, “the London-based mining finance house,” included interests in “asbestos . . . and other minerals, and in industrial enterprises in the United Kingdom”); Charter 1972 Annual Report, at 39 (May 30, 1972) (“In mining, the Anglo American Corporation group and its close associate De Beers Consolidated Mines Limited have important interests in the production of . . . asbestos.”).

¹⁵ *See also, e.g.*, Charter 1970 Annual Report, at 31 (June 18, 1970) (reporting that the sale of asbestos fibre contributed the most to the company’s trading profit); Charter 1972 Annual Report, at 3 (May 30, 1972) (noting among top “[f]eatures of the year” that Cape’s “profits increased from £2,528,000 to £3,098,000”); Charter 1977 Annual Report, at 47 (June 9, 1977) (noting £9,831,000 pre-tax trading profit from mining and sale of asbestos fibre and 28.2% profit margin from the same, *i.e.*, the highest among Charter’s manufacturing subsidiaries).

64. Goal of Corporate Complexity. Although the precise “connection between Cape, Charter, Central Mining and Anglo American is complex,” McCulloch (2002) at 51–52, that complexity reflects an intentional scheme to obfuscate corporate relationships and ownership interests while minimizing the amalgamated business empire’s liability risks, including for asbestos (as well as taxes).¹⁶

65. The Point of Charter. Specifically, Charter was designed to serve as a corporate cushion—a products-liability patsy—for Anglo that could (i) promptly purge itself of substantial cash (through dividends based on new profits, or by otherwise reallocating assets among holding companies through more complex transactions) to Oppenheimer-affiliated entities, and (ii) add a “formal” degree of separation between Anglo and Cape, *i.e.*, a profitable asbestos business, but one they knew would injure tens of thousands and thus created a substantial risk of liability in the future. *See infra* ¶¶ 81–88 (detailing working conditions and known disease in South Africa and England); *see also cf.* Jock McCulloch & Pavla Miller, *Mining Gold and Manufacturing Innocence: Occupational Lung Disease and the Buying and Selling of Labour in Southern Africa* 390–91 (2023) (noting “Charter’s controlling share in Cape gave Anglo American a commercial interest in the asbestos industry” and “Anglo American’s board reason to monitor” alleged liabilities of Cape).

¹⁶ As described later, *infra* ¶¶ 89–105, when the victims of this scheme began to sue and win verdicts, Anglo implemented additional—but still wholly superficial—corporate changes to further distance itself from its asbestos business and mitigate its U.S. liability risk, with Cape Asbestos (i) dropping *Asbestos* from its name, (ii) ceasing to appoint Cape officials to the board of its American subsidiary (NAAC) as a “sensible precaution,” (iii) interjecting another entity (Cape Industries Overseas Ltd.) between NAAC and Cape, to add yet *another* degree of superficial separation between Anglo and its U.S. asbestos business, and (iv) purporting to close NAAC and sell its South African asbestos mines, for the purpose of evading creditors, while Anglo continued to profit from the sale of asbestos through other entities.

66. Infamous Recognition for Success. Through these corporate maneuvers, Cape, as “part of the great South African conglomerates of De Beers and Anglo-American Corporation, provides a classic example of . . . tactics” centered on hiding behind a corporate-veil fiction, *i.e.*, “us[ing] complex and confusing corporate structures to distance themselves from liability.” McCulloch & Tweedale (2008) at 181 (also describing recognition by judicial tribunals that “Cape operated worldwide as a single economic unit” and provided “false testimony” about its organization).

67. Control as the Key to Success. The Oppenheimer “family’s control [of these enterprises] and its personal wealth” was consistently the “key” to coordinating the management of their businesses, including Charter and Cape. *See* Pallister (1988) at 41 (noting that apart from Oppenheimer kin, the “powerful inner cabinet that [took] the most sensitive and important decisions” for the global empire was limited to (i) two individuals who had each served as Chairmen of Charter, and (ii) former personal assistants who were “considered to be part of the ‘family’”).

68. Domination of the South African Mining Economy. In the end, the amalgamated Oppenheimer empire, as effectuated by De Beers, Anglo, and Charter primarily, was astonishingly successful in its domination of the South African mining economy—making up 10% of South Africa’s GDP and 30% of its exports in 1973, while controlling or producing 40% of South Africa’s gold, 80% of the world’s diamonds, a sixth of the world’s copper, and most of South Africa’s coal. Tweedale & Flynn (2007) at 274; *see also, e.g.*, Charter 1972 Annual Report, at 39 (May 30, 1972) (reporting Anglo’s dominance of gold, coal, and uranium mining in South Africa).

69. Control of Asbestos Supply. In fact, Cape controlled 90% of the global supply of amosite¹⁷ asbestos and dominated the distribution of other types of asbestos as well—effectively enjoying a monopoly over a then-highly sought industrial resource. *See Hammond v. N. Am. Asbestos Corp.*, 454 N.E. 2d 210, 217 (Ill. 1983); *see also* McCulloch & Tweedale (2008) at 28 (describing industrial preference for amosite “in the construction and repair of ships”).

II. Cape Created NAAC to Facilitate Its Asbestos Scheme.

70. A U.S. Subsidiary to Fuel Growth. As part of the Oppenheimer empire’s global expansion, on October 14, 1953, Cape established the North American Asbestos Corporation (“NAAC”) as a direct subsidiary domiciled in Illinois. *See, e.g.*, CAPE001511. Although Cape had been profitable for years, including “return[ing] a strong dividend” for shareholders (*i.e.*, Oppenheimer-affiliated interests) from 1936 to 1951, “the company’s most bountiful years were the two decades until 1976”—the period when Cape operated NAAC to provide raw asbestos fiber to customers in the United States, the company’s most important market. McCulloch (2002) at 68.

71. U.S. Industry Connections. Previously, Cape had already been marketing its asbestos to numerous U.S.-based customers, including having an important business relationship with, among other companies, Union Asbestos & Rubber Co. (UNARCO) since the 1930s to create “Unibestos” insulation. For the sake of continuity, and to leverage established client connections, Cape Chairman Ronald Dent selected UNARCO Vice President, Bob Cryor, to be NAAC’s first

¹⁷ The name for this unique form of asbestos is derived from its association with a Cape business division in South Africa—*i.e.*, AMOSA, Asbestos Mines of South Africa. Flynn (1992) at 192.

President—a role that Cryor filled until his death from mesothelioma in 1970. *See, e.g., Cameron v. Owens-Corning Fiberglas, Corp.*, 695 N.E.2d 572, 578 (1998).¹⁸

72. NAAC's Role at Cape. Cape designed NAAC to operate as Cape's wholly controlled instrumentality for the "purpose of expediting and facilitating the movement" of asbestos from South African mines into the United States (including South Carolina).¹⁹ To facilitate this, 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 the proper distribution of asbestos products from Africa "all the way through to the customer's plant," including to locations in South Carolina or through South Carolina ports.²⁰ NAAC "effect[ively] . . . put the Mines at every U.S. port." CAPE000988–89. By 1970, NAAC 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." CAPE000878–79.

¹⁸ Important to Cape, Cryor also had established relationships with executives at Johns-Manville Corp. (one of Cape's most important customers). Indeed, Johns-Manville Corp. trusted Cryor so much as to admit to him a company policy of not telling employees about their asbestos disease—out of fear that they would stop working and file claims, and instead choosing to withhold the information and let workers die to "save a lot of money." Paul Brodeur, *Outrageous Misconduct: The Asbestos Industry on Trial* 276–77 (1985).

¹⁹ *See* CAPE000110–12 (1982 court filing describing NAAC's history); CAPE000177 (identifying NAAC as the sole U.S.-based entity of the Cape mining division); CAPE000869 (1973 letter describing NAAC as "a division of Cape Asbestos Co. Ltd., with corporate offices in London").

²⁰ *See* CAPE000263–66 (describing intended business of NAAC); CAPE000333 (1975 Cape cover letter of NAAC director resignations); 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"); CAPE000988–89 (1969 NAAC memorandum describing customer services).

73. Cape's Business in South Carolina. In coordination with, and at the direction of, the amalgamated global Cape/Oppenheimer network, NAAC sold millions and millions of dollars of asbestos mined from South Africa to numerous U.S.-based clients, which used or distributed asbestos products in South Carolina. *See, e.g.*, CAPE000994–95 (NAAC letter identifying certain clients). NAAC's own records show that Cape sold asbestos to companies in South Carolina, including to Raybestos Manhattan, Inc. in North Charleston and Westinghouse Electric Corp. in Hampton, as well as to facilities on the South Carolina–Georgia border (*e.g.*, Babcock & Wilcox in Augusta, GA and Dow Chemical in Savannah, GA). *See also, e.g.*, S. Purrington Tr. 9–10, 64 (Aug. 25, 1986) (NAAC clerical worker from 1961 to 1978 identifying Dow Chemical as one of NAAC's three primary customers).

74. The Disastrous Impact on South Carolinians. In turn, those Cape products caused individuals (including residents of South Carolina) to be exposed to asbestos and suffer bodily injury, which has resulted in myriad suits against Cape (“Asbestos Suits”), including this suit filed by John A. Tibbs and Margaret B. Tibbs.

75. Goal of National Distribution. In addition, Cape and NAAC implemented a “conscious pattern of product distribution [of asbestos] nationally”—particularly, amosite, over which Cape had a monopoly. *See In re: Asbestosis Cases*, Case No. 78-CP-06-105, Order, at 3 (S.C. Common Pleas Apr. 7, 1980) [hereinafter, “S.C. 1980 Order”] (rejecting objection to the exercise of personal jurisdiction over NAAC in South Carolina); *see also* Flynn (1992) at 188 (“What Cape did [in the United States of America] is not dissimilar to the situation where someone fires a gun into a crowd of people. You may not know which of them will be killed but you know for certain that some of them will be killed.”).

76. Prevalence of Cape’s Asbestos. Cape’s amosite (along with Cape’s other types of mined asbestos) was an ingredient in the most popular and dominant asbestos products in the market, which were used in virtually every state, including products “used in [South Carolina].” *See* S.C. 1980 Order, at 3; *see also, e.g.*, Raybestos-Manhattan 1963 Annual Report, at 2 (Mar. 13, 1964) (Cape’s major customer in South Carolina touting: “Whoever you are, whatever your business, a [Raybestos-Manhattan] product touches your life.”); *Parker v. Bell Asbestos Mines, Ltd.*, 607 F. Supp. 1397, 1403–04 (E.D. Pa. 1985) (rejecting argument that Charter was entitled to dismissal, given possibility that plaintiff could “prove that Charter controls Cape, and that Cape has deliberately avoided liability to American plaintiffs, [such that] it will be fair to ask Charter to stay and defend Cape’s position”). In short, Cape deliberately and purposefully availed itself of the entirety of the United States market for asbestos fiber, including the South Carolina market.

77. Management at NAAC. The volume of Cape’s asbestos supply to the United States was breathtaking given the ostensibly small footprint of NAAC, “which was essentially a one-man operation” consisting of an operational lead supported by four office clerical personnel.²¹ All key decisions, however, including with respect to the fulfillment of specific purchase orders, were closely coordinated with and directed by other Cape entities, or made by a board comprised of Cape executives and lawyers (until Cape executives resigned in 1975, in what they described at the time as a “sensible precaution” against U.S. litigation). *E.g.*, CAPE000333.²²

²¹ *See* CAPE000110–12 (describing NAAC’s lean staffing); CAPE001514 (“Despite the volume of sales and profits of NAAC, our operation is a very small one, with only a total of 5 employees.”).

²² *See also, e.g.*, CAPE001528 (listing six directors in 1970).

78. A Pawn in the Oppenheimer Empire. In selecting directors to participate in this worldwide scheme, Cape Chairman Ronald Dent—also a director for Charter and several other Charter-owned companies, apart from NAAC and Cape—valued “the type of man who would fit into our scheme of things . . . without causing embarrassment all around.” CAPE000261–62; *see also* Charter 1972 Annual Report, at 33 (May 30, 1972) (noting Dent’s role as a Charter director and ownership of Cape shares, which were also directly owned by other Charter directors).

79. Domination of American Subsidiary. 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. How dominated was NAAC? The company could not “borrow one dollar without [Cape’s] approval” and was routinely forced to withdraw cash to pay dividends to Cape, thereby minimizing NAAC’s available assets that could be reached by American creditors.²³ Astoundingly, NAAC’s then-President Bob Cryor admitted that NAAC relegated its interests to Cape as “part of a coordinated group with responsibilities to the whole” group. CAPE000931–32.

80. NAAC’s Failure to Purchase Adequate Insurance. Cape’s domination also influenced and controlled NAAC’s risk management decision-making, including its purchase of insurance. Officially, Cape had a company-wide policy to purchase insurance “at minimum cost consistent with adequate cover.” CAPE0001465. But in reality, NAAC felt “pressure from [its] Home Office in London [that] forced [it] to seek lower rates” and choose carriers and policy terms based solely on short-term cost. *See* NAAC Letter to J. Kirk of Talbot Bird & Co. (Nov. 17, 1959). Because of

²³ *See, e.g.*, CAPE001507 (1976 letter noting borrowing limit); CAPE000816 (1976 board minutes showing payment of \$250,000 dividend).

Cape's domination of NAAC, and as a part of the liability-avoidance scheme, Cape directed NAAC to buy wholly inadequate insurance coverage to address its massive future products-liability exposure.

III. Cape Led Efforts in the U.S. and Internationally to Hide the Risks of Asbestos.

81. Known History of Illness in South Africa. Early in its history—even before setting up operations in the United States—Cape's management and ownership knew of the serious health hazards posed by their South African asbestos, as illness was endemic among Cape's own employees. For example, because child labor was extensively used in the South African asbestos mining industry and Cape lacked basic industrial hygiene measures, Cape was responsible for causing "radiologic asbestosis with cor pulmonale [*i.e.*, heart failure]" in Black children "before the age of 12." Dr. Gerrit Schepers, "Discussion," *Ann. N.Y. Acad. Sci.*, 132:246 (1965).²⁴

82. Infamy for South African Conditions. Indeed, Cape's operations in South Africa were so infamous that they became a case study—literally—in corporate irresponsibility. *See* Patricia Werhane et al., *Case Study: South African Mining and Asbestos-Related Diseases*, Univ. of Va. Darden School of Bus., at 7 (Apr. 11, 2006) ("[L]ong after the hazards of asbestos were well known to the company as well as the mining community in general, Cape took advantage of lax labor

²⁴ Years later, Dr. Schepers provided a detailed account of his time at a Cape mine in Penge, South Africa, including seeing (i) "a big strong man with a sjambok whip," whose apparent job was "to hit a hessian sack on the ground below the end of a chute," and (ii) inside the battered sack, a "boy of ten or twelve," whose job was "to get inside the bag and trample down the fluffy asbestos. He was cheaper than machinery or safe sacks. He was covered from top to toe in asbestos dust so I grabbed him and took him off to the X-ray machine. The X-ray showed he was already suffering from asbestosis. I was told that Cape employed a lot more children and I gave instructions to my technician that he was to round up all the children in the village with the little Cape Asbestos copper identification bands riveted around their wrists – identification tags, just like slaves, so they couldn't run off. A number of the other children had asbestosis too. The conditions were unbelievable." Flynn (1992) at 192–93.

legislation . . . [and also] benefited from cheap labor. Whole families, including children as young as 12 years, were involved in the mining and milling operations at Cape’s facilities, and workers handled asbestos with their bare hands. Not only Cape workers, but also those who lived in the communities around Cape mines were exposed to high levels of asbestos that were sometimes 30 times higher than the legal limit in Britain. One of Cape’s asbestos mills at Prieska was in the center of town, close to a church and school. One medical doctor stated that he diagnosed 900 mesothelioma victims, including his own son.”). Cape allowed these “work practices” to continue because they “were profitable for employers and Cape’s management readily acknowledged the importance of the mines to its success.” McCulloch & Tweedale (2008) at 44–45.

83. Known History of Illness in England. Likewise, Cape’s operations in England were infamous for lacking basic hygiene measures, such that a medical examination of 80 workers in 1928 “showed that nearly all had ‘definite evidences’ of asbestosis.” Geoffrey Tweedale, *Magic Mineral to Killer Dust: Turner & Newall and the Asbestos Hazard* 20 (Oxford Univ. Press 2000) [hereinafter, “Tweedale (2000)”]; *see also, e.g.*, Flynn (1992) at 180 (“[Cape’s] British factories had been shown to be so negligently run that they brought death, disease and injury to the communities around them”). Among Cape’s managers and owners, the danger of asbestos exposure was well known, with scientific studies repeatedly re-establishing a link between exposure to asbestos and illness.²⁵

²⁵ *See, e.g.*, R. Gaze Tr. 2, 111 (June 5, 1975) (Cape official admitting knowledge of asbestosis risk “since the first day [he] was employed” there in 1943); J. Christopher Wagner et al., *Diffuse Pleural Mesothelioma and Asbestos Exposure in the North Western Cape Province*, 17 Brit. J. Indus. Med. 260, 261–62 (1960) (study published by South African researchers linking mesothelioma with occupational and non-occupational exposure to Cape asbestos); Richard Doll, *Mortality from Lung Cancer in Asbestos Workers*, 12 Brit. J. Indus. Med. 81, 86 (1955) (concluding from data that “lung cancer was a specific industrial hazard of certain asbestos

84. Apathy to Personal Suffering. Nevertheless, the dangers of asbestos were hidden from Cape employees (and the general public) and atrocious conditions at Cape facilities continued for decades—causing widespread disease and later becoming focal points of damning exposés on the asbestos industry. *See* Tweedale (2000) at 238, 251, 255–56 (noting various documentaries showing, among other things, a Cape manager who “always kept a black tie in his desk for funerals”).

85. Lobbying and Perpetuating Misinformation in the United States. Yet, while having knowledge of these health hazards, and while peddling a toxic product throughout the United States (including in South Carolina), Cape used misinformation to influence public and corporate opinions about asbestos—working with government officials to protect South African (*i.e.*, Oppenheimer) business interests.²⁶ Cape acted as head cheerleader for the continuation of the asbestos trade, taking a keen interest in organizing efforts to downplay knowledge of the health hazards posed.²⁷

86. Examples of U.S. Misinformation Efforts. For example, in 1954, the year after NAAC’s establishment, Cape became a member of the U.S.-based Asbestos Textile Institute, which organized regular meetings to discuss developments in the asbestos industry, including the

workers”); *see also* McCulloch & Tweedale (2008) at 8–9, 119–20 (listing various studies of, or laws concerning, asbestos disease from 1898 to 1964, and noting that “[f]ew medical authors ever expressed doubt about the relationship between malignant mesotheliomas and asbestos exposure, and by 1953, the issue seemed to be fairly well resolved”).

²⁶ *See, e.g.*, CAPE000955 (official of South African mining holding company, Cape Asbestos South Africa (Pty.) Ltd., writing to NAAC as a fellow member “of the Cape Asbestos Group and the Charter Consolidated Group,” and introducing as a resource the Commercial Counsellor at the South African Embassy in Washington, DC).

²⁷ *See, e.g.*, CAPE000130 (Cape Asbestos Fibres Limited prioritizing efforts to “organise a body of medical opinion that is prepared to stand up” to critical opinions).

prospect of governmental regulation. Above all other companies, Cape was especially keen to suppress knowledge about the risks of asbestos. Thus, when Johns-Manville proposed labeling on bags of asbestos in 1968, Cape had a “bitter” response, suggesting that such a step should never be taken unilaterally by one producer. *Dring v. Cape: Key Points from Documents Obtained by the Asbestos Victims Support Groups Forum UK*, at 23 (available at <https://asbestosforum.org.uk/cape-documents/>) [hereinafter, “Dring Documents”]. And once Johns-Manville finally decided to adopt a warning label, Cape proposed use of an inaccurate warning that inhalation of only “substantial quantities” of asbestos could be harmful. *Id.* at 21.

87. Lobbying and Perpetuating Misinformation in England. In England in the 1950s and 1960s, Cape joined forces with other companies in the British asbestos industry to establish the Asbestosis Research Council and the Asbestos Information Committee, which worked to “publish several reassuring booklets on the use of asbestos.” Tweedale (2000) at 174, 191. In addition, in or around 1966–68, Cape lobbied the British Occupational Hygiene Society to weaken protections for workers from a “no dust policy” to a “maximum allowable concentration approach,” while continuing its misinformation campaign in the public and its strong-arm tactics designed to deter other manufacturers from introducing warning labels. Dring Documents, at 1.

88. Hiding the Truth to Profit. A linchpin of these schemes was Cape’s role in providing misleading reassurances to the government and public about the dangers of asbestos, which conflicted with Cape’s own internal data on the health risks of asbestos. Ultimately, when faced with a decision of shutting down the business (particularly, its South African mines) or “suppress[ing] knowledge of disease,” Cape “chose[] the latter” and “worked hard to keep information about mesothelioma secret.” McCulloch & Tweedale (2008) at 120.

IV. Cape Implemented a Strategy to Evade Liability in the United States.

89. Initial Maneuvers to Evade Liability Risk. In the early 1970s, after the onset of asbestos-related products-liability litigation, *see, e.g., Borel v. Fibreboard Paper Prods. Corp.*, 493 F.2d 1076 (5th Cir. 1973) (successful suit by insulation worker, widely acknowledged to have precipitated a wave of asbestos litigation in the 1970s), Cape and its affiliated entities undertook numerous actions in a deliberate effort to escape responsibility for the harm caused by Cape asbestos products.²⁸ For example, Cape went through tortured machinations to make it *appear* it was reducing oversight over NAAC, but in reality, NAAC continued to operate as a controlled instrumentality under Cape’s domination.²⁹ And these changes were the result of careful assessments by Cape officials—with the help of its lawyers and other advisors—regarding how to minimize the liability exposure of not only Cape, but Cape’s parent (Charter) and its other South African affiliates. *See* CAPE000141 (NAAC counsel advising Cape on risk of judgments attaching to Charter assets).

²⁸ *See, e.g.,* CAPE000351–56 (1975 lawyer letter referring to “attempt to limit NAAC’s and Cape’s exposure to future United States litigation”).

²⁹ *See* CAPE000123 (NAAC discouraging Cape visits to the U.S. in 1978 or else negate “maneuvers” related to “continued problems with product liability litigation”); CAPE000152 (1975 letter suggesting to “disassociate the Parent Company as fully as possible from the operating companies”); 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”); CAPE000166–67 (1974 lawyer 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”); 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).

90. Public Downplaying of Responsibility. At first, at least in their public statements, Charter and Cape “strenuously contested” their liability and concluded that “no material liability is likely to arise as a result of the actions,” because “[i]n the opinion of American legal advisers, the amounts claimed are highly speculative and conjectural and have only a tenuous basis in law or in fact.” Charter 1975 Annual Report, at 30 (June 3, 1975).

91. Implementing Liability-Avoidance Strategy. In parallel, and central to that claim and their plan to avoid liability, Cape directed a campaign of litigation avoidance by refusing to accept process or appear in any U.S. proceedings. That campaign continues unabated today, as evidenced by Cape’s failure to respond to the Second Amended Summons in this action, which was served pursuant to Article 10 of the Hague Convention on March 8, 2022.³⁰

92. Opinion of Moral Irresponsibility. More broadly, 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 the US product liability cult.” Tweedale & Flynn (2007) at 283; CAPE000486.

93. Financials Based on Immoral Opinion. In addition, despite knowing the liability risk, Cape and its affiliates—including its parent company, Charter—refused to make any provision for or reserve of cash to address that liability. *See* CAPE000781 (1971 correspondence regarding Charter’s annual report). Indeed, for most of NAAC’s existence under Charter, Charter refused to

³⁰ *See* 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”); 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”).

even acknowledge NAAC, despite listing various other Cape subsidiaries in England, South Africa, and other countries as among Cape's subsidiaries. *See, e.g.*, Charter 1970 Annual Report, at 10 (June 18, 1970) (listing Cape entities in South Africa, England, and Ireland).

94. Cape Liquidates NAAC as Part of Its Liability-Avoidance Scheme. Ultimately, to avoid liability to the tens of thousands of people injured or killed by its asbestos, Cape decided to liquidate NAAC, effective January 31, 1978 (though articles of dissolution were filed later, on or around May 19, 1978). *See, e.g.*, CAPE001035 (April 1978 letter noting liquidation and requesting, “for safety’s sake,” that Cape officials stop sending accounting memoranda to former NAAC officials). Existing commercial debts of NAAC were paid, with any 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. (formed in 1975 to create the *appearance* of separation). *See* CAPE000593 (noting conveyance of assets); CAPE000149 (noting new entity).

95. Liquidation Despite Continued Profitability. The decision to liquidate NAAC occurred notwithstanding consistent years of record profits from Cape’s sale of asbestos fiber in the United States. *See, e.g.*, Charter 1976 Annual Report, at 7, 38–39 (June 8, 1976) (reporting £10.2 million of operating profit “in spite of difficult trading conditions,” with the “greatest increase” in improved profit “arising in the mining division, which raised total tonnage both mined and sold,” even despite “substantial price increases”); Charter 1977 Annual Report, at 7, 11, 13 (June 9, 1977) (reporting another “record year” from Cape with pre-tax profit of £14.2 million, with the “mining division again perform[ing] exceptionally well”).

96. NAAC's Minimal Assets at Liquidation. As part of its overall scheme, and in light of Cape's funneling of cash from NAAC to overseas entities over many years, NAAC's assets at liquidation were minimal, as an absolute matter, and especially when compared to the total wealth of Cape and the broader Oppenheimer empire.³¹

97. Accepting Defaults to Perpetuate the Liability-Avoidance Scheme. NAAC's liquidation was central to Cape's liability-avoidance strategy, and was predicated 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.³² That strategy, more broadly, was taken right out of the Oppenheimer empire's operational playbook in the United States: (i) profit greatly from a business (including for the sale of asbestos), (ii) extract those profits from the United States to foreign entities, across an ever-changing, byzantine corporate structure, (iii) undercapitalize the United States operating entity, (iv) liquidate ownership interests when they sensed liability was imminent, while otherwise maintaining that there was no physical presence in the United States, and (v) retain overseas the massive financial fruits of their unlawful schemes, which, as to asbestos sales, were at the expense of dead and dying Americans, including South Carolinians. *See, e.g.,* Kanfer (1995) at 317–18 (describing De Beers' abrupt sale of equity in an American company to avoid antitrust liability,

³¹ *See, e.g.,* CAPE000701 (Cape counsel writing in 1979 with respect to whether the remaining assets in the NAAC liquidating trust should be written off, soon after its creation); CAPE000702 (1979 correspondence noting that NAAC's auditor "agree[d] that the potential loss of all NAAC's outstanding assets is not material in the Cape Group context" (capitalization altered)); CAPE000722 (1978 correspondence noting judgment non-enforceability and "[auditor] advice to [Cape] that the loss of NAAC's outstanding assets is not material in the Cape Group context").

³² *See, e.g.,* CAPE000141–43 (1975 legal letter advising Cape on default-judgment risk); CAPE000566 (1978 memorandum agreeing that it would be in the "best interests of Cape companies other than NAAC" to make "no response" to litigation); CAPE000617–19 (summarizing 1984 deposition testimony regarding litigation strategy).

which had previously been hidden by “the usual thicket of [European] registrations,” such that “financial facts were buried in the records of some 300 interlocking corporations”).

98. Continuation of the Asbestos Business. Even before NAAC’s dissolution, Cape contemplated ways to continue the flow of asbestos to U.S. customers and asbestos profits out of the United States, despite the formality of liquidating NAAC.³³

99. Creation of New American and Foreign Entities. To facilitate this ruse, Gerry Morgan (NAAC’s final President) formed Continental Products Corporation (“CPC”) to act as a commission agent for the future sales of asbestos from South Africa in the United States. Conveniently, CPC used the same NAAC address in Chicago, Illinois, and received funding from Cape in London. And CPC acted with South African mines to sell through a Lichtenstein-based entity named Associated Mines Company (“AMC”) associated with Cape or other Oppenheimer-affiliated business interests. *See, e.g.*, CAPE000386; CAPE000531 (announcement of CPC as “Agent to handle the North American requirements for Amosite and Crocidolite asbestos fibre”).

100. Transfer of IP Rights to New Entities. Brazenly, Cape even directed the transfer of certain intellectual property owned by NAAC for future use by CPC and AMC. *See, e.g.*, M. Meyer Tr. 14–18 (May 18, 1982) (describing the assignment of the “Noramite” trademark for certain asbestos mats and plastics).

101. Objective of New Entities. Ultimately, the “purpose of this corporate arrangement [was] to eliminate or reduce as much as possible the exposure in the United States of [South African mining

³³ *See, e.g.*, CAPE000728 (1977 meeting memorandum involving Cape officials “to discuss liquidation of NAAC and formation of new off-shore company to service North American market”).

companies] to lawsuits brought against it under theories of strict liability concerning products liability on the sale of asbestos in the United States.” CAPE000377–79.

102. Selling Mines as Part of the Liability-Avoidance Scheme. Outside of the United States, Cape took additional steps to disassociate itself from asbestos generally, despite its long-held role “as a major world producer of asbestos fibre” and “the Cape name [being] synonymous with asbestos.” Cape 1980 Review, at 2. On June 29, 1979, Cape sold “the whole of [its] asbestos mining interest in South Africa” to Transvaal Consolidated Land and Exploration Company Ltd. (“Transvaal”), *id.*, earning proceeds of £15.1 million to “finance the group’s expansion in other areas of its business,” Charter 1979 Annual Report, at 12 (July 4, 1979).

103. Anglo’s Continued Interest in Asbestos. Although Charter asserted that “mining subsidiaries in South Africa were sold *outside* the group,” *id.* at 35 (emphasis added), its own annual reports from prior years establish that Charter had previously owned the purchasing entity, Transvaal, and still had a financial interest in Transvaal, including through either another Anglo entity or Charter’s interest in Barlow Rand Ltd. *See* Charter 1965 Annual Report, at 3, 5 (May 19, 1965) (listing Transvaal as a “principal interest[,]” along with Rand Mines Ltd.); Charter 1972 Annual Report, at 12 (May 30, 1972) (referencing merger between Rand Mines Ltd. and Thos Barlow & Sons Ltd. in June 1971, resulting in Charter acquiring a 3.86% interest in the merged company, Barlow Rand Ltd., in exchange for its previous 15.9% interest in Rand Mines Ltd.); Charter 1973 Annual Report, at 8 (June 21, 1973) (reporting that Charter sold its interest in Transvaal in April 1972 “to companies in the Anglo American Corporation group”).³⁴

³⁴ *See also, e.g.,* Joseph Lelyveld, *The Many Faces of Barlow Rand Ltd.*, N.Y. Times, Apr. 11, 1982 (noting Barlow Rand was “the second-biggest industrial and mining group in South Africa,” after “the vast Anglo-American Corporation and its chairman, Harry F. Oppenheimer, whose place

104. Cape's Business Pivot. In 1982, Cape purported to cease all manufacturing of asbestos products.³⁵ Unfathomably, even for a collective of companies as devious as these, Cape refocused its business on—wait for it—asbestos removal. This is not fiction; it has been proudly touted by Cape.³⁶

105. The Scheme Was Contemptibly Successful. Within years of executing the liability-avoidance scheme, business historians recognized that “Cape Industries”—as part of Charter, *i.e.*, Anglo's international/industrial investment arm—was “astonishingly adept at extricating itself from the [asbestos] business without paying huge compensation.” Pallister (1988) at 345.

V. The Oppenheims Implemented a Strategy to Further Evade Responsibility.

106. Empire Restructuring to Mitigate Risk. Tellingly, while Cape implemented its liability-avoidance strategy, the Oppenheimer family similarly made changes to its investments to remove power and assets from Charter and relegate it to the periphery of the empire. On information and belief, these changes were motivated because the Oppenheims and their partners (i) understood that Charter, like Cape, faced substantial financial exposure for asbestos-related liabilities in the United States, and (ii) were concerned those liabilities would also attach to Anglo and De Beers. *See, e.g.*, Charter 1980 Annual Report, at 34 (June 24, 1980) (reporting that Charter had been

in the moneyed portion of [South African] society makes him a one-man aristocracy”); Flynn (1992) at 194 (“In the end the company became so worried about the extent of Anglo American's liabilities for deaths and injuries that they sold the mines, including Penge, to Barlow Rand, another company with strong connections to Harry Oppenheimer.”).

³⁵ Cape Website: Our History (May 17, 2013), <https://web.archive.org/web/20130517130040/http://www.capeplc.com/about-cape/our-history.aspx>.

³⁶ Cape Website: Our Services, Insulation (Oct. 20, 2012), <https://web.archive.org/web/20121020173812/http://www.capeplc.com/services-and-markets/our-services/insulation.aspx>.

named a defendant in U.S. asbestos litigation “in its capacity as the holding company of” Cape and had been told that certain U.S. corporations would seek to hold Charter liable for their own liability).

107. The Oppenheims’ Transfer of Shares. For example, beginning in the late 1970s, the Oppenheimer family began to substantially sell or otherwise divest their direct financial interests in Charter. *See, e.g.*, Charter 1977 Annual Report, at 47 (June 9, 1977) (indicating decrease in direct interest of Harry Oppenheimer); Charter 1983 Annual Report, at 41 (June 21, 1983) (indicating “nil” interest of the two listed Oppenheims by April 1982).

108. Minorco’s Rise. Around 1980—*i.e.*, soon after Cape’s sale of asbestos mines—the Minerals and Resources Corporation (“Minorco”) “over[took] Charter as the group’s overseas flagship.” Pallister (1988) at 122; *see also* Donald G. McNeil Jr., *A Diamond Cartel May Be Forever; The Hereditary Leader of De Beers Pursues Post-Apartheid Growth*, N.Y. Times, Jan. 12, 1999 [hereinafter, “McNeil Article”] (reporting that Minorco had been created previously to evade anti-Apartheid sanctions).³⁷

109. Charter’s Fall. As part of that pivot to Minorco, there was a “divestiture by Charter of its strategic holdings in Anglo American, De Beers and Anglo American Investment Trust,” which was a “very major step” in reorganizing the amalgamated Oppenheimer business empire and reducing (but not eliminating) Anglo’s “interference” with Charter. *See* A.J.W. Owston Tr. 67 (Aug. 22, 1984). As part of this divestiture, Charter “disposed of nearly all [its] investments in South Africa and adjoining territories,” which involved a “major restructuring” that Charter

³⁷ Available at <https://www.nytimes.com/1999/01/12/business/international-business-diamond-cartel-may-be-forever-hereditary-leader-de-beers.html>.

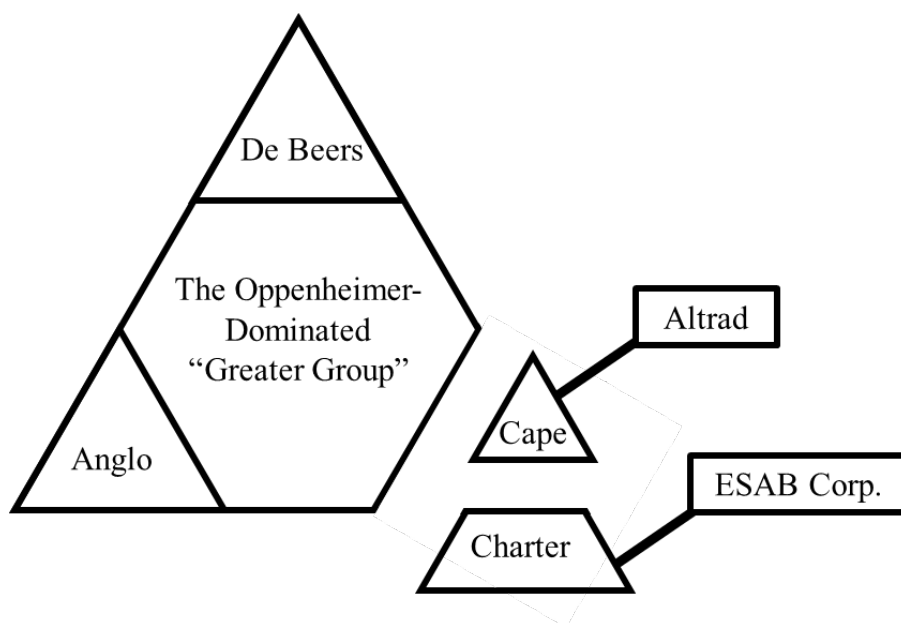
acknowledged “substantially changed” its “assets and business interests.” Charter 1980 Annual Report, at 5, 9 (June 24, 1980). Although Charter was purported to have received “a substantial amount of cash” from that sale, proceeds were used to repay debt and acquire Minorco shares. *See id.* at 5–6.

110. Charter’s Exile. Due to these restructurings, Anglo stopped acknowledging Charter as a material part of the Oppenheimer business empire—as it had been effectively replaced by Minorco. *Compare* Anglo 1977 Annual Report, at 3 (Mar. 25, 1977) (organizational chart portraying Charter on equal footing to Anglo and De Beers), *with* Anglo 1983 Annual Report, at 5 (June 28, 1983) (updated organizational chart making no reference to Charter at all). By the end of the 1980s, the Oppenheimers had stopped serving on the Charter board of directors all together, after unwinding themselves from Charter’s assets and associated liabilities. *See* Charter 1989 Annual Report, at 46 (June 10, 1989) (no Oppenheimer listed for the Charter board of directors).

111. A Weakened Charter. For its part, after disposing of its South African investments, Charter touted a renewed focus on its operating subsidiaries in the United Kingdom, rather than acting primarily as a holding company for Oppenheimer business interests. *See, e.g.*, Charter 1986 Annual Report, at 2 (July 3, 1986) (“Charter has undergone a major change in recent years. The business has been extensively reshaped and much of the capital employed is now in operating companies.”). However, without the backing of Anglo as a corporate patron, and with Cape no longer directly engaged with its main historical business—*i.e.*, mining and selling asbestos—both Charter and Cape were unable to achieve growth and profitability comparable to what they enjoyed in decades earlier as part of the Oppenheimer business empire.

VI. In Subsequent Years, There Have Been Changes to Third-Party Defendants.

112. Changes to the Former Asbestos-Mining Empire. Following Cape's escape from the United States, it changed its name and organization, and so did its affiliated companies and other actors that were part of the Cape liability-avoidance scheme. Certain of those entities and persons are named as Third-Party Defendants in this action, including as successors in interest and beneficiaries of Cape's liability-avoidance scheme, co-responsible for Cape's tortious conduct.



113. Changes to Cape. Since the 1970s, Cape Asbestos Company Ltd. has undergone several changes to its organization, including (i) changing its name to Cape Industries Ltd. in 1974 (*i.e.*, removing “Asbestos” from its name, soon after the onset of asbestos products-liability litigation); (ii) re-registering as a public company and changing its name to Cape Industries PLC in 1981; (iii) shortening its name to Cape PLC in 1989; (iv) changing its name to Cape Intermediate Holdings PLC in 2011; and (v) re-registering as a private company to become Cape Intermediate Holdings Ltd. in 2013. And as of 2016, Cape Holdco Ltd. (controlled by Cape Industrial Services

Group Ltd.) and The Law Debenture Corporation PLC were registered as Persons with Significant Control of Cape.

114. Unmet Responsibilities. Although Cape in the prior decades had entered into certain agreements to compensate for illness and death resulting overseas from its products (such as entering into a “Scheme of Arrangement” with former employees in 2006), Cape has 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.

115. Other Responsible Cape Entities. In addition, on information and belief, Cape has sold off certain subsidiaries or affiliates that were a part of Cape’s unlawful liability-avoidance scheme, but which have yet to be identified. Accordingly, the Receiver reserves the right to name those entities and/or their successors in interest as Additional Third-Party Defendants.

116. Altrad’s Acquisition and Subsequent Ownership of Cape. On or around October 9, 2017, Altrad Investment Authority S.A.S. (a French company), through Altrad UK Ltd. (controlling Cape UK Holdings Newco Ltd.), acquired and has since controlled Cape. Those entities are owned and controlled by the multinational Altrad Group, which has renamed certain Cape entities as well, including Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.).

117. Altrad’s U.S. Subsidiaries. In addition, the Altrad Group acquired Sparrows Offshore Group Ltd. in 2022, which established the Altrad Group’s presence in the United States through its (i) operations in the southern United States, and (ii) ownership of U.S.-registered entities,

including Hawk BidCo US Inc., Arranco US, LLC, Sparrows Offshore, LLC, and the Sparrows Group, LLC.³⁸

118. Altrad's Owner. The Altrad Group—and thus Cape—is controlled by its French–Syrian President and Founder, Mohed Altrad, a/k/a the “Scaffolding King.” *See* Altrad 2022 Annual Report, at 36 (Feb. 9, 2023);³⁹ *see also* Gaspard Sebag & Tara Patel, *Billionaire Scaffolding ‘King’ Guilty of Bribing Rugby Boss*, Bloomberg (Dec. 13, 2022) (reporting Mr. Altrad’s recent corruption conviction, punished with an 18-month suspended jail term and €50,000 fine).⁴⁰

119. Altrad Third-Party Defendants. Ultimately, each of the entities identified in paragraphs 113, 116, and 117, with Mohed Altrad, are either successors in interest to Cape and its numerous subsidiary and affiliated entities, or beneficiaries from Cape’s liability-avoidance scheme, or both, and are collectively referred to as the “Altrad Third-Party Defendants.”

ALTRAD AND CAPE-AFFILIATED ENTITIES (“ALTRAD THIRD-PARTY DEFENDANTS”)		
<u>Cape Subsidiaries / Control:</u> • Cape Holdco Ltd. • The Law Debenture Corp. PLC • Cape UK Holdings NewCo Ltd. • Cape Indus. Servs. Grp. Ltd. • Altrad Servs. Ltd. (f/k/a Cape Indus. Servs. Ltd.)	<u>Altrad Ownership:</u> • Mohed Altrad • Altrad Inv. Auth. S.A.S • Altrad UK Ltd.	<u>United States Subsidiaries:</u> • Sparrows Offshore Grp. Ltd. • Hawk Bidco US Inc. • Arranco US, LLC • Sparrows Offshore, LLC • The Sparrows Grp., LLC

³⁸ *See, e.g., Altrad Completes Acquisition of Engineering and Maintenance Specialist Sparrows Group*, Altrad (July 12, 2022), <https://www.altrad.com/en/newsreader/altrad-completes-acquisition-of-engineering-and-maintenance-specialist-sparrows-group.html>; *Sparrows Website: Global Locations*, <https://www.sparrowsgroup.com/global-locations>.

³⁹ Available at https://newsmanager.altrad.com/files/altrad-group/news/2023/02/09_annual-report-2022/annual-report_2022_en_double_br-min.pdf.

⁴⁰ Available at <https://www.bloomberg.com/news/articles/2022-12-13/scaffolding-billionaire-convicted-of-corruption-over-sponsorship#xj4y7vzkg>.

120. Involvement of Affiliated Oppenheimer Businesses. At all times relevant to Cape's business in the United States and its perpetuation of the liability-avoidance scheme, 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.

121. Oppenheimer Third-Party Defendants. Those dominating, conspiring, facilitating, or otherwise financially benefiting entities include Anglo American Corporation of South Africa Ltd. (as predecessor in interest to Anglo American PLC) and De Beers PLC, De Beers Centenary AG, De Beers Consolidated Mines Ltd., De Beers S.A., De Beers UK Ltd., and De Beers Jewellers Ltd. Those entities currently have presence, operations, and business in the United States, including in South Carolina, through 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., and Anglo American Crop Nutrients (U.S.A.), LLC. All of these companies are collectively referred to as the "Oppenheimer Third-Party Defendants," with Anglo American PLC acting as ultimate parent company for each. *See, e.g.,* Anglo 2022 Annual Report, at 283 (Feb. 22, 2023).⁴¹

⁴¹ Available at <https://www.angloamerican.com/~media/Files/A/Anglo-American-Group-v5/PLC/investors/annual-reporting/2022/aa-annual-report-full-2022.pdf>. 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 Minorco and moving assets out of South Africa (thereby mitigating the risk of post-Apartheid nationalization). *See* McNeil Article. In November 2011, moreover, the Oppenheimer family sold its direct stake in the De Beers Group to Anglo American PLC for \$5.1 billion, while (on information and belief) retaining indirect ownership through other entities. *See, e.g.,* Mark Scott, *Anglo American in Deal to Take Control of De Beers*, N.Y. Times, Nov. 4, 2011.

122. Increased U.S. Activities. Since closing NAAC and implementing their liability-avoidance scheme, the Oppenheimer Third-Party Defendants have increased their business activities in the United States, with certain of them using courts in the United States to enforce trademarks or other valuable rights, including under the De Beers name.⁴²

ANGLO AMERICAN PLC (“OPPENHEIMER THIRD-PARTY DEFENDANTS”)	
<u>“De Beers Group” Subsidiaries:</u> • De Beers PLC • De Beers Centenary AG • De Beers Consol. Mines Ltd. • De Beers S.A. • De Beers UK Ltd. • De Beers Jewellers Ltd.	<u>United States Subsidiaries:</u> • De Beers Jewellers US, Inc. • Anglo Am. US Holdings Inc. • Element Six US Corp. • Element Six Techs. US Corp. • Element Six Techs. (OR) Corp. • First Mode Holdings, Inc. • Platinum Guild Int’l (U.S.A.) Jewelry Inc. • Lightbox Jewelry Inc. • Forevermark US Inc. • Anglo Am. Crop Nutrients (U.S.A.), LLC

123. Changes to Charter. In 1993, after the broader Oppenheimer empire had demoted Charter’s role in the business, Charter re-registered as a public company, becoming Charter PLC. In 1996, Charter sold its interest in Cape for approximately £48 million. In 2008, a new holding company, Charter International PLC, took over Charter PLC,⁴³ and then, effective January 13, 2012, Colfax Corporation (“Colfax”) acquired Charter at a \$2.4 billion valuation, with Charter enjoying minimal

⁴² See, e.g., *De Beers UK Ltd. v. Adwar Casting, Co., Ltd.*, No. 4:10-cv-00843, ECF No. 3 (W.D. Mo. Sept. 15, 2010) (corporate disclosure statement of plaintiff identifying De Beers UK Ltd. as a wholly owned subsidiary of De Beers Centenary AG); *De Beers Centenary AG v. John-Robert Hasson*, No. 1:10-cv-23024, ECF No. 1 (S.D. Fla. Aug. 23, 2010) (action initiated by De Beers entity).

⁴³ See *Charter Website: History* (Dec. 12, 2008), https://web.archive.org/web/20081212114613/http://www.charter.ie/chtr_int/about/history/.

debt on its balance sheet. *See* Colfax Corp. Form 8-K (Jan. 17, 2022);⁴⁴ Colfax Corp. Schedule 14A (Dec. 19, 2011).⁴⁵ In making that acquisition, Colfax disclosed Charter’s exposure to asbestos-related lawsuits in the United States, but the companies (i) assessed it as not having “a material effect on Charter’s financial position,” (ii) dismissed any associated expenses as “negligible,” and (iii) ultimately made no provision for Charter’s asbestos liability. Colfax Corp. Schedule 14A (Dec. 19, 2011).

124. Charter Third-Party Defendants. By 2022, Colfax sold its interests in Charter’s businesses, including, on information and belief, those associated with Cape-related liabilities—namely, ESAB Corporation. *See Enovis (Formerly Colfax) Completes Spin-Off of ESAB Corporation* (Apr. 5, 2022).⁴⁶ 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., and each is collectively referred to as “Charter Third-Party Defendants.”

⁴⁴ Available at https://www.sec.gov/Archives/edgar/data/1420800/000134100412000060/cfx_8k.htm. at

⁴⁵ Available at https://www.sec.gov/Archives/edgar/data/1420800/000114420411070464/v242942_defm14a.htm. at

⁴⁶ Available at <https://ir.enovis.com/news-releases/news-release-details/enovis-formerly-colfax-completes-spin-esab-corporation>.

FIRST CAUSE OF ACTION
UNJUST ENRICHMENT
(Against All Third-Party Defendants)

125. Third-Party Plaintiff incorporates by reference paragraphs 1 through 124 as though fully set forth herein.

126. Under the cause of action for unjust enrichment, a party can recover restitution as a remedy if the party shows: (i) that it conferred a non-gratuitous benefit on the defendant; (ii) that the defendant realized some value from the benefit; and (iii) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value.

127. Each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants, including their predecessors in interest, received a non-gratuitous benefit from Cape as a result of the liability-avoidance scheme described herein, including the domination of NAAC's risk-management decisions (resulting in the purchase of wholly inadequate insurance) and the extraction of massive cash payments and other assets to entities outside of the United States.

128. Each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants realized substantial monetary value from the non-gratuitous benefit described herein and above.

129. It would be inequitable for these Third-Party Defendants to retain any such benefit without paying the Receiver for its value.

130. The proper and appropriate remedy under the circumstances here is for the Court to exercise its equitable power and authority to require that each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants to

return funds that have been wrongfully diverted from meeting obligations and responsibilities in the United States, in an amount to be proven at trial.

SECOND CAUSE OF ACTION
CONSTRUCTIVE TRUST
(Against All Third-Party Defendants)

131. Third-Party Plaintiff incorporates by reference paragraphs 1 through 130 as though fully set forth herein.

132. A constructive trust is a duty or relationship imposed by courts of equity to prevent the unjust enrichment of the holder of title to, or of an interest in, property which such holder acquired through fraud, breach of duty, or some other circumstance, making it inequitable for him to retain it against the claim of the beneficiary or the constructive trust. A constructive trust is a fiction of equity, brought into operation to prevent unjust enrichment through the breach of some duty or other wrongdoing. There is a common, indispensable element in the many types of situations out of which a constructive trust is deemed to arise—which is some fraud, breach of duty, or other wrongdoing by the holder of the property.

133. Each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants have taken possession of property—cash and other assets—which they should not have taken through the wrongful acts alleged herein.

134. The funds that they or their predecessors in interest have wrongfully diverted should have remained available to bodily-injury claimants in the United States, including in South Carolina, providing additional resources to meet Cape’s obligations to the tens of thousands of individuals harmed.

135. But for the false or misleading statements made by each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants, or their predecessors in interest, to hide the true nature of Cape's unethical business practices and the known harms associated with its asbestos products, the funds would and should have been accessible to third-party claimants.

136. The proper and appropriate remedy under the circumstances here is for the Court to exercise its equitable power and authority to require each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants to return funds that have been wrongfully diverted from meeting Cape's obligations and responsibilities in the United States, in an amount to be proven at trial.

THIRD CAUSE OF ACTION
ALTER EGO AND VEIL-PIERCING LIABILITY
(Against All Third-Party Defendants)

137. Third-Party Plaintiff incorporates by reference paragraphs 1 through 136 as though fully set forth herein.

138. South Carolina recognizes the imposition of liability under an "alter ego" theory based on a factual assessment of several factors, including: (i) common ownership; (ii) financial dependence; (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.

139. Likewise, under a veil-piercing theory, South Carolina recognizes attaching liability to a shareholder through a two-part test involving, first, an eight-factor analysis of the shareholder's relationship to the corporation and, second, proof of an element of injustice or fundamental unfairness if the acts of the corporation are not regarded as the acts of the equity owners. As part

of the first step, the eight factors are: (i) whether the corporation was grossly undercapitalized; (ii) failure to observe corporate formalities; (iii) non-payment of dividends; (iv) insolvency of the debtor corporation at the time; (v) siphoning of funds of the corporation by the dominant stockholder; (vi) non-functioning of other officers, directors, or stockholders; (vii) absence of corporate records; and (viii) the fact that the corporation was merely a façade for the operations of the dominant stockholder. In turn, to prove fundamental unfairness, the plaintiff must establish that: (i) the defendant was aware of the plaintiff's claim against the corporation, and (ii) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property.

140. Numerous facts support the conclusion that, in furtherance of the ends of justice, the Court may exercise personal jurisdiction over Third-Party Defendants and impose liability on them for acts of Third-Party Plaintiff, which Third-Party Defendants are responsible for having dominated, controlled, facilitated, or benefited from, including, without limitation:

- a. The sale and distribution of asbestos in the United States, including to facilities in South Carolina or in asbestos-containing products used in South Carolina;
- b. The failure to follow corporate formalities between Third-Party Plaintiff and each of the Third-Party Defendants;
- c. The common and intentionally obfuscated ownership interests of the Third-Party Defendants;
- d. The financial, marketing, and operational dependence of Cape on those Third-Party Defendants;

- e. The domination and control of Third-Party Defendants over Cape's and NAAC's executive personnel and boards of directors, which caused, among other things, NAAC to fail to safeguard the interests of personal-injury claimants by placing adequate products-liability insurance;
- f. The funneling of assets out of the United States to escape attachment by personal-injury claimants, and the resulting gross undercapitalization of NAAC in the United States;
- g. The absence of, and intentional destruction of, corporate records related to the events described herein;
- h. The establishment or use of Third-Party Plaintiff and NAAC as sham entities and a façade for the operations of Oppenheimer interests in South Africa and elsewhere, thereby misrepresenting the true origin of Cape's products (including Cape's use of child laborers), the grave health hazards associated with those products, and the ownership of Cape's business (including ownership by African oligarchs); and
- i. The self-serving actions of Third-Party Defendants, despite their having knowledge that Cape's asbestos and asbestos-containing products would cause bodily injury to tens of thousands of individuals in the United States, including in South Carolina, and result in claims for reimbursement.

141. The damages alleged against Third-Party Plaintiff in the Asbestos Suits resulted from the actions of Third-Party Defendants or their predecessors in interest, which dominated, controlled, facilitated, or benefited from Cape's successful asbestos business and liability-avoidance scheme. Accordingly, the proper and appropriate remedy under the circumstances here is for the Court to

declare that the Third-Party Defendants are alter egos of Third-Party Plaintiff and thereby liable to Third-Party Plaintiff and/or the Receiver for Asbestos Suits.

FOURTH CAUSE OF ACTION
ACCOUNTING
(Against All Third-Party Defendants)

142. Third-Party Plaintiff incorporates by reference paragraphs 1 through 141 as though fully set forth herein.

143. South Carolina recognizes the equitable action for an accounting, which implies that a defendant is responsible to the plaintiff for money or property as the result of a contract or some other fiduciary relationship. Accounting is particularly appropriate where there is a need for discovery. *See Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 273 (S.C. Ct. App. 2010); *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 145–46 (1989).

144. As alleged herein, this lawsuit involves an international, decades long scheme designed to profit from the sale of harmful asbestos fiber into the United States, including for use in South Carolina.

145. That scheme was intentionally designed to obfuscate the relationships between numerous, large corporations, and its direct purpose was to frustrate creditors and avoid liability, while retaining untold millions of dollars siphoned to foreign entities and individuals.

146. Given this long, complex history, a full accounting of each of the Third-Party Defendants, including for any records related to the allegations herein, is appropriate for the purpose of discovery.

PRAYER FOR RELIEF

WHEREFORE, Third-Party Plaintiff, by and through its duly appointed Receiver, demands judgment against Third-Party Defendants as follows:

- A. For the Court to exercise its equitable power and authority against the Third-Party Defendants as requested herein;
- B. For a full accounting of each of the Third-Party Defendants' records and other information related to the allegations herein, including the extent to which each of the Third-Party Defendants has financially benefited from the liability-avoidance scheme; and
- C. 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.⁴⁷

[Signature block on following page]

⁴⁷ This third-party action does not include or otherwise involve any claim arising under the Constitution, laws, or treaties of the United States, nor does this third-party action involve the vindication of any federal rights.

Dated: June 30, 2023
Columbia, South Carolina

GALLIVAN, WHITE & BOYD, P.A.

By: /s/ John T. Lay, Jr.
John T. Lay, Jr., SC Bar No. 64526
Gray T. Culbreath, SC Bar No. 11907
Lindsay A. Joyner, SC Bar No. 77437
Laura W. Jordan, SC Bar No. 100374
Eleanor L. Jones, SC Bar No. 104678
1201 Main Street, Suite 1200
PO Box 7368 (29202)
Columbia, SC 29201
jlay@gwblawfirm.com
gculbreath@gwblawfirm.com
ljoyner@gwblawfirm.com
ljordan@gwblawfirm.com
ejones@gwblawfirm.com
(803) 779-1833

Jonathan M. Robinson
Shanon N. Peake
SMITH | ROBINSON, LLC
2530 Devine Street, Third Floor
Columbia, SC 29205
jon@smithrobinsonlaw.com
shanonp@smithrobinsonlaw.com
(803) 254-5445

G. Murrell Smith, Jr.
SMITH | ROBINSON, LLC
PO Box 580
Sumter, SC 29151-0580
murrell@smithrobinsonlaw.com
(803) 778-2471

Troy S. Brown (*pro hac vice forthcoming*)
Dana E. Becker (*pro hac vice forthcoming*)
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
troy.brown@morganlewis.com
dana.becker@morganlewis.com
(215) 963-5000

Brady Edwards (*pro hac vice forthcoming*)

Robert W. Jacques (*pro hac vice forthcoming*)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004
brady.edwards@morganlewis.com
robert.jacques@morganlewis.com
(202) 739-3000

Paul A. Scrudato (*pro hac vice forthcoming*)
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
paul.scrudato@morganlewis.com
(212) 309-6000

Attorneys for Third-Party Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RICKY DEAN FLYNN,
as the Executor of the Estate of
JERRY KAY FLYNN, Deceased,

Plaintiff,

v.

3M COMPANY
f/k/a MINNESOTA MINING AND
MANUFACTURING COMPANY, *et al.*,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2023-CP-40-00633

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

DOCKETING ORDER

By Order of the South Carolina Supreme Court dated May 28, 2023, the undersigned was appointed to serve as the Chief Judge for Administrative Purposes over all asbestosis and asbestos litigation field 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.

The date-certain trial of the above-referenced asbestos matter will take place beginning April 15, 2024.

AND IT IS SO ORDERED.***[JUDGE'S E-SIGNATURE PAGE FOLLOWS]***

STATE OF SOUTH CAROLINA)
)
)

FOR THE FIFTH JUDICIAL CIRCUIT

)
)
)

IN RE: SOUTH CAROLINA

ASBESTOS LITIGATION

ASBESTOS TRIAL DOCKETING ORDER AS
 OF SEPTEMBER 6, 2023

DOCKETING ORDER

This Order is designed to set forth trial dates for asbestos cases pending in South Carolina for 2024.

The Trial settings are as follows:

February 12, 2024 (Pre-Trial Hearing Date February 7, 2024)

1. Link: Richland County (living Meso) (DOBS/KM) – 2022-CP-40-05543
2. Kelly: Richland County (Living Meso) (DOBS/KM) – 2022-CP-40-06035
3. Donaghy for Potter: Richland County (Deceased Meso) (DOBS/KM) 2023-CP-40-03108
4. Green: Richland County (Deceased lung cancer) (DOBS/KM) – 2022-CP-40-06627

April 15, 2024 (Pre-Trial Hearing Date: April 10, 2024)

1. Pierce: Richland County Living Meso) (DOBS/KM) – 2022-CP-40-06194
2. Tibbs: Richland County (Living Lung Cancer) (DOBS/KM) – 2023-CP-40-01759
3. Goodwin: Richland County (Deceased Meso) (DOBS/KM) – 2020-CP-40-04613
4. Flynn: Richland County (Deceased Meso) (DOBS/KM) – 2023-CP-40-00633
5. Mitchell: Richland County (living lung cancer) (DOBS/KM) – 2022-CP-40-02979

June 10, 2024 (Pre-Trial Hearing Date June 5, 2024)

1. Terry Lewis: Orangeburg County (Living Meso) (Motley Rice) 2023-CP-38-01053
2. Sawyer v. 3M: Orangeburg County (Living lung cancer) (Motley Rice) – 2023-CP-38-00132
3. David Croy: Orangeburg County (Living Meso) (Motley Rice): 2023-CP-38-01071
4. Kristi Murray: Orangeburg County (Deceased Meso) (Motley Rice): 2023-CP-38-01072

August 5, 2024 (Pre-Trial Hearing Date July 31, 2024)

1. Peggy B. Berley, Deceased Meso (MRHFM) (Richland County) C/A No. 2023-CP-40-02840
2. Audrey G. Smith v. Daniel Int'l Corp., et al (Living Meso) (Richland Co.)
C/A No. 2021-CP-40-05478 (MRHFM)
3. Woody v. Beaty Investments: Richland County (Dec Meso) (Motley Rice) – 2023-CP-40-02067
4. Michael L. Perry: Richland County (Living Meso) (DOBS/KM): 2023-CP-40-4072

September 30, 2024 (Pre-Trial Hearing September 25, 2024)

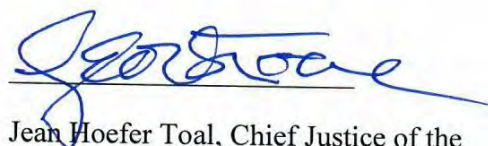
1. McLeod (living Meso) Richland County 2023-CP-40-01652) (Meirowitz & Wasserberg)
2. Widner v 3M: 2022-CP_40-06712 Richland County (Living Lung Cancer) (Meirowitz & Wasserberg)
3. Johnson, Kenneth & Patricia: Richland County 2022-CP-40-05808 (deceased meso) (BCH/KM)
4. David Reich Richland County 2023-CP-40-03243 (Living lung cancer) (Motley Rice)

October 21, 2024 (Pre-Trial Hearing October 16, 2024)

1. McBrayer/Hood: Charleston County: 2020-CP-10-03946 (Deceased Meso) (DOBS/KM)

December 2, 2024 (Pre-Trial Hearing Tuesday, November 26, 2024)

1. Cowart v. JR Deans: Richland County (Dec Meso) (Motley Rice) – 2023-CP-40-02009
2. Teague v. JR Deans: Richland County (Dec Meso) (Motley Rice) – 2023-CP-40-01871
3. Parr v Beaty Investments: Richland County (Living Meso) (Motley Rice) – 2023-CP-40-01899
4. Graham v. Beaty Investments: Richland County (Living Meso) (Motley Rice)– 2023-CP-40-02986



Jean Hoefer Toal, Chief Justice of the
South Carolina Supreme Court, Retired,
Acting as Circuit Court Judge

This 6th Day of Sept., 2023

Columbia, South Carolina



Richland Common Pleas

Case Caption: Jerry Kay Flynn vs Standard Insulation Company Of Nc Inc ,
defendant, et al
Case Number: 2023CP4000633
Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-09-20 11:16:02 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.

3M Company, *et al.*,

Defendants.

Cape plc, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly-appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff,

v.

Anglo American PLC, *et al.*,

Third-Party Defendants.

Case No. 2023-cp-40-01759

**THIRD-PARTY DEFENDANTS
CHARTER CONSOLIDATED LTD.,
ESAB CORPORATION, AND
CENTRAL MINING AND
INVESTMENT CORPORATION
LTD.'S ANSWER AND AFFIRMATIVE
DEFENSES TO THE THIRD-PARTY
COMPLAINT [FILED SUBJECT TO
PREVIOUSLY FILED MOTIONS TO
DISMISS, PENDING APPEAL]**

Jury Trial Requested

Third-Party Defendant Charter Consolidated Ltd. (“Charter”), ESAB Corporation (“ESAB”), and Central Mining and Investment Corporation Ltd. (“Central Mining”) hereby file their Answer to the Third-Party Complaint (the “Third-Part Complaint”) filed by “Cape plc, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly-appointed Receiver Peter D. Protopapas” (“Receiver”)¹ and any and all Cross-Claims

¹ The Receiver has not been given leave by the Court to intervene into the Tibbs case as a Defendant, and accordingly has no right to file a third-party complaint. Further, Cape plc is incorrectly identified “as successor in interest to Cape Asbestos Company Limited.” The Receiver in fact admits that Cape plc is not “a successor in interest to Cape Asbestos Company Limited” in ¶ 113 of the Third-Party Complaint: “Since the 1970s, Cape Asbestos Company Ltd. has undergone several changes to its organization, including (i) changing its name to Cape Industries

asserted previously, or in the future, by any co-defendants or third-party defendants. Charter, ESAB, and Central Mining are referred to collectively herein as the “Third-Party Defendants.”

Third-Party Defendants have filed notices of appeal regarding the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction (“Appeal”). Accordingly, this matter is stayed pursuant to SCRAP 241, and neither the Court nor the Receiver have jurisdiction or authority to act pursuant to SCRAP 205.

Ltd. in 1974 (i.e., removing “Asbestos” from its name, soon after the onset of asbestos products-liability litigation); (ii) re-registering as a public company and changing its name to Cape Industries PLC in 1981; (iii) shortening its name to Cape PLC in 1989; (iv) changing its name to Cape Intermediate Holdings PLC in 2011; and (v) re-registering as a private company to become Cape Intermediate Holdings Ltd. in 2013.” Further, counsel for the Receiver admitted on the record at the hearing on the motions to dissolve the receivership and the motions to dismiss for lack of personal jurisdiction that: “Cape plc is this new company that was created in the Bailiwick of Jersey and not the Cape plc that has existed forever and is now known as Cape Intermediate Holdings Limited. Cape plc, the newly created Cape of 2011, which was essentially a tax entity...has no -- never did any business in the U.S., did not sell asbestos.”

Additionally, the Receiver was appointed over “Cape plc,” which is not a successor in interest to Cape Asbestos Company Limited. However, the Receiver has argued in subsequent filings that he is purporting to act on behalf of the entity presently known as Cape Intermediate Holdings Limited f/k/a Cape Intermediate Holdings plc, which the Receiver plead in ¶ 113 of the Third-Party Complaint is the successor in interest to Cape Asbestos Company Limited. Third-Party Defendants maintain that the Receiver has no authority to act on behalf of Cape Intermediate Holdings Limited.

The Third-Party Complaint defines “Cape” as “Cape PLC is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates (collectively, “Cape”), which was and is a private company organized and existing under the laws of the United Kingdom, with its principal place of business in England.” Third-Party Complaint ¶ 40. As indicated above, the “private company” that is “existing” as Cape PLC is the entity created in 2011, and is not “successor in interest to Cape Industries Ltd.” Nevertheless, Third-Party Defendants will read and refer to any instances of “Cape” in the Third-Party Complaint, and in this Answer, as the United Kingdom entity that was originally known as Cape Asbestos Company Ltd., and is alleged to now be known as Cape Intermediate Holdings Limited. The use of “Cape” and “Cape plc” herein – reflecting the usage of those terms in the Third-Party Complaint – should not be construed as a waiver of any objections, challenges, or defenses to the Third-Party Complaint or to the receivership.

Third-Party Defendants submit this Answer without waiving and instead specifically preserving and incorporating herein (a) all of their objections and challenges to personal jurisdiction in South Carolina as well as all other grounds for dismissal, as set forth in their motions to dismiss filed on September 1, 2023 and subsequent filings and oral argument in support thereof (collectively, “12(b) Motions”); (b) all of their objections and challenges to the appointment of the Receiver, as set forth in their motions to dissolve the receivership filed on October 6, 2023 and subsequent filings and oral argument in support thereof (collectively, “Motions to Dissolve”); (c) all of their objections and challenges to the Receiver’s Proposed Order on December 4, 2023; (d) all of their objections and challenges to the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction; (e) the grounds for Third-Party Defendants’ pending appeal of the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction; and (f) that this matter is stayed pursuant to SCRAP 241, and that neither the Court nor the Receiver have jurisdiction or authority to act pursuant to SCRAP 205.

Unless expressly admitted herein, the allegations of the Third-Party Complaint are denied.

INTRODUCTORY STATEMENT

To the extent a response is required, Third-Party Defendants deny the allegations in the Introductory Statement of the Third-Party Complaint.

PARTIES

1. In response to Paragraph 1 of the Third-Party Complaint, Third-Party Defendants admit that an order was entered in another matter purportedly appointing Mr. Protopapas as receiver for Cape PLC and admits, upon information and belief, that Mr. Protopapas maintains

his principal place of business in Richland County. Third-Party Defendants deny the remaining allegations in Paragraph 1 of the Third-Party Complaint because the Receiver's appointment is not valid for the reasons set forth in the Motions to Dissolve and the Appeal.

2. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 2 of the Third-Party Complaint and therefore deny same.

3. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 3 of the Third-Party Complaint and therefore deny same.

4. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 4 of the Third-Party Complaint and therefore deny same.

5. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 5 of the Third-Party Complaint and therefore deny same.

6. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 6 of the Third-Party Complaint and therefore deny same.

7. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 7 of the Third-Party Complaint and therefore deny same.

8. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 8 of the Third-Party Complaint and therefore deny same.

9. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 9 of the Third-Party Complaint and therefore deny same.

10. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 10 of the Third-Party Complaint and therefore deny same.

11. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 11 of the Third-Party Complaint and therefore deny same.

12. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 12 of the Third-Party Complaint and therefore deny same.

13. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 13 of the Third-Party Complaint and therefore deny same.

14. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 14 of the Third-Party Complaint and therefore deny same.

15. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 15 of the Third-Party Complaint and therefore deny same.

16. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 16 of the Third-Party Complaint and therefore deny same.

17. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 17 of the Third-Party Complaint and therefore deny same.

18. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 18 of the Third-Party Complaint and therefore deny same.

19. Without waiving and instead specifically preserving all of its objections and challenges to personal jurisdiction in South Carolina as set forth in the 12(b) Motions and the Appeal, Charter admits that it is a corporation organized under the laws of England, United Kingdom, with its principal place of business located in Essex, England, United Kingdom.

20. Without waiving and instead specifically preserving all of its objections and challenges to personal jurisdiction in South Carolina as set forth in the 12(b) Motions and the Appeal, ESAB Corporation admits that it is a corporation organized under the laws of the State of Delaware, with its principal place of business in Montgomery County, Maryland.

21. Without waiving and instead specifically preserving all of its objections and challenges to personal jurisdiction in South Carolina as set forth in the 12(b) Motions and the Appeal, Central Mining admits that it is a corporation organized under the laws of England, United Kingdom, with its principal place of business located in Essex, England, United Kingdom.

22. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 22 of the Third-Party Complaint and therefore deny same.

23. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 23 of the Third-Party Complaint and therefore deny same.

24. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 24 of the Third-Party Complaint and therefore deny same.

25. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 25 of the Third-Party Complaint and therefore deny same.

26. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 26 of the Third-Party Complaint and therefore deny same.

27. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 27 of the Third-Party Complaint and therefore deny same.

28. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 28 of the Third-Party Complaint and therefore deny same.

29. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 29 of the Third-Party Complaint and therefore deny same.

30. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 30 of the Third-Party Complaint and therefore deny same.

31. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 31 of the Third-Party Complaint and therefore deny same.

32. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 32 of the Third-Party Complaint and therefore deny same.

33. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 33 of the Third-Party Complaint and therefore deny same.

34. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 34 of the Third-Party Complaint and therefore deny same.

35. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 35 of the Third-Party Complaint and therefore deny same.

JURISDICTION

36. The allegations in Paragraph 36 of the Third-Party Complaint purport to state conclusions of law to which no response is required. Nevertheless, Third-Party Defendants deny that the Court has jurisdiction over the matters alleged herein and deny that the Receiver's appointment is valid for the reasons set forth in the 12(b) Motions, the Motions to Dissolve, and the Appeal. To the extent a further response is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 36 of the Third-Party Complaint.

37. The allegations in Paragraph 37 of the Third-Party Complaint purport to state conclusions of law to which no response is required. Nevertheless, Third-Party Defendants deny the allegations in Paragraph 37 as to them and deny that the Court has jurisdiction over them for the reasons set forth in the 12(b) Motions and the Appeal. To the extent a further response is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 37 of the Third-Party Complaint.

VENUE

38. The allegations in Paragraph 38 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response to Paragraph 38 of the Third-Party Complaint is deemed required, the Third-Party Defendants deny the allegations in Paragraph 38 of the Third-Party Complaint.

FACTUAL BACKGROUND

39. Paragraph 39 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 39 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 39 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 39 of the Third-Party Complaint that are directed at other third-party defendants in this action and therefore deny same.

40. Paragraph 40 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which

contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 40 of the Third-Party Complaint is deemed required, Third-Party Defendants deny that Cape PLC is the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.).” Third-Party Defendants admit, upon information and belief, that Cape PLC is a presently existing private company that was formed in 2011. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 40 of the Third-Party Complaint and therefore deny same.

41. Paragraph 41 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 41 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 41 of the Third-Party Complaint and therefore deny same.

42. Paragraph 42 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the

validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 42 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 42 of the Third-Party Complaint and therefore deny same.

43. Paragraph 43 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 43 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 43 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 43 of the Third-Party Complaint that are directed at Cape plc or other third-party defendants in this action and therefore deny same.

44. Paragraph 44 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party

Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 44 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 44 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 44 of the Third-Party Complaint that are directed at Cape plc or other third-party defendants in this action and therefore deny same.

I. Cape Was Established As Part of a South African Mining Empire.

45. Paragraph 45 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 45 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 45 of the Third-Party Complaint and therefore deny same.

46. Paragraph 46 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 46 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 46 of the Third-Party Complaint and therefore deny same.

47. Paragraph 47 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 47 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 47 of the Third-Party Complaint and therefore deny same.

48. Paragraph 48 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 48 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 48 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 48 of the Third-Party Complaint and therefore deny same.

49. Paragraph 49 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 49 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 49 of the Third-Party Complaint and therefore deny same.

50. Paragraph 50 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 50 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 50 of the Third-Party Complaint is deemed required,, Central Mining denies that it “controlled” Cape as Central Mining understands that term. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 50 of the Third-Party Complaint and therefore deny same.

51. Paragraph 51 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 51 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient

information to admit or deny the allegations in Paragraph 51 of the Third-Party Complaint and therefore deny same.

52. Paragraph 52 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 52 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 52 of the Third-Party Complaint is deemed required, Central Mining and Charter deny that appropriate corporate formalities and separations were not maintained as between Central Mining, Charter, and the other entities identified in Paragraph 52 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 52 of the Third-Party Complaint and therefore deny same.

53. Paragraph 53 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 53 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 53 of the Third-Party Complaint and therefore deny same.

54. Paragraph 54 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 54 of the Third-Party Complaint is deemed required, Charter admits that it was formed in approximately 1965. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 54 of the Third-Party Complaint and therefore deny same.

55. Paragraph 55 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the

admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 55 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 55 of the Third-Party Complaint is deemed required, Charter admits that it had certain direct and/or indirect ownership interests in Cape at various times but denies that appropriate corporate formalities and separations were not maintained as between Charter, Cape, and the other entities identified in Paragraph 55 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 55 of the Third-Party Complaint and therefore deny same.

56. Paragraph 56 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 56 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 56 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 56 of the Third-Party Complaint.

57. Paragraph 57 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the

validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 57 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 57 of the Third-Party Complaint is deemed required, Charter admits that it maintained office space at 40 Holborn Viaduct at various times but denies that the corporate separation between Charter, Anglo and the other entities identified in Paragraph 57 of the Third-Party Complaint was superficial. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 57 of the Third-Party Complaint and therefore deny same.

58. Paragraph 58 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 58 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 58 of the Third-Party Complaint.

59. Paragraph 59 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 59 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 59 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 59 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 59 of the Third-Party Complaint and therefore deny same.

60. Paragraph 60 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 60 of the Third-Party Complaint constitute legal conclusions to which no response is

required. To the extent a further response to Paragraph 60 of the Third-Party Complaint is deemed required, Charter admits that it had certain direct and/or indirect ownership interests in Cape at various times but denies that appropriate corporate formalities and separations were not maintained as between Charter, Cape, and the other entities identified in Paragraph 60 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 60 of the Third-Party Complaint and therefore deny same.

61. Paragraph 61 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 61 of the Third-Party Complaint is deemed required, Charter admits that it had certain direct and/or indirect ownership interests in Cape at various times but denies that appropriate corporate formalities and separations were not maintained as between Charter, Cape, and the other entities identified in Paragraph 61 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 61 of the Third-Party Complaint and therefore deny same.

62. Paragraph 62 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the

validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 62 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 62 of the Third-Party Complaint is deemed required, Charter admits that it had certain direct and/or indirect ownership interests in Cape at various times but denies that appropriate corporate formalities and separations were not maintained as between Charter, Cape, and the other entities identified in Paragraph 62 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 62 of the Third-Party Complaint and therefore deny same.

63. Paragraph 63 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 63 of the Third-Party Complaint is deemed required, Charter admits that it had certain direct and/or indirect ownership interests in Cape at various times but denies that appropriate corporate formalities and separations were not maintained as between Charter, Cape, and the other entities

identified in Paragraph 63 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 63 of the Third-Party Complaint and therefore deny same.

64. Paragraph 64 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 64 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 64 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 64 of the Third-Party Complaint.

65. Paragraph 65 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in

Paragraph 65 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 65 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 65 of the Third-Party Complaint.

66. Paragraph 66 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 66 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 66 of the Third-Party Complaint and therefore deny same.

67. Paragraph 67 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in

Paragraph 67 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 67 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 67 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 67 of the Third-Party Complaint and therefore deny same.

68. Paragraph 68 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 68 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 68 of the Third-Party Complaint and therefore deny same.

69. Paragraph 69 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 69 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 69 of the Third-Party Complaint and therefore deny same.

II. Cape Created NAAC to Facilitate Its Asbestos Scheme.

70. Paragraph 70 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 70 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 70 of the Third-Party Complaint and therefore deny same.

71. Paragraph 71 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 71 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 71 of the Third-Party Complaint and therefore deny same.

72. Paragraph 72 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 72 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 72 of the Third-Party Complaint and therefore deny same.

73. Paragraph 73 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the

admissibility and/or relevance of these documents. To the extent a further response to Paragraph 73 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 73 of the Third-Party Complaint and therefore deny same.

74. Paragraph 74 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 74 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 74 of the Third-Party Complaint and therefore deny same.

75. Paragraph 75 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph

75 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 75 of the Third-Party Complaint and therefore deny same.

76. Paragraph 76 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 76 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 76 of the Third-Party Complaint is deemed required, Third-Party Defendants respectfully refer the Court to the legal decisions cited in Paragraph 76 for their contents, holdings, and subsequent treatment, deny that the Third-Party Complaint accurately characterizes controlling caselaw on this issue, and deny the remaining allegations in Paragraph 76 of the Third-Party Complaint.

77. Paragraph 77 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 77 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 77 of the Third-Party Complaint and therefore deny same.

78. Paragraph 78 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 78 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 78 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 78 of the Third-Party Complaint and therefore deny same.

79. Paragraph 79 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 79 of the Third-Party Complaint is deemed required, Charter denies that appropriate corporate formalities and separations were not maintained between Charter, Cape, and the other entities identified in Paragraph 79 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 79 of the Third-Party Complaint and therefore deny same.

80. Paragraph 80 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 80 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 80 of the Third-Party Complaint and therefore deny same.

III. Cape Led Efforts in the U.S. and Internationally to Hide the Risks of Asbestos

81. Paragraph 81 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the

Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 81 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 81 of the Third-Party Complaint and therefore deny same.

82. Paragraph 82 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 82 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 82 of the Third-Party Complaint and therefore deny same.

83. Paragraph 83 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which

contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 83 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 83 of the Third-Party Complaint and therefore deny same.

84. Paragraph 84 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 84 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 84 of the Third-Party Complaint and therefore deny same.

85. Paragraph 85 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 85 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 85 of the Third-Party Complaint and therefore deny same.

86. Paragraph 86 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 86 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 86 of the Third-Party Complaint and therefore deny same.

87. Paragraph 87 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the

admissibility and/or relevance of these documents. To the extent a further response to Paragraph 87 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 87 of the Third-Party Complaint and therefore deny same.

88. Paragraph 88 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 88 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 88 of the Third-Party Complaint and therefore deny same.

IV. Cape Implemented a Strategy to Evade Liability in the United States.

89. Paragraph 89 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the

admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 89 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 89 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations specifically directed to them and are without sufficient information to admit or deny the remaining allegations in Paragraph 89 of the Third-Party Complaint and therefore deny same.

90. Paragraph 90 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 90 of the Third-Party Complaint is deemed required, Third-Party Defendants deny that the allegations in Paragraph 90 specifically directed to them or reflecting any wrongdoing on their part and are without sufficient information to admit or deny the remaining allegations in Paragraph 90 of the Third-Party Complaint and therefore deny same.

91. Paragraph 91 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which

contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 91 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 91 of the Third-Party Complaint and therefore deny same.

92. Paragraph 92 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 92 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 92 of the Third-Party Complaint and therefore deny same.

93. Paragraph 93 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 93 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 93 specifically directed to them and are without sufficient information to admit or deny the remaining allegations in Paragraph 93 of the Third-Party Complaint and therefore deny same.

94. Paragraph 94 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 94 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 94 of the Third-Party Complaint and therefore deny same.

95. Paragraph 95 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 95 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 95 specifically directed to them and are without sufficient information to admit or deny the remaining allegations in Paragraph 95 of the Third-Party Complaint and therefore deny same.

96. Paragraph 96 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 96 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 96 of the Third-Party Complaint and therefore deny same.

97. Paragraph 97 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 97 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 97 of the Third-Party Complaint and therefore deny same.

98. Paragraph 98 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 98 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 98 of the Third-Party Complaint and therefore deny same.

99. Paragraph 99 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the

admissibility and/or relevance of these documents. To the extent a further response to Paragraph 99 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 99 of the Third-Party Complaint and therefore deny same.

100. Paragraph 100 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 100 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 100 of the Third-Party Complaint and therefore deny same.

101. Paragraph 101 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph

101 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 101 of the Third-Party Complaint and therefore deny same.

102. Paragraph 102 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 102 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 102 specifically directed to them and are without sufficient information to admit or deny the remaining allegations in Paragraph 102 of the Third-Party Complaint and therefore deny same.

103. Paragraph 103 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph

103 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 103 specifically directed to them and are without sufficient information to admit or deny the remaining allegations in Paragraph 103 of the Third-Party Complaint and therefore deny same.

104. Paragraph 104 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 104 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 104 of the Third-Party Complaint and therefore deny same.

105. Paragraph 105 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in

Paragraph 105 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 105 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 105 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 105 of the Third-Party Complaint and therefore deny same.

106. Paragraph 106 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 106 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 106 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 106 of the Third-Party Complaint and therefore deny same.

107. Paragraph 107 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 107 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 107 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 107 of the Third-Party Complaint and therefore deny same.

108. Paragraph 108 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 108 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 108 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 108 of the Third-Party Complaint and therefore deny same.

109. Paragraph 109 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which

contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 109 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 109 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 109 of the Third-Party Complaint and therefore deny same.

110. Paragraph 110 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 110 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 110 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 110 of the Third-Party Complaint and therefore deny same.

111. Paragraph 111 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the

Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 111 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 111 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 111 of the Third-Party Complaint and therefore deny same.

VI. In Subsequent Years, There Have Been Changes to Third-Party Defendants.

112. Paragraph 112 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, Paragraph 112 of the Third-Party Complaint contains a diagram to which no response is required. The allegations in Paragraph 112 of the Third-Party Complaint also constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 112 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 112 of the Third-Party Complaint.

113. Paragraph 113 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 113 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 113 of the Third-Party Complaint and therefore deny same.

114. Paragraph 114 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 114 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 114 of the Third-Party Complaint and therefore deny same.

115. Paragraph 115 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 115 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 115 of the Third-Party Complaint and therefore deny same.

116. Paragraph 116 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 116 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 116 of the Third-Party Complaint and therefore deny same.

117. Paragraph 117 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 117 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 117 of the Third-Party Complaint and therefore deny same.

118. Paragraph 118 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 118 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 118 of the Third-Party Complaint and therefore deny same.

119. Paragraph 119 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 119 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 119 of the Third-Party Complaint and therefore deny same.

120. Paragraph 120 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 120 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 120 of the Third-Party Complaint and therefore deny same.

121. Paragraph 121 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 121 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 121 of the Third-Party Complaint and therefore deny same.

122. Paragraph 122 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 122 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 122 of the Third-Party Complaint and therefore deny same.

123. Paragraph 123 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 123 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 123 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations of Paragraph 123 of the Third-Party Complaint.

124. Paragraph 124 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 124 of the Third-Party Complaint also constitute legal conclusions to which no response is required. To the extent a further response to the allegations of Paragraph 124 is deemed required, Third-Party Defendants admit that Colfax Corporation is no longer the corporate parent of Central

Mining or Charter and that ESAB Corporation became the corporate parent of the separate and distinct corporate entities Central Mining and Charter in 2022. Third-Party Defendants deny the remaining allegations of Paragraph 124 of the Third-Party Complaint.

FIRST CAUSE OF ACTION – UNJUST ENRICHMENT
(Against All Third Party Defendants)

125. Paragraph 125 of the Third-Party Complaint incorporates Paragraphs 1 through 124 in full by reference. Third-Party Defendants incorporate by reference their answers to Paragraphs 1 through 124 as if repeated herein.

126. The allegations in Paragraph 126 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response to Paragraph 126 of the Third-Party Complaint is deemed required, the Third-Party Defendants deny the allegations in Paragraph 126 of the Third-Party Complaint.

127. The allegations in Paragraph 127 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 127 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 127 of the Third-Party Complaint and therefore deny same.

128. The allegations in Paragraph 128 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 128 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 128 of the Third-Party Complaint and therefore deny same.

129. The allegations in Paragraph 129 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed

necessary, Third-Party Defendants deny the allegations in Paragraph 129 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 129 of the Third-Party Complaint and therefore deny same.

130. The allegations in Paragraph 130 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 130 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 130 of the Third-Party Complaint and therefore deny same.

SECOND CAUSE OF ACTION – CONSTRUCTIVE TRUST
(Against All Third-Party Defendants)

131. Paragraph 131 of the Third-Party Complaint incorporates Paragraphs 1 through 130 in full by reference. Third-Party Defendants incorporate by reference their answers to Paragraphs 1 through 130 as if repeated herein.

132. The allegations in Paragraph 132 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response to Paragraph 132 of the Third-Party Complaint is deemed required, the Third-Party Defendants deny the allegations in Paragraph 132 of the Third-Party Complaint.

133. The allegations in Paragraph 133 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 133 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 133 of the Third-Party Complaint and therefore deny same.

134. The allegations in Paragraph 134 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed

necessary, Third-Party Defendants deny the allegations in Paragraph 134 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 134 of the Third-Party Complaint and therefore deny same.

135. The allegations in Paragraph 135 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 135 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 135 of the Third-Party Complaint and therefore deny same.

136. The allegations in Paragraph 136 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 136 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 136 of the Third-Party Complaint and therefore deny same.

THIRD CAUSE OF ACTION – ALTER EGO AND VEIL-PIERCING LIABILITY
(Against All Third-Party Defendants)

137. Paragraph 137 of the Third-Party Complaint incorporates Paragraphs 1 through 136 in full by reference. Third-Party Defendants incorporate by reference their answers to Paragraphs 1 through 136 as if repeated herein.

138. The allegations in Paragraph 138 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response to Paragraph 138 of the Third-Party Complaint is deemed required, the Third-Party Defendants deny the allegations in Paragraph 138 of the Third-Party Complaint.

139. The allegations in Paragraph 139 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response to Paragraph 139 of

the Third-Party Complaint is deemed required, the Third-Party Defendants deny the allegations in Paragraph 139 of the Third-Party Complaint.

140. The allegations in Paragraph 140 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 140 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 140 of the Third-Party Complaint and therefore deny same.

141. The allegations in Paragraph 141 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 141 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 141 of the Third-Party Complaint and therefore deny same.

FOURTH CAUSE OF ACTION – ACCOUNTING
(Against All Third-Party Defendants)

142. Paragraph 142 of the Third-Party Complaint incorporates Paragraphs 1 through 141 in full by reference. Third-Party Defendants incorporate by reference their answers to Paragraphs 1 through 141 as if repeated herein.

143. The allegations in Paragraph 143 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response to Paragraph 143 of the Third-Party Complaint is deemed required, the Third-Party Defendants deny the allegations in Paragraph 143 of the Third-Party Complaint.

144. The allegations in Paragraph 144 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 144 specifically directed to

them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 144 of the Third-Party Complaint and therefore deny same.

145. The allegations in Paragraph 145 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 145 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 145 of the Third-Party Complaint and therefore deny same.

146. The allegations in Paragraph 146 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 146 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 146 of the Third-Party Complaint and therefore deny same.

PRAYER FOR RELIEF

Third-Party Defendants deny that the Receiver or Cape plc is entitled to the relief requested against them in the Third-Party Complaint.

AFFIRMATIVE DEFENSES

Without waiving and instead specifically preserving all of their objections and challenges to personal jurisdiction in South Carolina, as set forth in the 12(b) Motions, Motions to Dissolve, all of their objections and challenges to the Receiver's Proposed Order on December 4, 2023, all of their objections and challenges to the Court's December 6, 2023 Order denying Certain Third-Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motion to Dismiss for Lack of Personal Jurisdiction; and the grounds for the Appeal, Third-Party Defendants assert the affirmative defenses set forth below. By pleading these affirmative defenses, Third-Party

Defendants do not intend to alter, and shall not be deemed to have altered, the burden of proof and/or the burden of persuasion that otherwise exists with respect to any issues in this action. All affirmative defenses are pleaded in the alternative and do not constitute an admission of liability or that any party, individually or collectively, is entitled to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

The Third-Party Complaint fails to state facts sufficient to constitute a cause of action upon which relief can be granted against Third-Party Defendants.

SECOND AFFIRMATIVE DEFENSE

The Third-Party Complaint fails to plead jurisdiction over Third-Party Defendants, and indeed no such jurisdiction exists.

THIRD AFFIRMATIVE DEFENSE

The Third-Party Complaint does not allege that Third-Party Defendants are or may be liable to the Receiver or Cape plc for all or part of the underlying Plaintiffs' claims, and accordingly this third-party claim is improper and will only serve to complicate the litigation unduly or will prejudice parties in a substantial way. Further, the Receiver is not a defendant in Plaintiffs' underlying claims, and he has not moved to intervene in the underlying case. Therefore, for each of these reasons independently, the action should be dismissed or stricken pursuant to Rule 12(b)(6) and 14(a), SCRCP.

FOURTH AFFIRMATIVE DEFENSE

The appointment of the Receiver is invalid for the reasons set forth in the Motions to Dissolve and the Appeal, and thus the Receiver is without authority or power to bring the Third-Party Complaint on Cape plc's behalf.

FIFTH AFFIRMATIVE DEFENSE

The allegations in the Third-Party Complaint as to any wrongdoing or injury caused by Third-Party Defendants to the plaintiffs in the underlying action are so vague and ambiguous that it is not reasonable to request Third-Party Defendants to frame a responsive pleading.

SIXTH AFFIRMATIVE DEFENSE

The Receiver fails to allege a ripe and justiciable controversy with Third-Party Defendants.

SEVENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, by the doctrines of estoppel and/or waiver.

NINTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel and/or law of the case.

TENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, to the extent the claims against Third-Party Defendants were not filed within the applicable statute of limitations period or are otherwise time-barred.

ELEVENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, to the extent that it failed to take reasonable measures to mitigate, minimize, or avoid damages.

TWELFTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, by the doctrine of unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, to the extent that any of the costs for which Cape plc seeks defense or indemnification are unreasonable or unnecessary.

FOURTEENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, to the extent that they are released by a prior settlement or agreement.

FIFTEENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, to the extent that any other entity is properly responsible for Cape plc's defense and indemnity costs.

SIXTEENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred by lack of standing. Further, the claims asserted in the Third-Party Complaint are beyond the scope of the Receiver's appointment and/or duties.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred by lack of capacity.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Receiver's claims asserted in the Third-Party Complaint are barred by South Carolina's Door Closing Statute, S.C. Code Ann. § 15-5-150 (2022).

NINETEENTH AFFIRMATIVE DEFENSE

The claims asserted in the Third-Party Complaint are barred, in whole or in part, to the extent that Cape plc and/or Cape were and/or are adequately capitalized and/or have the ability to fund any judgment against them.

TWENTIETH AFFIRMATIVE DEFENSE

The claims asserted in the Third-Party Complaint are barred, in whole or in part, to the extent the Receiver has not identified any judgment creditors and/or to the extent damages/relief are being claimed for future claims.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Third-Party Defendants incorporate herein all affirmative defenses pleaded by any other third-party defendant in this action, to the extent applicable, and also reserve the right to assert any additional affirmative defenses.

WHEREFORE, Third-Party Defendants respectfully request that this Court enter a judgment:

1. Dismissing with prejudice all claims for relief against Third-Party Defendants; and
2. Awarding such other and further relief as may be appropriate.

JURY TRIAL DEMAND

Third-Party Defendants request trial by jury of all issues raised in the Third-Party Complaint.

Dated: January 2, 2024

GORDON REES SCULLY MANSUKHANI, LLP

By: s/A. Victor Rawl, Jr.

A. Victor Rawl, Jr. (SC 09261)

Email: vrawl@grsm.com

40 Calhoun Street, Suite 350

Charleston, SC 29401

Telephone: 843-278-5900

*Counsel for Third-Party Defendants
Charter Consolidated Ltd., ESAB
Corporation. and Central Mining and
Investment Corporation Ltd.*

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:
v.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
3M COMPANY, <i>et al.</i> ,	)	
	)	ANSWER OF MOHED ALTRAD
Defendants.	)	AND ALTRAD INVESTMENT
	)	AUTHORITY SAS TO THIRD-
*****	)	PARTY COMPLAINT
	)	(FILED SUBJECT TO PREVIOUSLY
CAPE PLC, individually and as successor in	)	FILED MOTIONS TO DISMISS,
interest to CAPE ASBESTOS COMPANY	)	PENDING APPEAL, AND POSITION
LIMITED, by and through its duly appointed	)	THAT THIRD-PARTY
Receiver Peter D. Protopapas,	)	DEFENDANTS HAVE NO
	)	OBLIGATION TO PARTICIPATE IN
Third-Party Plaintiff,	)	POST-APPEAL TRIAL COURT
	)	PROCEEDINGS AND THE TRIAL
v.	)	COURT AND RECEIVER HAVE NO
	)	AUTHORITY TO ACT PURSUANT
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	TO RULES 205 AND 241, SCACR)
	)	
Third-Party Defendants.	)	JURY TRIAL DEMANDED ON ALL
	)	ISSUES SO TRIABLE
	)	

Third-Party Defendants Mohed Altrad (“Mr. Altrad”) and Altrad Investment Authority SAS (“AIA”) (collectively, the “Altrad Defendants”), by and through the undersigned counsel, without waiving but instead specifically preserving their jurisdictional and other objections stated below, hereby answers the Third-Party Complaint (“Third-Party Complaint”) filed by Third-Party Plaintiff Cape PLC by and through its purported Receiver Peter Protopapas (“Third-Party Plaintiff” or “Receiver”) and any and all Cross-Claims asserted previously, or in the future, by any Co-Defendants or Third-Party Defendants, whether having appeared in the case at this time or not,

and states as follows. All allegations of the Third-Party Complaint—inclusive of all paragraphs, subparagraphs, headings, and footnotes—not hereinafter specifically admitted are denied.¹

The Altrad Defendants have filed notices of appeal regarding the Court’s December 6, 2023 Order denying their Motions to Dissolve Receivership and Motion to Dismiss for Lack of Personal Jurisdiction (“Appeal”). Accordingly, the Altrad Defendants submit this Answer without waiving and instead specifically preserving (1) all of their objections and challenges to personal jurisdiction in South Carolina as well as all other grounds for dismissal, as set forth in their motions to dismiss filed on September 1, 2023, and subsequent filings and oral argument in support thereof (collectively, “12(b) Motions”); (2) all of their objections and challenges to the appointment of the Receiver, as set forth in their motions to dissolve the receivership filed on September 1, 2023 and subsequent filings and oral argument in support thereof (collectively, “Motions to Dissolve”); (3) all of their objections and challenges to the Receiver’s Proposed Order on December 4, 2023, including, but not limited to, the counter proposed orders submitted by the Altrad Defendants; (4) all of their objections and challenges to the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction; (5) the grounds for Third-Party Defendants’ pending appeal of the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction; (6) that the Altrad Defendants have no obligation to participate in post-Appeal trial court proceedings related to the Third-Party Complaint, including no obligation to file the present Answer, and the trial court and Receiver have no authority or jurisdiction to act, pursuant to Rule

¹ By filing this Answer, the Altrad Defendants do not waive their previously filed motions to dismiss and motions to dissolve receivership or any of the arguments raised therein, including that this Court lacks personal jurisdiction over the Altrad Defendants and that all claims against the Altrad Defendants should be dismissed with prejudice.

205, SCACR; (7) that this matter is or should be stayed pursuant to Rule 241, SCACR; and (8) that the Altrad Defendants have no obligation to participate in discovery based on (6) and (7) and their pending motion for protective order and for stay of discovery filed on September 20, 2023.

INTRODUCTORY STATEMENT²

The Introductory Statement of the Third-Party Complaint contains inflammatory rhetoric and legal conclusions to which no response is required under the South Carolina Rules of Civil Procedure. However, due to the nature of the false and potentially defamatory statements contained therein, and without waiving their rights to require Third-Party Plaintiff to adhere to the South Carolina Rules of Civil Procedure with respect to the litigation of this matter, the Altrad Defendants deny the allegations contained therein.

PARTIES

1. The Altrad Defendants, upon information and belief, admit only that the Receiver bringing the Third-Party Complaint maintains a principal place of business in Richland County, South Carolina. All remaining allegations contained in Paragraph 1 of the Third-Party Complaint are denied.

2. The allegations of Paragraph 2 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 2 of the Third-Party Complaint and, therefore, deny the same.

² The Altrad Defendants include the headings as set forth in the original Third-Party Complaint for convenience of the Court. The Altrad Defendants specifically deny that any heading included in the Third-Party Complaint is an accurate or legally appropriate recitation of any fact or rule, and specifically preserve all rights with respect to disputing the same.

3. The allegations of Paragraph 3 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 3 of the Third-Party Complaint and, therefore, deny the same.

4. The allegations of Paragraph 4 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 4 of the Third-Party Complaint and, therefore, deny the same.

5. The allegations of Paragraph 5 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 5 of the Third-Party Complaint and, therefore, deny the same.

6. The allegations of Paragraph 6 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 6 of the Third-Party Complaint and, therefore, deny the same.

7. The allegations of Paragraph 7 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit

or deny the allegations contained in Paragraph 7 of the Third-Party Complaint and, therefore, deny the same.

8. The allegations of Paragraph 8 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 8 of the Third-Party Complaint and, therefore, deny the same.

9. The allegations of Paragraph 9 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 9 of the Third-Party Complaint and, therefore, deny the same.

10. The allegations of Paragraph 10 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 10 of the Third-Party Complaint and, therefore, deny the same.

11. The allegations of Paragraph 11 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 11 of the Third-Party Complaint and, therefore, deny the same.

12. The allegations of Paragraph 12 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 12 of the Third-Party Complaint and, therefore, deny the same.

13. The allegations of Paragraph 13 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 13 of the Third-Party Complaint and, therefore, deny the same.

14. The allegations of Paragraph 14 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 14 of the Third-Party Complaint and, therefore, deny the same.

15. The allegations of Paragraph 15 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 15 of the Third-Party Complaint and, therefore, deny the same.

16. The allegations of Paragraph 16 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit

or deny the allegations contained in Paragraph 16 of the Third-Party Complaint and, therefore, deny the same.

17. The allegations of Paragraph 17 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 17 of the Third-Party Complaint and, therefore, deny the same.

18. The allegations of Paragraph 18 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 18 of the Third-Party Complaint and, therefore, deny the same.

19. The allegations of Paragraph 19 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 19 of the Third-Party Complaint and, therefore, deny the same.

20. The allegations of Paragraph 20 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 20 of the Third-Party Complaint and, therefore, deny the same.

21. The allegations of Paragraph 21 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 21 of the Third-Party Complaint and, therefore, deny the same.

22. The allegations of Paragraph 22 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 22 of the Third-Party Complaint and, therefore, deny the same.

23. The allegations of Paragraph 23 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 23 of the Third-Party Complaint and, therefore, deny the same.

24. The allegations of Paragraph 24 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 24 of the Third-Party Complaint and, therefore, deny the same.

25. The Altrad Defendants admit the allegations of Paragraph 25 of the Third-Party Complaint.

26. The allegations of Paragraph 26 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 26 of the Third-Party Complaint and, therefore, deny the same.

27. The allegations of Paragraph 27 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 27 of the Third-Party Complaint and, therefore, deny the same.

28. The allegations of Paragraph 28 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 28 of the Third-Party Complaint and, therefore, deny the same.

29. With respect to the allegations of Paragraph 29 of the Third-Party Complaint, the Altrad Defendants admit that AIA is a *Societe par action simpliffee* (“SAS”) organized under the laws of France but deny that its principal place of business is Florensac, France.

30. The allegations of Paragraph 30 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 30 of the Third-Party Complaint and, therefore, deny the same.

31. The allegations of Paragraph 31 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 31 of the Third-Party Complaint and, therefore, deny the same.

32. The allegations of Paragraph 32 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 32 of the Third-Party Complaint and, therefore, deny the same.

33. The allegations of Paragraph 33 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 30 of the Third-Party Complaint and, therefore, deny the same.

34. The allegations of Paragraph 34 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 34 of the Third-Party Complaint and, therefore, deny the same.

35. The Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 35 of the Third-Party Complaint and, therefore, deny the same. To the extent the allegations of Paragraph 35 purport to state legal conclusions, including but not

limited to future amendments to the Third-Party Complaint, the Altrad Defendants deny such allegations.

JURISDICTION

36. Paragraph 36 of the Third-Party Complaint contains legal conclusions to which no response is required. To the extent a response is required, the Altrad Defendants state that Peter D. Protopapas was appointed as Receiver of Third-Party Plaintiff in another case, but that the Court has subsequently modified that appointment to now be over a different entity that was never the subject of a motion to appoint a receiver under South Carolina law. The remaining allegations in Paragraph 36 are denied, and the Altrad Defendants affirmatively aver that the appointment of the Receiver is both factually and legally improper.

37. Paragraph 37 of the Third-Party Complaint contains legal conclusions to which no response is required. To the extent a response is required, the Altrad Defendants deny the allegations in Paragraph 37 as alleged against them. The Altrad Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations as asserted against other Third-Party Defendants and on that basis deny the same.

VENUE

38. Paragraph 38 of the Third-Party Complaint contains legal conclusions to which no response is required. To the extent a response is required, the Altrad Defendants admit only that the referenced order was issued. That order speaks for itself and any allegations inconsistent with the terms of the order are denied. Any remaining allegations in Paragraph 38 are denied.

FACTUAL BACKGROUND

39. The Altrad Defendants deny the allegations contained in Paragraph 39 of the Third-Party Complaint.

40. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 40 of the Third-Party Complaint, and therefore deny the same.

41. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 41 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

42. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 42 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

43. The Altrad Defendants deny the allegations of Paragraph 43 of the Third-Party Complaint to the extent they are directed at the Altrad Defendants, and lack sufficient knowledge

or information to form a belief as to the truth of the allegations in Paragraph 43 of the Third-Party Complaint as to the other Third-Party Defendants, and therefore deny the same.

44. The Altrad Defendants deny the allegations of Paragraph 44 of the Third-Party Complaint to the extent they are directed at the Altrad Defendants, and lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 44 of the Third-Party Complaint as to the other Third-Party Defendants, and therefore deny the same.

“I. Cape Was Established As Part of a South African Mining Empire.”

45. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 45 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver’s characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

46. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 46 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver’s characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

47. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 47 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

48. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 48 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

49. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 49 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

50. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 50 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

51. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 51 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

52. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 52 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

53. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 53 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

54. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 54 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

55. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 55 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

56. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 56 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

57. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 57 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

58. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 58 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

59. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 59 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

60. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 60 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

61. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 61 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

62. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 62 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

63. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 63 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

64. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 64 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

65. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 65 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

66. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 66 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

67. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 67 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

68. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 68 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

69. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 69 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

“II. Cape Created NAAC to Facilitate Its Asbestos Scheme.”

70. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 70 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

71. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 71 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

72. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 72 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

73. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 73 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

74. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 74 of the Third-Party Complaint, and therefore deny the same.

75. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 75 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

76. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 76 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

77. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 77 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

78. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 78 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

79. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 79 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

80. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 80 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

“III. Cape Led Efforts in the U.S. and Internationally to Hide the Risks of Asbestos.”

81. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 81 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

82. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 82 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny

the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

83. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 83 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

84. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 84 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

85. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 85 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

86. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 86 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

87. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 87 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

88. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 88 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

“IV. Cape Implemented a Strategy to Evade Liability in the United States.”

89. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 89 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

90. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 90 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

91. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 91 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

92. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 92 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

93. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 93 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

94. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 94 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

95. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 95 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

96. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 96 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

97. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 97 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

98. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 98 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

99. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 99 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

100. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 100 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

101. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 101 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

102. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 102 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

103. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 103 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

104. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 104 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

105. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 105 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

“V. The Oppenheimers Implemented a Strategy to Further Evade Responsibility.”

106. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 106 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

107. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 107 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny

the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

108. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 108 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

109. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 109 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

110. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 110 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

111. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 111 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

“VI. In Subsequent Years, There Have Been Changes to Third-Party Defendants.”

112. The Altrad Defendants deny that they are successors in interest or beneficiaries of Cape's alleged liability-avoidance scheme, and further deny that they are co-responsible for Cape's alleged tortious conduct. The Altrad Defendants lack sufficient knowledge or information to form

a belief as to the truth of the remaining allegations in Paragraph 112 of the Third-Party Complaint, and therefore deny the same.

113. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 113 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

114. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 114 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

115. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 115 of the Third-Party Complaint, and therefore deny the same. To the extent that the allegations of Paragraph 115 imply or attempt to create rights for

the Receiver to amend the Third-Party Complaint beyond the rights created under the South Carolina Rules of Civil Procedure, the Altrad Defendants aver that such allegations constitute legal conclusions which need not be admitted or denied. To the extent the Court requests a response, the allegations are denied.

116. The Altrad Defendants deny the allegations in Paragraph 116 of the Third-Party Complaint.

117. The Altrad Defendants deny the allegations in Paragraph 117 of the Third-Party Complaint. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

118. The Altrad Defendants deny the allegations in Paragraph 118 of the Third-Party Complaint. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

119. The Altrad Defendants deny the allegation in Paragraph 119 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 119 of the

Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

120. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 120 of the Third-Party Complaint, and therefore deny the same.

121. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 121 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

122. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 122 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

123. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 123 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

124. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 124 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

FIRST CAUSE OF ACTION
UNJUST ENRICHMENT
(Against All Third-Party Defendants)

125. As to Paragraph 125 of the Third-Party Complaint, the Altrad Defendants incorporate and re-allege their answers to Paragraphs 1 through 124 as though fully set forth herein.

126. The Altrad Defendants aver that the allegations of Paragraph 126 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

127. The Altrad Defendants deny the allegation in Paragraph 127 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 127 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

128. The Altrad Defendants deny the allegation in Paragraph 128 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 128 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

129. The Altrad Defendants deny the allegation in Paragraph 129 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 129 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

130. The Altrad Defendants deny the allegation in Paragraph 130 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 130 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

SECOND CAUSE OF ACTION
CONSTRUCTIVE TRUST
(Against All Third-Party Defendants)

131. As to Paragraph 131 of the Third-Party Complaint, the Altrad Defendants incorporate and re-allege their answers to Paragraphs 1 through 130 as though fully set forth herein.

132. The Altrad Defendants aver that the allegations of Paragraph 132 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

133. The Altrad Defendants deny the allegation in Paragraph 133 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 133 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

134. The Altrad Defendants deny the allegation in Paragraph 134 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 134 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

135. The Altrad Defendants deny the allegation in Paragraph 135 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 135 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

136. The Altrad Defendants deny the allegation in Paragraph 136 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient

knowledge or information to form a belief as to the truth of the allegations in Paragraph 136 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

THIRD CAUSE OF ACTION
ALTER EGO AND VEIL-PIERCING LIABILITY
(Against All Third-Party Defendants)

137. As to Paragraph 137 of the Third-Party Complaint, the Altrad Defendants incorporate and re-allege their answers to Paragraphs 1 through 136 as though fully set forth herein.

138. The Altrad Defendants aver that the allegations of Paragraph 138 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

139. The Altrad Defendants aver that the allegations of Paragraph 139 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

140. The Altrad Defendants deny the allegation in Paragraph 140 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 140 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

141. The Altrad Defendants deny the allegation in Paragraph 141 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 141 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

FOURTH CAUSE OF ACTION
ACCOUNTING
(Against All Third-Party Defendants)

142. As to Paragraph 142 of the Third-Party Complaint, the Altrad Defendants incorporate and re-allege their answers to Paragraphs 1 through 141 as though fully set forth herein

143. The Altrad Defendants avers that the allegations of Paragraph 143 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

144. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 144 of the Third-Party Complaint, and therefore deny the same.

145. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 145 of the Third-Party Complaint, and therefore deny the same.

146. The Altrad Defendants deny the allegation in Paragraph 146 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 146 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

PRAYER FOR RELIEF

The Altrad Defendants deny that the Third-Party Plaintiff is entitled to any relief set forth in the Prayer for Relief on page 65 of the Third-Party Complaint (inclusive of all sub-parts) that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to whether the Third-Party Plaintiff is entitled to any relief set forth

in the Prayer for Relief on page 65 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

RESERVATION OF RIGHTS AND GENERAL DENIAL

The Altrad Defendants reserve the right to amend their pleadings in accordance with the South Carolina Rules of Civil Procedure or applicable law and to the extent they learn of new or additional information during discovery or otherwise. Any allegation not specifically admitted above is denied. The Altrad Defendants hereby assert the following defenses in total and/or partial bar of the claims for relief and/or alleged damages sought in the Third-Party Complaint. By including the following defenses, the Altrad Defendants do not assume the burden of proof with respect to any defense for which the Third-Party Plaintiff carries the burden.

DEFENSES

1. This Court lacks personal jurisdiction over the Altrad Defendants pursuant to SCRCP 12(b)(2), for at least the following reasons:

- a. The Court has no general personal jurisdiction over the Altrad Defendants.
- b. The Court has no specific personal jurisdiction over the Altrad Defendants.
- c. The minimal and conclusory allegations pleaded in the Third-Party Complaint that are specific to the Altrad Defendants are insufficient to establish personal jurisdiction under any legal theory.
- d. The Third-Party Complaint does not establish personal jurisdiction over the Altrad Defendants through specific allegations that would support a veil-piercing, alter ego, single business enterprise, “guiding spirit,” or any related theory of personal jurisdiction.

2. The Receiver does not have authority to prosecute this receivership action, and the receivership should be dissolved, for at least the following reasons:

- a. Cape PLC, a Jersey company with registration number 108031, was not lawfully served in the *Park* Lawsuit.
- b. Cape PLC, a Jersey company, was not lawfully served with either the summons and complaint or with the Motion to Appoint Receiver (in violation of South Carolina Code § 15-65-20).
- c. Park's counsel attached no proof of service to his Motion to Appoint 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, in fact it was not.
- d. On August 21, 2023, other Third-Party Defendants filed a Motion to Dissolve the Receivership. Their arguments included the lack of proof of service of either the *Park* Complaint or the Motion to Appoint Receiver upon Cape PLC.
- e. On August 28, 2023—more than fifteen months after this Court was told the *Park* matter was “fully resolved”—counsel for Mr. Park filed a “Notice of Filing of Ommitted (sic) Exhibit,” attaching an Affirmation of Andrew Morgan regarding his claimed service of the First Amended Summons—not the First Amended Complaint, just the First Amended Summons—on “Cape PLC”, an entity “that carries Companies House Reference Number 00040203.” However, as stated by Rule 4, SCRCP, “[t]he summons and complaint must be served together.” Because Mr. Morgan avers that he only served the First Amended Summons, and because Mr. Morgan attaches no

exhibit showing that he served both the summons and complaint, the purported service described in Mr. Morgan's Affirmation was ineffective.

- f. The Motion to Appoint Receiver represents that Cape "fail[ed] to respond to the **Second** Amended Summons in this action, properly served pursuant to Article 10 of the Hague Convention on March 8, 2022, *See Exhibit A.*" (emphasis added); Exhibit 2 at 5. The document filed by Mr. Park on August 28, 2023 does not aver to service of a **Second** Amended Summons on March 8, 2022; on the contrary, it avers to service of a **First** Amended Summons on December 14, 2021. At best it indicates service of the **First** Amended Summons on the UK entity with Companies House Reference Number 00040203. *Id.* Moreover, it does not allege that this occurred in March 2022, it alleges that the mailing occurred "[o]n 14 December 2021" and that under "CPR Part 6.26, proceedings sent by First Class Royal Mail post to an address within the jurisdiction are deemed to have been served on *"the second day after it was posted, left with, delivered to or collected by the relevant service provider ..."* Exhibit 1 at 3-4 (emphasis in original). This would make service of that **First** Amended Summons on December 16, 2021.
- g. Thus, the *Park* Motion to Appoint Receiver incorrectly told this Court that a U.K. company named Cape PLC was served with the Second Amended Summons on March 8, 2022, when in fact (1) there is no U.K. company named Cape PLC that is currently in existence, (2) the purported service

was of the First Amended Summons, and (3) the purported service of the First Amended Summons allegedly occurred on December 16, 2021.

- h. As of the date of this filing, there is still no proof of service of the **Second** Amended Summons and Second Amended Complaint on Cape PLC, as required by Rule 4, SCRCP.
- i. Neither the *Park* Motion to Appoint Receiver, nor the *Park* Order Appointing Receiver, made any reference to Cape Intermediate Holdings Limited, which is the current name of the U.K. entity “that carries Companies House Reference Number 00040203,” as Mr. Morgan admits in Paragraph 4 of his Affirmation. Even if there was some evidence that Cape Intermediate Holdings Limited (“CIHL”) had been served with the Motion to Appoint Receiver (there is not), because CIHL was not referenced by name in the *Park* Motion to Appoint Receiver, there was no way for it to have notice that its property was the subject of the Motion to Appoint Receiver, in violation of South Carolina Code § 15-65-20. Further, because CIHL was not referenced by name in the *Park* Order Appointing Receiver, it was ineffective to create a receivership over CIHL, which the public record and Mr. Morgan’s Affirmation clearly show is the current name of U.K. entity number 0040203—the entity originally known as Cape Asbestos Company Limited. Consequently, the *Park* Order Appointing Receiver did not lawfully create a receivership over Cape PLC, the Jersey company, or Cape Intermediate Holdings Limited, the U.K. company.

- j. The Court did not perform any of 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.
- k. Nor could there ever be an entry of default as to Cape PLC or CIHL because the First Amended Complaint was superseded by the Second Amended Complaint before the deadline to file a responsive pleading expired, and there is no proof of service that either entity was ever served with the Second Amended Complaint, which would have restarted the responsive pleading clock as to that operative pleading. In other words, with respect to Cape PLC and CIHL, there was no default as to the First Amended Complaint because it was superseded before the responsive pleading deadline expired, and there was no default as to the Second Amended Complaint because there is no filed proof of service showing that the Second Amended Complaint was ever served on either entity.
- l. The Order Appointing Receiver in the *Park* Lawsuit was based on additional incorrect representations to this Court, including that: (a) Cape PLC is “dissolved,” (b) Cape PLC has “forfeited its charter,” (c) Cape PLC was lawfully served with the Second Amended Summons in the *Park* Lawsuit, (d) Cape PLC is a U.K. company, and (e) 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 Receiver, and which were reflected in the Order

Appointing Receiver, were true, as any reasonably diligent review of the public record would have revealed.

- m. The Jersey company presently known as Cape PLC is **not** the successor-in-interest to the U.K. company Cape Asbestos Company Limited, as any reasonably diligent review of the public record would have revealed. There was no U.K. company known as Cape PLC at the time of the *Park* Motion to Appoint Receiver, and there is no U.K. company known as Cape PLC today. Indeed, Paragraph 4 of the Affirmation of Mr. Morgan admits that U.K. entity number 00040203—the entity originally incorporated in the U.K. as Cape Asbestos Company Limited—now bears the name Cape Intermediate Holdings Limited, not Cape PLC. Yet neither the *Park* Motion to Appoint Receiver, nor the *Park* Order Appointing Receiver, purported to seek or create a receivership over Cape Intermediate Holdings Limited.
- n. The Order Appointing 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 purported target of the receivership—Cape PLC.
- o. The Order Appointing Receiver in the *Park* Litigation is unlawful for the additional and independent reason that, 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.
- p. 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” prior to the filing of the Motion to Appoint Receiver, without any finding of liability as to Cape PLC or CIHL. Thus, Mr. Park lacked standing to even seek the appointment of a receiver, as he was not and is not a judgment creditor of Cape PLC.
- q. There is no justiciable controversy, and the Court has no jurisdiction to issue the advisory opinion sought by the Receiver, because the Motion to Appoint Receiver seeks to advance the plaintiffs’ position in unrelated asbestos cases rather than advance the interests of the clients in the *Park* Lawsuit.
- r. 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 and cannot purport to seek relief on behalf of the Park family.
- s. 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.

- t. The Order Appointing 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.
- u. The Order Appointing 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.
- v. The Order Appointing 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.”
- w. The Order Appointing 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. The same is true as to CIHL, which is not dissolved or insolvent and which is an active company in the U.K.

- x. The Order Appointing 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.
- y. The Order Appointing 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.
- z. The Order Appointing 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.
- aa. 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.
- bb. The Order Appointing 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.

- cc. 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 Receiver in the *Tibbs* Lawsuit, in violation of S.C. Code § 15-65-20. Footnote 13 of the *Park* Motion to Appoint Receiver claims that “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.” However, there is no proof of service in the record to substantiate the alleged service of the Motion to Appoint Receiver on Cape PLC. Further, even assuming the accuracy of Footnote 13, the alleged “address at which service was perfected” was not in Jersey, as reflected in the Affirmation of Mr. Morgan.
- dd. There is no proof of service in the record that CIHL was ever served with any Motion to Appoint Receiver, in the *Park* Lawsuit, in the *Tibbs* Lawsuit, or in any other lawsuit filed in South Carolina, in violation of S.C. Code § 15-65-20. Nor is there even a representation to the Court in the *Park* Motion to Appoint Receiver that CIHL was served with the motion. On the contrary, the motion only claims that “Plaintiffs, concurrently herewith, have provided copies of this motion to Cape PLC.” Since Mr. Park’s own filing admits that CIHL was not served with the Motion to Appoint Receiver, and since the Motion and the Order contain no reference CIHL, no receivership was lawfully created as to that entity.

- ee. The Order Appointing Receiver must be dissolved for purposes of the *Tibbs* Lawsuit because CIHL — the company originally known as Cape Asbestos Company Limited — is not named as a primary defendant by the Tibbs family. Thus, even if this Court had appointed a Receiver over CIHL, that Receiver could not assert Third-Party claims in the *Tibbs* Lawsuit because CIHL is not a primary defendant in the *Tibbs* Lawsuit. A party who is not a primary defendant has no primary liability to pass along to third-party defendants. CIHL in fact has no legal standing to assert any claims in the *Tibbs* Lawsuit.
- ff. The Order Appointing 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.
- gg. The Order Appointing 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 entity previously known as 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.
- hh. The Order Appointing 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. Similarly, as to CIHL, the U.K. courts have pre-existing exclusive jurisdiction regarding the oversight and management of the internal affairs of a U.K. company.

- ii. The Receiver is acting *ultra vires* in the *Tibbs* Lawsuit, has incurable conflicts of interest, and has violated the express terms of the Order Appointing 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.
- jj. The Receiver is acting *ultra vires* in the *Tibbs* Lawsuit, 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). The Third-Party Complaint amply demonstrates that Mr. Protopapas seeks to *impair* Cape PLC’s rights for the benefit of unspecified nonparty asbestos claimants in this and other lawsuits *against* Cape PLC, and whose claims the Receiver has no right to assert.

kk. The Order Appointing 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.

3. The Court lacks subject matter jurisdiction pursuant to SCRCP 12(b)(1), for at least the following reasons:

- a. The Receiver has no standing to bring this action because Cape PLC is not the successor-in-interest to Cape Asbestos Company Limited.
- b. The Receiver has no standing because he was never appointed as the receiver of Cape Intermediate Holdings Limited, which is not a named defendant in the *Tibbs* action, is not named in the motion to appoint the Receiver, and is not named in the order appointing the Receiver.
- c. The Receiver has no standing to bring this action because the *Park* receivership order purporting to appoint him receiver over Cape PLC is unlawful for the reasons explained in the motion to dissolve the receivership.
- d. The Receiver has no standing to assert self-piercing claims seeking to pierce the corporate veil of the entity over which he is a receiver.
- e. The Receiver's purported third-party complaint seeks an unlawful and expansive advisory opinion that cannot be reconciled with the limited scope of third-party practice in South Carolina.

- f. There is no derivative liability that the Receiver could seek to impose through the vehicle of a third-party complaint under SCRCP 14 because CIHL is not a named defendant in the *Tibbs* action.

4. The Receiver fails to state a claim for which relief can be granted pursuant to SCRCP 12(b)(6), for at least the following reasons:

- a. The Receiver fails to allege any facts specific to the Altrad Defendants that would support the elements of any of the claims alleged.
- b. The Receiver alleges in Paragraph 116 of the Third-Party Complaint that AIA, through certain foreign subsidiaries, acquired “Cape” on or around October 9, 2017, which is decades after the alleged wrongdoing occurred.

5. The action should be dismissed or stricken pursuant to SCRCP 12(e) because the Receiver must provide a more definite statement as to the allegations supporting the claims against the Altrad Defendants specifically in order to allow them to formulate a defense.

6. The action should be dismissed or stricken pursuant to SCRCP 14(a) because the Third-Party Complaint does not comply with the requirements for third-party practice in South Carolina.

7. The Receiver’s claims are barred by lack of standing.
8. The Receiver’s claims are barred by lack of capacity.
9. The Receiver’s claims fail because he asserts equitable claims that belong exclusively to the Plaintiffs in the primary action.
10. The Receiver fails to allege a ripe and justiciable controversy.
11. The Receiver’s claims are barred by the doctrine of laches.
12. The Receiver’s claims are barred by statutes of limitation and/or statutes of repose.

13. The Receiver's claims are barred by the doctrines of estoppel and/or waiver.
14. The Receiver's claims are barred by the doctrines of res judicata, collateral estoppel, and/or law of the case.
15. The Receiver's claims are barred because Defendant Cape PLC has no primary liability to Plaintiffs.
16. The Receiver's claims are barred by the doctrine of unclean hands.
17. The Receiver's claims are barred because the costs for which Cape PLC seeks defense, indemnification, or reimbursement are unreasonable, unnecessary, and collusive.
18. The Receiver's claims fail to the extent that any other entity is responsible for Cape PLC's defense and indemnity costs.
19. The Receiver's claims are barred by settlement and release.
20. The Receiver's claims are barred by spoliation.
21. The Receiver's claims are barred by the Receiver's failure to protect the interests of Cape PLC and failure to comply with the terms of the order appointing the Receiver.
22. The Receiver's claims are barred by South Carolina's Door Closing Statute, S.C. Code § 15-5-150.
23. The Receiver's claims are barred because the relevant equitable factors do not support any of the equitable relief sought.
24. The Altrad Defendants rely on and incorporate by reference as if fully recited herein all the defenses or affirmative defenses pleaded by any other Third-Party Defendant in this action.
25. To the extent not already included above, the Altrad Defendants incorporate by reference as if fully recited herein all defenses and arguments presented in any motion filed by the Altrad Defendants or any other Third-Party Defendant.

26. The Altrad Defendants reserve their right to amend this Answer to assert any additional defense, affirmative defense, or counterclaim of which they may become aware subsequent to the filing hereof.

PRAYER FOR RELIEF

The Altrad Defendants respectfully request that the Third-Party Complaint be dismissed in its entirety and with prejudice and that the Altrad Defendants be awarded their reasonable attorneys' fees, costs, and any such other and further relief as the Court deems just and proper.

The Altrad Defendants demand a jury trial on all issues so triable.

Respectfully submitted this 2nd day of January, 2024.

WOMBLE BOND DICKINSON (US) LLP

/s/ M. Elizabeth O'Neill

M. Elizabeth O'Neill (S.C. Bar No. 104013)

One Wells Fargo Center

301 S. College Street, Suite 3500

Charlotte, North Carolina 28202-6037

Ph.: (704) 350-6310

Elizabeth.ONeill@wbd-us.com

WBD.SCASBESTOS@wbd-us.com

Kevin A. Hall (S.C. Bar No. 015063)

M. Todd Carroll (S.C. Bar No. 74000)

1221 Main Street, Suite 1600

Columbia, South Carolina 29201

(803) 454-7710

kevin.hall@wbd-us.com

todd.carroll@wbd-us.com

*Attorneys for Third-Party Defendants Mohed Altrad
and Altrad Investment Authority SAS*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
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> ,	)	ANSWER OF ARRANCO US, LLC,
	)	HAWK BIDCO (US) INC., AND
Defendants.	)	SPARROWS OFFSHORE, LLC TO
	)	THIRD-PARTY COMPLAINT
*****	)	(FILED SUBJECT TO PREVIOUSLY
	)	FILED MOTIONS TO DISMISS,
CAPE PLC, individually and as successor in	)	PENDING APPEAL, AND POSITION
interest to CAPE ASBESTOS COMPANY	)	THAT THIRD-PARTY
LIMITED, by and through its duly appointed	)	DEFENDANTS HAVE NO
Receiver Peter D. Protopapas,	)	OBLIGATION TO PARTICIPATE IN
	)	POST-APPEAL TRIAL COURT
Third-Party Plaintiff,	)	PROCEEDINGS AND THE TRIAL
	)	COURT AND RECEIVER HAVE NO
v.	)	AUTHORITY TO ACT PURSUANT
	)	TO RULES 205 AND 241, SCACR)
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	
	)	JURY TRIAL DEMANDED ON ALL
Third-Party Defendants.	)	ISSUES SO TRIABLE
	)	

Third-Party Defendants ArranCo US, LLC (“ArranCo”), Hawk Bidco (US) Inc. (“Hawk Bidco”), and Sparrows Offshore, LLC (“Sparrows Offshore”) (collectively, the “Sparrows Defendants”), by and through the undersigned counsel, without waiving but instead specifically preserving their jurisdictional and other objections stated below, hereby answers the Third-Party Complaint (“Third-Party Complaint”) filed by Third-Party Plaintiff Cape PLC by and through its purported Receiver Peter Protopapas (“Third-Party Plaintiff” or “Receiver”) and any and all Cross-Claims asserted previously, or in the future, by any Co-Defendants or Third-Party Defendants, whether having appeared in the case at this time or not, and states as follows. All allegations of

the Third-Party Complaint—inclusive of all paragraphs, subparagraphs, headings, and footnotes—not hereinafter specifically admitted are denied.¹

The Sparrows Defendants have filed notices of appeal regarding the Court’s December 6, 2023 Order denying their Motions to Dissolve Receivership and Motion to Dismiss for Lack of Personal Jurisdiction (“Appeal”). Accordingly, the Sparrows Defendants submit this Answer without waiving and instead specifically preserving (1) all of their objections and challenges to personal jurisdiction in South Carolina as well as all other grounds for dismissal, as set forth in their motions to dismiss filed on August 21, 2023 and subsequent filings and oral argument in support thereof (collectively, “12(b) Motions”); (2) all of their objections and challenges to the appointment of the Receiver, as set forth in their motions to dissolve the receivership filed on August 21, 2023 and subsequent filings and oral argument in support thereof (collectively, “Motions to Dissolve”); (3) all of their objections and challenges to the Receiver’s Proposed Order on December 4, 2023, including, but not limited to, the counter proposed Orders submitted by the Sparrows Defendants; (4) all of their objections and challenges to the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction; (5) the grounds for Third-Party Defendants’ pending appeal of the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction; (6) that the Sparrows Defendants have no obligation to participate in post-Appeal trial court proceedings related to the Third-Party Complaint, including

¹ By filing this Answer, the Sparrows Defendants do not waive their previously filed motions to dismiss and motions to dissolve receivership or any of the arguments raised therein, including that this Court lacks personal jurisdiction over the Sparrows Defendants and that all claims against the Sparrows Defendants should be dismissed with prejudice.

no obligation to file the present Answer, and the trial court and Receiver have no authority or jurisdiction to act, pursuant to Rule 205, SCACR; (7) that this matter is or should be stayed pursuant to Rule 241, SCACR; and (8) that the Sparrows Defendants have no obligation to participate in discovery based on (6) and (7) and their pending motion for protective order and for stay of discovery filed on September 5, 2023.

INTRODUCTORY STATEMENT²

The Introductory Statement of the Third-Party Complaint contains inflammatory rhetoric and legal conclusions to which no response is required under the South Carolina Rules of Civil Procedure. However, due to the nature of the false and potentially defamatory statements contained therein, and without waiving their rights to require Third-Party Plaintiff to adhere to the South Carolina Rules of Civil Procedure with respect to the litigation of this matter, the Sparrows Defendants deny the allegations contained therein.

PARTIES

1. The Sparrows Defendants, upon information and belief, admit only that the Receiver bringing the Third-Party Complaint maintains a principal place of business in Richland County, South Carolina. All remaining allegations contained in Paragraph 1 of the Third-Party Complaint are denied.

2. The allegations of Paragraph 2 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient

² The Sparrows Defendants include the headings as set forth in the original Third-Party Complaint for convenience of the Court. The Sparrows Defendants specifically deny that any heading included in the Third-Party Complaint is an accurate or legally appropriate recitation of any fact or rule, and specifically preserve all rights with respect to disputing the same.

information to admit or deny the allegations contained in Paragraph 2 of the Third-Party Complaint and, therefore, deny the same.

3. The allegations of Paragraph 3 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 3 of the Third-Party Complaint and, therefore, deny the same.

4. The allegations of Paragraph 4 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 4 of the Third-Party Complaint and, therefore, deny the same.

5. The allegations of Paragraph 5 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 5 of the Third-Party Complaint and, therefore, deny the same.

6. The allegations of Paragraph 6 are not directed at the Sparrows Defendants, therefore, no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 6 of the Third-Party Complaint and, therefore, deny the same.

7. The allegations of Paragraph 7 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 7 of the Third-Party Complaint and, therefore, deny the same.

8. The allegations of Paragraph 8 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 8 of the Third-Party Complaint and, therefore, deny the same.

9. The allegations of Paragraph 9 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 9 of the Third-Party Complaint and, therefore, deny the same.

10. The allegations of Paragraph 10 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 10 of the Third-Party Complaint and, therefore, deny the same.

11. The allegations of Paragraph 11 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient

information to admit or deny the allegations contained in Paragraph 11 of the Third-Party Complaint and, therefore, deny the same.

12. The allegations of Paragraph 12 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 12 of the Third-Party Complaint and, therefore, deny the same.

13. The allegations of Paragraph 13 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 13 of the Third-Party Complaint and, therefore, deny the same.

14. The allegations of Paragraph 14 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 14 of the Third-Party Complaint and, therefore, deny the same.

15. The allegations of Paragraph 15 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 15 of the Third-Party Complaint and, therefore, deny the same.

16. The allegations of Paragraph 16 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 16 of the Third-Party Complaint and, therefore, deny the same.

17. The allegations of Paragraph 17 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 17 of the Third-Party Complaint and, therefore, deny the same.

18. The allegations of Paragraph 18 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 18 of the Third-Party Complaint and, therefore, deny the same.

19. The allegations of Paragraph 19 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 19 of the Third-Party Complaint and, therefore, deny the same.

20. The allegations of Paragraph 20 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient

information to admit or deny the allegations contained in Paragraph 20 of the Third-Party Complaint and, therefore, deny the same.

21. The allegations of Paragraph 21 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 21 of the Third-Party Complaint and, therefore, deny the same.

22. The allegations of Paragraph 22 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 22 of the Third-Party Complaint and, therefore, deny the same.

23. The allegations of Paragraph 23 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 23 of the Third-Party Complaint and, therefore, deny the same.

24. The allegations of Paragraph 24 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 24 of the Third-Party Complaint and, therefore, deny the same.

25. The allegations of Paragraph 25 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 25 of the Third-Party Complaint and, therefore, deny the same.

26. The allegations of Paragraph 26 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 26 of the Third-Party Complaint and, therefore, deny the same.

27. The allegations of Paragraph 27 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 27 of the Third-Party Complaint and, therefore, deny the same.

28. The allegations of Paragraph 28 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 28 of the Third-Party Complaint and, therefore, deny the same.

29. The allegations of Paragraph 29 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient

information to admit or deny the allegations contained in Paragraph 29 of the Third-Party Complaint and, therefore, deny the same.

30. The allegations of Paragraph 30 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 30 of the Third-Party Complaint and, therefore, deny the same.

31. The Sparrows Defendants admit the allegations contained in Paragraph 31 of the Third-Party Complaint.

32. As to Paragraph 32 of the Third-Party Complaint, the Sparrows Defendants admit that ArranCo US, LLC is a limited liability company organized under the laws of the State of Delaware, but deny the allegation that its principal place of business is in New Castle County, Delaware.

33. The Sparrows Defendants admit the allegations contained in Paragraph 33 of the Third-Party Complaint.

34. The allegations of Paragraph 34 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 34 of the Third-Party Complaint and, therefore, deny the same.

35. The Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 35 of the Third-Party Complaint and, therefore, deny the same. To the extent the allegations of Paragraph 35 purport to state legal conclusions, including but not

limited to future amendments to the Third-Party Complaint, the Sparrows Defendants deny such allegations.

JURISDICTION

36. Paragraph 36 of the Third-Party Complaint contains legal conclusions to which no response is required. To the extent a response is required, the Sparrows Defendants state that Peter D. Protopapas was appointed as Receiver of Third-Party Plaintiff in another case, but that the Court has subsequently modified that appointment to now be over a different entity that was never the subject of a motion to appoint a receiver under South Carolina law. The remaining allegations in Paragraph 36 are denied, and the Sparrows Defendants affirmatively aver that the appointment of the Receiver is both factually and legally improper.

37. Paragraph 37 of the Third-Party Complaint contains legal conclusions to which no response is required. To the extent a response is required, the Sparrows Defendants deny the allegations in Paragraph 37 as alleged against them. The Sparrows Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations as asserted against other Third-Party Defendants and on that basis deny the same.

VENUE

38. Paragraph 38 of the Third-Party Complaint contains legal conclusions to which no response is required. To the extent a response is required, the Sparrows Defendants admit only that the referenced order was issued. That order speaks for itself and any allegations inconsistent with the terms of the order are denied. Any remaining allegations in Paragraph 38 are denied.

FACTUAL BACKGROUND

39. The Sparrows Defendants deny the allegations contained in Paragraph 39 of the Third-Party Complaint.

40. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 40 of the Third-Party Complaint, and therefore deny the same.

41. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 41 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

42. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 42 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

43. The Sparrows Defendants deny the allegations of Paragraph 43 of the Third-Party Complaint to the extent they are directed at the Sparrows Defendants, and lack sufficient

knowledge or information to form a belief as to the truth of the allegations in Paragraph 43 of the Third-Party Complaint as to the other Third-Party Defendants, and therefore deny the same.

44. The Sparrows Defendants deny the allegations of Paragraph 44 of the Third-Party Complaint to the extent they are directed at the Sparrows Defendants, and lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 44 of the Third-Party Complaint as to the other Third-Party Defendants, and therefore deny the same.

“I. Cape Was Established As Part of a South African Mining Empire.”

45. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 45 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver’s characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

46. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 46 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver’s characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

47. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 47 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

48. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 48 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

49. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 49 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

50. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 50 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

51. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 51 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

52. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 52 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

53. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 53 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

54. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 54 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

55. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 55 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

56. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 56 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

57. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 57 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

58. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 58 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

59. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 59 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

60. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 60 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

61. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 61 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

62. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 62 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

63. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 63 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

64. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 64 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

65. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 65 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

66. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 66 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

67. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 67 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

68. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 68 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

69. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 69 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

“II. Cape Created NAAC to Facilitate Its Asbestos Scheme.”

70. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 70 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

71. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 71 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

72. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 72 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

73. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 73 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

74. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 74 of the Third-Party Complaint, and therefore deny the same.

75. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 75 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

76. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 76 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

77. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 77 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

78. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 78 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

79. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 79 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

80. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 80 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

“III. Cape Led Efforts in the U.S. and Internationally to Hide the Risks of Asbestos.”

81. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 81 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

82. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 82 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or

deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

83. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 83 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

84. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 84 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

85. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 85 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

86. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 86 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

87. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 87 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

88. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 88 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

“IV. Cape Implemented a Strategy to Evade Liability in the United States.”

89. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 89 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

90. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 90 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

91. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 91 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

92. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 92 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

93. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 93 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

94. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 94 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

95. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 95 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

96. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 96 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

97. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 97 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

98. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 98 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

99. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 99 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

100. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 100 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

101. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 101 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

102. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 102 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

103. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 103 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

104. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 104 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

105. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 105 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

“V. The Oppenheimers Implemented a Strategy to Further Evade Responsibility.”

106. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 106 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

107. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 107 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or

deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

108. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 108 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

109. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 109 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

110. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 110 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

111. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 111 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

“VI. In Subsequent Years, There Have Been Changes to Third-Party Defendants.”

112. As to Paragraph 112 of the Third-Party Complaint, the Sparrows Defendants deny that they are successors in interest or beneficiaries of Cape's alleged liability-avoidance scheme, and further deny that they are co-responsible for Cape's alleged tortious conduct. The Sparrows

Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 112 of the Third-Party Complaint, and therefore deny the same.

113. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 113 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

114. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 114 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

115. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 115 of the Third-Party Complaint, and therefore deny the same. To the extent that the allegations of Paragraph 115 imply or attempt to create rights for

the Receiver to amend the Third-Party Complaint beyond the rights created under the South Carolina Rules of Civil Procedure, the Sparrows Defendants aver that such allegations constitute legal conclusions which need not be admitted or denied. To the extent the Court requests a response, the allegations are denied.

116. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 116 of the Third-Party Complaint, and therefore deny the same.

117. The Sparrows Defendants deny the allegations in Paragraph 117 of the Third-Party Complaint. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

118. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 118 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

119. The Sparrows Defendants deny the allegation in Paragraph 119 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 119 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

120. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 120 of the Third-Party Complaint, and therefore deny the same.

121. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 121 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

122. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 122 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an

accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

123. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 123 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

124. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 124 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

FIRST CAUSE OF ACTION
UNJUST ENRICHMENT
(Against All Third-Party Defendants)

125. As to Paragraph 125 of the Third-Party Complaint, the Sparrows Defendants incorporate and re-allege their answers to Paragraphs 1 through 124 as though fully set forth herein.

126. The Sparrows Defendants aver that the allegations of Paragraph 126 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

127. The Sparrows Defendants deny the allegation in Paragraph 127 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 127 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

128. The Sparrows Defendants deny the allegation in Paragraph 128 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 128 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

129. The Sparrows Defendants deny the allegation in Paragraph 129 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 129 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

130. The Sparrows Defendants deny the allegation in Paragraph 130 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient

knowledge or information to form a belief as to the truth of the allegations in Paragraph 130 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

SECOND CAUSE OF ACTION
CONSTRUCTIVE TRUST
(Against All Third-Party Defendants)

131. As to Paragraph 131 of the Third-Party Complaint, the Sparrows Defendants incorporate and re-allege their answers to Paragraphs 1 through 130 as though fully set forth herein.

132. The Sparrows Defendants aver that the allegations of Paragraph 132 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

133. The Sparrows Defendants deny the allegation in Paragraph 133 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 133 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

134. The Sparrows Defendants deny the allegation in Paragraph 134 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 134 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

135. The Sparrows Defendants deny the allegation in Paragraph 135 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 135 of the

Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

136. The Sparrows Defendants deny the allegation in Paragraph 136 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 136 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

THIRD CAUSE OF ACTION
ALTER EGO AND VEIL-PIERCING LIABILITY
(Against All Third-Party Defendants)

137. As to Paragraph 137 of the Third-Party Complaint, the Sparrows Defendants incorporate and re-allege their answers to Paragraphs 1 through 136 as though fully set forth herein.

138. The Sparrows Defendants aver that the allegations of Paragraph 138 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

139. The Sparrows Defendants aver that the allegations of Paragraph 139 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

140. The Sparrows Defendants deny the allegation in Paragraph 140 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 140 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

141. The Sparrows Defendants deny the allegation in Paragraph 141 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient

knowledge or information to form a belief as to the truth of the allegations in Paragraph 141 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

FOURTH CAUSE OF ACTION
ACCOUNTING
(Against All Third-Party Defendants)

142. As to Paragraph 142 of the Third-Party Complaint, the Sparrows Defendants incorporate and re-allege their answers to Paragraphs 1 through 141 as though fully set forth herein

143. The Sparrows Defendants aver that the allegations of Paragraph 143 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

144. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 144 of the Third-Party Complaint, and therefore deny the same.

145. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 145 of the Third-Party Complaint, and therefore deny the same.

146. The Sparrows Defendants deny the allegation in Paragraph 146 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 146 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

PRAYER FOR RELIEF

The Sparrows Defendants deny that the Third-Party Plaintiff is entitled to any relief set forth in the Prayer for Relief on page 65 of the Third-Party Complaint (inclusive of all sub-parts)

that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to whether the Third-Party Plaintiff is entitled to any relief set forth in the Prayer for Relief on page 65 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

RESERVATION OF RIGHTS AND GENERAL DENIAL

The Sparrows Defendants reserve the right to amend their pleadings in accordance with the South Carolina Rules of Civil Procedure or applicable law and to the extent they learn of new or additional information during discovery or otherwise. Any allegation not specifically admitted above is denied. The Sparrows Defendants hereby assert the following defenses in total and/or partial bar of the claims for relief and/or alleged damages sought in the Third-Party Complaint. By including the following defenses, the Sparrows Defendants do not assume the burden of proof with respect to any defense for which the Third-Party Plaintiff carries the burden.

DEFENSES

1. This Court lacks personal jurisdiction over the Sparrows Defendants pursuant to SCRCP 12(b)(2), for at least the following reasons:

- a. The Court has no general personal jurisdiction over the Sparrows Defendants.
- b. The Court has no specific personal jurisdiction over the Sparrows Defendants.
- c. The minimal and conclusory allegations pleaded in the Third-Party Complaint that are specific to the Sparrows Defendants are insufficient to establish personal jurisdiction under any legal theory.
- d. The Third-Party Complaint does not establish personal jurisdiction over the Sparrows Defendants through specific allegations that would support

a veil-piercing, alter ego, single business enterprise, “guiding spirit,” or any related theory of personal jurisdiction.

2. The Receiver does not have authority to prosecute this receivership action, and the receivership should be dissolved, for at least the following reasons:

- a. Cape PLC, a Jersey company with registration number 108031, was not lawfully served in the separate *Park* lawsuit.
- b. Cape PLC, a Jersey company, was not lawfully served with either the summons and complaint or with the Motion to Appoint Receiver (in violation of South Carolina Code § 15-65-20).
- c. Park’s counsel attached no proof of service to his Motion to Appoint 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, in fact it was not.
- d. On August 21, 2023, other Third-Party Defendants filed a Motion to Dissolve the Receivership. Their arguments included the lack of proof of service of either the *Park* Complaint or the Motion to Appoint Receiver upon Cape PLC.
- e. On August 28, 2023—more than fifteen months after this Court was told the *Park* matter was “fully resolved”—counsel for Mr. Park filed a “Notice of Filing of Ommitted (sic) Exhibit,” attaching an Affirmation of Andrew Morgan regarding his claimed service of the First Amended Summons—not the First Amended Complaint, just the First Amended Summons—on “Cape PLC”, an entity “that carries Companies House Reference Number

00040203.” However, as stated by Rule 4, SCRCPP, “[t]he summons and complaint must be served together.” Because Mr. Morgan avers that he only served the First Amended Summons, and because Mr. Morgan attaches no exhibit showing that he served both the summons and complaint, the purported service described in Mr. Morgan’s Affirmation was ineffective.

- f. The Motion to Appoint Receiver represents that Cape “fail[ed] to respond to the **Second** Amended Summons in this action, properly served pursuant to Article 10 of the Hague Convention on March 8, 2022, *See* Exhibit A.” (emphasis added); Exhibit 2 at 5. The document filed by Mr. Park on August 28, 2023 does not aver to service of a **Second** Amended Summons on March 8, 2022; on the contrary, it avers to service of a **First** Amended Summons on December 14, 2021. At best it indicates service of the **First** Amended Summons on the UK entity with Companies House Reference Number 00040203. *Id.* Moreover, it does not allege that this occurred in March 2022, it alleges that the mailing occurred “[o]n 14 December 2021” and that under “CPR Part 6.26, proceedings sent by First Class Royal Mail post to an address within the jurisdiction are deemed to have been served on “*the second day after it was posted, left with, delivered to or collected by the relevant service provider ...*” Exhibit 1 at 3-4 (emphasis in original). This would make service of that **First** Amended Summons on December 16, 2021.
- g. Thus, the *Park* Motion to Appoint Receiver incorrectly told this Court that

a U.K. company named Cape PLC was served with the Second Amended Summons on March 8, 2022, when in fact (1) there is no U.K. company named Cape PLC that is currently in existence, (2) the purported service was of the First Amended Summons, and (3) the purported service of the First Amended Summons allegedly occurred on December 16, 2021.

- h. As of the date of this filing, there is still no proof of service of the **Second** Amended Summons and Second Amended Complaint on Cape PLC, as required by Rule 4, SCRCP.
- i. Neither the *Park* Motion to Appoint Receiver, nor the *Park* Order Appointing Receiver, made any reference to Cape Intermediate Holdings Limited, which is the current name of the U.K. entity “that carries Companies House Reference Number 00040203,” as Mr. Morgan admits in Paragraph 4 of his Affirmation. Even if there was some evidence that Cape Intermediate Holdings Limited (“CIHL”) had been served with the Motion to Appoint Receiver (there is not), because CIHL was not referenced by name in the *Park* Motion to Appoint Receiver, there was no way for it to have notice that its property was the subject of the Motion to Appoint Receiver, in violation of South Carolina Code § 15-65-20. Further, because CIHL was not referenced by name in the *Park* Order Appointing Receiver, it was ineffective to create a receivership over CIHL, which the public record and Mr. Morgan’s Affirmation clearly show is the current name of U.K. entity number 0040203—the entity originally known as Cape Asbestos Company Limited. Consequently, the *Park* Order Appointing Receiver did

not lawfully create a receivership over Cape PLC, the Jersey company, or Cape Intermediate Holdings Limited, the U.K. company.

- j. The Court did not perform any of 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.
- k. Nor could there ever be an entry of default as to Cape PLC or CIHL because the First Amended Complaint was superseded by the Second Amended Complaint before the deadline to file a responsive pleading expired, and there is no proof of service that either entity was ever served with the Second Amended Complaint, which would have restarted the responsive pleading clock as to that operative pleading. In other words, with respect to Cape PLC and CIHL, there was no default as to the First Amended Complaint because it was superseded before the responsive pleading deadline expired, and there was no default as to the Second Amended Complaint because there is no filed proof of service showing that the Second Amended Complaint was ever served on either entity.
- l. The Order Appointing Receiver in the *Park* Lawsuit was based on additional incorrect representations to this Court, including that: (a) Cape PLC is “dissolved,” (b) Cape PLC has “forfeited its charter,” (c) Cape PLC was lawfully served with the Second Amended Summons in the *Park* lawsuit, (d)

Cape PLC is a U.K. company, and (e) 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 Receiver, and which were reflected in the Order Appointing Receiver, were true, as any reasonably diligent review of the public record would have revealed.

- m. The Jersey company presently known as Cape PLC is **not** the successor-in-interest to the U.K. company Cape Asbestos Company Limited, as any reasonably diligent review of the public record would have revealed. There was no U.K. company known as Cape PLC at the time of the *Park* Motion to Appoint Receiver, and there is no U.K. company known as Cape PLC today. Indeed, Paragraph 4 of the Affirmation of Mr. Morgan admits that U.K. entity number 00040203—the entity originally incorporated in the U.K. as Cape Asbestos Company Limited—now bears the name Cape Intermediate Holdings Limited, not Cape PLC. Yet neither the *Park* Motion to Appoint Receiver, nor the *Park* Order Appointing Receiver, purported to seek or create a receivership over Cape Intermediate Holdings Limited.
- n. The Order Appointing Receiver in the *Park* action is unconstitutional and unlawful because the Court does not have, and made no finding that it has, personal jurisdiction over the purported target of the receivership—Cape PLC.
- o. The Order Appointing Receiver in the *Park* action is unlawful for the additional and independent reason that, 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.

- p. 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” prior to the filing of the Motion to Appoint Receiver, without any finding of liability as to Cape PLC or CIHL. Thus, Mr. Park lacked standing to even seek the appointment of a receiver, as he was not and is not a judgment creditor of Cape PLC.
- q. There is no justiciable controversy, and the Court has no jurisdiction to issue the advisory opinion sought by the Receiver, because the Motion to Appoint Receiver seeks to advance the plaintiffs’ position in unrelated asbestos cases rather than advance the interests of the clients in the *Park* lawsuit.
- r. 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 and cannot purport to seek relief on behalf of the Park plaintiffs.
- s. 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.

- t. The Order Appointing 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.
- u. The Order Appointing 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* action or the present *Tibbs* lawsuit.
- v. The Order Appointing 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.”
- w. The Order Appointing 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. The same is true as to CIHL, which is not dissolved or insolvent and which is an active company in the U.K.

- x. The Order Appointing 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.
- y. The Order Appointing 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.
- z. The Order Appointing 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.
- aa. 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.

- bb. The Order Appointing 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.
- cc. 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 Receiver in the *Tibbs* lawsuit, in violation of S.C. Code § 15-65-20. Footnote 13 of the *Park* Motion to Appoint Receiver claims that “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.” However, there is no proof of service in the record to substantiate the alleged service of the Motion to Appoint Receiver on Cape PLC. Further, even assuming the accuracy of Footnote 13, the alleged “address at which service was perfected” was not in Jersey, as reflected in the Affirmation of Mr. Morgan.
- dd. There is no proof of service in the record that CIHL was ever served with any Motion to Appoint Receiver, in the *Park* lawsuit, in the *Tibbs* lawsuit, or in any other lawsuit filed in South Carolina, in violation of S.C. Code § 15-65-20. Nor is there even a representation to the Court in the *Park* Motion to Appoint Receiver that CIHL was served with the motion. On the contrary, the motion only claims that “Plaintiffs, concurrently herewith, have provided copies of this motion to Cape PLC.” Since Mr. Park’s own filing admits that CIHL was not

served with the Motion to Appoint Receiver, and since the Motion and the Order contain no reference CIHL, no receivership was lawfully created as to that entity.

- ee. The Order Appointing Receiver must be dissolved for purposes of the *Tibbs* lawsuit because CIHL — the company originally known as Cape Asbestos Company Limited — is not named as a primary defendant by the *Tibbs* plaintiffs. Thus, even if this Court had appointed a Receiver over CIHL, that Receiver could not assert Third-Party claims in the *Tibbs* lawsuit because CIHL is not a primary defendant in the *Tibbs* lawsuit. A party who is not a primary defendant has no primary liability to pass along to third-party defendants. CIHL in fact has no legal standing to assert any claims in the *Tibbs* lawsuit.
- ff. The Order Appointing 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.
- gg. The Order Appointing 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 entity previously known as 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.

- hh. The Order Appointing 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. Similarly, as to CIHL, the U.K. courts have pre-existing exclusive jurisdiction regarding the oversight and management of the internal affairs of a U.K. company.
- ii. The Receiver is acting *ultra vires* in the *Tibbs* lawsuit, has incurable conflicts of interest, and has violated the express terms of the Order Appointing 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.
- jj. The Receiver is acting *ultra vires* in the *Tibbs* lawsuit, 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). The Third-Party Complaint amply demonstrates that Mr. Protopapas seeks to

impair Cape PLC's rights for the benefit of unspecified nonparty asbestos claimants in this and other lawsuits *against* Cape PLC, and whose claims the Receiver has no right to assert.

kk. The Order Appointing 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.

3. The Court lacks subject matter jurisdiction pursuant to SCRCP 12(b)(1), for at least the following reasons:

- a. The Receiver has no standing to bring this action because Cape PLC is not the successor-in-interest to Cape Asbestos Company Limited.
- b. The Receiver has no standing because he was never appointed as the receiver of Cape Intermediate Holdings Limited, which is not a named defendant in the *Tibbs* action, is not named in the motion to appoint the Receiver, and is not named in the order appointing the Receiver.
- c. The Receiver has no standing to bring this action because the *Park* receivership order purporting to appoint him receiver over Cape PLC is unlawful for the reasons explained in the motion to dissolve the receivership.
- d. The Receiver has no standing to assert self-piercing claims seeking to pierce the corporate veil of the entity over which he is a receiver.
- e. The Receiver's purported third-party complaint seeks an unlawful and expansive advisory opinion that cannot be reconciled with the limited

scope of third-party practice in South Carolina.

- f. There is no derivative liability that the Receiver could seek to impose through the vehicle of a third-party complaint under SCRCP 14 because CIHL is not a named defendant in the *Tibbs* action.

4. The Receiver fails to state a claim for which relief can be granted pursuant to SCRCP 12(b)(6), for at least the following reasons:

- a. The Receiver fails to allege any facts specific to the Sparrows Defendants that would support the elements of any of the claims alleged.
- b. The Receiver alleges in Paragraph 117 of the Third-Party Complaint that “Altrad Group” acquired “Sparrows Offshore Group Ltd. in 2022,” which is decades after the alleged wrongdoing occurred.
- c. The Sparrows Defendants did not exist during the time period when the alleged tortious conduct occurred.

5. The action should be dismissed or stricken pursuant to SCRCP 12(e) because the Receiver must provide a more definite statement as to the allegations supporting the claims against the Sparrows Defendants specifically in order to allow them to formulate a defense.

6. The action should be dismissed or stricken pursuant to SCRCP 14(a) because the Third-Party Complaint does not comply with the requirements for third-party practice in South Carolina.

7. The Receiver’s claims are barred by lack of standing.

8. The Receiver’s claims are barred by lack of capacity.

9. The Receiver’s claims fail because he asserts equitable claims that belong exclusively to the Plaintiffs in the primary action.

10. The Receiver fails to allege a ripe and justiciable controversy.
11. The Receiver's claims are barred by the doctrine of laches.
12. The Receiver's claims are barred by statutes of limitation and/or statutes of repose.
13. The Receiver's claims are barred by the doctrines of estoppel and/or waiver.
14. The Receiver's claims are barred by the doctrines of res judicata, collateral estoppel, and/or law of the case.
15. The Receiver's claims are barred because Defendant Cape PLC has no primary liability to Plaintiffs.
16. The Receiver's claims are barred by the doctrine of unclean hands.
17. The Receiver's claims are barred because the costs for which Cape PLC seeks defense, indemnification, or reimbursement are unreasonable, unnecessary, and collusive.
18. The Receiver's claims fail to the extent that any other entity is responsible for Cape PLC's defense and indemnity costs.
19. The Receiver's claims are barred by settlement and release.
20. The Receiver's claims are barred by spoliation.
21. The Receiver's claims are barred by the Receiver's failure to protect the interests of Cape PLC and failure to comply with the terms of the order appointing the Receiver.
22. The Receiver's claims are barred by South Carolina's Door Closing Statute, S.C. Code § 15-5-150.
23. The Receiver's claims are barred because the relevant equitable factors do not support any of the equitable relief sought.
24. The Sparrows Defendants rely on and incorporate by reference as if fully recited herein all the defenses or affirmative defenses pleaded by any other Third-Party Defendant in this

action.

25. To the extent not already included above, the Sparrows Defendants incorporate by reference as if fully recited herein all defenses and arguments presented in any motion filed by the Sparrows Defendants or any other Third-Party Defendant.

26. The Sparrows Defendants reserve their right to amend this Answer to assert any additional defense, affirmative defense, or counterclaim of which they may become aware subsequent to the filing hereof.

PRAYER FOR RELIEF

The Sparrows Defendants respectfully request that the Third-Party Complaint be dismissed in its entirety and with prejudice and that the Sparrows Defendants be awarded their reasonable attorneys' fees, costs, and any such other and further relief as the Court deems just and proper.

The Sparrows Defendants demand a jury trial on all issues so triable.

Respectfully submitted this 2nd day of January, 2024.

RICHARDSON, PLOWDEN & ROBINSON, PA

s/ Steven J. Pugh

Steven J. Pugh (S.C. Bar No. 14341)
 Benjamin P. Carlton (S.C. Bar No. 101142)
 1900 Barnwell Street
 Columbia, South Carolina 29201
 Tel.: (803) 771-4400
spugh@richardsonplowden.com
bcarlton@richardsonplowden.com

Attorneys for Third-Party Defendants ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JOHN A. TIBBS and MARGARET B. TIBBS,
Plaintiffs,

v.

3M COMPANY *et al.*,

Defendants.

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

Third-Party Plaintiff,

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.;

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

**THE RECEIVER FOR CAPE PLC'S
PRE-TRIAL HEARING STATUS REPORT**

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 case is scheduled to be tried in the April 15, 2024 trial block. Third-Party Plaintiff Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd., n/k/a Cape Intermediate Holdings Ltd. (“Cape”), by and through its duly appointed Receiver Peter D. Protopapas (the “Receiver”) submits this status report, including regarding outstanding issues and logistics related to the upcoming non-jury trial, and in anticipation of the pre-trial conference scheduled for April 10, 2024.

I. Procedural History

This case is a third-party action filed on June 30, 2023, in the *John A. Tibbs and Margaret B. Tibbs v. 3M Company et al.* case. The full *Tibbs* case, including the Receiver’s third-party action against various third-party defendants,¹ is scheduled to be tried in the April 15, 2024 trial block, including against the following 13 third-party defendants:

¹ In the Third-Party Complaint, apart from those identified herein, the Receiver named 20 other entities as Third-Party Defendants in this action. Of those 20 entities, 7 entities (all affiliated with the Altrad Third-Party Defendants) refused to participate in the action and have had default entered against them by the Court; one entity, De Beers S.A., was found to have ceased operation and been subsumed by another Third-Party Defendant, De Beers PLC; and 11 entities identified as Oppenheimer Third-Party Defendants, as well as Law Debenture Corporation PLC (originally identified as an Altrad Third-Party Defendant), have been voluntarily dismissed without prejudice by the Receiver.

- **The Oppenheimer Third-Party Defendants:** Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; De Beers PLC; De Beers UK Ltd.; De Beers Consolidated Mines Proprietary Ltd.; and De Beers Centenary AG.
- **The Charter Third-Party Defendants:** Charter Consolidated Ltd.; Central Mining & Investment Corporation Ltd. (“Central Mining”); and ESAB Corporation.
- **The Altrad Owners Third-Party Defendants:** Mohed Altrad; and Altrad Investment Authority S.A.S.
- **The Altrad Sparrows Third-Party Defendants:** ArranCo US, LLC (“Arranco”); Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC.

From August to October 2023, Third-Party Defendants filed numerous motions to dismiss the causes of action against them and to dissolve the Receivership, for which the Court held a hearing on October 25, 2023, and which the Court denied by orders dated December 6 and 15, 2023.

Subsequently, although the Receiver has attempted to progress the action by seeking relevant discovery with respect to the claims at issue, the Third-Party Defendants have filed multiple appeals challenging the jurisdiction of this Court and the ability of the Receiver to progress the matter. Thus, the Third-Party Defendants forced the Receiver to file multiple motions to compel discovery on January 12, 2024, which the Court granted on March 12, 2024 (after summarizing the full relevant history of the Third-Party Defendants’ attempts at delay).

As described in the next section, Third-Party Defendants have refused to comply with that March 12 Order. Instead, on or about March 19, 2024, the Charter and Altrad Third-Party Defendants filed appeals of the Court’s interlocutory discovery order, which the Receiver has

moved to dismiss in the Court of Appeals. The Oppenheimer Third-Party Defendants have also refused to provide fulsome discovery.²

II. Status of Discovery

As this case has been pending since June 30, 2023, the Receiver has diligently pursued discovery by serving on each Third-Party Defendant: (i) one basic set of interrogatories, (ii) one set of requests for production, (iii) notices for deposition pursuant to Rule 30(b)(6), SCRCp, and (iv) requests to admit the authenticity of records referenced in the Complaint and submitted previously to the Court in connection with the Receiver's omnibus opposition to the Third-Party Defendants' motions to dissolve.

Despite the Receiver promptly serving written discovery and noticing depositions at the onset of this litigation, the Altrad and Charter Third-Party Defendants have failed to provide any any responsive materials—in direct contravention to the Court's orders, including its March 12, 2024 discovery order ("Discovery Order"). Although on March 26, 2024, the Oppenheimer Third-Party Defendants provided supplemental responses and objections to the Receiver's discovery requests, those responses are deficient, including without limitation, based on frivolous objections that (1) construe "Cape" to mean only the entity organized in the Bailiwick of Jersey as of 2011, (2) narrowly construe documents they consider to be in their possession, custody, or control, and (3) explicitly refuse to produce any documents during years highly relevant to the Receiver's claims. In addition, all Third-Party Defendants have refused to provide any witness for

² On April 3, 2024, the Oppenheimer Third-Party Defendants moved for a continuance of the trial in this matter. Additionally, via email on April 4, 2024, the Oppenheimer Third-Party Defendants requested entry of a scheduling order in this matter and objected to the Rule 30(b)(6) notices of the Oppenheimer Third-Party Defendants as well as the de bene esse depositions scheduled for April 11 and 12, 2024, noting they will be forced to file motions for protective order if the Receiver insists on moving forward with these depositions.

30(b)(6) depositions noticed by the Receiver—including, as to Arranco and Central Mining, in direct contravention to the Court’s orders. *See* Discovery Order, at 13 (ordering witness designations by March 19 and depositions by April 2).

In contrast, on March 25, 2024—within six business days of receiving requests for production by the Oppenheimer Third-Party Defendants—the Receiver produced an organized set of 2,487 documents, consisting of 142,431 pages, accompanied by a Trial Exhibit List, too. The Receiver intends to make two additional, but smaller, productions of discrete records within the next few days.

III. In light of the failure of the Third-Party Defendants to engage in discovery in good faith, including in contravention to the Court’s orders, on April 3, 2024, the Receiver moved the Court to preadmit and authenticate its trial exhibits in advance of trial, in part as an appropriate sanction for Third-Party Defendants’ refusal to participate in this action.

April 15, 2024 Non-Jury Trial

The April non-jury trial involves the Receiver’s requests for declarations as to the following causes of action asserted against these Third-Party Defendants:

- **First Cause of Action**, for unjust enrichment.
- **Second Cause of Action**, for constructive trust.
- **Third Cause of Action**, for alter ego and veil-piercing liability.
- **Fourth Cause of Action**, for an accounting.

Compl. ¶¶ 125–146. In its prayer for relief, moreover, the Receiver respectfully requests: (A) the Court to exercise its equitable power and authority as requested in those causes of action; (B) a full accounting of Third-Party Defendants’ records, including to the extent that they have financially benefited from the liability-avoidance scheme; and (C) such other and further relief as

the Court may deem just and proper. *See id.*, Prayer for Relief, A–C. These are non-jury issues that are scheduled and ready to be tried to the bench the week of April 15, 2024.

Currently, the Receiver intends to call the following six witnesses for trial, including three witnesses who the Receiver intends to present through *de bene esse* videotaped depositions or by remote live testimony:

1. **Geoffrey Tweedale, Ph.D.**, former Professor of Business History at the Manchester Metropolitan University Business School. At this time, Dr. Tweedale is expected to offer expert testimony regarding the history and business practices of asbestos-related enterprises in Europe and southern Africa. Testimony to be offered *de bene esse* or remote live testimony.
2. **Barry Castleman, Ph.D.** At this time, Dr. Castleman is expected to offer expert testimony regarding the history and business practices of asbestos-related enterprises in the United States and their effects on individuals in the United States, including in South Carolina. Testimony to be offered in person.
3. **Steven Press, Ph.D.**, Associate Professor at the Stanford University, Department of History. At this time, Dr. Press is expected to offer expert testimony regarding the history and business practices of mining enterprises in Europe and southern Africa. Testimony to be offered *de bene esse*.
4. **Jim Buxton, Esq.**, Founding Partner at Buxton & Collie, LLC. At this time, Mr. Buxton is expected to offer expert testimony regarding related to alter-ego or veil-piercing liability. Testimony to be offered in person.
5. **Eric Talley, Ph.D.**, Isidor and Seville Sulzbacher Professor of Law at the Columbia Law School. At this time, Dr. Talley is expected to offer expert testimony regarding the nature and purposes of limited liability and corporate affiliate structures, and the cost-benefit case for limited liability within the affiliate structures at issue. Testimony to be offered *de bene esse* or remote live testimony.
6. **Peter Protopapas, Esq.**, as duly appointed receiver for Cape PLC, individually and as successor in interest for Cape Asbestos Company Ltd., n/k/a Cape Intermediate Holdings Ltd. At this time, Mr. Protopapas is expected to testify regarding the ongoing nature of Cape’s liability avoidance scheme and the basis for equitable relief against the Third-Party Defendants.

CONCLUSION

The Receiver looks forward to addressing any questions of the Court about these or other issues related to the upcoming non-jury trial at the pre-trial hearing scheduled for April 10, 2024.

GALLIVAN, WHITE & BOYD, P.A.

By: /s/ John T. Lay, Jr.
 John T. Lay, Jr., SC Bar No. 64526
 Gray T. Culbreath, SC Bar No. 11907
 Lindsay A. Joyner, SC Bar No. 77437
 Laura W. Jordan, SC Bar No. 100374
 Eleanor L. Jones, SC Bar No. 104678
 1201 Main Street, Suite 1200
 PO Box 7368 (29202)
 Columbia, SC 29201
jlay@gwblawfirm.com
gculbreath@gwblawfirm.com
ljoyner@gwblawfirm.com
ljordan@gwblawfirm.com
ejones@gwblawfirm.com
 (803) 779-1833

Jonathan M. Robinson
 Shanon N. Peake
 SMITH | ROBINSON, LLC
 2530 Devine Street, Third Floor
 Columbia, SC 29205
jon@smithrobinsonlaw.com
shanonp@smithrobinsonlaw.com
 (803) 254-5445

G. Murrell Smith, Jr.
 SMITH | ROBINSON, LLC
 PO Box 580
 Sumter, SC 29151-0580
murrell@smithrobinsonlaw.com
 (803) 778-2471

Troy S. Brown (*Admitted pro hac vice*)
 Dana E. Becker (*Admitted pro hac vice*)
 MORGAN, LEWIS & BOCKIUS LLP
 1701 Market Street
 Philadelphia, PA 19103
troy.brown@morganlewis.com

dana.becker@morganlewis.com
(215) 963-5000

Brady Edwards (*pro hac vice forthcoming*)
Robert W. Jacques (*Admitted pro hac vice*)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004
brady.edwards@morganlewis.com
robert.jacques@morganlewis.com
(202) 739-3000

Paul A. Scrudato (*Admitted pro hac vice*)
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
paul.scrudato@morganlewis.com
(212) 309-6000
Attorneys for Third-Party Plaintiff

April 4, 2024
Columbia, South Carolina

HEARING

In Re: Flynn v. Atlas Turner (2023-CP-40-000633)
Goodwin v. 3M (2020-CP-40-004613)
Mitchell v. Atlas Turner (2022-CP-40-02979)
Tibbs v. Atlas Turner (2023-CP-40-01759)
Donaghy/Potter v. Atlas Turner (2023-CP-40-03108)
Link v. Atlas Turner (2022-CP-40-05543)

In Re: Childers
Civil Action No. 2021-CP-40-03484

Receiver vs. AIG, et al,
Civil Action No. 2021-CP-40-05768

Receiver vs. Baker Patterson, et al.,
Civil Action No. 2023-CP-40-05203

In Re: State of Covil v. Pennsylvania National
(2023)-CP-40-000633)

Covil v. Penn National (2020-CP-4002098)

BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Wednesday, April 10, 2024

TIME START: 9:27 a.m.

TIME END: 12:27 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: Cindy A. Hayden, RMR-CRR
EveryWord, Inc.

1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFFS:

3 KASSEL MCVEY
4 BY: THEILE B. MCVEY, ESQUIRE
5 1330 Laurel Street
6 Columbia, South Carolina 29201
803.256.4242
tmcvey@kassellaw.com

7 ATTORNEYS FOR THE RECEIVER:

8 RIKARD + PROTOPAPAS
9 BY: PETER D. PROTOPAPAS, ESQUIRE
10 2110 N. Beltline Boulevard
11 Columbia, South Carolina 29204
803.978.6111
pdp@rplegalgroup.com

12 ATTORNEYS FOR THE RECEIVER PAYNE & KELLER:

13 SMITH ROBINSON
14 BY: JONATHAN M. ROBINSON, ESQUIRE
15 2530 Devine Street
16 Columbia, South Carolina 29205
803.254.5445
jon@smithrobinsonlaw.com

17 ATTORNEYS FOR THE RECEIVER FOR COVIL CORPORATION:

18 MORGAN, LEWIS & BOCKIUS LLP
19 BY: W. BRAD NES, ESQUIRE
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004-2541
202.739.5779
bnes@morganlewis.com

22 (Appearances continued on next page.)
23
24
25

1 APPEARANCES CONTINUED:

2 ATTORNEYS FOR THE RECEIVER FOR CAPE:

3 GALLIVAN WHITE BOYD
4 BY: LINDSAY A. JOYNER, ESQUIRE
1201 Main Street, Suite 1200
5 Columbia, South Carolina 29201
803.724.1800
6 ljoyner@gwblawfirm.com

7
8 ATTORNEYS FOR THIRD-PARTY DEFENDANTS MR. ALTRAD
AND ALTRAD INVESTMENT AUTHORITY:

9 WOMBLE BOND DICKINSON
10 BY: M. TODD CARROLL, ESQUIRE
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
11 803.454.7730
todd.carroll@wbd-us.com

12 ~ And ~

13 WOMBLE BOND DICKINSON (US) LLP
14 BY: M. ELIZABETH O'NEILL, ESQUIRE
One Wells Fargo Center
15 Suite 3500, 301 South College Street
Charlotte, North Carolina 28202-6037
16 704.331.4900
elizabeth.oneill@wbd-us.com

17
18 ATTORNEYS FOR THIRD-PARTY DEFENDANTS ANGLO
AMERICAN PLC; DE BEERS PLC; DE BEERS CENTENARY AG;
19 DE BEERS UK LIMITED; AND DE BEERS MINING:

20 HERBERT SMITH FREEHILLS NEW YORK LLP
21 BY: SCOTT S. BALBER, ESQUIRE
MAXWELL D. HERMAN, ESQUIRE
450 Lexington Avenue 14th Floor
22 New York, New York 10017
917.542.7600
23 scott.balber@hsf.com
maxwell.herman@hsf.com

24
25 (Appearances continued on next page.)

1 APPEARANCES CONTINUED:

2 ~ And ~

3 ATTORNEYS FOR THIRD-PARTY DEFENDANTS ANGLO
4 AMERICAN PLC; DE BEERS PLC; DE BEERS CENTENARY AG;
DE BEERS UK LIMITED; AND DE BEERS MINING:

5 RICHARDSON PLOWDEN
6 BY: CAMERON D. BERTHELSEN, ESQUIRE
235 MaGrath Darby Boulevard, Suite 100
7 Mt. Pleasant, South Carolina 29464
843.714.2625
8 cberthelsen@richardsonplowden.com

9 ATTORNEYS FOR THIRD-PARTY DEFENDANTS CHARTER
10 CONSOLIDATED LTD.; ESAB CORPORATION AND CENTRAL
MINING & INVESTMENT CORPORATION, LTD.:

11 GORDON REES SCULLY MANSUKHANI, LLP
12 BY: A. VICTOR RAWL, JR., ESQUIRE
40 Calhoun Street, Suite 350
13 Charleston, South Carolina 29401
843.714.2501
14 vrawl@grsm.com

15 ATTORNEYS FOR THIRD-PARTY DEFENDANTS SPARROWS
16 OFFSHORE, LLC; HAWK BIDCO US, INC.; AND ARRANCO
US, LLC:

17 RICHARDSON PLOWDEN
18 BY: STEVEN J. PUGH, ESQUIRE
1900 Barnwell Street
18 Columbia, South Carolina 29201
19 803.576.3721
20 spugh@richardsonplowden.com

21 ATTORNEYS FOR PENNSYLVANIA NATIONAL MUTUAL
22 CASUALTY INSURANCE COMPANY:

23 ADAMS AND REESE LLP
24 BY: KIRBY D. SHEALY III, ESQUIRE
1221 Main Street, Suite 1200
24 Columbia, South Carolina 29201
803.212.4966
25 kirby.shealy@arlaw.com

APPEARANCES CONTINUED:

ATTORNEYS FOR AIG PROPERTY & CASUALTY, BERKSHIRE
HATHAWAY SPECIALTY, LEXINGTON INSURANCE COMPANY,
CONTINENTAL INSURANCE COMPANY, NATIONAL UNION
INSURANCE COMPANY, UNNAMED UNDERWRITERS AT LLOYD'S
AND UNNAMED LONDON MARKET COMPANIES:

MURPHY & GRANTLAND, P.A.
BY: WESLEY B. SAWYER, ESQUIRE
4406-B Forest Drive
Columbia, South Carolina 29206
803.782.4100
wsawyer@murphygrantland.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

* * *

THE COURT: Please be seated.

All right. Before I call the hearing officially, let me indicate this: I received late last night or yesterday afternoon -- where is it? Yeah -- filings in the Tibbs matter from the Sparrow defendants. Where is Mr. Pugh?

MR. PUGH: That's me, Your Honor.

THE COURT: Mr. Pugh -- these -- we will discuss these matters in connection with Number 7, which is the pretrial for Tibbs.

MR. PUGH: Yes, ma'am.

THE COURT: All right.

All right. This is a pretrial hearing this morning on many matters that all revolve around the asbestos docket. We are going to begin by having the receiver, Mr. Protopapas, or whoever would represent the receiver in ACL, give a status report on ACL and Atlas Turner and on Payne & Keller. So I will proceed in that order with Number 1, status of ACL.

1 MR. PROTOPAPAS: Thank you,
2 Your Honor. Peter Protopapas, the receiver
3 for Asbestos Corporation Limited.

4 Your Honor is very familiar with the
5 heartbeat of receivership litigation, and
6 today on the Court's agenda will be some
7 familiar moments in that -- that -- that
8 timeline of receiverships.

9 The receiverships, normally,
10 Your Honor, arise out of a recalcitrant
11 defendant or nonperforming defendant in
12 this Court's asbestos docket, a defendant
13 that has been sued, fails to respond, fails
14 to participate, and a receiver gets
15 appointed.

16 And when I get appointed as receiver,
17 I begin the work of identifying assets and
18 following this Court's instruction as to
19 how it wants -- or what it expects of
20 defendants in its asbestos docket.

21 And it normally begins with some
22 measure of litigation, either based on
23 insurance coverage and legacy liability
24 policies, which are still responsive to
25 torts today; sometimes it delves into alter

1 ego allegations where assets or
2 responsibilities flow to other entities who
3 have been hiding from the jurisdiction of
4 this Court.

5 Usually, that litigation gets
6 contentious. And we occupy this Court's
7 resources, this Court's time and
8 this Court's effort, and we tax our court
9 system. And not just in South Carolina,
10 but the Middle District of North Carolina
11 where receiverships have won, in the Fourth
12 Circuit Court of Appeals where the
13 receiverships have won, in Texas where the
14 receiverships have won, in the South
15 Carolina Court of Appeals and in the South
16 Carolina Supreme Court where the
17 receiverships and the positions that
18 this Court has set forth and the orders it
19 has set forth have been affirmed time and
20 time again.

21 And that contentious litigation goes
22 for a period of time. And it either goes
23 to trial such as the Penn National case, or
24 we get to come before you and say some
25 measure of peace has broken out.

1 And this Court is intimately familiar
2 with receiverships such as Pipe & Boiler,
3 Covil, Southern, companies that were
4 recalcitrant defendants or defendants who
5 were nonperforming that are now normal
6 performing functionaries. And I am proud
7 to say that those receiverships are not
8 before this Court on motions to compel and
9 nonparticipation. We participate, we
10 fight, and we -- we settle cases that have
11 merit.

12 And that heartbeat has taxed this
13 court, I know. And today, you will see
14 receiverships are in various stages of this
15 heartbeat with ACL, Atlas Turner, Payne &
16 Keller, Covil and, of course, Cape.

17 With ACL, Your Honor, we're at that
18 stage where I get to say good news. Some
19 measure of peace has broken out. This
20 Court is aware that it held hearings on
21 February 7th, hearings on February 9th,
22 hearings on March 13th. And time and time
23 again, we're brought into the ACL
24 litigation to help bring clarity and to
25 help direct the parties.

1 And the good news, Your Honor, is over
2 the last several weeks, stemming from
3 this Court's involvement in the March 13th
4 hearing, we have brought a measure of
5 normalcy. We're not all the way there yet.
6 But the good news, Your Honor, is that
7 through a lot of hard work and my
8 colleagues on the other side, Mr. Manos and
9 Ms. Richardson and their national counsel,
10 we have been able to put together a
11 settlement of five of the six cases.

12 As the Court remembers, it started
13 with Link and Donaghy where I came to
14 the Court and asked the Court for more
15 time. Reluctantly, the Court gave me more
16 time. We then had more hearings before
17 the Court. But Link and Donaghy have
18 settled.

19 The paperwork is not complete. But we
20 are completing the paperwork. The funds
21 haven't been transferred. However, the
22 carrier group has agreed to those payments.

23 THE COURT: Which means that Link and
24 Donaghy would not be tried, correct?

25 MR. PROTOPAPAS: Correct, Your Honor,

1 as to ACL. Asbestos Corporation Limited
2 has --

3 THE COURT: Well, it's still on my
4 docket for other defendants, is it not,
5 Ms. McVey?

6 MS. McVEY: Your Honor, in Potter,
7 there is Atlas Turner, and there is Spirax
8 Sarco. And in Link, there is just Atlas
9 Turner.

10 MR. PROTOPAPAS: The Atlas Turner,
11 Your Honor, is on a different part of the
12 timeline of receiver fight, appeal, trial.
13 ACL is the -- is the good story right now.
14 It's the -- it's the receivership where --
15 where cooperation has broken out
16 sufficiently where we were able to resolve
17 the Link and Potter cases as well as Flynn,
18 Mitchell and Goodwin.

19 And so Your Honor's efforts and the
20 taxing of this Court's time has produced a
21 measure of cooperation between Resolute,
22 Lloyd's, a certain underwriter of Lloyd's
23 and the receivership.

24 We are not all the way there yet,
25 Your Honor. But momentum in settling those

1 five cases, I think, is relevant and does
2 fit within that timeline of how do we make
3 an entity and receivership responsive
4 within litigation. And we have made a
5 major -- I think a major step in the right
6 direction.

7 THE COURT: Okay. Let me be sure I
8 understand. Now, this is ACL. And ACL has
9 not finalized but has sufficient confidence
10 in the settlement negotiations that it
11 represents through its receiver, you, that
12 Link and Donaghy, Flynn, Mitchell,
13 Goodwin -- and Potter?

14 MR. PROTOPAPAS: And Potter.

15 THE COURT: -- from the standpoint of
16 ACL are in the process of completing
17 settlement agreements, correct?

18 MR. PROTOPAPAS: Correct, Your Honor.

19 THE COURT: All right. I'm going to
20 turn to Ms. McVey when all of these status
21 reports are over, of course, to go over
22 what the status of those cases is from the
23 plaintiff's standpoint. But from the
24 standpoint of this receivership, those
25 cases are resolved, okay?

1 MR. PROTOPAPAS: That's correct,
2 Your Honor. And within that process, we
3 have identified -- as the Court is aware,
4 there was questions regarding legacy
5 liability policies. We have answered those
6 questions for ACL. They have sufficient
7 legacy liability policies to participate in
8 this court, as noted by those five
9 settlements.

10 Your Honor --

11 THE COURT: And will that simply be a
12 participation by the insurers on a
13 going-forward basis by tendering to them
14 and having them participate in the
15 development in this case -- these five
16 cases of settlements? Is that -- it's not
17 a qualified settlement fund?

18 MR. PROTOPAPAS: Correct, Your Honor,
19 not a qualified settlement fund but a
20 traditional carrier paid --

21 THE COURT: Traditional carrier
22 insurer vis-a-vis corporation now in
23 receivership, receiver-type negotiations --

24 MR. PROTOPAPAS: Correct, Your Honor.

25 THE COURT: -- which will then, of

1 course, involve the plaintiff in terms of
2 how the matters are ultimately resolved.
3 But in terms of the tendering of
4 insurance -- tendering of claims and the
5 acceptance of responsibility of insurance,
6 that's been done now?

7 MR. PROTOPAPAS: In those five cases,
8 it has been done, Your Honor. And on the
9 going-forward basis --

10 THE COURT: And that's primarily
11 Resolute/Lloyd's/CMLI?

12 MR. PROTOPAPAS: Correct, Your Honor.

13 THE COURT: All right.

14 MR. PROTOPAPAS: And on a
15 going-forward basis, Your Honor, there are
16 other matters that will be before you in
17 August and in the fall. I apologize. I
18 don't have that trial calendar in front of
19 me.

20 But we are in negotiations to -- to
21 push our differences aside so that we are
22 not where we were with this Court in
23 January, February and March. Those have
24 not concluded into a final agreement of any
25 kind that we could bring to the Court.

1 However, Ms. Richardson, Mr. Manos, the
2 national counsel, and I were on calls
3 earlier this week, and we are committed to
4 seeing where we can come to more agreement
5 for future cases so we are not taxing
6 the Court as we have.

7 Historically, Your Honor, these
8 moments tend to result in a peace amongst
9 the carriers and the receivership
10 sufficient to stop taxing this Court's
11 time.

12 THE COURT: All right. Now, let me
13 understand this. Is Ms. Richardson
14 present? Yes, she is. I see her.

15 MS. RICHARDSON: Yes, Your Honor.

16 THE COURT: And, Ms. Richardson, you
17 obviously are in a representation position
18 with at least some of the insurers or the
19 insurers on some of their cases, correct?

20 MS. RICHARDSON: Yes.

21 THE COURT: All right. And your
22 representation is through Lloyd's/CMLI?

23 MS. RICHARDSON: We represent the
24 lending market carriers who are not
25 controlled by Resolute. They are

1 independent insurance carriers of various
2 types.

3 THE COURT: I'm very familiar.

4 MS. RICHARDSON: Yeah.

5 THE COURT: Now, just so I'm sure
6 who's on first, Mr. Sawyer, are you here in
7 the courtroom?

8 MR. SAWYER: I am, Your Honor.

9 THE COURT: All right. Where are you
10 with regard to these matters?

11 MR. SAWYER: I'm nowhere involved in
12 Atlas or ACL. The only matter that I'm
13 here for today that I have any
14 representation is Payne & Keller,
15 Your Honor.

16 THE COURT: Okay. Very good.

17 MR. SAWYER: Yeah.

18 THE COURT: Understood. All right.
19 Thank you so much.

20 MR. SAWYER: Thank you, Your Honor.

21 MR. PROTOPAPAS: And, Your Honor, we
22 have Mr. Manos here, who is from the
23 Resolute-controlled London insurers and who
24 have been working with a -- with the
25 receive -- with me as receiver on these

1 five matters and on a go-forward solution.

2 THE COURT: All right. Thank you,
3 Mr. Manos, and thanks for moving this thing
4 forward in the way that Mr. Protopapas has
5 described.

6 MR. MANOS: Yes, Your Honor.

7 MR. PROTOPAPAS: And so, Your Honor,
8 there -- there is one -- it may be
9 worthwhile to turn to the Atlas Turner.
10 But that is the status of ACL for five of
11 the six cases.

12 The Tibbs case, Your Honor, is the
13 case I was appointed in, in which an answer
14 was struck. I will say, Your Honor, I
15 believe we have filed 11 motions to dismiss
16 appeal, or something along those lines, in
17 the last two weeks based on a Supreme Court
18 order in Payne & Keller, which is a
19 receivership that is still in the war --
20 the -- the "sharp words back and forth"
21 portion of the heartbeat of litigation.

22 THE COURT: Well, I must say that when
23 you turn to Atlas Keller and Payne &
24 Keller -- I mean, Atlas Turner and Payne &
25 Keller, I was shocked to get briefing as

1 late as yesterday, afternoon late about the
2 sanctity of Rule 205 with no mention made
3 of the Court of Appeals' two orders, the
4 Supreme Court's latest order, the Supreme
5 Court's previous order in Covil, the Fourth
6 Circuit's order, the Texas Secretary of
7 State's order and so many other things that
8 have been -- that have occurred that bear
9 on -- directly on arguments that are made
10 in those briefs, which continued to be
11 stated that this is some sort of rogue
12 activity going on here unrecognized by the
13 courts and that this -- none of this
14 activity here is permitted because they
15 have appealed a nonappealable order. So
16 I -- that -- I don't understand why that's
17 still occurring.

18 MR. PROTOPAPAS: Your Honor, I -- I
19 agree with the Court, and hopefully our
20 motions to dismiss the appeals in their
21 entirety will be looked on favorably.
22 They're in the briefing stage, and I'm --
23 I'm hopeful that there will be more clarity
24 from our Courts of Appeals.

25 But -- but that's, of course, the

1 heartbeat of these cases, Your Honor.
2 They -- they go -- they go through this
3 intense fighting at times, as ACL did.
4 And -- and we -- we either end up at a
5 trial moment with the Court, which we did
6 in Penn National, or we end up in a -- I
7 get to say we've managed to do something
8 positive as a group and negotiate hard with
9 the plaintiffs, who were, at times,
10 difficult to negotiate with, respectfully,
11 if they're advocating for their clients.
12 But we were able to come to that common
13 ground in the last seven -- seven days.

14 And so I think -- I think we can see
15 with Payne & Keller, which is an insurance
16 coverage, or Cape, which is the alter ego
17 issues, those are still in those earlier
18 stages of sharp words.

19 THE COURT: Well, I have received -- I
20 want to get back to Atlas Turner because
21 that's the one I've got the most heartburn
22 about right now because it impacts the
23 Tibbs case.

24 But since you mentioned Payne &
25 Keller, I received a list of pending

1 motions from -- from Ms. Valek yesterday.
2 And what I want to know is, if this isn't
3 the right time to hear them, when would be
4 the right time to hear those?

5 MR. PROTOPAPAS: Your Honor, I believe
6 anytime the Court has the time to -- to
7 hear those motions, we are -- the receiver
8 is ready for them. We can do them at the
9 Court's will today. We could do them in
10 the next period of time in April. I
11 believe we need --

12 THE COURT: Well, it depends on
13 whether the Tibbs case settles.

14 MR. PROTOPAPAS: That's true,
15 Your Honor. May I turn my attention to
16 Atlas Turner for a moment?

17 THE COURT: Yes, sir.

18 MR. PROTOPAPAS: So in receivership,
19 Your Honor, when we talk about the
20 heartbeat of the receivership, sometimes,
21 like in ACL, I identify that program within
22 four to six months, the fighting begins,
23 and we are able to bring clarity and
24 cooperation. Atlas Turner is a little bit
25 different of a matter. Atlas Turner is a

1 related entity to ACL.

2 THE COURT: Right. And they are
3 asserting the same business about lack of
4 personal jurisdiction. There's no question
5 but what for those entities, which are
6 the -- are either the predecessors or
7 successors of Asbestos Corporation, the
8 kind of mother ship in this thing.
9 Personal jurisdiction is alleged on the
10 basis that they are successors in
11 responsibility to Asbestos Corporation, who
12 put into the stream of commerce in South
13 Carolina by allegation, which is all that
14 is needed to deal with the personal
15 jurisdiction issue, asbestos material which
16 injured South Carolina workers in South
17 Carolina.

18 What has -- what has -- I'm going to
19 ask the Atlas Turner people to come up here
20 and talk to me about this. But what is,
21 basically, the status of Atlas Turner's
22 position on these matters?

23 I know they want to dismiss for lack
24 of personal jurisdiction. Haven't I
25 already ruled on that once?

1 MR. PROTOPAPAS: Yes, Your Honor. And
2 the -- the Court's recitation, there is
3 evidence of Atlas Turner products -- in
4 particular, something called Atlasite --
5 that has made its way to South Carolina.
6 It's a chrysotile product that likely comes
7 from the mines of Canada that ACL was
8 involved in.

9 And so there is more evidence coming
10 every day as to these contacts and the
11 products' placement in South Carolina. And
12 there are entities, insulation contractors
13 and others, who have purchase orders and so
14 forth indicating some measure of
15 transaction, business with Atlas and ACL.

16 THE COURT: And is that connection --
17 that allegation of connection the same with
18 respect to Flynn, Goodwin, Mitchell, Tibbs,
19 Donaghy, Potter and Link?

20 MR. PROTOPAPAS: Yes, Your Honor. I
21 believe those are the -- the allegations.

22 THE COURT: Right. And all we're
23 dealing with is allegations. And in these
24 personal jurisdiction motions, considering
25 things in the light most favorable to the

1 nonmoving party, a scintilla of evidence is
2 enough.

3 And what is alleged in the responses,
4 at least as I recall them initially when we
5 fought these very same battles, is what
6 you've recited, that there are products
7 that -- chrysotile products that came into
8 the stream of commerce here.

9 In fact, the only thing that's changed
10 about that dynamic is the announcement two
11 weeks ago by the EPA that chrysotile is now
12 banned. So that's -- you know, there's the
13 good asbestos, and the bad asbestos has
14 always been the argument about chrysotile
15 asbestos. But another pretty heavy
16 regulatory ruling has been made about
17 chrysotile.

18 But that's the path that is alleged to
19 create the injury to workers here; am I
20 right?

21 MR. PROTOPAPAS: You are correct.

22 THE COURT: All right.

23 MR. PROTOPAPAS: And, Your Honor, in
24 my job as the Atlas receiver, we have sent
25 out 60 to 70 subpoenas. We have 20 or so

1 FOIAs. We are doing those things that are
2 traditionally done to identify responsive
3 assets.

4 Atlas Turner did have an insurance
5 program, and that insurance program -- I've
6 been provided three agreements, one by
7 order of this Court at the March 13th
8 hearing, reduced to writing where Lloyd's
9 provided me an agreement under seal for my
10 view, your view and the plaintiffs' view.

11 And then there are Canadian --
12 Aviva Canadian General Insurance has
13 provided me an agreement, as has -- I
14 believe it's Zurich. And I apologize,
15 Your Honor.

16 THE COURT: Well, the contention is
17 made by Atlas Turner that none of those
18 insurance programs apply to these matters.
19 Is that basically the contention?

20 MR. PROTOPAPAS: Yes, Your Honor.
21 They look -- the agreements look very
22 similar to our qualified settlement fund
23 agreements where a buyout is done of the
24 program. A trust is formed in Canada. The
25 trust sits at the Royal Bank of Canada,

1 from my latest -- the latest information
2 I've been provided. There is a trust fund
3 to pay claims located in Canada that I
4 don't have for Atlas Turner.

5 THE COURT: It's a trust -- it's a
6 trust fund only for claims in Canada?

7 MR. PROTOPAPAS: I don't know,
8 Your Honor. The operative trust documents
9 have evaded me.

10 However, there is -- when it comes to
11 Atlas Turner, every insurance policy I have
12 so far identified has been sold back to
13 Atlas Turner for a sum of money for the
14 settlement fund in Canada.

15 THE COURT: Have any of those sales
16 taken place since my order directing that
17 they -- no further transfers be made?

18 MR. PROTOPAPAS: Your Honor, they all
19 predate the order by several years.

20 THE COURT: All right.

21 MR. PROTOPAPAS: What -- what I --
22 what I think, though, Your Honor, is there
23 is -- in Atlas Turner, as the receiver, I
24 have brought several pieces of litigation.
25 One is against a law firm that is the

1 national law firm for Atlas Turner that we
2 would ask the Court set for hearing at its
3 appropriate time. And that is one of the
4 loose ends out there as I tried to figure
5 out what are the responsive assets.

6 Sitting here today, I cannot honestly
7 say to the plaintiff that there is any
8 recoverable asset in the United States of
9 America.

10 What I can tell the plaintiff, and I
11 would like to report to this Court, is that
12 the buyout agreements that I have read have
13 created questions.

14 As recently as Monday afternoon, I met
15 with the Aviva attorneys, very helpful, who
16 provided me extensive information about
17 their transfer of money for the tearing up
18 of their policies in 1988 and their
19 relationship and documents that evidence
20 what happened to that money over the
21 ensuing years.

22 Similar, Your Honor, from Lloyd's, who
23 recently provided us their documents, there
24 are more documents we need from Lloyd's.
25 Last time we were here, Mr. Psichos, on

1 behalf of Mr. Rawl, and Mr. Rawl on behalf
2 of his client, Lloyd's, agreed that an
3 order of the Court would get us access to
4 the confidential document.

5 But we -- I believe that the
6 additional information -- for example,
7 reporting by the trust, if they have the
8 trust instrument, the bank accounts where
9 the trust money is held, those sorts of
10 documents, Your Honor, will better inform
11 me as to whether or not Atlas Turner can be
12 a responsive defendant in discovery,
13 ultimately settlement, ultimately paying
14 claims and judgments.

15 As I sit here today, Your Honor, I
16 am -- I have not gotten as far in Atlas
17 Turner as I have in ACL. And so for Atlas
18 Turner, we need a little more -- as we go
19 through the heartbeat of receivership
20 litigation, we are going to tax -- I'm
21 asking to tax the Court's resources more --

22 THE COURT: So are you asking that
23 the -- that the case be continued as to
24 Atlas Turner?

25 MR. PROTOPAPAS: I am, Your Honor.

1 And I make the request knowing this Court's
2 reluctance.

3 THE COURT: I am very, very reluctant
4 and particularly since we've been dealing
5 with this thing for a long time. This is
6 not like they just suddenly knew about
7 this.

8 MR. PROTOPAPAS: And so the Atlas
9 Turner -- I think the -- the path towards
10 understanding what Atlas Turner has to
11 respond to claims in South Carolina is --
12 is uncertain. I think it does land on law
13 firms that have represented Atlas Turner
14 and have represented its related company,
15 Asbestos Corporation Limited. And I
16 believe it rests, perhaps, in the
17 additional documents that the Court ordered
18 Lloyd's provide to us in its March --

19 THE COURT: It sounds like the March
20 order hasn't been completely complied with
21 if you don't have a copy of the trust that
22 indicates whether or not the trust was set
23 up just for Canadian claims or for other
24 claims. This Canadian-produced asbestos
25 was sold all over the world, was it not?

1 MR. PROTOPAPAS: It was indeed. It
2 was indeed. And so I think an initial
3 production pursuant to the order has
4 occurred, which was the actual transaction
5 documents evidencing the sale of the
6 insurance policies and the creation of a
7 trust. But the reports -- the claims that
8 have been paid --

9 Your Honor, I -- I believe that
10 South Carolina is being treated differently
11 than other states in the United States of
12 America. I believe ACL settles claims in
13 other states in the United States of
14 America. I believe Atlas Turner does.

15 But for whatever reason, the state of
16 South Carolina gets treated somewhat
17 differently. And I can't say for certain
18 with Atlas Turner what that looks like, but
19 I believe the additional information will
20 assist us.

21 And so I think when it comes to Atlas
22 Turner, Your Honor, I -- I worry as an
23 officer of the court that has to be
24 transparent with the plaintiff, carriers,
25 and with the Court, I have to say a

1 judgment rendered against Atlas Turner may
2 be an uncollectable moment, simply because
3 the documents as they stand transacted the
4 legacy policies in a way similar to these
5 qualified settlement funds that we have
6 done in South Carolina receiverships.

7 And so how do we get to that
8 settlement fund? And that is the path, of
9 course, that I'm outlining to the Court, of
10 law firms that have the information,
11 carriers that have the information. And
12 there's several -- several other
13 productions that I'm hoping to get from --
14 from carriers that will round up my
15 knowledge.

16 And I can report to the Court there is
17 nothing left for me to do because I can't
18 find anything or there is something more
19 for me to do in order to assist Atlas
20 Turner's participation in the asbestos
21 docket.

22 THE COURT: Okay. All right. I'm
23 going to ask in a minute to hear from
24 Mr. Rawl about this, but first I want to go
25 back for a minute to Payne & Keller. Is

1 Payne & Keller involved in any of the cases
2 that are set for trial this coming week?

3 MR. PROTOPAPAS: They are not,
4 Your Honor, but Payne & Keller is in a
5 number of cases. And in the last 60 days,
6 Your Honor, I have been served with 6, 7 --
7 probably 35 lawsuits in the past 60 days,
8 many of them from Texas where the companies
9 reconstituted them, many of them in
10 Illinois where they had a significant
11 presence, some from Louisiana where they
12 had a significant presence. The plaintiffs
13 in South Carolina have identified several
14 South Carolina sites with evidence.

15 So, Payne & Keller, as far as the
16 asbestos litigation, is going to be a
17 robust defendant for years to come in
18 South Carolina and elsewhere.

19 But I think where the -- where the --
20 where we need help from the Court is going
21 to be on ensuring the carrier's proper
22 participation in the defense of Payne &
23 Keller and the carrier's obeying the rules
24 of our appellate courts on what is and what
25 is not appealable and that those things --

1 THE COURT: Well, right now, there
2 are -- insurers are working very closely
3 with Payne & Keller, but not with its
4 receiver, to defeat the receivership by
5 making these appeals of nonappealable
6 issues; is that correct?

7 MR. PROTOPAPAS: That is correct.
8 That is correct, Your Honor.

9 And -- and I think with Cape, which is
10 the alter ego receivership, you have some
11 of the similar issues. We're in that part
12 of the litigation where cooperation is
13 somewhat limited. Not just somewhat.
14 Cooperation is zero, very limited. And
15 the -- the filings are very pointed in
16 their -- in their approach.

17 And hopefully, we have -- we -- we can
18 take steps to lessen the rhetoric, increase
19 the merits and -- and move the order of
20 this Court forward.

21 THE COURT: Okay. All right. I'm --
22 I'm going to turn next to Ms. McVey for her
23 comments on the status of these three
24 receivership defendants.

25 MS. McVEY: Thank you, Your Honor.

1 Good morning.

2 THE COURT: Good morning.

3 MS. McVEY: I like your lapel pin.

4 Does that mean something special?

5 THE COURT: Yes, it does. National
6 Championship Number 3.

7 MS. McVEY: Pretty awesome.

8 THE COURT: It was. Absolutely beyond
9 compare.

10 MS. McVEY: I'm jealous.

11 All right. Your Honor, just briefly,
12 Mr. Protopapas gave you an excellent update
13 on ACL for the cases that are in the May --
14 I'm sorry -- the April block. The one case
15 that has not settled with ACL is the Tibbs
16 case. And the Tibbs case has two
17 defendants remaining, ACL and Atlas Turner.

18 That is the case where you struck
19 their answer because they refused to comply
20 with any discovery or do anything. And
21 that case is up on appeal.

22 The fact that a receiver was appointed
23 in Tibbs for ACL I don't believe stays
24 anything. I do think, though, the striking
25 of the answer probably stays the Tibbs case

1 as it relates to ACL.

2 So from that perspective, trying a
3 case against ACL, I think, would not be
4 appropriate at this time, not because
5 there's a receiver, but because of the
6 answer that was struck in the contempt
7 finding.

8 As to Atlas Turner, Your Honor, you
9 heard many motions about Atlas Turner, and
10 there have been lots of representations
11 made in this Court, both about ACL and
12 Atlas Turner, that there was no insurance,
13 there was zero insurance, can't get to it.
14 We now know that ACL has a ton of
15 insurance, and I believe Atlas Turner has
16 or had insurance.

17 And, Your Honor, if I could, I wanted
18 to handle -- hand -- you ordered Lloyd's to
19 produce the confidential agreement where
20 Atlas Turner bought back -- or the
21 company --

22 THE COURT: Right.

23 MS. McVEY: -- bought back --

24 THE COURT: They produced that in the
25 Link case, correct?

1 MS. McVEY: Yes, ma'am. Link and
2 Donaghy. I've got it right here, if that's
3 helpful.

4 THE COURT: Yeah.

5 MS. McVEY: And I tabbed just a couple
6 of things for you. And, Your Honor, this
7 was produced pursuant to a confidentiality
8 order, so I will try not to use any
9 numbers.

10 But you can see in the first tab is an
11 addendum, a listing of known policies. And
12 there's a lot of them.

13 Your order, when you ordered that
14 document produced, also included language
15 that said: In light of the foregoing,
16 Resolute and Lloyd's are hereby ordered to
17 produce the agreement, along with all
18 schedules, attachments, addenda or any
19 other related material, within 24 hours of
20 entry of this order.

21 That was the only document that was
22 produced. And so when we had a chance to
23 review it, we wrote to counsel for Lloyd's,
24 Mr. Rawl, and said: You didn't produce all
25 the documents.

1 Annual reports, Atlas was supposed to
2 give Lloyd's annual reports. Those were
3 not included. There was a database that
4 Lloyd's was entitled to access. We asked
5 had Lloyd's done that; where is that
6 production?

7 Lloyd's has a right to audit. Those
8 audits were not produced.

9 I mentioned to you the known policies
10 identified as Attachment A. Where are the
11 documents that -- who -- that identify who
12 the known syndicate subscribers are that
13 are referenced in Attachment B?

14 They did not produce the signed copy
15 of the escrow agreement; it's unsigned.

16 Where are the -- I see the requests
17 for the reimbursement from Bell and Atlas
18 that have presumably been sent from time to
19 time, the request for indemnity and
20 certification.

21 All of those documents, I believe,
22 should have been produced pursuant to your
23 order. And Mr. Rawl, on behalf of his
24 client, said they were not going to produce
25 those. And so we would ask that those be

1 ordered to be produced.

2 You can see the numbers in there that
3 all of those known policies were bought
4 back or Lloyd's paid Atlas Turner a very
5 small amount of money, in my view, based on
6 those policies. While that is dated 2006,
7 that seems fraudulent to me, knowing that
8 there's asbestos claims out there that will
9 have to be paid. So, Your Honor, we would
10 like some time to investigate that, and if
11 not us, then the receiver.

12 So, for Atlas Turner, you know, I have
13 never, I don't think, come in front of
14 this Court and consented to a continuance.
15 I just don't like to waste the Court's
16 time. You've blocked out the schedules. I
17 like to -- to push as hard as we can.

18 There is an exception to that, though,
19 when the receiver who -- who fights hard
20 against us, by the way. And negotiating
21 with him with ACL was -- was not my most
22 pleasant experience.

23 But he has said, even if you go get a
24 verdict, I have not been able to tender
25 this to any policies. And we know that

1 Atlas Turner is hiding -- my words --
2 hiding their money in Canada that I don't
3 think we can get to at this point.

4 So I don't want to go spend these
5 clients' money and not be able to get a
6 judgment collected.

7 Now, by saying that, however, we have
8 moved because Atlas Turner refused to
9 comply with any discovery, they refused to
10 list any witnesses, they refused to produce
11 a 30(b)(6) deposition. And so we don't
12 believe that they should be entitled to put
13 up any evidence if we go try this case.

14 And we've made several motions, that
15 if you continue it, we don't need to get to
16 today. But they have abandoned their right
17 to put up any evidence, in my view. And so
18 I don't know how long a trial it would be,
19 but we would certainly have to prove our
20 case, both with liability and causation.

21 So I say that to Your Honor to say I
22 am not consenting to this continuance, but
23 I certainly defer to the receiver on
24 putting this case in the best possible
25 position, either that we know there's no

1 insurance or there is some insurance that
2 we can tender to. And so, Your Honor,
3 that's kind of our position on Atlas
4 Turner.

5 We can discuss later, if you want to,
6 the personal jurisdiction motions. But as
7 to Donaghy, Potter and Link, you have
8 already ruled for sure on those personal
9 jurisdiction motions. And those were ruled
10 on on February 7th, 2023, when you denied
11 the personal jurisdiction motions.

12 And -- and, Your Honor, as you know by
13 reading this, it's not just that we have
14 allegations. Despite their willingness to
15 comply with discovery, we have
16 independently found documents they sold to
17 our client's worksites, to Guy M. Beaty, to
18 Covil, who are co-defendants in this case.
19 We have Atlas Turner and ACL all over South
20 Carolina. It was not a small state for
21 them in terms of sales.

22 But for Donaghy, Potter, for Link, you
23 denied orally their motion to dismiss for
24 personal jurisdiction. And you didn't
25 issue a written order. We do that all the

1 time. No written order was forthcoming.
2 And they never answered the complaint, and
3 they had 15 days from the date to do that.

4 So we filed a motion, affidavit for
5 default in Donaghy, Potter and Link. We
6 believe that they're in default currently
7 in those cases. Of course, they have not
8 filed a motion to lift default. And so
9 that's sitting here before you. That only
10 affects Donaghy, Potter and Link.

11 The Flynn, Goodwin and Mitchell cases
12 are still -- I -- I thought you heard
13 personal jurisdiction, but you may not
14 have. I couldn't -- I couldn't find that.

15 So, Your Honor, that's kind of where
16 we are. I'm grateful to both
17 Ms. Richardson and Mr. Manos and -- and
18 Mr. Protopapas for working through the ACL
19 thing, and this Court's intervention in
20 that was very helpful to get the case
21 remediated. So that is progressing
22 somewhat. And Atlas Turner is at a
23 stalemate until we get some additional
24 information, I think.

25 THE COURT: All right. And with

1 respect to Atlas Turner, who are the
2 attorneys you have been dealing with?

3 MS. McVEY: For -- Mr. Brown. In
4 terms of the tort case?

5 THE COURT: Yes.

6 MS. McVEY: Yes.

7 THE COURT: All right. And how about
8 Mr. Rawl and Ms. Richardson?

9 MS. McVEY: So, in the settlement,
10 it's been Mr. Manos, their national
11 counsel, Ms. Richardson. And Mr. Rawl is
12 in Atlas Turner only.

13 THE COURT: All right. Okay. The
14 first thing I'd like to do is ask Mr. Rawl
15 to come to the podium.

16 MS. McVEY: Thank you, Your Honor.

17 MR. RAWL: Good morning, Your Honor.

18 THE COURT: Good morning, Mr. Rawl.
19 Who do you represent?

20 MR. RAWL: I represent Lloyd's
21 entities with regard to the Atlas Turner
22 matter.

23 THE COURT: Lloyd's and who?

24 MR. RAWL: It's -- it's the Lloyd's
25 group, whether this -- dealing with

1 Atlas --

2 THE COURT: CMLI?

3 MR. RAWL: Yes.

4 THE COURT: I would like to understand
5 why my order has not been complied with in
6 terms of giving them the policies and
7 specific information that they've requested
8 about the trust.

9 MR. RAWL: Yes, Your Honor. As you
10 recall, the -- the issue that brought this
11 matter to the Court's attention was with
12 regard to the ADR rules and for the
13 mediation. And -- and that mediation, I
14 believe, was in the Link and the Potter
15 cases.

16 Both ACL and London have been
17 informing both the receiver and plaintiff
18 for a very long time that there is no
19 coverage remaining for London --

20 THE COURT: We understand that that's
21 the position you take. I directly required
22 that your client provide the policies.
23 What I got was a confidential submission to
24 myself that lists a whole bunch of policies
25 but does not provide the policies

1 themselves.

2 That's Attachment A to the settlement
3 agreement and release that is denominated
4 on each page confidential, produced
5 pursuant to court order, dated March the
6 25th, 2024, in 0 -- in Case -- Case Numbers
7 2022-CP-40-05543 and 2023-CP-40-03108.
8 That's Donaghy, Potter and Link.

9 So why was not my order complied with
10 with respect to those two cases in
11 submitting the documents I directed be
12 submitted?

13 MR. RAWL: Your Honor, I do believe
14 that it was complied with and --

15 THE COURT: Are you talking about this
16 submission I'm looking at right now?

17 MR. RAWL: And -- and, Your --
18 Your Honor, my understanding --

19 THE COURT: Where -- where in this
20 submission is a copy of the policies listed
21 in Attachment A, which says "known
22 policies" and gives policy periods
23 beginning in April of 20 -- of 1963 through
24 March of 1971? This is a document that
25 says these are known policies. Where are

1 the policies?

2 MR. RAWL: Your Honor, I apologize. I
3 did not provide the policies in camera to
4 the Court. My understanding was -- is that
5 the settlement agreement was to be provided
6 confidentially to the Court and to
7 Mr. Protopapas and to the plaintiffs, and
8 the -- but the policies were sent via a
9 different link at the same time.

10 THE COURT: And who were those sent
11 to?

12 MR. RAWL: They were -- they were
13 produced in the entire -- in the litigation
14 in --

15 THE COURT: The policies themselves?

16 MR. RAWL: The policies themselves
17 were produced in the litigation in the
18 Welch case.

19 THE COURT: In the Welch case?

20 MR. RAWL: Yeah -- Your Honor --

21 THE COURT: Well, if they were
22 produced in the Welch case, why are they
23 not produced in these cases when that's
24 what we're talking about right now and the
25 same order has directed the same kind of

1 performance?

2 MR. RAWL: Your -- Your Honor, what I
3 did was I -- I sent a link to those
4 documents to the receiver and to the -- the
5 plaintiffs. And I referenced that because
6 CLMI has been sued by the receiver in the
7 Welch case, and -- and those documents were
8 requested in the request for production.

9 So I referenced those documents
10 where -- where they were produced and
11 provided the link to those -- to those
12 policies and then sent the only thing that
13 was confidential, which is the agreement
14 itself --

15 THE COURT: Right.

16 MR. RAWL: -- to the Court on their --
17 you know, by email confidentially --

18 THE COURT: Well, let's get -- they --
19 they said they didn't get the policies.
20 Let's just get that clear right now.

21 Mr. Protopapas, do you have the
22 policies?

23 MR. PROTOPAPAS: Your Honor, the
24 policies were produced in Welch. I
25 apologize. They have not gotten to

1 Ms. McVey.

2 However, the trust instrument, which
3 took the money, the reporting requirements
4 set forth in the settlement and agreement
5 have not been produced, the post-payment
6 evidentiary documents.

7 So the -- the trust has an accounting
8 much like the accountings I provided to
9 the Court, by plaintiff, by amount and the
10 money that was transmitted by Lloyd's to
11 Atlas Turner. That accounting and that
12 post-settlement information has not been
13 produced.

14 THE COURT: All right.

15 MS. McVEY: And, Your Honor, it's --
16 it's -- so everything that happened
17 post-settlement, what is the condition of
18 the trust, the audits, the reports, the
19 request for reimbursement, all of that is
20 the stuff that we emailed Mr. Rawl about
21 after we realized we didn't get it. And
22 that is when he said, "The client is not
23 going to give it to you." So --

24 THE COURT: Okay. But --

25 MS. McVEY: -- that's -- and I'm not

1 sure I've seen the policies. They may have
2 been sent to me, but I --

3 THE COURT: Well, Mr. Rawl, I come
4 right back to you. What -- what's the
5 hang-up with going on and completing the
6 disclosure by letting us know what's
7 happening with the trust?

8 That's the -- that's, apparently, the
9 source, at least as your client has created
10 it, of assets that may be available to
11 settle these lawsuits or to respond to
12 these lawsuits. Why haven't they gotten
13 that information?

14 MR. RAWL: Your -- Your Honor, my --
15 my understanding from your order was to
16 produce the settlement agreement, which was
17 the evidence that had been discussed --

18 THE COURT: Well, I can certainly
19 clarify that for you today. I'm very
20 disappointed that you take that position,
21 Mr. Rawl. Because what you've apparently
22 told them privately is a little bit of a
23 more direct thing than you're telling me
24 right now as you look me in the eye. What
25 you apparently told them is they're not

1 going to give it to you.

2 MR. RAWL: Well, I will tell you
3 exactly what I told them, Your Honor. What
4 I -- what I said -- and I -- I will read to
5 you this specific email that I sent.

6 And it says -- and I received an email
7 from Trey Branham asking for several
8 documents that would -- that may have
9 been -- I don't know if they were possible
10 documents that could be produced after the
11 settlement agreement was -- was entered
12 into.

13 THE COURT: Right.

14 MR. RAWL: And he said, you know,
15 this -- this document says that you have
16 the ability to go and do audits. I want
17 all the audit documents, you know, in the
18 future.

19 And the -- and it -- and it says
20 something along there may be reporting that
21 may have been done by ACL to London, you
22 know, after this release was entered into.
23 I want -- I want all of these documents.

24 And what I responded to, is I said
25 that this is an email that I sent. The day

1 he sent me the email, I said: Trey, I hope
2 you are having a good evening. I received
3 your email yesterday afternoon requesting
4 additional information, but I think we have
5 provided the information required by
6 Justice Toal's order. Shortly after
7 Justice Toal's order was entered yesterday
8 morning, I provided you with a copy of the
9 2006 confidential settlement agreement and
10 release. This was the agreement referenced
11 by Mr. Psichos at the March 13th, 2024,
12 hearing. The materials provided were the
13 signed agreement with seven attachments and
14 six schedules, along with the signed first
15 amendment to the confidential settlement
16 agreement and release.

17 As described in detail in Section 4 in
18 the release provisions, this agreement
19 provided a release from Lloyd's
20 underwriters with respect to insurance
21 policies that had previously covered Atlas.

22 Part of the information you requested
23 was copies of the policies listed in the
24 Attachment A. The listed policies were not
25 attached to the confidential settlement

1 agreement and the release signed by the
2 parties, but a detailed information
3 concerning those policies was provided
4 earlier this month. And -- and then I
5 provided the link --

6 THE COURT: Well, of course they
7 wouldn't be a part of the settlement
8 agreement. This is what happened in aid of
9 going forward after the settlement
10 agreement.

11 And what they are trying to do, as you
12 well know, and as your company well knows,
13 is they are trying to -- and the reason the
14 receivership was set up to begin with is to
15 identify insurance assets or other
16 indemnification-type assets that might be
17 available to respond to the -- these
18 lawsuits.

19 And -- so let's not dance around with
20 some kind of -- "You said settlement
21 agreement; and, therefore, that's all I
22 gave you."

23 This whole exercise is about trying to
24 identify materials that would be pertinent
25 to settling or responding to these cases.

1 That's why y'all are in the ADR in
2 Link to begin with, was because of your
3 posture as defendants and as people who had
4 assets in the form of insurance agreements,
5 indemnification agreements, trusts or the
6 like that might be available to respond to
7 these matters.

8 And what they are asking for that you
9 still haven't given them is current
10 information about the status of these
11 assets. Why cannot that be done?

12 MR. RAWL: Your Honor, I -- I
13 apologize. I do not represent Atlas
14 Turner. I represent CLMI, which --

15 THE COURT: That's who I'm talking
16 about.

17 MR. RAWL: Right.

18 THE COURT: Let's be very clear.

19 MR. RAWL: Yes.

20 THE COURT: I'm talking about Lloyd's.
21 I'm talking about CLMI.

22 MR. RAWL: And CLMI --

23 THE COURT: They well know -- you've
24 sat through these hearings many times
25 before --

1 MR. RAWL: Yes.

2 THE COURT: -- that the reason we are
3 interested in them is because of their
4 position as an insurer or indemnitor or
5 trust relationship with Atlas Turner or ACL
6 such that they have assets that might
7 respond to these claims. That's why they
8 need the information.

9 MR. RAWL: I do --

10 THE COURT: You said no just kind of
11 flatly. "Oh, we don't have any information
12 there." They are then allowed to explore
13 that by asking for documentary information
14 that could verify either that you're right
15 or your client hadn't told you the whole
16 truth.

17 MR. RAWL: Your Honor, respectfully, I
18 do understand the purpose of the receiver
19 and your -- your direction to the receiver
20 to find insurance assets. This request was
21 not made by a receiver. It was made by a
22 underlying plaintiff in a case where my --
23 my client is not a party. You know, my
24 client --

25 THE COURT: Well, your --

1 MR. RAWL: -- my client --

2 THE COURT: -- your client in that
3 thing, we've been through this many times
4 before in the Covil litigation and other
5 matters by the receiver. Your client was
6 in a situation of having to respond in an
7 ADR mediation where both the defendant and
8 its potential insurers, trustees or others
9 that have assets are supposed to respond
10 and be in a position to make an offer.
11 That's -- I'm not telling you something you
12 don't know.

13 MR. RAWL: No, ma'am, you're not, you
14 know. And -- and I agree with everything
15 you're saying, except for the fact that
16 what was specifically told to the receiver
17 and to the plaintiffs is that CLMI has no
18 coverage for the claim and so --

19 THE COURT: I -- I get that all the
20 time. There are seven insurance companies
21 that participated in the creation of a
22 qualified settlement fund in Covil, the
23 granddaddy of all this thing, that for
24 years told courts, including me, that they
25 had no insurance, no available insurance.

1 It was only because of the dogged
2 pursuit of those insurance assets in my
3 court and in Nancy Eagles' court in the
4 United States District Court in
5 North Carolina that those insurance assets
6 were uncovered.

7 And they had plenty of assets and
8 plenty of legacy policies to respond to a
9 \$34 million verdict that took place in
10 North Carolina and then was sought to be
11 enforced before me.

12 After a whole bunch of hullabaloo
13 about removal and everything else,
14 ultimately, every court that looked at it
15 put it back here, and we dealt with it.
16 That's the very same scenario that we're in
17 with your client.

18 MR. RAWL: Your Honor, I have no -- I
19 have no client or involved in Covil. So
20 I -- I've heard about some of that history,
21 but I am not fully aware of it.

22 THE COURT: You're a lawyer. You can
23 read the cases -- the orders that have been
24 written, and we're asking for that same
25 information here.

1 And it is not enough for Lloyd's to
2 tell you or CLMI to tell you for you to
3 represent to this Court they say they don't
4 have any assets. That's the reason that
5 this -- this litigator is now asking more
6 specifically for documents, to see whether
7 or not they're telling you the truth.

8 It turns out that the folks who
9 represented the insurers in Covil either
10 were told the truth and chose not to tell
11 the truth to the Court or weren't told the
12 truth, but it was only through looking at
13 the legacy documents themselves that
14 the Court was able to discover that there
15 was coverage.

16 MR. RAWL: I completely understand.

17 THE COURT: And then negotiation
18 ensued that created the qualified
19 settlement fund. We're in the same
20 situation with your client. And it's not
21 enough for them to say, "You go to the
22 Court and tell them we don't have any
23 coverage." That's not enough.

24 MR. RAWL: I agree, which is why,
25 Your Honor -- you know, my client did not

1 produce that agreement earlier because
2 there are confidentiality provisions in it.
3 And -- and it asked for permission from --
4 you know, pursuant to the document, in
5 order to produce --

6 THE COURT: And -- and we've honored
7 that.

8 MR. RAWL: And you took care of that,
9 Your Honor. You -- you took care of that
10 issue.

11 THE COURT: Immediately.

12 MR. RAWL: And so we produced it.
13 And -- and my client does appreciate, you
14 know, your order in regard to keeping that
15 document confidential.

16 My client is not saying that it did
17 not receive other information that was
18 referenced in that document that could, you
19 know, have been produced later. I don't
20 know what there is or is not there.

21 My client's understanding, and -- and,
22 Your Honor, as was mine, was that your
23 order was: Produce this, the policies,
24 which we did, and the settlement agreement
25 that demonstrates conclusively, Your Honor,

1 if -- if you haven't received it --
2 reviewed it, that there is no coverage.
3 There was a complete policy buyout.

4 With that -- with regard, I understand
5 Mr. Protopapas's role -- you know, I've
6 worked with him on -- in many other
7 cases -- that he is trying to learn
8 information about ACL. And -- and there
9 are -- he's -- he's made document
10 production requests and other requests with
11 regard to this information in the Welch
12 case where my client is actually a party.

13 Part of the -- the concern,
14 Your Honor, is, you know, every exhibit,
15 addenda, everything was attached to that
16 settlement agreement. The signed
17 settlement agreement was produced. The
18 policies as you ordered were produced.
19 What's being asked for now is, well, the
20 agreement references the possibility that
21 other information was -- might have been
22 produced later.

23 And -- and, Your Honor, my reading of
24 your order did not say, you know, produce
25 the confidential settlement agreement that

1 demonstrates there is no longer coverage
2 and anything else that may have occurred
3 between the parties after the date of the
4 confidential settlement agreement.

5 THE COURT: Well, Mr. -- Mr. Rawl, the
6 confidential agreement at least suggests
7 that there was ongoing activity as a result
8 of that settlement agreement that involved
9 insurance assets that had then been
10 converted into some sort of trust fund, a
11 trust which apparently still currently
12 exists in the Royal Bank of Canada.

13 MR. RAWL: And, Your Honor --

14 THE COURT: And that is what they're
15 searching for now, is whether there are
16 still assets that were either created by
17 this settlement agreement or exist
18 independently of it. And they're entitled
19 to look at that.

20 MR. RAWL: And -- and, Your Honor,
21 I -- I don't know whether -- how the trust
22 was set up. I'm -- I'm pretty sure that --
23 that CLMI didn't set up any trust. It
24 would have paid the amount of money, you
25 know, pursuant to that settlement agreement

1 to them, and it may have been paid directly
2 to an account. I do not know the answer to
3 that question off the top of my head.

4 But one of my concerns, Your Honor, is
5 the information that is requested is -- is
6 of a confidential nature to --

7 THE COURT: I -- and I've already
8 demonstrated that we can protect that.
9 Your client, if it has further information
10 about the financial accountings that are
11 suggested would be done by this settlement
12 agreement and they're now being asked for,
13 the confidentiality can be -- be protected
14 just as it is going to be absolutely
15 protected by the settlement agreement
16 that's been received.

17 But you can't stop there with them
18 saying, well, all we have to do is produce
19 this. And the -- the fact that we may have
20 knowledge and maybe even participation in
21 supplying information for accountings that
22 would take place with respect to the trusts
23 created is something they're asking about.

24 MR. RAWL: And I do -- I understand
25 what is being requested. My -- my --

1 and -- and to be clear, CLMI is not -- I
2 mean, its position is very clear that there
3 is no coverage. It wants to -- to
4 cooperate as much as possible because it
5 very much would like for me to convince
6 Mr. Protopapas that there is no coverage
7 such that he will let them out of
8 litigation.

9 THE COURT: And a way to demonstrate
10 that is to give them what they ask for in
11 terms the trust as to being administered.
12 And if -- if that information demonstrates
13 that the trust is actually being
14 independently administered, CLMI is
15 completely out of it, then that's fine and
16 dandy.

17 But they -- what they're saying is not
18 there isn't any -- we don't -- they're not
19 saying to the Court we don't have this
20 information. They are saying to the Court
21 we're not going to supply this information.

22 MR. RAWL: No, Your Honor. They
23 are -- one, they are not saying that they
24 don't have any -- any information or
25 reporting that as -- as I've said.

1 I don't know exactly what they do
2 have, but I -- I am -- I -- I am pretty --
3 I don't want to speak out of school. I'm
4 pretty confident that there would be some
5 reporting.

6 My understanding of that reporting,
7 however, Your Honor, is that that would
8 have been ACL -- I apologize. I get -- I
9 get them confused -- Atlas Turner providing
10 confidential information to the carrier.

11 THE COURT: Right. And --

12 MR. RAWL: And --

13 THE COURT: And, of course, here's
14 what the dilemma is: They can't -- your
15 client can't hide behind the
16 confidentiality of information on the
17 strength of Atlas Turner taking the
18 position "Well, we're not going to
19 cooperate with anything."

20 MR. RAWL: Please, I -- Your Honor, I
21 completely understand. My -- what -- some
22 of that information is -- my understanding,
23 shows is it delineates settlement amounts
24 that Atlas Turner has paid for settlements.

25 And -- and to the extent that

1 this Court is going to order CLMI to
2 produce that type of information, I would
3 request that it be limited to the receiver
4 because that information would be very
5 harmful to --

6 THE COURT: I -- I understand why you
7 don't want the plaintiff to have specific
8 information about settlement. Right now,
9 we're just trying to identify the asset.
10 This is a receiver-led activity. And I
11 sympathize with you and agree with you
12 about that. And I'm perfectly willing to
13 sign whatever confidentiality matters need
14 to be signed to get you to comply with the
15 receiver. That's what's in front of me
16 right now.

17 All right. The only thing that's in
18 front of me right now with respect to
19 plaintiff, besides their frustration about
20 this matter, is whether or not to postpone
21 this trial. But I get what you're saying.
22 And if that's the situation, we can work
23 something out there, Mr. Rawl.

24 MR. RAWL: Thank you, Your Honor.

25 THE COURT: And so I appreciate that

1 clarification. And what I would like to be
2 done as a result of that is for you and
3 Mr. Protopapas to sit down and see if you
4 can develop some kind of protocol that
5 would facilitate giving him access to the
6 information he needs.

7 It may show there is no coverage,
8 there is no anything, the trust doesn't
9 have anything left. And then they can
10 decide what they want to do about that.

11 MR. RAWL: Yes, Your Honor.

12 THE COURT: But I think he is at least
13 entitled to know what he's asking for with
14 respect to the document you produced.

15 MR. RAWL: I am always happy to meet
16 with Mr. Protopapas, and I will do it --

17 THE COURT: Okay. So let's start
18 there. That's not going to suit the
19 plaintiff completely, but it's a start.
20 And I can always take other requests as
21 they come along. But right now, as though,
22 apparently, those who employ you and those
23 who employ attorneys to represent them
24 directly in this litigation don't believe
25 it. These receiverships are not about some

1 punitive measure by a rogue court. These
2 are very traditional means of marshalling
3 assets of a corporation which either cannot
4 do that him -- itself or refuses to do it.

5 And that relief has been around in
6 South Carolina law since Colonial times.
7 It is a very old and ancient tradition of
8 British common law that comes right down to
9 the present time. I learned about it in
10 the '70s when my law firm, as defense
11 counsel, represented a state chartered life
12 insurance company that was just about being
13 placed into bankruptcy, and we put it into
14 a receivership so as to be able to use the
15 friendlier atmosphere of state receivership
16 to marshal its assets, and we did and
17 achieved a great result for the client and
18 for the policyholders by doing that.

19 MR. RAWL: Yes, ma'am.

20 THE COURT: So this is -- you know,
21 that's what frustrates me about some of
22 these very antagonistic and volatile kind
23 of filings that have been made in this
24 claim as if this is some kind weird,
25 offbeat thing.

1 Unfortunately, those who don't like
2 this have the burden of having someone who
3 has been around the sun 80 times and been
4 in the practice of law for 55 years, who is
5 old enough to have lived through the use of
6 some of these documents and is old enough
7 to know about when policies were
8 per-occurrence policies rather than
9 claims-made policies.

10 That's just a burden that people are
11 going to have to live with, but it doesn't
12 somehow make this Court a race horse of
13 some sort of unusual sort of approach to
14 this thing. This is about as traditional
15 an approach to marshalling insurance assets
16 as you can possibly believe or ever see.
17 And that's all that is trying to be done
18 with your clients. They're not -- we're
19 not trying to punish them for things
20 they're not responsible for. We're trying
21 to provide the receivership and -- the
22 receiver in the exercise of his fiduciary
23 responsibilities with the means of
24 examining these things.

25 But you know yourself from dealing

1 with this particular receiver, this is not
2 some kind of an antagonistic person who is
3 going to accuse you of personal wrongdoing
4 or anything. He's just trying to perform
5 the duties that he's responsible for
6 performing. If he's wrong and there aren't
7 any assets, he will be the first person to
8 admit that to you.

9 MR. RAWL: I've known Mr. Protopapas
10 for a very long time. I consider him a
11 friend. Yes, ma'am, Your Honor.

12 THE COURT: All right. Thank you very
13 much, Mr. Rawl.

14 MR. RAWL: Thank you.

15 THE COURT: Anything further,
16 Ms. McVey?

17 MS. McVEY: No, Your Honor. I -- I
18 hear what you're saying. I'll just say
19 that the order you signed was on request of
20 the plaintiffs --

21 THE COURT: Yes, it was.

22 MS. McVEY: -- to get this
23 information?

24 THE COURT: Yes, it was.

25 MS. McVEY: And it wasn't limited to

1 just the settlement agreement. It included
2 all schedules, attachments, addendums and
3 any other related materials.

4 THE COURT: Yes.

5 MS. McVEY: It's not --

6 THE COURT: It's exactly that order
7 that I'm referring to in saying that
8 further work needs to be done by Mr. Rawl.

9 He says the client is resisting
10 because of these confidentiality issues.
11 We've protected him on this first thing.
12 We may protect them a little bit more on
13 these other things. But let's let
14 Mr. Protopapas have a chance to do that, is
15 kind of my approach to it. All right.
16 And -- and I think it's yours, too, all
17 right, because you've reluctantly asked for
18 a continuance.

19 MS. McVEY: No, no, I did not ask for
20 a continuance.

21 THE COURT: Well, I understand.
22 You -- you have reluctantly conceded that
23 it might be warranted.

24 MS. McVEY: That's right.

25 THE COURT: Okay.

1 MS. McVEY: But I -- just so the
2 record is clear --

3 THE COURT: I understand.

4 MS. McVEY: -- I did not ask for a
5 continuance.

6 THE COURT: I understand.

7 MS. McVEY: Okay.

8 THE COURT: All right. Well, all
9 right. I think I now understand the status
10 of ACL, Atlas Turner and Payne & Keller.

11 Now, let me then turn to Atlas
12 Turner's motion to dismiss for lack of
13 personal jurisdiction. Haven't I already
14 ruled on that once?

15 MR. BROWN: May I --

16 THE COURT: Mr. Brown.

17 MR. BROWN: May I approach the Court,
18 Your Honor.

19 THE COURT: Yes, sir. Mr. Brown --

20 MR. BROWN: Yes, ma'am?

21 THE COURT: -- one thing that does --

22 MR. BROWN: Your Honor --

23 THE COURT: One thing that does
24 disappoint me very much about this
25 situation -- I tried to protect you. I

1 don't want you to be in an awkward position
2 any more awkward than you are in now.

3 But your client requires you,
4 apparently, to file things that's
5 completely failed to cite or recognize any
6 of the authorities in aid of supporting the
7 jurisdiction that I'm now exercising over
8 this matter, and I don't understand that.

9 MR. BROWN: Can you -- I apologize.
10 Can you give me an example, Your Honor?

11 THE COURT: I just recited it at
12 length already. The Supreme Court,
13 the Court of Appeals, the federal courts,
14 the Fourth Circuit, you name it, there's
15 not been one court that's looked at this
16 receivership issue or the way I've
17 conducted these asbestos cases that has not
18 approved of what has been and is being done
19 here, and you know that very well.

20 MR. BROWN: Yes, ma'am.

21 THE COURT: But when you brief these
22 matters or send up matters in aid of your
23 client's position, you shout to the
24 housetops that we are violating the
25 appellate court orders but don't cite so

1 much as one authority that has ruled on
2 this matter. I don't understand that.

3 MR. BROWN: I have only filed three
4 notices of appeal in this --

5 THE COURT: Yes, sir.

6 MR. BROWN: -- hullabaloo --

7 THE COURT: Yes.

8 MR. BROWN: -- from the beginning,
9 the --

10 THE COURT: Yeah, but you inquire of
11 my law clerk and everybody else in the
12 world about this thing, trying to maintain
13 a position that you're not really involved
14 because your client says that, but at the
15 same time, ignoring the rulings that have
16 been made that squarely affects your
17 client's position in this matter, including
18 the ones I've made. I don't understand
19 that.

20 MR. BROWN: Your Honor, I -- I
21 understand the rulings on the cases that
22 have come forward. I think my case is
23 slightly different, and I've said that from
24 the very beginning.

25 THE COURT: All right. So -- well --

1 MR. BROWN: Your Honor disagreed.

2 THE COURT: Yes, sir, and I have ruled
3 on that.

4 MR. BROWN: Yes, ma'am. And -- and we
5 have two appeals with the Court of Appeals
6 related to that.

7 THE COURT: Right.

8 MR. BROWN: And then the third --

9 THE COURT: And then we have orders
10 from the Court of Appeal that indicate that
11 the activities of the receiver are not
12 stayed by anything that's going on with
13 your appeals, which are appeals of
14 nonappealable issues.

15 MR. BROWN: I have not tried to stop
16 anything other than a trial in Tibbs. I
17 didn't think, much like Ms. McVey and the
18 receiver, that Tibbs was -- that's on the
19 block or on the block.

20 I called your law clerk to inquire if
21 we could bring this issue up today because
22 the appeal was still out there, and I know
23 you don't like things just brought up out
24 of the blue.

25 THE COURT: Yes, and --

1 MR. BROWN: That was --

2 THE COURT: -- and I'm --

3 MR. BROWN: That was --

4 THE COURT: -- ready to hear from you.

5 But I do not understand why there is no
6 recognition by your client of the rulings
7 that have already been made about this
8 matter and the fact that Tibbs is ready for
9 trial and is not stayed by anything that
10 your -- any activities that are being now
11 taken in the Court of Appeals. So please
12 address that.

13 MR. BROWN: I believe, Your Honor, the
14 only answer is my client is taking the
15 rights to appeal they have in that case.
16 And if the Court of Appeals --

17 THE COURT: They don't have any right
18 to appeal the unappealable orders, do they?

19 MR. BROWN: We haven't appealed any of
20 the other orders in Tibbs, just one. The
21 orders -- the other orders that are out
22 there floating --

23 THE COURT: Are you talking about the
24 one to strike your answer?

25 MR. BROWN: Yes, ma'am. And that's

1 it. And then -- so that was Tibbs and
2 Welch. Those two were the companion cases
3 that started.

4 And then the only other appeal that's
5 sort of floating out there that I think
6 would be -- as the ACL knew, that with
7 these settlements then is the Atlas Turner.
8 Mr. Protopapas and I have -- will have to
9 talk through how to deal with it.

10 But if Your Honor recalls, you went
11 to -- Mr. Protopapas moved to terminate me.
12 Your Honor said, no, I'm not going to let
13 him terminate you, but if there's any
14 indecision between you two, he gets the --
15 for lack of a better word, he gets the --

16 THE COURT: -- final say. That's
17 correct.

18 MR. BROWN: Yes, ma'am. And I -- I
19 take the position, based upon research, not
20 willy-nilly -- and I didn't do this --
21 because you brought it up, whether it was
22 appealable.

23 So I said, I will not just go file an
24 appeal, but go back, research this thing.
25 And what it says is, it's not only

1 appealable, it's mandatory that I appeal it
2 or I waive the right. Now, you might --

3 THE COURT: Now, are you talking about
4 the strike-the-pleadings thing?

5 MR. BROWN: No, ma'am. I'm talking
6 about putting Mr. Protopapas as -- as my
7 ultimate decision-maker.

8 THE COURT: Well, that is -- you and I
9 will just have to disagree about that.

10 MR. BROWN: Yes, ma'am, and I -- and I
11 understand --

12 THE COURT: And --

13 MR. BROWN: And that's all --

14 THE COURT: And the reason we disagree
15 about that is this: You may be appealing
16 his status as your -- as the receiver and
17 his control of this litigation. And I
18 don't know what the activity is going to be
19 in that regard. But what you're not citing
20 to the Court and ignoring in the argument
21 you're making to me now is the orders of
22 two members of the Court of Appeals who
23 have said the activities of the receiver
24 are not stayed by these appeals.

25 MR. BROWN: And anything that I can

1 do, I do do. But we have got, in one of
2 those appeals, the blocking statute, which
3 I understand, again, Your Honor has ruled
4 on. It's over there. They'll be what
5 they'll be. They'll --

6 But otherwise, Your Honor, we've been
7 asked to do something. We have tried to
8 participate. I don't think anyone has
9 asked me to do something that -- other than
10 it's the blocking statute or something, we
11 have tried. I have not gone and filed an
12 appeal on varieties of things. I have
13 carefully looked at what I've appealed.

14 And I think there may be some, maybe
15 in my head, confusion between -- I just
16 filed, for example, one appeal in Tibbs.
17 That was it. And I haven't filed any
18 others. And I know Your Honor has entered
19 other orders, and there are other appeals
20 floating by other parties. It's not me.
21 So, as to a ton of appeals out there, as
22 Your Honor has indicated --

23 THE COURT: Well, one of the things
24 you haven't done is filed any responsive
25 pleadings in this matter.

1 MR. BROWN: In -- and I -- I can --

2 THE COURT: And if that is dependent
3 on your position about personal
4 jurisdiction --

5 MR. BROWN: No, ma'am. No, ma'am.

6 THE COURT: -- you know --

7 MR. BROWN: It's not personal
8 jurisdiction --

9 THE COURT: Well, that's a good
10 thing --

11 MR. BROWN: No, ma'am.

12 THE COURT: -- because you would not
13 be able to avoid responsibility to
14 respond --

15 MR. BROWN: No, no. No, ma'am.

16 THE COURT: -- on that basis.

17 MR. BROWN: I'm not trying to avoid
18 that. On the --

19 THE COURT: If -- and if it's because
20 of the status of the receiver as the one in
21 control of this litigation --

22 MR. BROWN: No, ma'am.

23 THE COURT: Okay. Then what is it?
24 The striking of the pleadings?

25 MR. BROWN: No, ma'am. We never got

1 an order from that case. You've entered on
2 all the other jurisdictionals that I've
3 had. I went and looked. The Court has
4 entered an order or a Form 4 or some sort
5 of written order.

6 The last time, I believe,
7 Mr. Protopapas and I were here, we were
8 sitting, I think, at this table and
9 whispering back and forth, "Have you gotten
10 an order yet?"

11 And he said, "No."

12 I said, "I haven't either."

13 So went from there -- if Your Honor
14 will recall, you went, I think, to
15 Spartanburg. I think the motion for
16 default was filed on Friday of that week,
17 and then your Spartanburg week started. I
18 was -- went over to watch because I've
19 never watched you try a case. And when I
20 saw that that was filed, that's why I got
21 up and left Spartanburg to get back to
22 Charleston, prepared responses.

23 And I cannot tell you why, but I will
24 make my computers available to anybody
25 forensically who wants to look at that

1 time, prepared responses that said we never
2 got the written order. And I have an
3 argument based on that.

4 And I can give you a copy of the draft
5 as it was. At the time, it had
6 Mr. Protopapas's name on it. In fact, it
7 was sent to Mr. Protopapas, who said, "As
8 receiver, I'm not going to sign that. But
9 you -- you go do what you need to do. But
10 that's -- that's not me."

11 THE COURT: Well --

12 MR. BROWN: That's trying --

13 THE COURT: -- you understand that
14 the Court finds itself in this position.
15 Your client is being managed by a
16 receivership. You choose to represent a
17 so-called client that is defying the
18 authority of the receiver to act as a
19 receiver.

20 The Court of Appeals has said the
21 receiver's activities are not stayed by any
22 appeal or anything that they've got. So
23 why would -- if the receiver is not joining
24 you in asking for this order, why would I
25 accommodate you over the receiver when he's

1 been appointed to be the receiver, and the
2 appellate courts now have three times
3 approved the authority of the receiver to
4 move forward?

5 MR. BROWN: Your Honor, I think on
6 that particular one -- because that was the
7 day you were coming up with your attempt to
8 balance out I'm not -- don't want to fire,
9 but I don't accept receiver --

10 THE COURT: I know -- you know, I may
11 have accommodated you more than I should
12 have is all I can say, Mr. Brown. I've
13 tried to respect your dignity by not --

14 MR. BROWN: I appreciate that,
15 Your Honor.

16 THE COURT: -- having you fired. But
17 it doesn't take away from the fact that you
18 have no authority in this matter.
19 Mr. Protopapas is the receiver in this
20 matter.

21 So you may be hired by these people,
22 and that's their business, but I'm running
23 proceedings that have their own procedure
24 attached to them. And part of what your
25 client doesn't want to acknowledge but what

1 has been done is to appoint a receiver for
2 that client.

3 MR. BROWN: And notwithstanding the
4 appeal of that receiver, which I understand
5 the rulings of the Court, what they say the
6 receiver can do --

7 THE COURT: What they say --

8 MR. BROWN: -- we are --

9 THE COURT: -- continue with the
10 receivership.

11 MR. BROWN: May I ask Mr. Protopapas
12 one question --

13 THE COURT: All right.

14 MR. BROWN: -- privately just to make
15 sure I'm --

16 THE COURT: All right.

17 MR. BROWN: -- not going into a wrong
18 area?

19 THE COURT: All right.

20 MR. ROBINSON: Your Honor, I have the
21 answer to, I think, the question that
22 you're asking about the issue that is
23 before the Court of Appeals presently
24 involving your order as to who is
25 representing Mr. Protopapas.

1 THE COURT: All right. Well,
2 Mr. Brown is -- has the floor.

3 MR. ROBINSON: Okay.

4 THE COURT: So I think --

5 MR. BROWN: Let me take one second,
6 and then I'll --

7 THE COURT: Yeah.

8 MR. BROWN: So, as Your Honor --

9 THE COURT: Let's let Mr. Brown
10 complete his things. And then,
11 Mr. Robinson, I'll recognize you.

12 Go ahead, Mr. Brown.

13 MR. BROWN: As the ACL -- I was -- the
14 ACL cases were -- were resolving, as they
15 were, last week Mr. Protopapas and I
16 reached agreement that if the Atlas Turner
17 matters were continued, we could get
18 together this week --

19 THE COURT: Okay. I -- so --

20 MR. BROWN: -- with every case out
21 there to -- to -- some things have to
22 happen to see that cases don't fall through
23 the cracks. That's -- that's another issue
24 that -- and I -- you know --

25 THE COURT: I think that's a valid --

1 MR. BROWN: Yes, ma'am.

2 THE COURT: I think that's a valid
3 concern.

4 MR. BROWN: Who's going to answer in
5 light of that order, and then what happens
6 to that order? That becomes complicated,
7 and we want to come up with an easier way
8 to solve it than to come in here and just
9 sort of --

10 THE COURT: Well -- because my options
11 are limited. I've appointed a receiver.
12 The appellate courts that have looked at
13 this thing have told me and the world that
14 this receiver has the authority to continue
15 despite the appeals of the defendant. So
16 that's, from my standpoint, all I know how
17 to do.

18 Now, if you-all make some side
19 agreements that are propounded by the
20 receiver, then I -- I've got a platform to
21 go on. But I can't simply do it on the
22 basis of what you are arguing.

23 MR. BROWN: Yes, ma'am.

24 THE COURT: I've not responded to
25 receiver's request that you be terminated

1 in your representation. I did that as a
2 matter of your status and your dignity as a
3 lawyer, whom I know well.

4 But I can't ignore the rulings that
5 have been made and so far blessed that give
6 Mr. Protopapas the authority and the
7 control of how this litigation proceeds.
8 That's what's got me in a bind.

9 MR. BROWN: And I understand what
10 you're saying, Your Honor. I apologize.

11 THE COURT: But in a -- I -- I think
12 you're doing a very noble thing and
13 realizing that despite the confusion that
14 your client has introduced into this, we
15 can't let the situation move in such a way
16 that if -- that any responsibilities of
17 Atlas Turner or ACL fall in the cracks.

18 MR. BROWN: Yes, ma'am.

19 THE COURT: And that's what you're
20 trying to prevent --

21 MR. BROWN: Yes, Your Honor.

22 THE COURT: -- from happening.

23 MR. BROWN: That -- without --

24 THE COURT: I mean, I -- I get that.

25 MR. BROWN: Without waiving any of my

1 rights, that's what we're doing, yes,
2 ma'am.

3 THE COURT: Sure.

4 MR. BROWN: Absolutely.

5 THE COURT: I understand.

6 MR. BROWN: And -- and have been
7 committed to it. And although they're all
8 the big players in ACL and not me, if I'm
9 asked to do something, unless there is just
10 no way to do it, so something needs to be
11 written, so...

12 Mr. -- Mr. Protopapas and I are at
13 least communicating and working together to
14 try to get there. But next week, we've
15 committed on this, that we have to have a
16 process because it needs to move the
17 plaintiffs -- as you say, you have to move
18 cases, they have to move cases. The State
19 gives you very limited resources to deal
20 with these cases. And we will have
21 something in place, I can promise you, that
22 won't take away the appeal underlying that,
23 but will move these -- move the cases the
24 way they should.

25 THE COURT: Okay. All right. Now,

1 Mr. Robinson.

2 MR. ROBINSON: I think Mr. Protopapas,
3 Your Honor, is going to address it.

4 THE COURT: All right.

5 Mr. Protopapas.

6 MR. PROTOPAPAS: Thank you,
7 Your Honor.

8 And thank you.

9 When we think about the -- the various
10 stages of receivership litigation, Atlas
11 is -- is at that point where -- where
12 cooperation has -- you know, over the last
13 two months, has begun. And -- and
14 Mr. Brown and I are working to make it a
15 more responsive defendant within the
16 litigation.

17 And so when I -- when the two arms of
18 the receivership -- one is properly defend
19 cases brought by plaintiffs; two, identify
20 and be transparent on assets. On those two
21 roles of the receivership, one thing I will
22 say: In the last 30 days, admirably,
23 Mr. Brown has worked hard to become a
24 better asbestos lawyer.

25 Whether he wanted to or not, he -- he

1 attended a trial, has watched a trial.
2 There's been plenty of -- of courtroom
3 trials videotaped here as well. He and I
4 have talked about them. We have -- trying
5 to identify industrial hygienists, trying
6 to identify documents that would be
7 responsive.

8 But the docket in South Carolina moves
9 fast, and it has overtaken us in Atlas
10 Turner in two ways. One is: I have not
11 answered the asset portion.

12 I'll tell the Court that in the
13 settlement agreement that is under seal,
14 without revealing its terms with Lloyd's,
15 there's something called an "indemnified
16 claim." And if Lloyd's receives a claim on
17 its policies that is an indemnified claim,
18 there are avenues that may be available to
19 compensate plaintiffs. And there are also
20 quarterly and annual reports on the trust.

21 So there are two -- those are the two
22 asset -- two of the assets that I'm trying
23 to track down.

24 And then on the proper defense side --

25 THE COURT: Well, and I may just say,

1 with respect to that, it sounds to me like
2 Mr. Rawl is going to try to cooperate to
3 the extent his client will allow him.

4 MR. PROTOPAPAS: Correct, Your Honor.
5 And Mr. Rawl and I will get together and --
6 and saw through that second aspect of
7 the -- of the receivership.

8 And then on the first aspect, we have
9 not been the most responsive defendant in
10 the South Carolina asbestos docket. We
11 have not. Atlas Turner has not done what
12 this Court expects of defendants.

13 I am fully aware of what the Court
14 expects, and I feel that -- that we are on
15 that path. We're not there yet. But the
16 meetings we've had, communications that
17 we've had, we're better.

18 This Court has a robust docket. It
19 moves quickly. And this April docket has
20 overtaken us in Atlas Turner where I have
21 not been able to fully identify our best
22 witnesses or our best arguments.

23 And, frankly, Your Honor, there may
24 not be an opportunity to present witnesses
25 and documents. Ms. McVey raises some fine

1 points about some of the shortfalls in our
2 process.

3 But with that said, it's not that we
4 have not heard the Court's instruction. I
5 think we -- we are working towards it
6 imperfectly.

7 But that is the unique situation for
8 Atlas Turner. It's not at peace that's
9 been called out and we're able to perform
10 where we are with ACL, which is still not
11 where Covil is. And -- but we're not where
12 we are with Payne & Keller, which is still
13 bludgeoning war.

14 So the -- to me, the -- I think we're
15 on the right path. I -- I do think --

16 THE COURT: Okay. I -- I get what you
17 want. That's a way of dancing around
18 everything to tell me that y'all are still
19 working with each other. That's -- what
20 the plaintiffs are saying is, hey, these
21 cases are up on the docket now, and we want
22 some relief.

23 MS. McVEY: And it's more than that,
24 Your Honor. And I respect Mr. Protopapas
25 and Mr. Brown for this. And this is not

1 defendants who are "Oops, goodness, it got
2 away from us."

3 Here's where we are: You ordered them
4 to produce witnesses, you ordered them to
5 produce documents, and they have refused
6 and said, "We're not doing it now; we're
7 not doing it ever." And by "they," I mean
8 what Atlas is telling Mr. Brown to tell
9 this Court. I don't think Mr. Protopapas
10 is saying that.

11 On top of your orders, we emailed
12 Mr. Brown, probably weekly, saying: You
13 have listed no witnesses. We're going to
14 move to strike any witnesses you do. You
15 are past the scheduling order for fact
16 witnesses. You're past the scheduling
17 order for the expert witnesses. You can't
18 call anybody.

19 And on top of that, then they say, we
20 can't produce any documents because of this
21 blocking Quebec Act, records act, which is,
22 every court has looked at it but has turned
23 it away.

24 THE COURT: Decided first in 1988 in
25 the United States District Court for the

1 District of South Carolina by Judge Joe
2 Anderson, that Quebec Records Act has been
3 a dead letter in this district for years.

4 MS. McVEY: Exactly. And, Your Honor,
5 they say, we can't produce anything to you
6 because it's from Canada, and then in
7 response to personal jurisdiction motions,
8 they're in support of it.

9 They send me an affidavit from the guy
10 in Quebec, notarized in Quebec. They're
11 sending me a document from Quebec. What?
12 Isn't that a business record? I -- I'm
13 just frustrated. I want Mr. Protopapas to
14 get this defendant --

15 THE COURT: Well, let me ask you this,
16 Ms. McVey: I'm just looking at this list
17 of things now.

18 MS. McVEY: Yes, ma'am.

19 THE COURT: With regard to motions to
20 dismiss for lack of personal jurisdiction,
21 have I not already ruled on all those
22 things with respect to Flynn, Goodwin,
23 Mitchell, Tibbs, Donaghy and Link?

24 MS. McVEY: My belief is that you
25 have, Your Honor. If you -- I know you

1 have for sure in Donaghy, Potter and Link
2 because those are ruled on on February 7th,
3 2023.

4 THE COURT: And --

5 MS. McVEY: That --

6 THE COURT: And I don't need to with
7 respect to Mitchell, Goodwin and Flynn, or
8 do I?

9 MS. McVEY: I think you can rule on
10 the papers. I -- I thought you had already
11 ruled on that. But to the extent you
12 haven't -- I know you've read everything
13 that we've provided to you, but we have
14 direct sales to our client's worksites to
15 Guy M. Beaty, to Covil. We've got
16 Atlasite. We've got a coworker identifying
17 New-Therm insulation.

18 Your Honor, there is more than enough
19 evidence. We've got customer lists
20 showing --

21 THE COURT: Well, I -- I understand
22 all that. And, you know, if that's
23 something we didn't do -- what I don't want
24 to do is invite another round of appeals
25 for something that is not appealable --

1 MS. McVEY: Right.

2 THE COURT: -- because --

3 MS. McVEY: And mind you, you could
4 just deny it.

5 THE COURT: Denying a motion is not an
6 appealable --

7 MS. McVEY: That's right.

8 THE COURT: -- matter.

9 MS. McVEY: I would ask you to deny on
10 the record their personal jurisdiction
11 motions and make clear, as I think you did
12 on February 7th, that you don't need to do
13 a written order. An oral order is fine.
14 If you want me to do a written order, I
15 will.

16 But I believe in Donaghy, Link and
17 Potter -- Donaghy is Potter, and Link, that
18 they are in default. And it's interesting
19 to me that Mr. Brown comes up here and
20 says, well, I was in Spartanburg, and I got
21 this, and it was such a mystery.

22 I was in Spartanburg trying that case.
23 He didn't come up to me and say, "Hey,
24 what -- what is this? This is crazy. I
25 didn't know that you were putting us in

1 default and that you -- I was going to
2 answer the case." They didn't move to lift
3 default. I -- I don't understand that.

4 And so, you know, I never want to hold
5 another lawyer in default. You -- you know
6 my experience, that I usually call people.
7 But with Atlas Turner, I -- I have no idea
8 what they're doing.

9 THE COURT: Well, I can tell you this:
10 My law clerk and I will get together after
11 this session is over and make it very clear
12 that these motions are denied.

13 MS. McVEY: Thank you, Your Honor.

14 THE COURT: And we'll probably do it
15 in the same kind of way that the Donaghy,
16 Potter, Link, Atlas things do. And if that
17 also involves putting them in default, we
18 can do that as well.

19 MS. McVEY: Thank you, Your Honor.

20 THE COURT: I just -- I don't have the
21 paper right here in front of me to do that,
22 but we -- we're going to do all that.

23 MS. McVEY: That's great.

24 THE COURT: And -- but with respect to
25 Tibbs, that's -- well -- no, they're all on

1 the docket. The only ones that I will not
2 have to do anything further about -- well,
3 Tibbs is the only one I have to worry about
4 continuing, right?

5 MS. McVEY: No, ma'am. Atlas Turner
6 is in all of the cases that are on --

7 THE COURT: Okay. So I -- so what's
8 being asked by Protopapas is to continue
9 them all?

10 MS. McVEY: Yes, ma'am.

11 THE COURT: Oh, that gives me so much
12 heartburn, but that's what I'm going to do.

13 MS. McVEY: Okay. And, Your Honor,
14 I -- I hear you on the continuance. I want
15 to make clear that when we come back up,
16 and I expect that we will come back up for
17 trial, that Atlas Turner doesn't get to all
18 of a sudden now let's do witnesses when
19 they haven't -- they failed to comply up to
20 this point. We can revisit that, but I --

21 THE COURT: We can do that. But
22 they -- they have not complied with any of
23 the deadlines that are in the Gary Hill
24 order that have never been changed --

25 MS. McVEY: Yes, Ma'am.

1 THE COURT: -- and the Rules of Civil
2 Procedure, which they clearly understand.
3 So this doesn't mean te absolvo.

4 MS. McVEY: Okay. Thank you,
5 Your Honor.

6 THE COURT: Okay.

7 MS. McVEY: I appreciate it.

8 THE COURT: So the bottom line is, I'm
9 going to continue these cases. And I will
10 want a complete report from both sides as
11 to whether there's a stalemate or there's
12 any real progress within one month from
13 today's date. And if there's not any
14 progress, I'm going to reset them for trial
15 at the earliest time I can do it.

16 MS. McVEY: Thank you, Your Honor.

17 THE COURT: All right. Okay. Now --

18 MR. SAWYER: Your Honor, may it please
19 the Court.

20 THE COURT: Just a second, Mr. Sawyer.

21 MR. SAWYER: Yes, ma'am, Your Honor.

22 THE COURT: All right. Payne & Keller
23 I don't need to do anything else about
24 right now; am I right?

25 MR. PROTOPAPAS: You're correct,

1 Your Honor.

2 THE COURT: All right. Okay. Now,
3 Mr. Sawyer.

4 MR. SAWYER: Your Honor, that's what I
5 was going to ask. I was here for Payne &
6 Keller. I have a deposition that's
7 supposed to start in five minutes. It will
8 start a little late, but I didn't want to
9 leave without relief of the Court. I'm
10 only here for Payne & Keller --

11 THE COURT: I -- I think -- we've
12 gotten a status report on Payne & Keller.
13 I think that's all we had on the docket for
14 today.

15 MR. SAWYER: And we do need to
16 schedule some hearings for motions. But,
17 Judge, I think we should be able to do that
18 by email amongst the parties and submit
19 some dates to you. I think that makes the
20 most sense.

21 MR. PROTOPAPAS: Your Honor, we just
22 take whatever time this Court has, whatever
23 time you say --

24 THE COURT: Well, if we're not going
25 to do anything with Tibbs or anything else

1 the next two weeks trying, then I'm going
2 to set something within the next two weeks
3 to hear all these things.

4 So what I think would be helpful,
5 Mr. Protopapas, is for you-all to generate
6 something for me to tell me what all needs
7 to be heard about these things and I'll
8 hear them.

9 MR. PROTOPAPAS: Your Honor, you'll
10 have it by the end of today.

11 THE COURT: All right.

12 MS. McVEY: That's great, Your Honor.
13 Separate from Payne & Keller, I also have a
14 couple of discovery motions for cases in
15 future blocks. I'd love to --

16 THE COURT: Yeah, yeah, yeah, yeah.

17 MS. McVEY: I'd love to -- I'll email
18 you and the parties asking for those to be
19 set --

20 THE COURT: Good.

21 MS. McVEY: -- for hearing as well.

22 THE COURT: And then we will just put
23 that together for a day within the next two
24 weeks is what I'm just going to tell you.

25 MR. SAWYER: And, Your Honor, I

1 believe Mr. Carroll emailed your chambers
2 yesterday about some availabilities for
3 Mr. Lee, who is national counsel. So
4 that's why I was suggesting that we confer
5 on dates.

6 THE COURT: Well, I'll tell you what.
7 I'm -- I'm not much inclined to worry about
8 that. I've got -- that's not something
9 that's your business anyway.

10 MR. SAWYER: It's not, but I -- I feel
11 like I would be remiss --

12 THE COURT: Is Mr. Carroll here?

13 MR. SAWYER: -- not to mention it,
14 Your Honor.

15 MR. CARROLL: Yes, ma'am, I'm back
16 here.

17 MR. SAWYER: There we go.

18 THE COURT: Mr. Carroll, all right, I
19 noted, all right, that that request was
20 made.

21 MR. CARROLL: Understood, Your Honor.

22 THE COURT: I've got to look at my
23 schedule and see what I've got fore and
24 aft, too.

25 It's a collision between what I can do

1 with all the obligations I've got, then --
2 you know, I -- I don't know that I can
3 accommodate that request, but I'm -- let me
4 see.

5 MR. CARROLL: Thank you, Your Honor.
6 I understand. And we'll obviously get in
7 touch, and we can propose times. And if
8 they work with Your Honor's schedule --

9 THE COURT: Exactly.

10 MR. CARROLL: -- that's great.

11 THE COURT: Exactly. I mean, the --
12 the ideal thing to do would be for you-all
13 to get with Protopapas and propose some
14 dates for me.

15 MR. CARROLL: Of course.

16 MR. SAWYER: I think that makes the
17 most sense, Your Honor.

18 THE COURT: Okay.

19 MR. SAWYER: We'd love to do that.

20 THE COURT: Let's just do it that way.

21 MR. SAWYER: Okay. Yes, ma'am.

22 THE COURT: All right.

23 MR. SAWYER: Thank you, Your Honor.

24 MS. McVEY: Thank you, Judge.

25 MR. CARROLL: Thank you, Your Honor.

1 THE COURT: All right. Now, we've got
2 plaintiffs' motions in limine with respect
3 to Atlas Turner.

4 MS. McVEY: And, Your Honor, they have
5 not filed any responses. So I'm happy to
6 kind of push those down the road since
7 you've continued the case.

8 THE COURT: Yeah. I mean, all right,
9 default may satisfy a whole lot of things
10 in that regard.

11 MS. McVEY: That's right.

12 THE COURT: And that's kind of where
13 we are right now.

14 MS. McVEY: And, Your Honor, we have
15 filed a motion to prevent them from putting
16 any evidence in, essentially, calling
17 witnesses since they haven't produced any.
18 And so we're going to address that when it
19 comes back up. I know you've got a full
20 day today, so --

21 THE COURT: Exactly. Exactly. So we
22 just hold on to those.

23 MS. McVEY: Yes, ma'am.

24 THE COURT: All right. Now we're at
25 status of Covil versus Penn National in the

1 Flynn case. And just by means of the court
2 reporter, you've got something that shows
3 you what the Flynn case is, and they will
4 give you a number on the Covil versus Penn
5 National case.

6 Mr. Protopapas, at some point, favor
7 the court reporter with something that
8 indicates the case number for Covil versus
9 Penn National.

10 LAW CLERK: I think she has it.

11 MR. PROTOPAPAS: Yes, Your Honor.

12 LAW CLERK: She has the same thing.
13 It's that number. This is the case number.

14 THE COURT: Oh, okay. That's the --
15 that -- that is the Covil number. And the
16 Flynn -- no, that's the Flynn number.
17 That's Flynn.

18 LAW CLERK: Oh, sorry.

19 THE COURT: What I want is for her
20 record to be complete by having an
21 identification of Covil versus Penn
22 National.

23 Mr. Protopapas, I'm sure you or
24 Ms. Valek know it by heart, so just be sure
25 you get that to her. Okay?

1 All right. Now, the next thing, then,
2 is the status of Covil versus Penn
3 National. Mr. -- who is going to take
4 that? Mr. Nes?

5 MR. NES: Yes, Your Honor.

6 THE COURT: All right.

7 MR. NES: Good morning, Your Honor.
8 Brad Nes for the receiver for Covil
9 Corporation.

10 There are two issues in front of the
11 Court this morning with respect to Covil.
12 The first is a status conference related to
13 Covil versus Penn National as a third-party
14 action in the Flynn case. And the second
15 issue we'd like to address has to do with
16 the data search and the status of that in
17 their e-discovery database and some of the
18 issues that we're still seeing with that.

19 But turning to the first issue, which
20 is the status of Covil versus Penn National
21 in the Flynn case, just by way of
22 background, Penn National is now failing to
23 comply with this Court's March 1st, 2024,
24 order.

25 In that order, the Court laid out very

1 specifically its declarations for how Penn
2 National must interpret its three insurance
3 policies that cover asbestos cases filed
4 against Covil. One of those cases is the
5 Flynn case. The --

6 THE COURT: Right. This was a
7 coverage ruling that was made by the Court,
8 right?

9 MR. NES: That is correct, Your Honor.

10 And the Flynn case is the first
11 asbestos case --

12 THE COURT: And that's a bifurcated
13 piece of activity in an ongoing case that
14 affects the Flynn case as one of the
15 potential recipients of coverage because
16 Covil is a defendant in that case.

17 MR. NES: That is correct, Your Honor.

18 THE COURT: All right.

19 MR. NES: And that underlying asbestos
20 case that has been filed against Covil is
21 in the process of resolving prior to trial.
22 There are still settlement documents that
23 need to be finalized, but it is in process.

24 Penn National has taken the position
25 that it will not comply with the Court's

1 rulings as to how to interpret the
2 insurance policies that cover Flynn. They
3 do not recognize one of the years of
4 coverage that this Court made a declaration
5 exists. And they also do not, for example,
6 comply with the requirement that the
7 continuous trigger of coverage applies.

8 This is problematic, not only because
9 this Court issued an order saying that
10 that's how to interpret the policy, but
11 also because during closing argument,
12 Penn National admitted that that was the
13 law of South Carolina.

14 So we find ourselves with -- when we
15 approach Penn National as to how we would
16 proceed in Flynn, we were told conflicting
17 issues. First, they take the position
18 that, well, what happened in the Covil
19 trial, the comprehensive coverage action,
20 applies to the Flynn case. So you don't
21 get any discovery in Flynn. We'll file a
22 protective order.

23 But at the same time, they've said
24 that we're not going to comply with the
25 rulings from the Covil versus Penn National

1 trial.

2 THE COURT: All right.

3 MR. NES: And that is also
4 problematic, Your Honor, because there is
5 overlap between the two cases, but two
6 significant differences.

7 In Flynn, there is also a breach of
8 contract claim, and there is a bad faith
9 claim. So while we agree with Penn
10 National that the coverage rulings and the
11 declaratory judgment from the comprehensive
12 coverage action absolutely apply to Flynn,
13 the two remaining claims are still viable
14 claims that must be resolved.

15 First, with respect to the breach of
16 contract claim, it is now clear they are
17 going to be in breach. As soon as the
18 settlement is finalized -- they have
19 refused to comply with this Court's order
20 in terms of an all sums and a continuous
21 trigger rulings. So, as soon as that
22 happens, there actually won't be an issue
23 for a jury. They will just be in breach.

24 The second issue, though, is bad
25 faith. And we believe, and we have

1 contended in the lawsuit, that, one, by
2 failing to recognize all the policies and,
3 two, by refusing to contribute to the Flynn
4 settlement in an inconsistent manner in
5 which they've made concessions in the prior
6 action are bad faith for a jury to decide.

7 So we stand ready to try Covil versus
8 Penn National as a breach of contract and a
9 bad faith case as soon as those settlement
10 documents are finalized, and that will take
11 probably a couple of weeks. But as soon as
12 that's finalized, we're ready to try that
13 case to a jury.

14 The second issue has to do with the
15 database. And as I mentioned at the top,
16 Penn National is failing to comply with
17 this Court's orders. The second set of
18 orders that Penn National is failing to
19 comply with has to do with the orders that
20 this Court issued with respect to
21 processing their historic insurance
22 policies in a database that was searchable
23 to Covil.

24 As this Court will recall, in May of
25 2022, almost two years ago, this Court

1 issued an order that Penn National needed
2 to digitize all of their historic records.
3 And over the course of about a year and a
4 half, those records got digitized.

5 But it was clear that the process that
6 was taken to digitize those records was
7 insufficient, because simple, basic
8 searches that were put into the system
9 would not reveal all of the Covil hits or
10 they would reveal false positives.

11 So, as a result, I believe it was this
12 summer the Court issued a much stricter
13 order on Penn National that within two
14 months they had to have a new system put in
15 place. And that system was run. There
16 were still problems.

17 So the final order that this Court
18 issued was to have the receiver's expert,
19 IDS, take a stab at redoing the
20 digitization so it would be in a searchable
21 format.

22 My understanding, based on
23 conversations with IDS, the outside vendor,
24 as well as Penn National and the reports
25 they've issued to the Court, is that while

1 that process has been complete, Penn
2 National refuses to give the receiver
3 access to that new completed database.

4 So, Your Honor, we anticipate that
5 Penn National may come up here and tell you
6 that that process is finished and that they
7 have reported to you that it's finished.
8 And that may very well be true, but we have
9 been refused access to that database until
10 Penn National signs off on it. And Penn
11 National has not given us access.

12 And that's important, because as
13 this Court will recall, we were provided
14 access not only to search for Covil hits,
15 but for any other receivership in which
16 Mr. Protopapas was appointed as a receiver.

17 So, for that reason, we would ask that
18 the Court address that with Penn National's
19 counsel.

20 THE COURT: All right.

21 MR. NES: Thank you.

22 THE COURT: Who is here for
23 Penn National?

24 MR. SHEALY: I am, Your Honor.

25 THE COURT: Mr. Shealy.

1 MR. SHEALY: May it please the Court,
2 Your Honor.

3 Your Honor, I do think I'll approach
4 this in reverse order about the data
5 digitization project. IDS -- I received a
6 check from Penn National to pay IDS's last
7 invoice. I believe on Friday I sent it out
8 to IDS, and it was not going to give -- it
9 was not going to give access back to the
10 enhanced database until it had received its
11 final payment.

12 I am trying to get that data -- and I
13 was in contact yesterday with Ellis &
14 Winters to get the enhanced database back
15 to Ellis & Winters, and -- but I've got to
16 confirm that they can run it.

17 And the entire time that IDS has had
18 the data, I understand that Ellis & Winters
19 still had maintained the data itself, and
20 both sides have had access to the
21 unenhanced database.

22 But we've not -- we've not ever
23 refused the receiver any access. I'm just
24 trying to get the data back to Ellis &
25 Winters where it will be housed.

1 We have not talked about how long they
2 want to have access yet because I haven't
3 gotten it there. But literally, only in
4 the last two days have now been in a
5 position to give instruction to IDS as --
6 to -- to send it back to Ellis & Winters.
7 So that's -- that's where that stands.

8 THE COURT: Well, of course, that
9 revolves around something very simple. No
10 access, no pay. Apparently, Covil
11 wasn't -- I mean, Penn National wasn't
12 paying IDS, and IDS wanted its money before
13 it would release access to anybody is what
14 it sounds like.

15 MR. SHEALY: Well, IDS issued three
16 different invoices, which Penn National
17 paid, and it's -- we finally got the check
18 for the last -- the last one on Friday.
19 That was the smallest of the three. We
20 ended up issuing payment, I think, over
21 \$700,000 to IDS.

22 And I got an email, you know,
23 indicating they were seeking instruction
24 from us as to where to send it. They did
25 not finish the process but just --

1 THE COURT: What do you mean --

2 MR. SHEALY: -- just a few weeks ago.

3 THE COURT: Oh. Oh, okay. All right.

4 MR. SHEALY: So they were -- they
5 were -- they were working all through
6 February and through March.

7 THE COURT: I'll tell you, in
8 reflection, the worst mistake I ever made
9 in this thing was letting Ellis & Winters
10 be in charge of this. They -- it was -- we
11 thought that the company that had been
12 hired as the defendant for this case would
13 be a law firm we could deal with, but it's
14 been nothing but a series of delays. And
15 that's very frustrating.

16 What do you think is a reasonable
17 guess now of when they're going to get
18 access to this stuff?

19 MR. SHEALY: Well, the -- I heard this
20 morning from Ellis & Winters' IT person he
21 was -- said he's following up with IDS to
22 confirm that their platform, that -- that
23 IDS -- that Ellis & Winters' --

24 THE COURT: -- platform.

25 MR. SHEALY: -- platform --

1 THE COURT: -- can run the stuff.

2 MR. SHEALY: -- can run the enhanced
3 database. I have no reason to believe it
4 cannot.

5 But if there is some problem with
6 that, then we'll work that out very
7 quickly. I can't give Your Honor a -- any
8 dates because I'm -- I'm relying on other
9 people.

10 THE COURT: Sure. Mr. Shealy, I'm not
11 blaming you for this debacle. That's for
12 sure. I wish you had been in the case a
13 lot sooner.

14 MR. SHEALY: Well --

15 THE COURT: All right. Things have
16 started to move since you got in the case,
17 and I appreciate that.

18 MR. SHEALY: Well, I mean, and I stand
19 here to say to Your Honor we're -- we're --
20 Penn National is not taking the position of
21 refusing access to -- to any database.
22 We -- we want access to the enhanced
23 database ourselves. We have not had access
24 to it either.

25 THE COURT: Okay. Let me ask you

1 this: Okay. This is the data. Let's go
2 back to the other two things that they were
3 fussing about, which is the refusal to
4 comply with the all sums trigger and the
5 refusal to comply with the other parts of
6 my order that deal with coverage.

7 MR. SHEALY: Your Honor, I will say
8 that I have been in communications with the
9 receiver for the last couple of weeks about
10 trying to come up with a mutual
11 understanding of how Penn National and the
12 receiver will operate with each other on a
13 going-forward basis while the appeal of the
14 comprehensive coverage action is ongoing.

15 THE COURT: Right.

16 MR. SHEALY: We've had some
17 communications that I think have been
18 positive. We still have some ground to
19 cover, no question.

20 I had hoped that we would be able
21 to -- to get somewhere yesterday, but I --
22 the receiver gave us a document to review
23 on Monday. I have not been able yet to
24 turn it back to them with a response.

25 But we are -- I'm hopeful that we

1 might be able to reach an agreement that
2 would obviate the need for further
3 litigation in the Flynn third-party action
4 and then the other third-party actions that
5 the receiver filed against Penn National.
6 But we -- we still have some discussions to
7 be had.

8 THE COURT: Okay. All right.

9 MR. SHEALY: That's all that --
10 Your Honor, that -- in terms of their being
11 ready to try that action in Flynn in a
12 couple of weeks, I -- if that's the -- sort
13 of the window that we need to operate in to
14 see --

15 THE COURT: That's the window you need
16 to operate in --

17 MR. SHEALY: I will --

18 THE COURT: -- big time.

19 MR. SHEALY: -- relay that message,
20 Your Honor.

21 THE COURT: Okay.

22 MR. SHEALY: Okay. Thank you.

23 THE COURT: Mr. Nes.

24 MR. NES: Nothing further, Your Honor.

25 THE COURT: All right. Very good.

1 All right. What we've got left is
2 Cape. I certainly think we ought to have
3 some mercy on the court reporter, and so
4 let's take a 15-minute recess, and we'll
5 come back at 11:30 and deal with Cape.

6 * * *

7 (Whereupon, there was a recess in the
8 proceedings from 11:15 a.m. to 11:37 a.m.)

9 * * *

10 THE COURT: Please be seated.

11 All right. Just confirming from --
12 nothing to argue today on Spirax, correct,
13 Ms. --

14 MS. McVEY: Yes. Yes, ma'am.

15 THE COURT: -- McVey?

16 MS. McVEY: You had previously ruled
17 on all of Spirax's motions on the last
18 time --

19 THE COURT: Right, right, right.

20 Okay. Now we come to Cape. This is
21 the Cape pretrial hearing status report in
22 Tibbs.

23 MS. JOYNER: Good morning, Your Honor.
24 This is Lindsay Joyner. I can stay here,
25 or I can go up there, whichever is easier.

1 THE COURT: Whichever suits you best.

2 MS. JOYNER: Okay.

3 THE COURT: I can hear you great from
4 there. It's just whatever suits you best.

5 MS. JOYNER: Yes. No one has ever
6 accused me of being quiet.

7 As I mentioned, my name is Lindsay
8 Joyner. I am here on behalf of the
9 receiver for Cape plc, Mr. Protopapas. And
10 as you noted, the agenda has us presenting
11 our pretrial status report.

12 So I would like to start -- as you've
13 kind of been telegraphing during the day,
14 the late filings were in this third-party
15 action that you received. And so I would
16 like to start with kind of where we are in
17 procedural history over the last nine
18 months of this matter and how that has led
19 us to, in working with some of the
20 third-party defendants, believe that this
21 matter should probably be continued and --
22 and work toward getting a scheduling order,
23 as I emailed yesterday.

24 As you know, we filed this matter in
25 June 30th of 2023, alleging that these

1 third-party defendants are part of a Cape
2 U.S.-based asbestos sales and litigation
3 avoidance scheme.

4 And along with that were claims for
5 unjust enrichment, constructive trust,
6 alter ego and veil-piercing liability as
7 well as accounting.

8 Now, there are four kind of buckets of
9 third-party defendants. And one bucket of
10 third-party defendants are what we refer to
11 as the "Oppenheimer defendants," and those
12 are Anglo American plc, De Beers plc,
13 De Beers Centenary AG, De Beers UK Ltd.,
14 and De Beers Consolidated Mines
15 (Proprietary) Ltd.

16 The next bucket are the Charter
17 third-party defendants. And those include
18 Charter Consolidated, Central Mining, and
19 ESAB. E-S-A-B.

20 And then you have the Altrad owner's
21 third-party defendants. And those include
22 Mr. Mohed Altrad and Altrad Investment
23 Authority.

24 And then you have Altrad Sparrows
25 third-party defendants. And those are

1 Arranco, Hawk Bidco, and Sparrows Offshore.

2 After serving these various
3 third-party defendants in the summer of
4 2023, beginning in July of 2023, we served
5 interrogatories and requests for
6 production, just this, you know, standard
7 sets to get this case moving.

8 And then between August 15th of 2023
9 and October 6th, there were somewhere in
10 the range of 48 motions filed for motions
11 to dismiss. And there are a variety of
12 combinations, some to dissolve the
13 receivership, some on 12(b)(6), some on
14 personal jurisdiction, some on
15 subject-matter jurisdiction.

16 We had also -- by that time, before
17 October 6th, had also noticed 30(b)(6)
18 depositions. And those led to a long
19 hearing before Your Honor on October 25th.
20 And -- and prior to that, we had said,
21 okay, because these various third-party
22 defendants had added, some of them had
23 actual protective order motions, some had
24 requested it within other motions, we would
25 kind of suspend discovery until the

1 resolution of the motions occurred.

2 So we have the hearing on
3 October 25th. You send us with our
4 marching orders to go write these different
5 proposed orders, and we were supposed to
6 share them. And then the process, after at
7 least one extension by third-party
8 defendants, led to them being submitted to
9 you and you making a ruling on December 6th
10 of 2023.

11 On December 8th, so just two days
12 later, the receiver, I believe John T. Lay
13 in our office, sent it -- kind of sent an
14 email to you clarifying what motions were
15 still yet to be resolved and -- and
16 indicating that based on the ruling in the
17 October 25th -- October 25th hearing that
18 we were going to hold on to discovery until
19 the motions had been resolved, that we
20 could continue discovery. At that point,
21 none of the third-party defendants objected
22 to that or said anything.

23 And so on December 15th, the Court
24 issued a Form 4 as to some of the
25 additional 12(b)(6) motions. And then on

1 that same day, we went ahead and started
2 renoticing the 30(b)(6) depositions for
3 January, just to kind of get everyone on
4 the same page.

5 And then beginning on December 18th,
6 the third-party defendants filed notices of
7 appeal related to the motion to dissolve
8 the receivership. And those -- those
9 appeals are still active currently.

10 The Oppenheimer defendants on
11 December 21st filed additional motions to
12 dismiss. And at that time -- we kind of
13 got through Christmas.

14 And then January 5th rolls around.
15 And that was the deadline that the receiver
16 had given after the December 6th order, to
17 say, okay, you guys, like, give us your
18 discovery responses; these have been
19 outstanding for a while, but let's get
20 moving with it.

21 And we were informed at that time that
22 the third-party defendants were not going
23 to be participating in discovery because of
24 their appeals.

25 On January 8th, we attempted to

1 consult with them regarding the deficient
2 responses that we received, which they just
3 objected and said because of the appeals
4 and -- and on the 30(b)(6) depositions. So
5 then we moved to compel those.

6 We had another hearing with Your Honor
7 on February 2nd regarding the Oppenheimer
8 defendants, the third-party defendants,
9 additional motions to dismiss.

10 And on March 12th, Your Honor granted
11 our January 12th motions to compel related
12 to discovery and related to the 30(b)(6)
13 depositions.

14 Now, I think you'll recall that in
15 some of the oppositions to the motions to
16 compel, there was like a cross-motion added
17 on to enjoin the Court. And in your order,
18 you specifically said you're not ruling on
19 that. However, some of the third-party
20 defendants, not the Oppenheimer third-party
21 defendants, appealed that March 12th order
22 as well.

23 And you had moved to dismiss those
24 appeals. And then they requested an
25 extension last night and this morning on

1 responding to our motion to dismiss. So
2 that's where that is with the appellate
3 court.

4 On March 25th, we then -- the receiver
5 then served requests for authenticity of
6 records in our statutory request for
7 authenticity of records in preparation for
8 this April block.

9 And we also on that day produced over
10 2,000 documents that are in chronological
11 order, and -- there's a lot of pages,
12 though. It is over 140,000 pages. We --
13 we also served a trial exhibit list that
14 day as well.

15 And so on March 26th, the Oppenheimer
16 defendants provided supplemental responses
17 to their discovery. And certainly, you
18 know, we still had some back-and-forth to
19 go through with those discovery responses,
20 but they provided some responses, and they
21 had provided some documents.

22 And then on March 29th, each of the
23 third-party defendants responded to our
24 request to admit the authenticity of
25 records and objected to those.

1 So then on April 1st, we moved forward
2 with noticing 30(b)(6) depositions of the
3 Oppenheimer defendants, thinking, again,
4 you know, toward April 15th. And so we
5 have been in conversations with the
6 Oppenheimer defendants since then.

7 The last real communication we've had
8 with the Charter defendants or the Altrad
9 owner's defendants or the Altrad Sparrows
10 defendants were that they were not going to
11 dismiss their appeals after the Supreme
12 Court's March 27th order in the Childers
13 matter.

14 And so then we kept moving forward
15 trying to get to, you know, next week with
16 you. And so on October 2nd, we learned --
17 I'm sorry -- April 2nd, we learned that
18 some of our experts were not going to be
19 available this week of April 15th. So we
20 noticed their de bene esse depositions.

21 After that, the Oppenheimer
22 third-party defendants filed a motion for
23 continuance and sought to have a scheduling
24 order. Again, we've had more conversations
25 about that scheduling order. We don't

1 currently agree on the dates, but we're
2 trying to work through that right now.

3 Also, on -- then on April 3rd of --
4 the receiver moved to preadmit our exhibits
5 given everyone's objection on the
6 authenticity.

7 And then on April 4th, we filed the
8 status report that listed our witnesses
9 and -- and kind of gave a background
10 history there, too.

11 And then on April 5th, we filed a
12 motion for adverse inference against the
13 Charter defendants, the Altrad owner
14 third-party defendants, and the Altrad
15 Sparrows third-party defendants, not the
16 Oppenheimer third-party defendants because
17 they were in communications with us, and we
18 didn't feel that that would -- an adverse
19 inference would be proper against them.

20 Then on Monday, April 8th, the
21 Oppenheimer third-party defendants filed
22 motions in limine and motions for
23 protective order. I guess, actually, they
24 filed motions for protective order on
25 Friday evening. But -- so they filed all

1 of those motions.

2 On Tuesday morning, I was able to have
3 great communication with Mr. Elliott,
4 and -- and that's what led to my email to
5 you around noon yesterday; though we
6 believe that, you know, a continuance --
7 that this matter needs to be postponed
8 because we've had to deal with some of the
9 discovery, and I think that will streamline
10 trial for Your Honor as we move forward as
11 well.

12 So that's where we end until yesterday
13 after the agenda comes out, and then at
14 4:00, the Altrad Sparrows defendants file
15 an additional motion or motions. And then
16 the other third-party defendants kind of
17 all joined on those motions.

18 And so, you know, I'm happy to take
19 any questions from Your Honor. But
20 certainly, we don't think that motions
21 filed 17 1/2 hours before this hearing
22 started, you know, should be heard at this
23 time and that -- but I'm certainly ready to
24 go forward if Your Honor disagrees with
25 that.

1 THE COURT: Well, what's the bottom
2 line? What is it you want me to hear
3 today? Nothing?

4 MS. JOYNER: I believe that the
5 motions that were filed by the Oppenheimer
6 third-party defendants are either moot,
7 such as the motions in limine, because if
8 this case is continued, those issues will
9 work themselves out in -- in discovery; or
10 they will -- they can remain pending, and
11 we can deal with them at that later date.

12 I don't think -- if -- if the -- if
13 you're going to continue the trial, we
14 don't need to hear any of the motions today
15 because all of them are related to trial.

16 THE COURT: And you're talking about
17 the Tibbs case?

18 MS. JOYNER: Yes, ma'am. Yes. So
19 it's a non -- so ours is the nonjury Tibbs
20 because it's the third-party action.

21 THE COURT: Right. Well, so what is
22 it you're saying? You're saying continue
23 it all or continue Oppenheimer and go
24 forward with everything else?

25 MS. JOYNER: I think that we would

1 think -- we believe it's necessary to
2 continue it all at this time because we're
3 going to have to deal with the discovery
4 issues. And hopefully, Your Honor can help
5 us. You know, hopefully, the appeals will
6 be dismissed --

7 THE COURT: Well, I rule on all of
8 these things --

9 MS. JOYNER: -- and we can move
10 forward with those.

11 THE COURT: Well, I rule on all of
12 these things, and they're clearly trial
13 rulings, and then they get appealed.

14 And then I get these filings like I
15 got from Sparrow, Mr. Pugh. I think the
16 world of Mr. Pugh. But to file something
17 like was filed yesterday afternoon with me
18 that acts as if none of what the Supreme
19 Court or the Court of Appeals or the Fourth
20 Circuit or anybody else has ever done makes
21 any difference or the other rulings I have
22 made countless numbers of times that -- I
23 mean, it's just a further defiance of the
24 authority of the Court by saying, hey, we
25 don't have to answer anything, we don't

1 have to do anything because we've appealed
2 nonappealable things. I -- as I said in
3 the Link order, I'm weary of that.

4 All right. And it's just not fair to
5 me or to the process to ignore what has
6 been the uniform opinion of anybody that's
7 looked at this thing, which is: The
8 receiverships are legitimate. They go
9 forward. You've got legitimate things that
10 have to do with personal jurisdiction and
11 the matter of that kind that can be brought
12 forward.

13 So far, I have denied motions to
14 dismiss on that basis. That's not
15 appealable. Apparently, it doesn't make
16 any difference to anybody.

17 So I -- I don't know, Mr. Pugh. I --
18 I don't know what to do about this. It's a
19 complete waste of my time to get these
20 things teed up all the way to trial and
21 then have these filings made that just
22 ignore everything that's been done.

23 MR. PUGH: I don't want to get in the
24 middle of their time. If you want me to
25 address that now or I'll wait until they're

1 done.

2 THE COURT: Well, let me at least find
3 out what -- they're wanting me to just
4 continue things. I'll be honest with you,
5 I'm tired of doing that.

6 MS. JOYNER: And -- and I --

7 THE COURT: Because I -- I listen to
8 all this stuff here, all this stuff -- have
9 you bring all this stuff to my front door,
10 read it all, hundreds of pages of material,
11 and then y'all come up here and say, "Well,
12 we're working on it, so hold off a little
13 bit."

14 MS. JOYNER: And I understand that
15 completely, Your Honor. I just feel like
16 that we're being stymied by the discovery
17 process, and it is not fair to the
18 receiver. It's not fair to the Oppenheimer
19 third-party defendants and -- you know. So
20 that -- that's why we're here asking it.

21 I would say that Mr. Robinson wanted
22 to give you a more full -- a more complete
23 update as to the appellate process related
24 to this third-party action.

25 MR. ROBINSON: Your Honor --

1 THE COURT: Well, let me just say
2 this. I'll be glad to hear that. But, you
3 know, here's what we've got: In the face
4 of all of this and countless hearings that
5 I've held on the nitty-gritty of discovery
6 and everything else, come up at the first
7 of this year, and now they want to continue
8 the trial; they want a protective order for
9 30(b)(6) and de bene esse, which is -- in
10 essence, we don't have to do that; don't
11 want the plaintiff to preadmit exhibits;
12 exclude so-called late-discovered fact
13 witnesses, or they've cooperated not one
14 bit with any discovery; exclude expert
15 testimony, late-disclosed documents,
16 de bene esse from a -- from a group of
17 defendants -- Anglo American, De Beers,
18 De Beers UK, De Beers Consolidated Mine,
19 De Beers Centenary -- that have not
20 cooperated with anything. So I'm -- I
21 don't know what to do.

22 Mr. Robinson.

23 MR. ROBINSON: So, Your Honor,
24 everything that you've just pointed out,
25 while frustrating, it does put the receiver

1 in a very difficult position to try a case
2 with a defendant who does not participate
3 in discovery or recognize -- which
4 basically, it'd become the situation --
5 recognize trial and appellate court orders.

6 I would like to give the Court just in
7 this case -- first of all, they're -- as
8 you might know, and I think you've been
9 copied on most of these, the defendants in
10 this case have appealed your discovery
11 orders. They have renamed them as
12 injunctive orders despite the fact that
13 your orders said that it was not an
14 injunctive order.

15 There have been, just across the
16 receiverships that we are here today, 19
17 appeals in the last four months in the
18 receiverships that we've talked about
19 today.

20 Presently, there is the receiver
21 Cape's motion to dismiss the interlocutory
22 discovery appeals, the -- the -- and that
23 was filed at the Court of Appeals, a motion
24 to dismiss those interlocutory appeals.

25 I will let you know that the receiver

1 has also reached out to defend that,
2 notified them of the Supreme Court order
3 that in a -- in a 5-0 decision stated your
4 order denying the motion to dismiss or
5 dissolve the receivership was not
6 immediately appealable.

7 We wrote the defendants in that case,
8 asked them to withdraw their appeals. They
9 all responded and said that they did not
10 believe that the Supreme Court had
11 adequately explained themselves, basically.
12 And I filed those -- we had filed those
13 today, those orders, with the appropriate
14 letters with the appellate courts.

15 I'm not sure that the Supreme Court is
16 required to explain why they issue orders.
17 But that is the position.

18 They also are still taking the
19 position that Rule 205, despite the
20 multiple orders addressing that, do not
21 require them to participate.

22 All that to say, we have 19 appeals.
23 In this case, I think there are -- I kind
24 of lose count. We have a motion to dismiss
25 the interlocutory discovery appeals in this

1 case with Cape. There is still the appeal
2 of your order denying a motion to dismiss
3 or dissolve. We will have to file a motion
4 to dismiss that, which we have not yet done
5 because the defendants have refused to
6 withdraw that appeal. So we'll have to
7 file a motion to dismiss that, and it will
8 be pursuant to the Supreme Court's order
9 saying it's not an immediately appealable
10 order.

11 So all that to say, you know, we would
12 love to come today and say we're ready for
13 trial next week. But, unfortunately, we
14 have a slew of appeals. We don't believe
15 they're going to go very far. They have
16 not gone far thus -- thus far. They've all
17 been rejected by all of the courts.

18 And we are hopeful at some point that
19 there will be some finality -- well, we
20 already believe there's finality. We're
21 hopeful at some point there will be some
22 type of action that will prevent the
23 continuous improper appeals. Because
24 without that, they will continue. And
25 we've seen that. I mean, 19 of the last

1 four months is -- is quite extraordinary.

2 And -- and as we saw -- as I said,
3 within the last few weeks, just the
4 unilateral renaming of your orders --
5 discovery orders as injunction orders, the
6 same orders that specifically say they were
7 not addressing the injunction, you know,
8 that -- that type of activity and behavior,
9 you know, we can't explain it. It has put
10 us in a bad position as far as being ready
11 for trial.

12 We are hopeful that these appellate
13 issues -- we believe they're resolved. But
14 we're hopeful they will eventually be
15 followed by the defendants and that the
16 defendants will comply with the orders.
17 And once that happens, we believe these
18 cases will move forward and will go to
19 trial.

20 You know, you have been -- you and I,
21 we have both -- as other people in this
22 courtroom, have been here since two
23 thousand -- late '18, early '19, and we
24 have seen the impact that the appeals have
25 on extending trial dates.

1 And, you know, I do think that the
2 doors are closing. They have not all
3 closed yet. But I do think that these
4 attempts to delay these trials and prevent
5 the receiver from doing his duties, it --
6 it appears that the -- the courts are
7 acting more swiftly and -- and addressing
8 these issues and -- and understand that --
9 the urgency and the widespread impact it
10 has had on your docket.

11 So with that, you know, we believe
12 that a trial date this summer would still
13 be something that we can shoot for. But
14 we -- we also believe that moving forward
15 next week, at really no fault of the
16 receiver, would put him in a very -- let's
17 say a limited capacity and ability to try
18 the case.

19 So with that, that's why we've talked
20 with the one participating defendant about
21 the scheduling order. You know, if that's
22 all we can get to participate with us in
23 doing that, then that's what we're asking
24 the Court to allow us to do.

25 THE COURT: Well, all right. I'm

1 certainly going to hear from the other
2 side. But, you know, it puts me in a very
3 difficult position, because I schedule
4 these things a year in advance, and I
5 schedule my other obliga --

6 I'm not a full-time judge. I'm
7 supposed to be a part-time, fill-in
8 Circuit Court judge and to schedule my
9 other obligations and family considerations
10 and so forth around these things.

11 And then to have this kind of defiance
12 for the Court and then to say "But let's
13 make it up on the back end by you taking
14 your summer to hear these cases" is -- I'm
15 not guaranteeing that I will do that. But
16 there's got to be a day of reckoning for
17 this kind of defiance of the normal rules
18 of the Court, and I guess that's what's got
19 me frustrated.

20 So I turn to those representing the
21 third parties in this nonjury piece of
22 Tibbs for your commentary.

23 Yes, sir?

24 MR. BALBER: May I be heard,
25 Your Honor. I'm Scott Balber on behalf of

1 Anglo American and the De Beers entities.
2 And thank you for allowing me to be heard.

3 I just want to address the comments
4 made by counsel about the appellate issues
5 and referring to the defendants, and I just
6 want to be clear where we are in that mix.
7 Because we did not join the motion for
8 injunctive relief before this Court. We
9 didn't join the interlocutory appeal of
10 your discovery order. And we did not join
11 the motions filed last night. So I just
12 want to be clear that we're acting
13 differently.

14 What we have done, Your Honor, is we
15 have responded to the receiver's discovery
16 request. We've produced an initial tranche
17 of documents. We intend to produce all
18 responsive documents. We've had
19 constructive discussions with the
20 receiver's counsel about a sensible
21 schedule for that. And to proceed to trial
22 in the ordinary course, we have served
23 discovery demands on the receiver, which we
24 look forward to the response.

25 But we -- we'll completely respect

1 Your Honor's schedule, Your Honor's
2 dedication to these cases. And we do not
3 view ourselves as recalcitrant defendants.
4 We're here to defend the case on the
5 merits. And I appreciate being heard.

6 THE COURT: All right, sir.

7 All right. That's Anglo American.
8 How about De Beers?

9 MR. BALBER: That's us as well,
10 Your Honor.

11 THE COURT: That would include
12 De Beers -- the various De Beers, right?

13 MR. BALBER: Yes, Your Honor. Anglo
14 American and the four De Beers entities.

15 THE COURT: Right. Okay. Very good.

16 MR. BALBER: As Your Honor knows, we
17 have asserted personal jurisdiction
18 defenses. Your Honor has ruled against us.
19 We understand that ruling. We're here
20 notwithstanding that, and we will continue
21 to participate in discovery.

22 THE COURT: Okay. All right. Now,
23 how about these late filers? Mr. Pugh.

24 MR. PUGH: Yes, Your Honor.

25 THE COURT: Now, you're with -- for

1 the Sparrow, right?

2 MR. PUGH: To be clear for the record,
3 my clients are Arranco US, LLC; Hawk Bidco
4 US, Inc.; and Sparrows Offshore, LLC.

5 THE COURT: Okay.

6 MR. PUGH: They've been --

7 THE COURT: I gotcha.

8 MR. PUGH: They've been grouped
9 together different ways, "Sparrows
10 defendants." And subsequently, some folks
11 have been calling them "Altrad Sparrows."
12 I'll be brief unless Your Honor has
13 specific questions of me.

14 I heard you earlier this morning, and
15 I heard you moments ago loud and clear.
16 But I will say this: What I believe we
17 have here, whether I'm right or wrong --
18 and if I'm wrong, I'll be the first one to
19 admit it -- that we have a reasoned -- I
20 didn't say "reasonable" -- reasoned
21 disagreement about the status of Court of
22 Appeals orders or Supreme Court orders in
23 different receiverships, none of which --
24 no one has put before Your Honor where
25 someone at the Court of Appeals or the

1 Supreme Court has said, "205, you're
2 wrong." No one has told us that. No one.

3 And what we're talking about is a
4 difference of authority or jurisdiction
5 versus staying. That's not what we've been
6 talking about in here.

7 And I understand -- I truly do -- your
8 schedule. I understand how you try to run
9 your docket. And I respect that. And I
10 have not and would not come in here and
11 disrespect you. And I don't believe I've
12 done that. And if you do, I apologize. I
13 have not attempted to do that.

14 What I have attempted to do is bring
15 forth claims that I believe, my client
16 believes, are reasoned claims under the
17 law. That's what we've attempted to do.
18 And --

19 THE COURT: And so what is your
20 position about 205 and your reasoned claim
21 based on that?

22 MR. PUGH: My position is: Under
23 Stokes-Craven and Tillman, that this Court
24 is without authority to go forward because
25 the matters on appeal are all matters that

1 are related to the trial and are affected
2 by the appeal.

3 If you will recall, what happened in
4 this case, we had a receivership created in
5 Park, then brought over into Tibbs, and
6 then a new receivership created inside of
7 this case for a different entity that had
8 been in the Park case but wasn't part of
9 the Park order. That's a new receivership.
10 And we filed a motion to dissolve that.
11 And the Court denied that. And we took an
12 appeal of that.

13 THE COURT: And how is that an
14 appealable order?

15 MR. PUGH: Because under your
16 December 6th order was creation,
17 modification or continuation of a
18 receivership over CIHL, which was not in
19 the Park order. The Park order is as to
20 Cape. So it's a different receivership.

21 THE COURT: Well, I -- there hasn't
22 been a separate receivership filed, and
23 you're just calling it a different
24 receivership out of thin air. What -- what
25 is your basis for saying it's a separate

1 receivership?

2 MR. PUGH: What I just outlined for
3 Your Honor. I mean, this is a different
4 entity. And -- and what -- we take the
5 position that that issue is an appealable
6 issue, and once that appeal is made -- and
7 that appeal has been pending before
8 the Court of Appeals, and it's
9 still there --

10 THE COURT: Well, what do you do --

11 MR. PUGH: -- that all the matters
12 here are affected by that appeal.

13 THE COURT: But, Mr. Pugh, the Court
14 of Appeals has now said twice that
15 receiverships continue despite appeals
16 about the legitimacy of receiverships.

17 MR. PUGH: With regard to actions
18 being taken by the receiver in the
19 underlying issue. That's different.
20 That's under a different rule. That's not
21 under 205. That's under a different --

22 THE COURT: Well, what does 205 say
23 that is so different?

24 MR. PUGH: Well, we can read Rule 205,
25 and we can certainly look to the Tillman

1 case and the Stokes versus Craven case that
2 says --

3 THE COURT: I -- I am well aware of
4 Stokes-Craven. I wrote it.

5 MR. PUGH: I know you are, and that's
6 why I feel like arguing to you about what
7 these cases say or don't say is a little
8 interesting. But I will say, I read them
9 to say, apparently, something different
10 than you do. And I don't do that lightly,
11 Your Honor. I hope you know that.

12 And what those cases say and the
13 distinction drawn between them is, as I've
14 said, that you have a difference between
15 jurisdiction versus staying conduct. We're
16 talking about jurisdiction of this Court.

17 And so when Mr. Robinson brings up --
18 they even took a second appeal of your
19 order. Before that order leading to the
20 second appeal was entered --

21 THE COURT: And you say the Court of
22 Appeals' rulings that the -- that the
23 receivership continues, which are rulings
24 based on 205 and on the provision of 205
25 that says: Nothing in these rules shall

1 prohibit the lower court, commission or
2 tribunal from proceeding with matters not
3 affected by the appeal.

4 That is exactly what the -- what
5 the Court of Appeals did, was to construe
6 that language. And their construction was
7 that the receivership should continue. And
8 your defiance is to say, "We don't care
9 what they said in those cases. 205 stays
10 everything."

11 MR. PUGH: That's not what I'm saying,
12 and that's not my --

13 THE COURT: Well, I don't understand
14 what you're saying.

15 MR. PUGH: And that's not my defiance.
16 There's not an order from the Court of
17 Appeals and this 5-0 order that came out
18 from the Supreme Court does not say
19 205 here. It doesn't say it. It doesn't
20 say it.

21 THE COURT: So what? It says in
22 language the receivership is not continued.
23 It says in language the Court of Appeals --
24 the Supreme Court stated it even stronger
25 than that. They said -- well, let me get

1 it. I won't try to quote the Supreme
2 Court.

3 They -- this certification was just
4 another way of trying to delay action in
5 this particular case by, quote/unquote,
6 "certifying," even though there hadn't been
7 a final ruling of the Court of Appeals.

8 But they wanted to certify -- these
9 insurance companies did this question to
10 the Supreme Court even before the Court of
11 Appeals ruling.

12 And they -- the Supreme Court said, we
13 grant the motion for certification and the
14 motion for joinder. Dispense with further
15 briefing. Therefore, they got the whole
16 thing in their hand. Vacate the Court of
17 Appeals' denial of sanctions. Dismiss the
18 appeal. Because the underlying Circuit
19 Court order at issue is not immediately
20 appealable.

21 I don't see how you can get any
22 clearer than what the Supreme Court said in
23 the words I just read.

24 MR. PUGH: Well, I assume you're
25 referring to the Payne & Keller --

1 THE COURT: Yes, I am.

2 MR. PUGH: And that was based upon --
3 my understanding -- I'm not in that case,
4 as you know. My understanding is -- and
5 there are others who are here that can
6 speak to that in more detail than I can.
7 But my understanding was that was based on
8 a motion that was made with regard to
9 Payne & Keller and the extension or
10 perhaps --

11 THE COURT: This is -- this dealt with
12 appealability of rulings I made --

13 MR. PUGH: With regard --

14 THE COURT: -- in the Circuit Court.

15 MR. PUGH: With regard to the receiver
16 inside of that case. What I'm talking
17 about, what we're talking about --

18 THE COURT: No. I've made regular
19 rulings about a whole lot of things that
20 weren't appealable, motions to dismiss, all
21 kinds of things, normal things that
22 everybody has understood are the normal
23 rules of appellate procedures for years in
24 South Carolina are not appealable. South
25 Carolina is a very strict state about

1 appealability.

2 The feds have a system that allows for
3 interlocutory appeals. We have virtually
4 no interlocutory appeals in our appellate
5 practice at the South Carolina appellate
6 level.

7 MR. PUGH: I understand that.

8 THE COURT: And that is what they were
9 referring to.

10 MR. PUGH: Well, that's where we have
11 a disagreement --

12 THE COURT: Well --

13 MR. PUGH: -- about what they were
14 referring to, because we're talking about a
15 difference of 205 and the language of that,
16 which has no exceptions, and 241 --

17 THE COURT: Well --

18 MR. PUGH: -- which has exceptions.

19 THE COURT: I invite you to pay
20 attention to what was filed by the
21 insurance companies in the case's language
22 I just read that had 205 and all the other
23 things that fit right in there, and the
24 Supreme Court did not buy that argument.
25 Did not buy it.

1 MR. PUGH: Well, as I said, I was not
2 in that case, and if others --

3 THE COURT: I think you could read
4 language in the filings that they made,
5 Mr. Pugh, and then read the plain English
6 that the Supreme Court used the ruling on,
7 and that will give you the answer. And
8 that means we no longer have a reasoned
9 disagreement in light of what the Supreme
10 Court has said.

11 MR. PUGH: I hear your position,
12 Your Honor.

13 THE COURT: All right.

14 MR. PUGH: I understand.

15 THE COURT: That, again, is why it
16 just rankles to have to, in effect, give
17 the parties who drag their feet and defy
18 the jurisdiction of the Court another
19 victory by continuing this thing. That's
20 what's got me very frustrated. It's not
21 fair to the system. And it's exemplified
22 by the arguments I just heard.

23 All right. That's Sparrow. Anybody
24 else?

25 MR. CARROLL: Your Honor --

1 THE COURT: Mr. Carroll.

2 MR. CARROLL: Yes, ma'am. For the
3 Altrad defendants, we -- we're in the same
4 position as Mr. Pugh's clients. I -- I
5 agree with his reading of the -- of the
6 case law. I'm in the Payne & Keller case.
7 You know that.

8 THE COURT: Yes, sir.

9 MR. CARROLL: And --

10 THE COURT: You use these same
11 arguments in the Payne & Keller case.

12 MR. CARROLL: Yes, ma'am.

13 THE COURT: No question about it,
14 including this very 205 business that we've
15 been talking about is a reasoned
16 disagreement.

17 MR. CARROLL: Yes, ma'am.

18 THE COURT: Y'all raised those things.

19 MR. CARROLL: We -- we sure did.

20 THE COURT: The Supreme Court saw fit
21 to completely disagree with you on that.

22 MR. CARROLL: The Supreme Court didn't
23 say anything about 205, Your Honor --

24 THE COURT: They don't need to. They
25 ruled on the issue that was presented to

1 them in the case. They took the
2 certification and dismissed the whole
3 doggone thing because it was not
4 appealable. And --

5 MR. CARROLL: Yes, ma'am.

6 THE COURT: -- that's the issue you're
7 trying to raise, 205, that Mr. Pugh is as
8 well --

9 MR. CARROLL: Yes, ma'am.

10 THE COURT: -- is that somehow or
11 another 205 operates to change the
12 interlocutory appeal rules in some --

13 MR. CARROLL: Oh, heavens, no. We're
14 not making that argument at all.

15 THE COURT: Well --

16 MR. CARROLL: What -- what we're
17 saying is that the appeal in this case is
18 fundamentally different than the appeal
19 that was in Payne & Keller.

20 THE COURT: Well, I know, but
21 ironically you made the same arguments in
22 Payne & Keller.

23 MR. CARROLL: The -- the order on
24 appeal in this case is different than the
25 order that was on appeal in Payne & Keller.

1 They are -- they are not the same.

2 THE COURT: Well, that goes back,
3 though, to the worst piece of this whole
4 thing. You can only get there by
5 construing the receivership as somehow
6 another receivership within the
7 receivership. That's the platform this
8 whole nonsense is being projected. I mean,
9 you know --

10 MR. CARROLL: Well, Your Honor, in the
11 Park case, Mr. or Ms. Park named Cape plc
12 as a defendant. And Mr. or Ms. Park named
13 Cape Intermediate Holdings Limited as a
14 totally separate defendant. It's in the
15 summons. It's in the caption of the
16 complaint. It's listed in the body of the
17 complaint.

18 At no point does -- does Mr. Park or
19 Ms. Park -- I apologize; I can't remember
20 the plaintiff's gender. At no point did
21 they suggest, oh, this is really the same.

22 They make it clear: They're not the
23 same. They are two separate entities. But
24 Mr. or Ms. Park filed a motion to appoint a
25 receiver over only one of those, Cape plc.

1 THE COURT: That is the most
2 casuistical argument I've ever -- I'll tell
3 you, Samuel Johnson was right when he
4 defined the law as "Cages for gnats, and
5 chains to yoke a flea, Dry'd butterflies,
6 and tomes of casuistry." That is the most
7 casuistical argument I've ever heard.

8 I can read the plain English language
9 that the South Carolina Supreme Court put
10 on this whole thing, the very same attempt
11 that you-all are making here that was made
12 in Payne & Keller.

13 And they said it's all going back and
14 going to be dismissed because it's not
15 immediately appealable.

16 MR. CARROLL: And, Your Honor --

17 THE COURT: That's what the Court
18 said. They don't have to frame that in
19 your terms. They don't have to frame that
20 with your references.

21 MR. CARROLL: Yes, ma'am.

22 THE COURT: They framed what they felt
23 the bottom-line issue was. And the
24 bottom-line issue is: Are these things
25 appealable and, therefore, stay the

1 proceedings below? They said no was the
2 answer to that. They're not immediately
3 appealable. So it doesn't really matter
4 what direction or avenue they took to get
5 there, Mr. --

6 MR. CARROLL: -- Carroll.

7 THE COURT: -- Carroll.

8 MR. CARROLL: Yes, ma'am.

9 THE COURT: I don't know. I --

10 MR. CARROLL: Your Honor --

11 THE COURT: If you've got some more to
12 say, say it.

13 MR. CARROLL: You and I have sparred
14 about this every time we've seen each
15 other --

16 THE COURT: Yes. And so far, the
17 courts that have looked over my shoulder
18 have agreed with me about it.

19 MR. CARROLL: I understand that,
20 Your Honor. I think that this is a
21 separate -- a different issue. And I've
22 practiced law in the state long enough to
23 know that a waiver at some point is
24 perilous. And so my client, Mr. Pugh's
25 clients, these gentlemen, we all have an

1 obligation to preserve our issues and not
2 accidentally step on a trip wire of waiver.
3 So I understand --

4 THE COURT: But you also have the
5 obligation to follow direct orders of the
6 South Carolina Supreme Court, and that's
7 what's not being done here, in my humble
8 opinion.

9 MR. CARROLL: Your Honor, and I -- I,
10 as forcefully as I can, disagree for the
11 reasons I've said. I understand you and I
12 disagree, but I -- I don't want the record
13 to -- to leave a hanging chad here about
14 whether I'm defying an order of the State
15 Supreme Court. I -- I most certainly --

16 THE COURT: I -- I believe that you
17 are.

18 MR. CARROLL: And I believe that I'm
19 not, Your Honor. I understand. I
20 understand we disagree about that.

21 THE COURT: Well, at least in
22 this Court, I get the final word on that.

23 MR. CARROLL: Yes, ma'am. You're --
24 you're wearing the robe and not me. And I
25 understand that, and I respect that,

1 Your Honor. I just -- I don't want my
2 client --

3 THE COURT: I think your position is
4 very well stated.

5 MR. CARROLL: Very good. Thank you,
6 Your Honor.

7 THE COURT: All right.

8 MR. CARROLL: Your Honor, may I -- may
9 I inquire -- this is unrelated to the 205
10 issue. This morning, Ms. -- Ms. McVey
11 mentioned that there are only two
12 defendants left in Tibbs: Atlas and ACL.
13 My understanding of -- of third-party
14 practices is the cases are supposed to be
15 tethered together. But -- but I don't --

16 THE COURT: I'm not going to answer
17 that right now. I'm not in that right now.
18 I --

19 MR. CARROLL: I'm just wondering what
20 happened to Cape.

21 MS. McVEY: Cape is still in, the
22 tolling agreement.

23 THE COURT: Cape is still very much in
24 it.

25 MR. CARROLL: The tolling agreement.

1 Okay. So they are?

2 MS. McVEY: You can just ask me,
3 though, Todd, if you ever want to.

4 MR. CARROLL: Well, there was a
5 question posed to the -- in the email.

6 THE COURT: Hey, wait a minute now.
7 We're certainly not going to have this kind
8 of thing. If y'all got something you want
9 to ask about, ask each other some later
10 time. Don't be --

11 MR. CARROLL: Very good, Your Honor.

12 THE COURT: All right.

13 MR. CARROLL: Thank you.

14 THE COURT: All right. Well, I -- I
15 don't have any choice, I don't suppose,
16 except to continue these matters, and I'm
17 going to do that.

18 But I can tell you this: We are going
19 to very, very quickly and we're going to
20 utilize the time that I had allocated to
21 devote to trying these cases next week and
22 the week afterwards for me to set some
23 hearings to get these things back on track
24 and get some scheduling orders out on all
25 those things.

1 So I -- I want the parties to be fully
2 aware of that. And I want the moving
3 parties, for plaintiffs in particular, to
4 develop at the earliest possible time after
5 the consultations that are being had with
6 defendants on a possible resolution of
7 these matters, which would be a good thing
8 to develop, if they can't be resolved, some
9 schedule for trial.

10 And in the meantime, I'm looking over
11 my book of business to see that there are
12 not some orders that I should have signed
13 that I haven't signed.

14 I ruled on these things on the record.
15 And even I checked back on that. This
16 uncertainty about what I did with respect
17 to those cases is not justified.

18 I don't have to even file a Form 4 on
19 these things. And I certainly don't have
20 to go further than that, particularly on
21 nonappealable matters like the denial of
22 motions to do various things.

23 But I ruled on those things. You're
24 just going to file something today making
25 sure that's so. And, you know, I don't

1 suppose I can prevent people from trying to
2 construe them as something that they're
3 not, like this crazy injunction thing that
4 suddenly reared its head. The only reason
5 why the thing was defined that way, of
6 course, was to make it an appealable matter
7 when it otherwise was not. I'm just not
8 going to keep fighting those battles.

9 But there's going to be some
10 permanency to what I do. And it means that
11 when I make a ruling in court, that's the
12 end of it. And dates will flow in the
13 future from those rulings, not from me
14 trying to accommodate people by putting
15 them in writing and filing various things.
16 That obviously is not something that helps
17 move the matter along. So I'm not going to
18 do that anymore.

19 Okay. All right. Anything else?

20 Ms. Joyner?

21 MS. JOYNER: No, ma'am.

22 THE COURT: All right. Ms. --

23 MS. JOYNER: Not from us.

24 THE COURT: Ms. McVey?

25 MS. McVEY: No, ma'am. Thank you.

1 We'll get with you about what we'd like to
2 get scheduled in the next two weeks.

3 THE COURT: All right. All right.

4 MS. McVEY: I'll send an email. Thank
5 you, Your Honor.

6 THE COURT: Any defendants?

7 MR. EARLY: Hey, Judge. Just, the
8 next trial group is June 10th. That's the
9 Motley Rice trial group. There is a motion
10 to continue that's been filed by Mr. Swett
11 in that. I don't know if Chris is in here.
12 I haven't seen him. But I don't know if
13 the Court at an opportunity to take up our
14 motion about that or address it.

15 LAW CLERK: It's -- I believe it's the
16 one we just got regarding Lewis.

17 MR. EARLY: Lewis. Terry Lewis. I
18 just --

19 THE COURT: Yeah. I mean, you know,
20 today is 4/10, and I've been in court since
21 9:00. At 9:09, I -- this morning, I get in
22 Lewis against A.W. Chesterton. I have not
23 been able to get in touch with the client
24 in months. Can't locate the defendant. Do
25 you want to grant a continuance? I'm just

1 going to have to decide what to do about
2 that, don't I?

3 MR. EARLY: I'm just bringing it to
4 the Court's attention, that it's coming
5 up --

6 THE COURT: Yeah.

7 MR. EARLY: -- in the next turnover,
8 and --

9 THE COURT: I --

10 MR. EARLY: -- that's imminent.

11 THE COURT: Well, it -- it's obvious
12 that they're not ready to try it next --

13 MR. EARLY: And I don't want to speak
14 because Chris is not here, Judge, I
15 don't -- I don't think.

16 THE COURT: Yeah. I mean, the whole
17 thing with taking it off the docket with
18 leave to restore is probably --

19 MR. EARLY: Well, Judge --

20 THE COURT: -- what I really ought to
21 do, and that's probably what I will do.
22 But that leaves that space open. All
23 right. And I'll have to decide what to do
24 about that. I --

25 MR. EARLY: There's another case in

1 that term that they are pushing for, the --
2 the Sawyer case.

3 THE COURT: Yeah. Well, I don't know.
4 I've got kind of conflicting notes from
5 them. But the June, as you know, is an
6 Orangeburg term.

7 Okay. Well, thanks for letting me
8 know that. Well, all I can say is I'm
9 going to try to get with Mr. Swett and see
10 exactly what's going on.

11 MR. EARLY: Okay.

12 THE COURT: Now, are you in that one?

13 MR. EARLY: He's -- he is local
14 counsel for both the Sawyer and the Lewis
15 cases.

16 THE COURT: I got it.

17 MR. EARLY: And they are both in
18 Orangeburg, Your Honor.

19 THE COURT: Okay.

20 MR. EARLY: Yeah.

21 THE COURT: All right. Well, let me
22 do some filtering around to see what I can
23 find out what the scoop is on those.

24 MR. EARLY: Thank you, Judge.

25 THE COURT: Okay. All right.

1 Anything else for the good of the order?

2 MS. JOYNER: No, ma'am.

3 THE COURT: All right. Court is
4 adjourned.

5 - - -

6 (Proceedings adjourned at 12:27 p.m.)

7 - - -

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

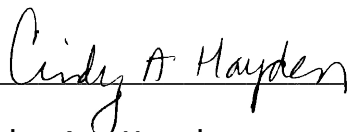
25

CERTIFICATE OF REPORTER

I, Cindy A. Hayden, Registered Merit Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on Page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, this 12th of April, 2024.


Cindy A. Hayden,
Registered Merit Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
July 27, 2030

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY, et al.,

Defendants.

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as
successor in interest to ANGLO AMERICAN
CORPORATION OF SOUTH AFRICA LTD., et
al.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

**THIRD-PARTY DEFENDANTS CHARTER CONSOLIDATED LTD., ESAB
CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION
LTD.'S MEMORANDUM IN OPPOSITION TO CAPE PLC'S MOTION FOR ADVERSE
INFERENCE AS TO THE ALTRAD AND CHARTER THIRD-PARTY DEFENDANTS¹**

¹ By making this filing, the Charter Third-Party Defendants do not waive, but instead specifically preserve, all defenses asserted and objections previously made regarding these proceedings through its written motions, oral arguments, memoranda and briefs, responsive pleadings, served responses, and appellate filings, including, *inter alia*, that: the Court lacks personal jurisdiction over each of the Charter Third-Party Defendants; the Court lacks subject matter jurisdiction; the Receiver was improperly appointed; the Cape PLC receivership was improperly continued and modified and an entirely new receivership was granted over the separate entity named Cape Intermediate Holdings Limited ("CIHL"); the Receiver lacks

Third-Party Defendant Charter Consolidated Ltd. (“Charter”), ESAB Corporation (“ESAB”), and Central Mining and Investment Corporation Ltd. (“Central Mining” and, collectively, “Charter Third-Party Defendants”) hereby request the Court abstain from ruling on the Third-Party Plaintiff’s Motion for Adverse Inference as to certain of the Third-Party Defendants, including the Charter Third-Party Defendants (the “Motion”), or, in the alternative, issue an order denying the Motion and the relief sought therein. This memorandum in opposition is primarily based on Rule 205, SCACR, and the fact it would be inappropriate for a court, engaging in a *bench trial*, to award an adverse inference that closely mirrors the third-party claims pled and the prayer for relief sought *before* litigation on the merits occurs—if and when appropriate given the divestiture of jurisdiction and authority pursuant to Rule 205, SCACR.²

As stated in the Charter Third-Party Defendants’ separate Adoption and Notice of Joinder in Filings of Other Third-Party Defendants (the “Joinder”) which is incorporated herein in full (including as to all arguments, authorities, and relief requested and incorporated therein), neither

standing; the Receiver’s claims were improperly pled, should be severed, and/or fail under Rules 12(b) and 14, SCRCPP; and these proceedings and the claims asserted and relief sought against the Charter Third-Party Defendants violate their fundamental procedural and substantive constitutional rights and protections.

² In addition to the grounds contained herein, this Motion is further based on all pleadings, filings, motions, objections, appellate filings and designations, briefs, federal and state jurisprudence, federal and state constitutional law, statutory authority, and any other material properly before this Court and the South Carolina Court of Appeals. Without limiting the foregoing, the Charter Third-Party Defendants further adopt and incorporate herein all other motions, objections, and arguments asserted, and authorities cited, by any of the other Third-Party Defendants in response and/or opposition to the Receiver’s prosecution of the claims asserted in the Third-Party Complaint; the discovery served, sought, or otherwise produced by the Receiver (including through the instant Deposition Notices); any motion filed, or request for relief sought, by the Receiver; and/or with respect to the timing and conduct of trial and preliminary matters thereto. In this regard, and to the extent consistent with the arguments asserted (or otherwise incorporated) and relief sought herein, the Charter Third-Party Defendants adopt and incorporate the pre-trial filings of all Third-Party Defendants, including the memoranda and series of motions *in limine* filed by Third-Party Defendants Anglo American plc, De Beers plc, De Beers Consolidated Mines (Pty) Ltd., De Beers UK Limited, and De Beers Centenary AG (collectively, the “Anglo American-De Beers Defendants”).

this Court nor the Receiver, who is an “arm” and “officer” of the Court, can proceed given the Rule 205, SCACR, jurisdictional bar established based on the Charter Third-Party Defendants’ (and other of the Third-Party Defendants’) pending appeals before the South Carolina Court of Appeals and the issues contained therein. Accordingly, through the Joinder and the arguments, authorities, and relief requested and incorporated therein, the Charter Third-Party Defendants have sought, once again, to: (i) enforce the mandatory provisions of Rule 205, SCACR, given the Charter Third-Party Defendants’ (and other of the Third-Party Defendants’) pending appeals; (ii) oppose this Court from proceeding, outside of its authority, with trial as to any or all of the matters at issue in the Receiver’s Third-Party Complaint; and (iii) enjoin all activity by the Receiver, including with respect to pre-trial matters such as seeking the determination of pled causes of action and defenses—via the mechanism of adverse inferences in a bench trial of equitable claims— before trial of either the first-party or third-party action occurs and while valid appeals are pending.

Because granting the relief sought in the Third-Party Plaintiff’s instant Motion would be in direct the violation of the Rule 205 jurisdictional bar—by both the Court and its officer, the Receiver—no action can occur while the Court is deprived of jurisdiction and authority to act. However, even if such action could be validly taken (which it decidedly cannot) and was non-prejudicial (again, which it is not), the Charter Third-Party Defendants respectfully request that the Court—in addition to granting the relief sought in the Charter Third-Party Defendants’ Joinder—either abstain from ruling on the Motion at this time, or, deny the Motion so as to enforce and comply with Rule 205, SCACR.

I. ARGUMENT

A. Under These Circumstances, Proceeding To Trial, Refusing To Enjoin The Receiver, And/Or Granting This Motion Seeking An Adverse Inference Would Equate To An Impermissible Sanction Equivalent To Striking The Charter Third-Party Defendants' Answer And Depriving Them Of Substantial Rights.

The relief sought by the Third-Party Plaintiff in this Motion would essentially determine the matter, granting as a pre-emptive matter nearly all relief sought in the Third-Party Complaint before trial of the matter or any resolution on the merits of the underlying action from which this third-party action derives. Accordingly—if the Court chooses not to withhold ruling on this Motion based on Rule 205, SCACR—granting of the Motion would be essentially the granting of sanctions against the Charter Third-Party Defendants akin to a finding of contempt or the striking of an Answer or defenses.

Sanctions awarded in South Carolina “should be reasonable, and the Court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case.” *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990) (citing *Societe Int’l Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 207 (1958)). Any sanction awarded “should be aimed at the specific misconduct of the party sanctioned.” *Balloon Planation*, 303 S.C. at 154, 399 S.E.2d at 440. “In other words, the sanction should be a rifle-shot, not a shotgun blast” and certainly not “a hydrogen bomb,” for example, by denying defendants “the opportunity to present a defense.” *Id.* “The courts have generally held that *Rogers* requires some element of bad faith, willfulness, or callous disregard of the rights of other litigants in order to justify imposition of such a sanction” of holding a party in default and striking their pleading. *Id.* at 154–55, 399 S.E.2d at 440 (quoting 4A J. Moore, J. Lucas & D. Epstein, *Moore’s Federal Practice* ¶ 37.03[2], at 89 (2d ed. 1990)).

Should the Court proceed to trial (even though it has no power to do so per Rule 205, SCACR) and refuse to enjoin the Receiver—in these circumstances (i) where the Charter Third-Party Defendants (and other Third-Party Defendants) have legitimate, pending appeals (and are not acting in bad faith or in willful and/or callous disregard of the rights of other litigants), (ii) where the Court’s March 12, 2024 Order—now on appeal—that first compelled discovery (although without the requisite power to do so) was issued less than one month ago in a case where the Receiver’s pled factual allegations date back to the nineteenth century, even though ESAB was only recently formed in the twenty-first century, and (iii) where the first-party tort action, from which the Receiver’s purported derivative claims are necessarily based and upon which they are contingent, has not yet been tried with a verdict returned against Cape PLC (or CIHL)—the result of such action would equate to an impermissible sanction equivalent to striking the Charter Third-Party Defendants’ Answer and holding them in default, thereby affecting and infringing upon their substantial rights. This reality also results—and is, in fact, amplified—if the Court grants this Motion and awards the requested sanctions sought by the Receiver as a pre-trial matter, including with respect to pre-admission of trial exhibits and declaring an adverse inference of an alter-ego relationship and unjust enrichment. Such a “hydrogen bomb”—destructive to the Charter Third-Party Defendants’ substantial constitutional and statutory rights—should be altogether avoided by respecting the Rule 205, SCACR, jurisdictional bar, halting any trial of this third-party action, enjoining the Receiver from taking any action, within and outside of this litigation and including pre-trial matters, and refusing to grant the instant Motion and the relief sought therein.

B. The Court Is Without Jurisdiction Or Authority To Grant The Motion Pursuant To Rule 205, SCACR.

In addition to all the reasons set forth in and incorporated by the Charter Third-Party Defendants' Joinder, which are fully incorporated herein, this Motion cannot be granted because this Court lacks jurisdiction and authority *and* the Receiver is without authority to proceed with this matter as all issues regarding the purported Receiver's appointment, his purported authority to engage in litigation, and this Court's exercise of personal jurisdiction over the Charter Third-Party Defendants are presently pending before the South Carolina Court of Appeals. *See* Rule 205, SCACR (providing that "[u]pon the service of the notice of appeal, the appellate court *shall have exclusive jurisdiction* over the appeal" (emphasis added)); *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) (explaining that "Rule 205 divests the lower court or administrative tribunal of jurisdiction over '*matters affected by the appeal*'" (emphasis supplied by the Supreme Court) (quoting *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012))); *Morris v. Morris*, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) ("This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal."); *Tillman*, 398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (reiterating that "[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal," and explaining that this rule "deprives the lower court of the power to address a particular issue, or '*matter*,' during the pendency of the appeal"); *Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App. 2002) ("Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter."); Jean H. Toal, *et al.*, *Appellate Practice in South Carolina* 121 (3d ed. 2016) (confirming that "[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal"); *see also Tillman*, 398 S.C. at 255, 728 S.E.2d at 51 ("Thus, the existence or

nonexistence of a stay under Rule 241 does not control the family court's power to proceed with the action and address matters not affected by the appeal. Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a 'matter affected by the appeal' under Rules 205 and 241(a).").

On December 6, 2023, the Court entered its Order Denying Certain Third-Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction (the "December 6 Order on Appeal"). Thereafter, on December 19, 2023, the Charter Third-Party Defendants perfected their appeal of that December 6 Order. The issues in that appeal include: the propriety of the Cape PLC receivership; the granting, continuation, and modification of the appointment of the Receiver, including over to a separate entity—CIHL; and whether this Court has personal jurisdiction over the Charter Third-Party Defendants or other of the Third- Party Defendants.

Should the December 6 Order on Appeal be reversed as to any of these issues, the result would be that Receiver's third-party action against the Charter Third-Party Defendants would be dismissed and/or the Receiver would have no power or authority to take any action on behalf of Cape PLC (or CIHL), including pursuing the relief sought in the Receiver's Third-Party Complaint, engaging in discovery, or preparing for trial, instantly mooted issues relating to adverse inferences sought by the Receiver. Accordingly, as a result of the Notice of Appeal filed with the South Carolina Court of Appeals on December 19, 2023, the Court, is unable to act on any matter affected by the currently pending appeal—again, which would include awarding an adverse inference and other related trial matters—until such appeal is decided and remittitur returned. Rule 205, SCACR, mandates this result and provides no exception. Moreover, the Court's and the Receiver's lack of authority to proceed are squarely pending

before the Court of Appeals and have been since the Charter Defendants perfected their second appeal on March 19, 2024 and filed their Initial Brief and Initial Designation on March 20, 2024. The Court should recognize and enforce this reality and not rule on the Third-Party Plaintiff's Motion or issue an Order denying the Motion until such time as is appropriate after remittitur, pursuant to Rule 205, for this Court to act.

II. CONCLUSION

For the foregoing reasons, the Charter Third-Party Defendants ask that the Receiver's Motion be refused or denied and that the Charter Third-Party Defendants be awarded all such other and further relief to which they may be entitled in accordance with the precepts of Rule 205, SCACR, and other applicable law. In accordance with Rule 11, SCRCP, the undersigned counsel certifies that consultation on this matter would serve no useful purpose given the Receiver's positions on Rule 205, SCACR, discovery in general, and pre-trial matters; counsel for the Receiver has made a reciprocal certification in his purported pre-trial filings.

Dated: April 9, 2024

GORDON REES SCULLY MANSUKHANI, LLP

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

*Counsel for Third-Party Defendants
 Charter Consolidated Ltd., ESAB
 Corporation, and Central Mining and
 Investment Corporation Ltd.*

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,)
Plaintiffs,) Civil Action No. 2023-CP-40-01759

v.)

3M COMPANY, *et al.*,)

Defendants.)

*****)

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

Third-Party Plaintiff,)

v.)

ANGLO AMERICAN PLCS, *et al.*,)

Third-Party Defendants.)

**THIRD-PARTY DEFENDANTS
MOHED ALTRAD AND ALTRAD
INVESTMENT AUTHORITY SAS'S
MEMORANDUM IN OPPOSITION
TO CAPE PLC'S MOTION(S) FOR
SANCTIONS, ALL RELIEF SOUGHT
THEREIN, AND THE SAME
AND/OR SIMILAR RELIEF
SOUGHT IN PRIOR FILINGS¹**

Third-Party Defendants Altrad Investment Authority S.A.S. (hereinafter AIA) and Mohed Altrad (hereinafter "Mr. Altrad") (collectively, the "AIA and Mr. Altrad") hereby request the Court abstain from ruling on the Third-Party Plaintiff's Motion for Sanctions as to certain of the Third-

¹ By making this filing, AIA and Mr. Altrad do not waive, but instead specifically preserve, all defenses asserted and objections previously made regarding these proceedings through its written motions, oral arguments, memoranda and briefs, responsive pleadings, served responses, and appellate filings, including, *inter alia*, that: the Court lacks personal jurisdiction over each of AIA and Mr. Altrad; the Court lacks subject matter jurisdiction; the Receiver was improperly appointed; the Cape PLC receivership was improperly continued and modified and an entirely new receivership was granted over the separate entity named Cape Intermediate Holdings Limited ("CIHL"); the Receiver lacks standing; the Receiver's claims improperly pled, should be severed, and/or fail under Rules 12(b) and 14, SCRCF; and these proceedings and the claims asserted and relief sought against AIA and Mr. Altrad violate their fundamental procedural and substantive constitutional rights and protections.

Party Defendants, including AIA and Mr. Altrad (the “Motion”),² or, in the alternative, issue an order denying the Motion and the relief sought therein. This memorandum in opposition is primarily based on Rule 205, SCACR; the “tolled” status of the first-party action as to the Third-Party Plaintiff; and the fact it would be inappropriate for a court, engaging in a *bench trial*, to either:

(i) award an adverse inference that effectively decides *before* litigation on the merits occurs, the substantive claims third-party claims pled and grants the prayer for relief sought in the Third-Party Complaint. Such a ruling would be inappropriate in any instance, but would be particularly inappropriate here—if given the “tolled” nature of the underlying tort claim and the divestiture of jurisdiction and authority pursuant to Rule 205, SCACR; or

(ii) preadmit—and, as part thereof, find authentic, genuine, and admissible—at least 2,538 purported trial exhibits (the “Purported Exhibits”), but only as to some (and not all) of the Third-Party Defendants and even though almost all of Purported Exhibits are unrelated to AIA and Mr. Altrad and their creation. This too is relief which is inappropriate independent of the divestiture of jurisdiction pursuant to Rule 205, SCACR or the “tolled” nature of the underlying tort claims. It is especially inappropriate given that the number of the Purported Exhibits that relate directly to the Third-Party Defendant against whom admission is apparently not sought, and that the content of the vast majority of the Purported Exhibits predates the recent formation and

² This Motion is duplicative of the Receiver’s prior filed Motion for Adverse Inference, filed April 5, 2024, and Motion to Preadmit Exhibits, filed April 3, 2024 (collectively, the “Prior Motions for Sanctions”). See Receiver’s Motion, at p.2 (“This Motion amends, supplements, and streamlines the Receiver’s [P]rior Motion[s] for [Sanctions].”).

even more recent, mid-2022 acquisition of AIA and Mr. Altrad by decades and, in some instances, centuries.³

As stated in the April 9, 2024 Notice of Motion and Motion to Enforce Rule 205 and Second Motion to Enjoin filed by Third-Party Defendants ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore LLC, which AIA and Mr. Altrad joined, (the “Second Injunction Motion”), and which is incorporated herein in full (including as to all arguments, authorities, and relief requested therein), neither this Court nor the Receiver, who is an “arm” and “officer” of the Court, can proceed given the Rule 205, SCACR, jurisdictional bar established based on AIA and Mr. Altrad’ (and other of the Third-Party Defendants’) pending appeals before the South Carolina Court of Appeals and the issues contained therein.⁴

³ In addition to the grounds contained herein, this Motion is further based on all pleadings, filings, motions, objections, appellate filings and designations, briefs, federal and state jurisprudence, federal and state constitutional law, statutory authority, and any other material properly before this Court and the South Carolina Court of Appeals. Without limiting the foregoing, AIA and Mr. Altrad further adopt and incorporate herein all other motions, objections, and arguments asserted, and authorities cited, by any of the other Third-Party Defendants in response and/or opposition to the Receiver’s prosecution of the claims asserted in the TPC; the discovery served, sought, or otherwise produced by the Receiver (including through the instant Deposition Notices); any motion filed, or request for relief sought, by the Receiver; and/or with respect to the timing and conduct of trial and preliminary matters thereto. In this regard, and to the extent consistent with the arguments asserted (or otherwise incorporated) and relief sought herein, AIA and Mr. Altrad adopt and incorporate the pre-trial filings of all Third-Party Defendants, including the memoranda and series of motions *in limine* filed by Third-Party Defendants Anglo American plc, De Beers plc, De Beers Consolidated Mines (Pty) Ltd., De Beers UK Limited, and De Beers Centenary AG (collectively, the “Anglo American-De Beers Defendants”).

⁴ On April 11, 2024, the Court of Appeals issued an Order granting the Receiver’s Motion to Dismiss the Third-Party Defendants’ appeals of this Court’s March 12, 2024 Order. As the Court is aware, per Rule 221(a), SCACR, parties have a right to petition for rehearing, and AIA and Mr. Altrad intend to do so as to the Court of Appeals’ April 11 Order. While the Receiver separately moved (on April 16, 2024) to dismiss the Third-Party Defendants’ appeals of this Court’s earlier December 6, 2023 Order, that motion has not yet been fully briefed and is not ripe for disposition. Moreover, as further explained below, the grounds for the Receiver’s motion before the Court of Appeals is a “Packet of Orders,” in separate cases, that are each inapplicable and/or distinguishable.

Accordingly, through their joinder in the Second Injunction Motion, AIA and Mr. Altrad have sought, once again, to: (i) enforce the mandatory provisions of Rule 205, SCACR, given AIA and Mr. Altrad' (and other of the Third-Party Defendants') pending appeals; (ii) oppose this Court from proceeding, outside of its authority, with trial as to any or all of the matters at issue in the Receiver's Third-Party Complaint; and (iii) enjoin all activity by the Receiver, including with respect to pre-trial matters such as seeking the determination of pled causes of action and defenses—via the mechanism of adverse inferences in a bench trial of equitable claims—before trial of either the first-party or third-party action occurs and while valid appeals are pending.

Because granting the relief sought in the Third-Party Plaintiff's instant Motion (and its earlier filings seeking the same or similar relief) would be in direct the violation of the Rule 205 jurisdictional bar—by both the Court and its officer, the Receiver—no action can occur while the Court is deprived of jurisdiction and authority to act. However, even if such action could be validly taken (which it decidedly cannot) and assuming arguendo that was non-prejudicial (again, which it is not), then AIA and Mr. Altrad respectfully request that the Court—in addition to granting the relief sought in AIA and Mr. Altrad' Second Injunction Motion—either abstain from ruling on the Motion at this time, or, deny the Motion, including so as to enforce and comply with Rule 205, SCACR.

ARGUMENT

I. Granting the Relief Sought Is an Impermissible Sanction Equivalent to Striking AIA and Mr. Altrad' Answer and Depriving Them of Substantial Rights.

The relief sought by the Third-Party Plaintiff is to essentially determine the substantive claims, granting pre-emptively and prematurely nearly all relief sought in the Third-Party Complaint without trial of the matter or any resolution on the merits of the underlying—now

“tolled”—action from which this third-party action derives. Accordingly—if the Court chooses not to withhold ruling on this Motion based on Rule 205, SCACR—granting the relief sought in the Motion would impose sanctions against AIA and Mr. Altrad equivalent to a finding of contempt and the striking of an Answer or defenses.

Sanctions awarded in South Carolina “should be reasonable, and the Court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case.” *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990) (citing *Societe Int’l Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 207 (1958)). Any sanction awarded “should be aimed at the specific misconduct of the party sanctioned.” *Balloon Planation*, 303 S.C. at 154, 399 S.E.2d at 440. “In other words, the sanction should be a rifle-shot, not a shotgun blast” and certainly not “a hydrogen bomb,” for example, by denying defendants “the opportunity to present a defense.” *Id.* “The courts have generally held that *Rogers* requires some element of bad faith, willfulness, or callous disregard of the rights of other litigants in order to justify imposition of such a sanction” of holding a party in default and striking their pleading. *Id.* at 154–55, 399 S.E.2d at 440 (quoting 4A J. Moore, J. Lucas & D. Epstein, *Moore’s Federal Practice* ¶ 37.03[2], at 89 (2d ed. 1990)).

If the Court grants the Receiver’s Motion and awards the relief sought therein (even though it has no power to do so per Rule 205, SCACR), the result would be an impermissible sanction, equivalent to striking AIA and Mr. Altrad’ Answer and holding them in default, thereby affecting and infringing upon their substantial rights. This is especially so under the particular circumstances here where:

- (i) AIA and Mr. Altrad (and other Third-Party Defendants) have legitimate, pending appeals (and are not acting in bad faith or in willful and/or callous disregard of the rights of other litigants);
- (ii) The Court's March 12, 2024 Order that first compelled discovery (although without the requisite power to do so) was issued slightly more than one month ago in a case where the Receiver's pled factual allegations date back to the nineteenth century even though Mr. Altrad was not born and AIA did not exist then; and
- (iii) Where the first-party tort action, from which the Receiver's purported derivative claims are necessarily based and upon which they are contingent, (a) has not yet been tried with a verdict returned against Cape PLC (or CIHL) and (b) has now been disclosed as being the subject of a "tolling agreement" between the *Tibbs* Plaintiffs and Cape PLC (or CIHL) - which has not been filed with the Court or shared with AIA and Mr. Altrad.

The granting of these sanctions, a "hydrogen bomb,"—destructive to AIA and Mr. Altrad's substantial constitutional and statutory rights—must be altogether avoided by respecting the Rule 205, SCACR, jurisdictional bar; halting any trial of this third-party action of claims purportedly derivative of a first-party action that is tolled; and refusing to grant the instant Motion and the relief sought therein.

II. The Court Is Without Jurisdiction or Authority to Grant the Motion Pursuant to Rule 205, SCACR.

In addition to all reasons set forth in the Second Injunction Motion, which AIA and Mr. Altrad joined, and which are incorporated fully herein, this Motion cannot be granted because this Court lacks jurisdiction and authority *and* the Receiver is without authority to proceed with this matter as all issues regarding the purported Receiver's appointment, his purported authority to

engage in litigation, and this Court’s exercise of personal jurisdiction over AIA and Mr. Altrad are presently pending before the South Carolina Court of Appeals. *See* Rule 205, SCACR (providing that “[u]pon the service of the notice of appeal, the appellate court *shall have exclusive jurisdiction* over the appeal” (emphasis added)); *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) (explaining that “Rule 205 divests the lower court or administrative tribunal of jurisdiction over ‘*matters affected by the appeal*’” (emphasis supplied by the Supreme Court) (quoting *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012))); *Morris v. Morris*, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) (“This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal.”); *Tillman*, 398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (reiterating that “[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal,” and explaining that this rule “deprives the lower court of the power to address a particular issue, or ‘matter,’ during the pendency of the appeal”); *Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App. 2002) (“Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter.”); Jean H. Toal, *et al.*, *Appellate Practice in South Carolina* 121 (3d ed. 2016) (confirming that “[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal”); *see also Tillman*, 398 S.C. at 255, 728 S.E.2d at 51 (“Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court’s power to proceed with the action and address matters not affected by the appeal. Rather, the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a ‘matter affected by the appeal’ under Rules 205 and 241(a).”).

On December 6, 2023, the Court entered its Order Denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motions to Dismiss

for Lack of Personal Jurisdiction (the “December 6 Order”). Thereafter, on December 18, 2023, AIA and Mr. Altrad and other Third-Party Defendants perfected their appeal of that December 6 Order. The issues in that appeal include: the propriety of the Cape PLC receivership; the granting, continuation, and modification of the appointment of the Receiver, including over to a separate entity—CIHL; and whether this Court has personal jurisdiction over AIA and Mr. Altrad or other of the Third-Party Defendants.

Should the December 6 Order on Appeal be reversed as to any of these issues, the result would be the Receiver’s third-party action against AIA and Mr. Altrad would be dismissed and/or the Receiver would have no power or authority to take any action on behalf of Cape PLC (or CIHL), including pursuing the relief sought in the Receiver’s Third-Party Complaint, engaging in discovery, or preparing for trial, instantly mooted issues relating to adverse inferences and admission of exhibits as now being sought by the Receiver. Accordingly, as a result of the Notice of Appeal filed with the South Carolina Court of Appeals on December 18, 2023, the Court, is unable to act on any matter affected by the currently pending appeal—again, which would include awarding an adverse inference, preadmitting exhibits, and other related trial matters—until such appeal is decided and remittitur returned. Rule 205, SCACR, mandates this result and provides no exception. The Court should recognize and enforce this reality and not rule on the Receiver’s Motion or issue an Order denying the Motion until such time as is appropriate after remittitur, pursuant to Rule 205, for this Court to act. There is no need for the Court to rush to judgment here -- any urgency to act created by the trial date has been obviated by the tolling agreement between Mr. Tibbs and the Receiver.

III. Procedural Appellate Orders, in Other Cases, Do Not Affect Established South Carolina Precedent on Rule 205, SCACR, and Are Inapplicable Here.

The Receiver contends—and this Court has indicated it agrees—that certain orders issued by the Court of Appeals and Supreme Court indicate that AIA and Mr. Altrad’ position on Rule 205, SCACR, is not supported. In reliance on the overwhelming established South Carolina law, AIA and Mr. Altrad respectfully disagree. *See* Section II, *supra*; Section Injunction Motion, at 11–15. For the reasons set forth below, this Court must approach and direct the analysis of Rule 205 as to *this case*, not what was decided in *another matter*. Moreover, the focus of this inquiry is not on the appealability of the December 6 Order—which is a matter for the appellate courts—but merely on what matters before this Court are affected by the matters implicated in the appeal. *See Tillman*, 398 S.C. at 256, 728 S.E.2d at 51 (“The question the court should have addressed is whether the issue raised in the petition was a matter affected by the appeal.”).

a. The Supreme Court’s March 2024 *Payne & Keller* Order Is Not Precedent.

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. Thereafter, 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).

This Order has *no* bearing for two simple reasons. *First*, just as issues of personal and subject-matter jurisdiction must be evaluated at the outset of each case when challenged, a self-executing jurisdictional rule such as Rule 205—which divests a lower court of nearly *all* authority to act—necessarily requires a case-by-case application. *See Tillman*, 398 S.C. at 255, 728 S.E.2d at 51. Accordingly, a review of matters in *Tibbs* affected by the appeals in *Tibbs* is the only way Rule 205 can be properly addressed. Published opinions from the South Carolina appellate courts—with both citation to authority and reasoning supporting its holdings on Rule 205—control here, not orders in other cases that are unavailing non-precedential, especially so where no analysis or explanation is included from which the basis for the ruling may be transposed into a separate case, with a separate and distinguishable procedural posture and with a separate and distinguishable set of substantive facts.

Second, the South Carolina Appellate Court Rules make clear this Supreme Court Order is *not* a precedential opinion. 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.” As is obvious, 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.”⁵ Likewise, that too has not occurred, including because no authority has been cited.

For the reasons stated above (and as applicable from those below), such an Order cannot be cited for anything more than doing what it did in that particular case. With the nuanced facts of an entirely different receivership, parties, circumstances, circuit court order, appellate procedure, briefing, and other major differences, a three-sentence Order—devoid of explanation and citation—cannot have bearing on the issues in this case.⁶

b. The Court of Appeals' November 2023 Payne & Keller Order Did Not Address the Issue Applicable Here.

On November 21, 2023, the Court of Appeals issued an Order on an Emergency Motion to Clarify and Enforce Rule 205 filed by various appellants in that case. That Order stated the Motion to Clarify was “prompted by an order issued by the circuit court on October 5, 2023” and stated

⁵ 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:

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).

⁶ 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).

nothing more than: “This court will take no action on any order which is not properly before it,” citing a case which states a notice of appeal is required for the Court of Appeals to decide on a circuit court order.⁷ *See Payne & Keller*, S.C. Ct. App. Order, dated November 21, 2023 (Appellate Case No. 2023-000727).

By its *plain text*, this Court of Appeals Order did nothing more than tell the appellants in that matter that it was simply withholding ruling on an issue as presented in that matter until a notice of appeal of this Court’s underlying Order was filed with the Court of Appeals. To take such an Order and cite it, as valid precedent, in other matters—procedurally and factually different—is incorrect.

c. **The Court of Appeals’ September 2023 *Payne & Keller* Order Addressed a Different Issue Inapplicable Here.**

On September 8, 2024, the Court of Appeals rejected another argument related to a stay of a circuit court order after a motion to dissolve a receivership. However, that order did not address Rule 205. Instead, it relied on Rule 62(a), SCRCP, and Section 14-3-450 of the South Carolina Code—both of which are inapplicable here—to rule “the March 31, 2023 order is not stayed during the pendency of this appeal. . . . Accordingly, the receivership action and the receiver’s ability to carry out his duties are not stayed.” *See Payne & Keller*, S.C. Ct. App. Order, dated Sept. 8, 2023 (Appellate Case No. 2023-000727).

The issue of a “stay” is *not* the issue dealt with by Rule 205, which has no exception. The issue of *stay* comes under Rule 241, SCACR, which does have exceptions and thereby renders Rule 62(a), SCRCP, and Section 14-3-450 relevant in that context (again, inapplicable here).

⁷ As noted in other filings, this is the reason AIA and Mr. Altrad were required to file their March 19, 2024 Notices of Appeal seeking review of the de facto denial of their Motion for Injunction seeking to enforce Rule 205.

Compare Rule 241, SCACR (“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order”) *with* Rule 205, SCACR (limiting the lower court to proceed only “with matters not affected by the appeal”). The required analysis under Rule 241 for *stays and supersedeas petitions* is separate and wholly distinct from the *jurisdictional* inquiry mandated by Rule 205. A decision on one does not, and cannot, affect or dictate the other. As explained in *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012), these separate rules, with separate accompanying analyses, cannot be conflated:

When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending. The answer to the first question is governed by the stay and supersedeas provisions of Rule 241. . . .

The second question is whether the lower court may proceed with the action during the pendency of the appeal, and its answer is governed by Rule 205, SCACR. . . .

398 S.C. at 254–55, 728 S.E.2d at 50–51; *see also Stokes-Craven Holding*, 416 S.C. at 533–34, 787 S.E.2d at 493–94 (analyzing both Rules 205 and 241, SCACR).

Accordingly, *any* contention that a prior order that determined a procedural issue, in an unrelated appellate case, on a non-merits basis and without discussing or mentioning Rule 205, SCACR, is wholly inapposite and provides *no authority* to support the Receiver’s Motion and/or to deny AIA and Mr. Altrad’ Second Motion for Injunction and/or the relief sought therein.

d. The Relevant Facts and Procedural Posture Here Is Distinguishable from *Payne & Keller*.

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 AIA and Mr. Altrad’ Motion to Dissolve the Cape PLC Receivership is fundamentally and factually different, as the relevant issue at hand concerns this Court’s *grant* of an entirely new receivership (in *Tibbs*) over a legal entity (Cape Intermediate Holdings Limited) separate and distinct from that named in this Court’s underlying Order of Appointment (in *Park*).⁸ By *granting* an entirely new receivership, relying on the inapplicable doctrine of “misnomer,” the Court in fact also *modified* and *continued* a receivership.

Such ruling by this Court goes far beyond what transpired in Payne & Keller and fits squarely within S.C. Code Ann. § 14-3-330(4) (“The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: . . . “[a]n interlocutory order or decree in a court of common pleas . . . *granting, continuing, modifying,* or refusing the appointment of a receiver.” (emphasis added)). In fact, this Court’s December 6 Order

⁸ Cape PLC and Cape Intermediate Holdings Limited (CIHL) were separately named defendants in *Park*; however, the Order of Appointment only named and identified Cape PLC. Now, in its December 6 Order in *Tibbs*, the Court has now identified CIHL as the entity over which the Receiver has been appointed.

was issued following briefing by the Receiver expressly requesting an amendment 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.”) & 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).”).

Similarly, the December 6 Order included inextricably linked issues as to personal jurisdiction over AIA and Mr. Altrad. Because these are issues on appeal, and properly within the appellate courts’ ability to rule on, they directly affect the matters before this Court. Orders in other cases did not contain similar personal jurisdiction issues—issues which are foundational and touch nearly everything currently before this Court.

Respectfully, this Court’s 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.

e. **For the Same Reasons, the Court of Appeals’ April 2024 Orders Regarding Factual Scenarios and Procedural Postures More Akin to *Payne & Keller* Are Also Inapplicable, Distinguishable, and Non-Dispositive.**

On April 12, 2024, the South Carolina Court of Appeals issued three Orders denying appeals brought pursuant to S.C. Code Ann. § 14-3-330(4), finding each not immediately appealable. *See Mitchell*, Appellate Case No. 2024-000341; *Link & Donaghy*, Appellate Case No. 2024-000342; 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, this 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 this 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 directly 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 set forth above regarding the *Payne & Keller* Orders, these separate Court of Appeals’ Orders are inapplicable, distinguishable, and non-dispositive to, and a far cry from, the factual scenario and procedural posture existing in this case, wherein the Court (in *Tibbs*) *granted* an entirely new receivership over a legal entity separate and distinct from that which this Court (in *Park*) appointed the Receiver: CIHL. Here, the Court’s December 6, 2023 Order—under the specific facts and posture in this case—is immediately appealable. Nonetheless, determination of the appealability of the December 6 Order—the reason for Rule 205’s effect here—is matter for the appellate courts. *See Levi v. N. Anderson Cnty. EMS*, 409 S.C. 374, 379, 762 S.E.2d 44, 47 (Ct. App. 2014) (“An *appellate court* may determine the question of appealability of a decision from a lower court as a matter of law.” (emphasis added)). And, the appellate courts’ determination of that will be made anew, not based on these prior unrelated orders in unrelated cases. *See 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.”).

IV. The Derivative Third-Party Action, Although Improper, Cannot Proceed Unless and Until There Is a Finding of Liability in the Direct, First-Party *Tibbs* Action, Which Now Cannot Occur Due to the *Tibbs* Plaintiffs’ Tolling Agreement with Cape PLC (or CIHL).

The proceedings in the first-party *Tibbs* action—from which the Receiver purportedly derives his claims against AIA and Mr. Altrad (and the other Third-Party Defendants)—have not been resolved, even though counsel for the *Tibbs* Plaintiffs explained in an April 8, 2024 email to the Court, a copy of which is attached hereto as Exhibit A, that the only two remaining direct defendants in *Tibbs* were (1) ACL (whose “answer was struck and it is currently in the Court of Appeals”) and (ii) Atlas Turner. The list did not include Cape PLC (or CIHL). At the April 10, 2024 pre-trial hearing, it was disclosed that Cape PLC (or CIHL) was not included among the remaining direct defendants because it was a party to a “tolling agreement” with the *Tibbs* Plaintiffs.⁹ So, at present, there has neither been an adverse verdict against nor a settlement with Cape PLC (or CIHL) from which derivative liability could be attempted to be shifted to the Third-Party Defendants, including AIA and Mr. Altrad. Moreover, at present, that first-party potentiality and condition precedent has, in effect, been stayed (either indefinitely or pursuant to unknown specifics of the “tolling agreement” voluntarily entered into by the Receiver).

By bringing this third-party action, the Receiver has necessarily conceded that the claims asserted by Cape PLC (or CIHL) against AIA and Mr. Altrad are derivative of the *Tibbs* Plaintiffs’ claims against Cape PLC (or CIHL) in the first-party action.¹⁰ And, by virtue of this Court’s

⁹ The specific terms of this “tolling agreement” have not been filed with the Court or disclosed to AIA and Mr. Altrad.

¹⁰ Under Rule 14(a), a defendant is permitted to implead and pursue claims against a third party only if it “is or may be liable to [defendant] for all or part of the plaintiff’s claim”; it “does not allow the defendant

December 15, 2023 Form 4 Order denying AIA and Mr. Altrad' Motion to Dismiss, including based on Rule 14, SCRCP, the Court has accepted this representation from the Receiver, at least as a preliminary, pleading matter.

Now, even though the Court's Form 4 denial was issued approximately four months ago; even though the Court issued its March 12 Order on Appeal slightly over one month ago; and even though Rule 205, SCACR, and the nature of the pending appeals of this Court's December 6, 2023 Order constitute a jurisdictional bar as to the Court and the Receiver from proceeding, the Receiver's third-party action is purportedly on the eve of determination, via the mechanism of sanctions, seemingly untethered to whether the underlying *Tibbs* first-party trial proceeds to a verdict against Cape PLC (or CIHL) or not, or even if it will ever be tried. Such a scenario is unsupported in fact, law, or logic. *See generally* Rule 205, SCACR (providing that "[u]pon the service of the notice of appeal, the appellate court *shall have exclusive jurisdiction* over the appeal" (emphasis added)); *Stokes-Craven Holding Corp.*, 416 S.C. at 534, 787 S.E.2d at 494 (explaining that "Rule 205 divests the lower court or administrative tribunal of jurisdiction over 'matters

to assert a separate and independent claim." Rule 14(a), SCRCP; *CNH Indus. Capital Am. LLC v. Able Contracting, Inc.*, No. 9:16-cv-2520-RMG, 2017 WL 512453, at *1 (D.S.C. 2017); *Laughlin v. Dell Fin. Servs., L.P.*, 465 F. Supp. 2d 563, 566 (D.S.C. 2006). "The third party claim must be derivative of the plaintiff's claim" such that "the third-party defendant's liability arises only if the defendant/third-party plaintiff is first held liable to plaintiff." *CNH Indus. Capital*, No. 9:16-cv-2520-RMG, at *2; *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) ("The outcome of the principal claim must impact the third-party defendant's liability[.]"); *see also Travelers Prop. Cas. Co. of Am. v. M.B. Kahn Constr. Co., Inc.*, No. 3:20-CV-01304-SAL, 2021 WL 1177861, at *29 (D.S.C. Mar. 29, 2021) ("Third-party claims require a very specific connection to the original claims—derivative liability. The third[-]party claim must be 'derivative' of the plaintiff's claim because [d]erivative liability is central to the operation of Rule 14. Such a claim says, [i]f I am liable to plaintiff, then my liability is only technical or secondary or partial, and the third party defendant is derivatively liable and must reimburse me for all or part . . . of anything I must pay plaintiff." (internal quotations and quotation marks omitted)). When "Rule 14(a)'s derivative-liability requirement" is not satisfied, the court should strike or sever the third-party action. *CNH Indus. Capital*, 2017 WL 512453, at *1. Rule 14 cannot be used—as seemingly being done here—to seek an expansive advisory opinion regarding hypothetical liabilities beyond the scope of the primary first-party action, especially when that first-party action is now stayed.

affected by the appeal” (emphasis supplied by the Supreme Court) (quotation omitted); *Morris*, 295 S.C. at 40, 367 S.E.2d at 26 (“This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal.”); *Tillman*, 398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (reiterating that “[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal” and explaining that this rule “deprives the lower court of the power to address a particular issue, or ‘matter,’ during the pendency of the appeal”); *Companion Prop. & Cas. Ins. Co. v. U.S. Bank Nat’l Ass’n*, No. 3:15-CV-01300-JMC, 2017 WL 3613874, at *7 (D.S.C. Aug. 23, 2017) (“Here, resolution of the third-party claims . . . for contribution and indemnification are contingent upon [the defendant] being found liable for [the plaintiff’s] injuries [in the first-party action]. If, in a first trial, [the first-party defendant] is found not liable for [the plaintiff’s] injuries, [the] third-party claims against [the third-party defendants] would be resolved against [the first-party defendant/third-party plaintiff] and a second trial on [the third-party defendants’] liability . . . would be obviated. If, on the other hand, [the first-party defendant] is found liable to [the plaintiff] in a first trial, the factual basis for the scope of liability will have been developed and . . . the issues in the third-party claims might be narrowed significantly.”).

Notwithstanding the foregoing, and even if Rule 205, SCACR, did not pose a jurisdictional bar preventing this third-party action from continuing (which it does), only two procedural outcomes could exist in this instance.

First, if the *Tibbs* Plaintiffs’ claims against Cape PLC (or CIHL) in the first-party action are not resolved, which it has been represented they are not by virtue of a “tolling agreement,” then this third-party action of derivative claims asserted against AIA and Mr. Altrad cannot proceed to trial and this Court should not address pre-trial matters or entertain motions for sanctions. *See generally*, 6 C. Wright & Miller, Federal Practice and Procedure § 1451 (3d ed.).

Second, if the claims of Cape PLC (or CIHL) are, in fact, not derivative of the *Tibbs* Plaintiffs’ claims against Cape PLC (or CIHL) in the first-party action, then the Receiver’s claims were improperly pled and this third-party action must be stricken or severed. *See, e.g.*, Am. Third-Party Compl. ¶ 127 (“Each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants, including their predecessors in interest, received a non-gratuitous benefit from Cape as a result of the liability-avoidance scheme described herein, including the domination of NAAC’s risk-management decisions (resulting in the purchase of wholly inadequate insurance) and the extraction of massive cash payments and other assets to entities outside of the United States.”); *id.* at ¶ 135 (“But for the false or misleading statements made by each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants, or their predecessors in interest, to hide the true nature of Cape’s unethical business practices and the known harms associated with its asbestos products, the funds would and should have been accessible to third-party claimants.”); *see also generally Raymond James & Assocs., Inc. v. Bassford*, No. 2:21-CV-01825-DCN, 2022 WL 673833, at *8 (D.S.C. Mar. 7, 2022) (staying third-party claims until either the filing of a separate action or the resolution of the underlying action); *Beach v. Hudson*, 298 S.C. 424, 427, 380 S.E.2d 869, 871 (Ct. App. 1989) (quoting 6 C. Wright & Miller, Federal Practice and Procedure § 1446 at 246A for the proposition that a “third-party claim may be asserted under Rule 14(a) only when the third party’s liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to defendant”).

V. Pre-Admitting Exhibits, as a Sanction, as to Some but Not All Third-Party Defendants Is Unsupportable and Defies Logic.

As part of the requested sanctions, the Receiver has asked this Court to pre-admit a flood of purported trial exhibits—satisfying Rule 901, SCRE—as to some, but not all, of the Third-Party

Defendants. Such a request is unsupportable, given that evidence is either authentic or it is not; there can be no such thing as evidence being authentic as to certain Third-Party Defendants, but not as to all of them. *See* Rule 901(a), SCRE (“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”); *see also* Rule 901, SCRE, Note (“[T]he requirement of showing authentication or identity falls in the category of relevancy dependent upon fulfillment of a condition of fact and is governed by the procedure set forth in Rule 104(b).”); Rule 37(b)(2)(A), SCRCF (permitting, as a sanction if warranted, “[a]n order that the matters regarding which the order was made or any other designated facts shall be taken to be established *for the purposes of the action* in accordance with the claim of the party obtaining the order” (emphasis added)). For this additional reason, the Receiver’s request for the pre-admission of exhibits should be rejected.

CONCLUSION

No sanction is warranted because AIA and Mr. Altrad are simply trying to proceed through this matter in an orderly, consistent way, as directed by the South Carolina Appellate Court Rules and the myriad cases enforcing the impenetrable jurisdictional boundaries of Rule 205, SCACR. There is absolutely no urgency associated with this case, as it cannot proceed to trial unless and until there is any liability assigned to Cape PLC in the first-party action. Rule 14, SCRCF. Yet, according to Tibbs’ counsel’s representations to the Court, the underlying claims have been tolled by agreement between the plaintiffs and the Receiver, rendering this entire third-party action moot in its present status. In other words, without any liability owed to the plaintiff, Cape has nothing to try to impute through a third-party action. Given that, there is no basis at all to “sanction” AIA, Mr. Altrad or any other Third-Party Defendant for pursuing their

appellate rights and abiding by the jurisdictional limitations set forth by Appellate Court Rule 205, and the Court should categorically reject the Receiver's rush to judgment in defiance of Due Process and all procedural rules and norms of United States and South Carolina law.

For the foregoing reasons, AIA and Mr. Altrad ask the Receiver's Motion be refused or denied and they be awarded all such other and further relief to which they may be entitled in accordance with the precepts of Rule 205, SCACR, and other applicable law. In accordance with Rule 11, SCRCR, the undersigned counsel certifies that consultation on this matter would serve no useful purpose given the Receiver's positions on Rule 205, SCACR, discovery in general, and pre-trial matters; counsel for the Receiver has made a reciprocal certification in his Motion and other purported pre-trial filings.

Respectfully submitted this 19th day of April, 2024.

WOMBLE BOND DICKINSON (US) LLP

/s/ M. Todd Carroll

M. Elizabeth O'Neill (S.C. Bar No. 104013)
One Wells Fargo Center
301 S. College Street, Suite 3500
Charlotte, North Carolina 28202-6037
Ph.: (704) 350-6310
Elizabeth.ONeill@wbd-us.com
WBD.SCASBESTOS@wbd-us.com

Kevin A. Hall (S.C. Bar No. 015063)
M. Todd Carroll (S.C. Bar No. 74000)
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-7710
kevin.hall@wbd-us.com
todd.carroll@wbd-us.com

*Attorneys for Third Party Defendants Altrad Investment
Authority S.A.S. and Mohed Altrad*

EXHIBIT A

From: Theile McVey
To: Toal, Jean; Diaz, Eva; JMTechman@ewhlaw.com; Brown, Stephen L.; Peter Protopapas; "Lindsay Valek"
Cc: Angela.Strickland@bowmanandbrooke.com; Brianna.Bowling@bowmanandbrooke.com;
 Patrick.Cleary@bowmanandbrooke.com; franklin.greene@bowmanandbrooke.com;
 morgan.drapeau@bowmanandbrooke.com; Jacquese.gray@bowmanandbrooke.com;
 Glee.henderson@bowmanandbrooke.com; wac@roecassidy.com; SingewaldC@WhiteandWilliams.com;
 JMTechman@EWHLaw.com; ASRogers@EWHLaw.com; plsisk@ewhlaw.com; PAMcGrath@ewhlaw.com;
 louis@milliganlawfirm.com; robert.meriwether@cs-law.com; jase.glenn@cs-law.com; Rebecca.sanford@cs-law.com;
 Sc-asbestos@cs-law.com; Matt.Patterson@nelsonmullins.com; James.Burns@nelsonmullins.com;
 mitch.brown@nelsonmullins.com; matt.patterson@nelsonmullins.com; matt.bogan@nelsonmullins.com;
 nick.charles@nelsonmullins.com; deirdre.mccool@nelsonmullins.com; kelli.martin@nelsonmullins.com;
 jo.lyons@nelsonmullins.com; mark.phillips@nelsonmullins.com; Ashley.peoples@nelsonmullins.com;
 Kelli.martin@nelsonmullins.com; Linda.wilson@nelsonmullins.com; Eileen.hindman@nelsonmullins.com;
 Susan.collings@nelsonmullins.com; ymcleod@maronmarvel.com; grouse@maronmarvel.com;
 bi@maronmarvel.com; FOcel@maronmarvel.com; cla@maronmarvel.com; kln@maronmarvel.com;
 JRenner@maronmarvel.com; CGourdine@maronmarvel.com; awilkinson@grsm.com; squerriere@grsm.com;
 ehawkins@grsm.com; jrvn@grsm.com; vrawl@grsm.com; wkleindienst@grsm.com; jldelon@grsm.com;
 Bahnson-GRSM@grsm.com; leslie.packer@elliswinters.com; ashley.brathwaite@elliswinters.com;
 curtis.shipley@elliswinters.com; joe.hammond@elliswinters.com; CovilParalegal@elliswinters.com;
 Asbestos@elliswinters.com; derrick.foard@elliswinters.com; Scottie.Lee@elliswinters.com;
 AGeddes@nexsenpruet.com; AWaring@nexsenpruet.com; aaustin@nexsenpruet.com; kjones@nexsenpruet.com;
 bjowers@nexsenpruet.com; rcavalchire@nexsenpruet.com; spugh@richardsonplowden.com;
 mwwhite@richardsonplowden.com; cmcqueen@richardsonplowden.com; wharte@richardsonplowden.com;
 jelliott@richardsonplowden.com; HElliott@RichardsonPlowden.com; cberthelsen@richardsonplowden.com;
 mdalton@richardsonplowden.com; mjones@richardsonplowden.com; sgflynn@FoxRothschild.com;
 ncherry@FoxRothschild.com; atwilley@FoxRothschild.com; lrusell@foxrothschild.com; kkolb@foxrothschild.com;
 TPeck@foxrothschild.com; carlpierce@piercesloan.com; pattwilliams@piercesloan.com;
 bensmoot@piercesloan.com; carsonparker@piercesloan.com; Jameskennedy@piercesloan.com;
 elizabeth.taylor@piercesloan.com; daniellynch@piercesloan.com; treypierce@piercesloan.com;
 willearly@piercesloan.com; hollyparker@piercesloan.com; robinspitz@piercesloan.com;
 kristinhoward@piercesloan.com; caseyhewett@piercesloan.com; Kimberly.Sullivan@wbd-us.com;
 Elizabeth.ONeill@wbd-us.com; WBD.SCAstbestos@wbd-us.com; sarah.wells@wbd-us.com; rosa.rubenstein@wbd-us.com;
 Michael.Bogle@wbd-us.com; Deborah.Lehman-Wooten@wbd-us.com; Debbie.Brockman@wbd-us.com;
 Philip.reid@vonbriesen.com; Maria.piraino@vonbriesen.com; Laurie.mcleroy@vonbriesen.com;
 dconner@hsblawfirm.com; sfrick@hsblawfirm.com; cphillips@hsblawfirm.com; tfreedle@hsblawfirm.com;
 sturner@hsblawfirm.com; Chris.Collier@lewisbrisbois.com; Rondell.Warren@lewisbrisbois.com;
 aries@smithlaw.com; ckiger@smithlaw.com; cparker@smithlaw.com; aserrat@smithlaw.com;
 cbona@smithlaw.com; dargabright@mcguirewoods.com; manzelmo@mcguirewoods.com;
 jrichardson@mcguirewoods.com; dargabright@mcguirewoods.com; EDiamond@mcguirewoods.com;
 mmontgomery@robinsongray.com; rhutchens@robinsongray.com; dwhite@gwblawfirm.com;
 rtate@gwblawfirm.com; drheney@gwblawfirm.com; wmaurides@gwblawfirm.com; ctowers@gwblawfirm.com;
 jlaflitte@gwblawfirm.com; pholland@gwblawfirm.com; jennamcgee@parkerpoe.com;
 connorhoy@parkerpoe.com; nicknybo@parkerpoe.com; jonathanhall@parkerpoe.com;
 mattlahiff@parkerpoe.com; kellygouin@parkerpoe.com; celestemallett@parkerpoe.com;
 Mark.Wall@WallTempleton.com; jcarroll@carrollweiss.com; mweiss@carrollweiss.com; scole@carrollweiss.com;
 tara.sullivan@klgates.com; jdunlap@vwlawfirm.com; swilliamson@vwlawfirm.com; tedge@vwlawfirm.com;
 fpatterson@vwlawfirm.com; BPrice@dmclaw.com; kmiller@DMCLaw.com; mpritt@dmclaw.com;
 bwagner@barnwell-whaley.com; olevine-sass@barnwell-whaley.com; fgordon@mgsattorneys.com;
 aspradlin@mgsattorneys.com; bmagram@mgsattorneys.com; oelhamzaoui@mgsattorneys.com;
 robert.meriwether@cs-law.com; manzelmo@mcguirewoods.com; jrichardson@mcguirewoods.com;
 fgordon@mgsattorneys.com; rskahen@mgsattorneys.com; oelhamzaoui@mgsattorneys.com;
 asrogers@ewhlaw.com; jmtchman@ewhlaw.com; BPrice@dmclaw.com; kmiller@dmclaw.com;
 mpritt@dmclaw.com; carlpierce@piercesloan.com; robinspitz@piercesloan.com; bensmoot@piercesloan.com;
 willearly@piercesloan.com; jameskennedy@piercesloan.com; pattwilliams@piercesloan.com;
 carsonparker@piercesloan.com; daniellynch@piercesloan.com; treypierce@piercesloan.com;
 robinspitz@piercesloan.com; kristinhoward@piercesloan.com; billysweeny@piercesloan.com;
 caseyhewett@piercesloan.com; mmcdonald@hsblawfirm.com; dconner@hsblawfirm.com;
 sfrick@hsblawfirm.com; tfreedle@hsblawfirm.com; sturner@hsblawfirm.com; robert.meriwether@cs-law.com;
 jase.glenn@cs-law.com; Rebecca.sanford@cs-law.com; mark.phillips@nelsonmullins.com;
 David.traylor@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; jenny.jordan@nelsonmullins.com; erika.fedolini@nelsonmullins.com;
 jack.slosson@nelsonmullins.com; James.Burns@nelsonmullins.com; matt.patterson@nelsonmullins.com;
 kelli.martin@nelsonmullins.com; kelly.taylor@nelsonmullins.com; ashley.peoples@nelsonmullins.com;
 yasmeen.klein@nelsonmullins.com; tyler.walker@nelsonmullins.com; matt.patterson@nelsonmullins.com;
 kelli.martin@nelsonmullins.com; kelly.taylor@nelsonmullins.com; ashley.peoples@nelsonmullins.com;
 Yasmeen.Ebbini@nelsonmullins.com; tyler.walker@nelsonmullins.com; jelliott@richardsonplowden.com;
 cberthelsen@richardsonplowden.com; spugh@richardsonplowden.com; wharte@richardsonplowden.com;
 mwwhite@richardsonplowden.com; cmcqueen@richardsonplowden.com; helliot@richardsonplowden.com;
 mmayden@richardsonplowden.com; MMayden@RichardsonPlowden.com; mdalton@richardsonplowden.com;
 jcataline@richardsonplowden.com; mjones@richardsonplowden.com; louis@milliganlawfirm.com;
 jackie@milliganlawfirm.com; sgflynn@FoxRothschild.com; ncherry@FoxRothschild.com;
 atwilley@FoxRothschild.com; TPeck@foxrothschild.com; sgflynn@foxrothschild.com; Ncherry@foxrothschild.com;

Dcarnes@foxrothschild.com; kkolb@foxrothschild.com; atwilley@foxrothschild.com; russell@foxrothschild.com;
vrawl@grsm.com; wkleindienst@grsm.com; krcraig@grsm.com; bbihun@grsm.com; sasmith@grsm.com;
Bahnson-GRSM@grsm.com; squerriere@grsm.com; awilkinson@grsm.com; VISTRA-GRSMTeam@grsm.com;
alegary@grsm.com; AGeddes@maynardnexsen.com; CKeibler@maynardnexsen.com;
AWaring@maynardnexsen.com; cshoun@maynardnexsen.com; aaustin@maynardnexsen.com;
mtrevino@maynardnexsen.com; bjowers@maynardnexsen.com; RCavalchire@maynardnexsen.com;
ismith@maynardnexsen.com; psantos@maynardnexsen.com; Elizabeth.ONeill@wbd-us.com;
WBD.SCASBESTOS@wbd-us.com; Kimberly.sullivan@wbd-us.com; todd.carroll@wbd-us.com; sarah.wells@wbd-us.com;
Ted.Roberts@wbd-us.com; Brian.Zemil@wbd-us.com; Geoff.Pashke@wbd-us.com; Matt.Robusto@wbd-us.com;
Scott.Richmond@wbd-us.com; Michael.Bogle@wbd-us.com; chuck.baker@wbd-us.com;
Julie.wallace@wbd-us.com; Deborah.lehman-wooten@wbd-us.com; Rosa.Rubenstein@wbd-us.com;
Philip.Reid@vonbriesen.com; Rhyan.lindley@vonbriesen.com; Maria.Piraino@vonbriesen.com;
PREid@vonbriesen.com; RLindley@vonbriesen.com; Laurie.McLeRoy@vonbriesen.com;
leslie.packer@elliswinters.com; ashley.brathwaite@elliswinters.com; curtis.shipley@elliswinters.com;
derrick.foard@elliswinters.com; CovilParalegal@elliswinters.com; Asbestos@elliswinters.com;
Scottie.Lee@elliswinters.com; skozick@kernodelaw.com; jdunlap@vwlawfirm.com; swilliamson@vwlawfirm.com;
tedge@vwlawfirm.com; fpatterson@vwlawfirm.com; mmontgomery@robinsongray.com;
rhutchens@robinsongray.com; ltraywick@robinsongray.com; BLaffitte@robinsongray.com;
smcconnell@robinsongray.com; kwarnar@smithlaw.com; ckiger@smithlaw.com; aries@smithlaw.com;
Chona@smithlaw.com; JMTechman@ewhlaw.com; ASRogers@ewhlaw.com; plsisk@ewhlaw.com;
PAMcGrath@ewhlaw.com; KEBaird@ewhlaw.com; Chris.Collier@lewisbrisbois.com;
Taylor.stewart@lewisbrisbois.com; dwhite@gwblawfirm.com; rtate@gwblawfirm.com;
wmaurides@gwblawfirm.com; ctowers@gwblawfirm.com; jlaffitte@gwblawfirm.com; pholland@gwblawfirm.com;
mkalwaitys@dougallfirm.com; wcollins@brblegal.com; jdavis@yrclaw.com; tgandy@yrclaw.com;
mriddle@yrclaw.com; pbell@yrclaw.com; Mary.Abdalla@formanwatkins.com;
Chelsea.Lewis@formanwatkins.com; Steve.Collum@formanwatkins.com; ruth.maron@formanwatkins.com;
Catherine.pettis@formanwatkins.com; Mark.Wall@WallTempleton.com; Tommy.boger@walltempleton.com;
sarah.schrodetzki@walltempleton.com; ymcleod@maronmarvel.com; grouse@maronmarvel.com;
BI@maronmarvel.com; JRenner@maronmarvel.com; kln@maronmarvel.com; cla@maronmarvel.com;
FOcel@maronmarvel.com; cqourdine@maronmarvel.com; pdp@rplegalgroup.com; jspitz@rplegalgroup.com;
Lindsay@rplegalgroup.com; bb@rplegalgroup.com; blarrabee@rplegalgroup.com; jchandler@rplegalgroup.com;
murrell@smithrobinsonlaw.com; shanonp@smithrobinsonlaw.com; jon@smithrobinsonlaw.com;
Dot@smithrobinsonlaw.com; kjessee@barnwell-whaley.com; jchilders@barnwell-whaley.com;
James.Burns@nelsonmullins.com; robert.meriwether@cs-law.com; Bobbyjr.hood@hoodlaw.com;
Maryrose.williamson@hoodlaw.com; Melinda.accardo@hoodlaw.com; eshofner@hpylaw.com;
jay.thompson@murphygrantland.com; Nancy.patterson@morganlewis.com; Peter.moir@morganlewis.com;
cparker@smithlaw.com; Nancy.patterson@morganlewis.com; swainger@kaleolegal.com;
morgan.drapeau@bowmanandbrooke.com; angela.strickland@bowmanandbrooke.com;
patrick.cleary@bowmanandbrooke.com; deshawn.mitchell@bowmanandbrooke.com;
morgan.drapeau@bowmanandbrooke.com; Jacquese.gray@bowmanandbrooke.com;
Glee.henderson@bowmanandbrooke.com; Ashley.lord@bowmanandbrooke.com;
Brianna.Bowling@bowmanandbrooke.com; wac@roecassidy.com; SingewaldC@WhiteandWilliams.com;
DBurkoff@HunterMaclean.com; nlaybourn@huntermaclean.com; psmith@huntermaclean.com;
dwhite@gwblawfirm.com; rtate@gwblawfirm.com; drheney@gwblawfirm.com; wmaurides@gwblawfirm.com;
ctowers@gwblawfirm.com; jlaffitte@gwblawfirm.com; pholland@gwblawfirm.com; TPeck@foxrothschild.com;
sgflynn@foxrothschild.com; Ncherry@foxrothschild.com; russell@foxrothschild.com; kkolb@foxrothschild.com;
atwilley@foxrothschild.com; JMTechman@EWHLaw.com; ASRogers@EWHLaw.com; plsisk@ewhlaw.com;
PAMcGrath@ewhlaw.com; louis@milliganlawfirm.com; jackie@milliganlawfirm.com;
mark.phillips@nelsonmullins.com; robert.meriwether@cs-law.com; jase.glenn@cs-law.com; sc-asbestos@cs-law.com;
Matt.Patterson@nelsonmullins.com; mitch.brown@nelsonmullins.com;
matt.patterson@nelsonmullins.com; matt.bogan@nelsonmullins.com; linda.wilson@nelsonmullins.com;
deirdre.mccool@nelsonmullins.com; kelli.martin@nelsonmullins.com; James.burns@nelsonmullins.com;
Carolyn.blackwell@nelsonmullins.com; Ashley.Peoples@nelsonmullins.com; awilkinson@grsm.com;
squerriere@grsm.com; ehawkins@grsm.com; jrvn@grsm.com; vrawl@grsm.com; wkleindienst@grsm.com;
jldelon@grsm.com; Bahnson-GRSM@grsm.com; sasmith@grsm.com; leslie.packer@elliswinters.com;
ashley.brathwaite@elliswinters.com; curtis.shipley@elliswinters.com; joe.hammond@elliswinters.com;
CovilParalegal@elliswinters.com; Asbestos@elliswinters.com; derrick.foard@elliswinters.com;
Scottie.Lee@elliswinters.com; AGeddes@nexsenpruet.com; AWaring@nexsenpruet.com;
aaustin@nexsenpruet.com; kjones@nexsenpruet.com; bjowers@nexsenpruet.com;
rcavalchire@nexsenpruet.com; spugh@richardsonplowden.com; mwhite@richardsonplowden.com;
wharte@richardsonplowden.com; mjones@richardsonplowden.com; cmqueen@richardsonplowden.com;
jelliott@richardsonplowden.com; helliott@richardsonplowden.com; cberthelsen@richardsonplowden.com;
mdalton@richardsonplowden.com; carlpierce@piercesloan.com; pattiwilliams@piercesloan.com;
bensmoot@piercesloan.com; carsonparker@piercesloan.com; Jameskennedy@piercesloan.com;
elizabethtaylor@piercesloan.com; daniellynch@piercesloan.com; trepierce@piercesloan.com;
willleary@piercesloan.com; robinspitz@piercesloan.com; kristinhoward@piercesloan.com;
caseyhewett@piercesloan.com; jessicamiller@piercesloan.com; hollyparker@piercesloan.com;
Elizabeth.ONeill@wbd-us.com; WBD.SCAsbestos@wbd-us.com; sarah.wells@wbd-us.com; Michael.Bogle@wbd-us.com;
Kimberly.Sullivan@wbd-us.com; Rosa.Rubenstein@wbd-us.com; Deborah.Lehman-Wooten@wbd-us.com;
Philip.Reid@vonbriesen.com; Laurie.McLeRoy@vonbriesen.com; Maria.Piraino@vonbriesen.com;
skozick@kernodelaw.com; dconner@hsblawfirm.com; sfrick@hsblawfirm.com; cphillips@hsblawfirm.com;
tfreedle@hsblawfirm.com; sturner@hsblawfirm.com; Chris.Collier@lewisbrisbois.com;
[Rondell.Warren@lewisbrisbois.com](mailto>Rondell.Warren@lewisbrisbois.com); aries@smithlaw.com; ckiger@smithlaw.com; cparker@smithlaw.com;
aserratt@smithlaw.com; cbona@smithlaw.com; mmontgomery@robinsongray.com;
rhutchens@robinsongray.com; WCollins@brblegal.com; MKalwaitys@brblegal.com;

Mark.Wall@WallTempleton.com; tara.sullivan@klgates.com; fgordon@mgsattorneys.com;
pborden@mgsattorneys.com; aspradlin@mgsattorneys.com; bmagram@mgsattorneys.com;
BPrice@dmclaw.com; kmiller@DMCLaw.com; mpritt@dmclaw.com; Joe.kilpatrick@huschblackwell.com;
jameskennedy@piercesloan.com; spugh@richardsonplowden.com; wharte@richardsonplowden.com;
mmcdonald@hsblawfirm.com; dconner@hsblawfirm.com; sfrick@hsblawfirm.com;
AGeddes@maynardnexsen.com; jdunlap@vwlawfirm.com; jay.thompson@murphygrantland.com;
wsawyer@murphygrantland.com; junumb@murphygrantland.com; kbickford@murphygrantland.com;
ichappell@murphygrantland.com; bb@rplegalgroup.com; blarrabee@rplegalgroup.com;
ichandler@rplegalgroup.com; sbrown@ycrlaw.com; tgandy@ycrlaw.com; amelling@burr.com;
ashuler@burr.com; landrews@burr.com; rwillis@williamsmullen.com; rlevy@williamsmullen.com;
styer@williamsmullen.com; kmartin-rothrock@williamsmullen.com; pkconway@conwaylawcorp.com;
jase.glenn@cs-law.com; rskahen@mgsattorneys.com; aelhamzaoui@mgsattorneys.com; Eshofner@hpylaw.com;
Nturner@hpylaw.com; robert.meriwether@cs-law.com

Subject: April Block remaining Defendants and proposed agenda
Date: Monday, April 8, 2024 12:48:19 PM
Attachments: [Proposed Agenda april 10.docx](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Chief Justice Toal:

I write to give you an update on the April block of cases. Below are the remaining defendants in each case.

Flynn

Atlas Turner

Goodwin

Atlas Turner

Mitchell

Atlas Turner

Tibbs

ACL (ACL's answer was struck and it is currently in the Court of Appeals)

Atlas Turner

Donaghy/Potter

Atlas Turner (currently in default)

Spirax Sarco

Link

Atlas Turner (currently in default)

Mr. Protopapas wrote to you and I understand that you will have a status conference on ACL and Atlas Turner Wednesday morning. I am attaching a proposed agenda to this

email but I am happy to make any changes. We have also delivered notebooks to both you and Ms. Diaz. By copy of this email, I am notifying defense counsel of my communication with the Court. Thanks, Theile

Theile McVey
Kassel McVey
Post Office Box 1476
1330 Laurel Street
Columbia, South Carolina 29202
803.256.4242
tmcvey@kassellaw.com
www.kasselmvey.com

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,)
Plaintiffs,) Civil Action No. 2023-CP-40-01759

v.)

3M COMPANY, *et al.*,)

Defendants.)

*****)

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

Third-Party Plaintiff,)

v.)

ANGLO AMERICAN PLCS, *et al.*,)

Third-Party Defendants.)

**THIRD-PARTY DEFENDANTS
ARRANCO US, LLC, HAWK BIDCO
(US) INC., AND SPARROWS
OFFSHORE, LLC'S
MEMORANDUM IN OPPOSITION
TO CAPE PLC'S MOTION(S) FOR
SANCTIONS, ALL RELIEF SOUGHT
THEREIN, AND THE SAME
AND/OR SIMILAR RELIEF
SOUGHT IN PRIOR FILINGS¹**

Third-Party Defendants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC (collectively, the "Sparrows Defendants") hereby request the Court abstain from ruling on the Third-Party Plaintiff's Motion for Sanctions as to certain of the Third-Party

¹ By making this filing, the Sparrows Defendants do not waive, but instead specifically preserve, all defenses asserted and objections previously made regarding these proceedings through its written motions, oral arguments, memoranda and briefs, responsive pleadings, served responses, and appellate filings, including, *inter alia*, that: the Court lacks personal jurisdiction over each of the Sparrows Defendants; the Court lacks subject matter jurisdiction; the Receiver was improperly appointed; the Cape PLC receivership was improperly continued and modified and an entirely new receivership was granted over the separate entity named Cape Intermediate Holdings Limited ("CIHL"); the Receiver lacks standing; the Receiver's claims improperly pled, should be severed, and/or fail under Rules 12(b) and 14, SCRCP; and these proceedings and the claims asserted and relief sought against the Sparrows Defendants violate their fundamental procedural and substantive constitutional rights and protections.

Defendants, including the Sparrows Defendants (the “Motion”),² or, in the alternative, issue an order denying the Motion and the relief sought therein. This memorandum in opposition is primarily based on Rule 205, SCACR; the “tolled” status of the first-party action as to the Third-Party Plaintiff; and the fact it would be inappropriate for a court, engaging in a *bench trial*, to either:

(i) award an adverse inference that effectively decides—*before* litigation on the merits occurs—the substantive third-party claims pled and grants the prayer for relief sought in the Third-Party Complaint. Such a ruling would be inappropriate in any instance, but would be particularly inappropriate here given the “tolled” nature of the underlying tort claims and the divestiture of jurisdiction and authority pursuant to Rule 205, SCACR; or

(ii) preadmit—and, as part thereof, find authentic, genuine, and admissible—at least 2,538 purported trial exhibits (the “Purported Exhibits”), but only as to some (and not all) of the Third-Party Defendants and even though almost all of Purported Exhibits are unrelated to the Sparrows Defendants and their creation. This too is relief which is inappropriate independent of the divestiture of jurisdiction pursuant to Rule 205, SCACR, or the “tolled” nature of the underlying tort claims. It is especially inappropriate given the substantial number of the Purported Exhibits that relate directly to the Third-Party Defendants against whom admission is apparently not sought and further given the content of the vast majority of the Purported Exhibits predates the

² This Motion is duplicative of the Receiver’s prior filed Motion for Adverse Inference, filed April 5, 2024, and Motion to Preadmit Exhibits, filed April 3, 2024 (collectively, the “Prior Motions for Sanctions”). *See* Receiver’s Motion, at p.2 (“This Motion amends, supplements, and streamlines the Receiver’s [P]rior Motion[s] for [Sanctions].”).

recent formation and even more recent, mid-2022 acquisition of the Sparrows Defendants by decades and, in some instances, centuries.³

As stated in the Sparrows Defendants' separate April 9, 2024 Notice of Motion and Motion to Enforce Rule 205 and Second Motion to Enjoin (the "Second Injunction Motion"), which is incorporated herein in full (including as to all arguments, authorities, and relief requested therein), neither this Court nor the Receiver, who is an "arm" and "officer" of the Court, can proceed given the Rule 205, SCACR, jurisdictional bar established based on the Sparrows Defendants' (and other of the Third-Party Defendants') pending appeals before the South Carolina Court of Appeals and the issues contained therein.⁴

Accordingly, through the Second Injunction Motion, the Sparrows Defendants have sought, once again, to: (i) enforce the mandatory provisions of Rule 205, SCACR, given the

³ In addition to the grounds contained herein, this Motion is further based on all pleadings, filings, motions, objections, appellate filings and designations, briefs, federal and state jurisprudence, federal and state constitutional law, statutory authority, and any other material properly before this Court and the South Carolina Court of Appeals. Without limiting the foregoing, the Sparrows Defendants further adopt and incorporate herein all other motions, objections, and arguments asserted, and authorities cited, by any of the other Third-Party Defendants in response and/or opposition to the Receiver's prosecution of the claims asserted in the TPC; the discovery served, sought, or otherwise produced by the Receiver (including through the instant Deposition Notices); any motion filed, or request for relief sought, by the Receiver; and/or with respect to the timing and conduct of trial and preliminary matters thereto. In this regard, and to the extent consistent with the arguments asserted (or otherwise incorporated) and relief sought herein, the Sparrows Defendants adopt and incorporate the pre-trial filings of all Third-Party Defendants, including the memoranda and series of motions *in limine* filed by Third-Party Defendants Anglo American plc, De Beers plc, De Beers Consolidated Mines (Pty) Ltd., De Beers UK Limited, and De Beers Centenary AG (collectively, the "Anglo American-De Beers Defendants").

⁴ On April 11, 2024, the Court of Appeals issued an Order granting the Receiver's Motion to Dismiss the Third-Party Defendants' appeals of this Court's March 12, 2024 Order. As the Court is aware, per Rule 221(a), SCACR, parties have a right to petition for rehearing, and the Sparrows Defendants intend to do so as to the Court of Appeals' April 11 Order. While the Receiver separately moved (on April 16, 2024) to dismiss the Third-Party Defendants' appeals of this Court's earlier December 6, 2023 Order, that motion has not yet been fully briefed and is not ripe for disposition. Moreover, as further explained below, the grounds for the Receiver's motion before the Court of Appeals is a "Packet of Orders," in separate cases, that are each inapplicable and/or distinguishable.

Sparrows Defendants’ (and other of the Third-Party Defendants’) pending appeals; (ii) oppose this Court proceeding, outside of its authority, with trial as to any or all of the matters at issue in the Receiver’s Third-Party Complaint; and (iii) enjoin all activity by the Receiver, including with respect to pre-trial matters such as seeking the determination of pled causes of action and defenses—via the mechanism of adverse inferences in a bench trial of equitable claims—before trial of either the first-party or third-party action occurs and while valid appeals are pending.

Because granting the relief sought in the Third-Party Plaintiff’s instant Motion (and its earlier filings seeking the same or similar relief) would be in direct violation of the Rule 205 jurisdictional bar—by both the Court and its officer, the Receiver—no action can occur while the Court is deprived of jurisdiction and authority to act. However, even if such action could be validly taken (which it decidedly cannot) and was non-prejudicial (again, which it is not), the Sparrows Defendants respectfully request that the Court—in addition to granting the relief sought in the Sparrows Defendants’ Second Injunction Motion—either abstain from ruling on the Motion at this time, or, deny the Motion, including so as to enforce and comply with Rule 205, SCACR.

ARGUMENT

I. Proceeding to Trial, Refusing to Enjoin the Receiver, and/or Granting This Motion Seeking an Adverse Inference and Preadmission of Exhibits Is an Impermissible Sanction Equivalent to Striking the Sparrows Defendants’ Answer and Depriving Them of Substantial Rights.

The relief sought by the Third-Party Plaintiff in this Motion would essentially determine the substantive claims, granting pre-emptively and prematurely nearly all relief sought in the Third-Party Complaint without trial of the matter or any resolution on the merits of the underlying—now “tolled”—action from which this third-party action derives. Accordingly—if the Court chooses not to withhold ruling on this Motion based on Rule 205, SCACR—granting

the relief sought in the Motion would impose sanctions against the Sparrows Defendants equivalent to a finding of contempt and the striking of an Answer or defenses.

Sanctions awarded in South Carolina “should be reasonable, and the Court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case.” *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990) (citing *Societe Int’l Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 207 (1958)). Any sanction awarded “should be aimed at the specific misconduct of the party sanctioned.” *Balloon Planation*, 303 S.C. at 154, 399 S.E.2d at 440. “In other words, the sanction should be a rifle-shot, not a shotgun blast” and certainly not “a hydrogen bomb,” for example, by denying defendants “the opportunity to present a defense.” *Id.* “The courts have generally held that *Rogers* requires some element of bad faith, willfulness, or callous disregard of the rights of other litigants in order to justify imposition of such a sanction” of holding a party in default and striking their pleading. *Id.* at 154–55, 399 S.E.2d at 440 (quoting 4A J. Moore, J. Lucas & D. Epstein, *Moore’s Federal Practice* ¶ 37.03[2], at 89 (2d ed. 1990)).

If the Court grants the Receiver’s Motion and awards the relief sought therein (even though it has no power to do so per Rule 205, SCACR), the result would be an impermissible sanction, equivalent to striking the Sparrows Defendants’ Answer and holding them in default, thereby affecting and infringing upon their substantial rights. This is especially so under the particular circumstances here where:

(i) the Sparrows Defendants (and other Third-Party Defendants) have legitimate, pending appeals (and are not acting in bad faith or in willful and/or callous disregard of the rights of other litigants);

(ii) the Court’s March 12, 2024 Order that first compelled discovery (although without the requisite power to do so) was issued slightly more than one month ago in a case where the Receiver’s pled factual allegations date back to the nineteenth century even though the Sparrows Defendants were only recently formed and acquired in the twenty-first century; and

(iii) where the first-party tort action, from which the Receiver’s purported derivative claims are necessarily based and upon which they are contingent, (a) has not yet been tried with a verdict returned against Cape PLC (or CIHL) and (b) has now been disclosed as being the subject of a “tolling agreement” between the *Tibbs* Plaintiffs and Cape PLC (or CIHL), which has not been filed with the Court or shared with the Sparrows Defendants.

The granting of these requested sanctions, a “hydrogen bomb,”—destructive to the Sparrows Defendants’ substantial constitutional and statutory rights—must be altogether avoided by respecting the Rule 205, SCACR, jurisdictional bar; halting any trial of this third-party action of claims purportedly derivative of a first-party action that is tolled; and refusing to grant the instant Motion and the relief sought therein.

II. The Court Is Without Jurisdiction or Authority to Grant the Motion Pursuant to Rule 205, SCACR.

In addition to all reasons set forth in the Sparrows Defendants’ Second Injunction Motion, which are incorporated fully herein, this Motion cannot be granted because this Court lacks jurisdiction and authority *and* the Receiver is without authority to proceed with this matter as all issues regarding the purported Receiver’s appointment, his purported authority to engage in litigation, and this Court’s exercise of personal jurisdiction over the Sparrows Defendants are presently pending before the South Carolina Court of Appeals. *See* Rule 205, SCACR (providing that “[u]pon the service of the notice of appeal, the appellate court *shall have exclusive jurisdiction* over the appeal” (emphasis added)); *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534,

787 S.E.2d 485, 494 (2016) (explaining that “Rule 205 divests the lower court or administrative tribunal of jurisdiction over ‘*matters affected by the appeal*’” (emphasis supplied by the Supreme Court) (quoting *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012))); *Morris v. Morris*, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) (“This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal.”); *Tillman*, 398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (reiterating that “[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal,” and explaining that this rule “deprives the lower court of the power to address a particular issue, or ‘matter,’ during the pendency of the appeal”); *Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App. 2002) (“Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter.”); Jean H. Toal, *et al.*, *Appellate Practice in South Carolina* 121 (3d ed. 2016) (confirming that “[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal”); *see also Tillman*, 398 S.C. at 255, 728 S.E.2d at 51 (“Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court’s power to proceed with the action and address matters not affected by the appeal. Rather, the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a ‘matter affected by the appeal’ under Rules 205 and 241(a).”).

On December 6, 2023, the Court entered its Order Denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction (the “December 6 Order”). Thereafter, on December 18, 2023, the Sparrows Defendants perfected their appeal of that December 6 Order. The issues in that appeal include: the propriety of the Cape PLC receivership; the granting, continuation, and modification of the appointment of the Receiver, including over a separate entity—CIHL; and

whether this Court has personal jurisdiction over the Sparrows Defendants or other of the Third-Party Defendants.

Should the December 6 Order on Appeal be reversed as to any of these issues, the result would be the Receiver's third-party action against the Sparrows Defendants would be dismissed and/or the Receiver would have no power or authority to take any action on behalf of Cape PLC (or CIHL), including pursuing the relief sought in the Receiver's Third-Party Complaint, engaging in discovery, or preparing for trial, instantly mooted issues relating to adverse inferences and admission of exhibits as now being sought by the Receiver as a sanction. Accordingly, as a result of the Notice of Appeal filed with the South Carolina Court of Appeals on December 18, 2023, the Court, is unable to act on any matter affected by the currently pending appeal—again, which would include awarding an adverse inference, preadmitting exhibits, and other related trial matters—until such appeal is decided and remittitur returned. Rule 205, SCACR, mandates this result and provides no exception. The Court should recognize the application of this rule and should either abstain from ruling on the Receiver's Motion or issue an Order denying the Motion until such time as is appropriate after remittitur, pursuant to Rule 205, for this Court to act. There is no need for the Court to proceed as requested by the Receiver—since any urgency to act created by the trial date has been obviated by the tolling agreement between the *Tibbs* Plaintiffs and the Receiver.

III. Procedural Appellate Orders, in Other Cases, Do Not Affect Established South Carolina Precedent on Rule 205, SCACR, and Are Inapplicable Here.

The Receiver contends—and this Court has indicated it agrees—that certain orders issued by the Court of Appeals and Supreme Court indicate that the Sparrows Defendants' position on Rule 205, SCACR, is not supported. In the face of the overwhelming established South Carolina law, the Sparrows Defendants respectfully disagree. *See* Section II, *supra*; Section Injunction

Motion, at 11–15. For the reasons set forth below, this Court must approach and direct the analysis of Rule 205 as to *this case*, not what was decided in *another matter*. Moreover, the focus of this inquiry is not on the appealability of the December 6 Order—which is a matter for the appellate courts—but merely on what matters before this Court are affected by the matters implicated in the appeal. *See Tillman*, 398 S.C. at 256, 728 S.E.2d at 51 (“The question the court should have addressed is whether the issue raised in the petition was a matter affected by the appeal.”).

a. **The Supreme Court’s March 2024 *Payne & Keller* Order Is Not Precedent.**

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. Thereafter, 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).

This Order has *no* bearing for two simple reasons. *First*, just as issues of personal and subject-matter jurisdiction must be evaluated at the outset of each case when challenged, a self-executing jurisdictional rule such as Rule 205—which divests a lower court of nearly *all* authority

to act—necessarily requires a case-by-case application. *See Tillman*, 398 S.C. at 255, 728 S.E.2d at 51. Accordingly, a review of matters in *Tibbs* affected by the appeals in *Tibbs* is the only way Rule 205 can be properly addressed. Published opinions from the South Carolina appellate courts—with both citation to authority and reasoning supporting its holdings on Rule 205—control here, not orders in other cases that are unavailing non-precedential, especially so where no analysis or explanation is included from which the basis for the ruling may be transposed into a separate case, with a separate and distinguishable procedural posture and with a separate and distinguishable set of substantive facts.

Second, the South Carolina Appellate Court Rules make clear this Supreme Court Order is *not* a precedential opinion. 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.” As is obvious, 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.”⁵ Likewise, that too has not occurred, including because no authority was cited.

⁵ 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:

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.

For the reasons stated above (and as applicable from those below), such an Order cannot be cited for anything more than doing what it did in that particular case. With the nuanced facts of an entirely different receivership, parties, circumstances, circuit court order, appellate procedure, briefing, and other major differences, a three-sentence Order—devoid of explanation and citation—cannot have bearing on the issues in this case.⁶

b. The Court of Appeals’ November 2023 *Payne & Keller* Order Did Not Address the Issue Applicable Here.

On November 21, 2023, the Court of Appeals issued an Order on an Emergency Motion to Clarify and Enforce Rule 205 filed by various appellants in that case. That Order stated the Motion to Clarify was “prompted by an order issued by the circuit court on October 5, 2023” and stated nothing more than: “This court will take no action on any order which is not properly before it,” citing a case which states a notice of appeal is required for the Court of Appeals to decide on a circuit court order.⁷ *See Payne & Keller*, S.C. Ct. App. Order, dated November 21, 2023 (Appellate Case No. 2023-000727).

By its *plain text*, this Court of Appeals Order did nothing more than tell the appellants in that matter that it was simply withholding ruling on an issue until a notice of appeal of this Court’s

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

⁶ 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).

⁷ As noted in other filings, this is the reason the Sparrows Defendants were required to file their March 19, 2024 Notices of Appeal seeking review of the de facto denial of their Motion for Injunction seeking to enforce Rule 205.

underlying Order was filed with the Court of Appeals. To take such an Order and cite it, as valid precedent, in other matters—procedurally and factually different—cannot be correct.

c. **The Court of Appeals’ September 2023 *Payne & Keller* Order Addressed a Different Issue Inapplicable Here.**

On September 8, 2024, the Court of Appeals rejected another argument related to a stay of a circuit court order after a motion to dissolve a receivership. However, that order did not address Rule 205. Instead, it relied on Rule 62(a), SCRCP, and Section 14-3-450 of the South Carolina Code—both of which are inapplicable here—to rule “the March 31, 2023 order is not stayed during the pendency of this appeal. . . . Accordingly, the receivership action and the receiver’s ability to carry out his duties are not stayed.” *See Payne & Keller*, S.C. Ct. App. Order, dated Sept. 8, 2023 (Appellate Case No. 2023-000727).

The issue of a “stay” is *not* the issue dealt with by Rule 205, which has no exception. The issue of *stay* comes under Rule 241, SCACR, which does have exceptions and thereby renders Rule 62(a), SCRCP, and Section 14-3-450 relevant in that context (again, inapplicable here). *Compare* Rule 241, SCACR (“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order”) *with* Rule 205, SCACR (limiting the lower court to proceed only “with matters not affected by the appeal”). The required analysis under Rule 241 for *stays and supersedeas petitions* is separate and wholly distinct from the *jurisdictional* inquiry mandated by Rule 205. A decision on one does not, and cannot, affect or dictate the other. As explained in *Tillman*, these separate rules, with separate accompanying analyses, cannot be conflated:

When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending. The answer to the

first question is governed by the stay and supersedeas provisions of Rule 241. . . .

The second question is whether the lower court may proceed with the action during the pendency of the appeal, and its answer is governed by Rule 205, SCACR. . . .

398 S.C. at 254–55, 728 S.E.2d at 50–51; *see also Stokes-Craven Holding*, 416 S.C. at 533–34, 787 S.E.2d at 493–94 (analyzing both Rules 205 and 241, SCACR).

Accordingly, *any* contention that a prior order that determined a procedural issue, in an unrelated appellate case, on a non-merits basis and without discussing or mentioning Rule 205, SCACR, is wholly inapposite and provides *no authority* to support the Receiver’s Motion and/or to deny the Sparrows Defendants’ Second Motion for Injunction and/or the relief sought therein.

d. The Relevant Facts and Procedural Posture Here Are Distinguishable from *Payne & Keller*.

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 the Cape PLC Receivership is fundamentally and factually different, as the relevant issue at hand concerns this Court’s *grant* of an entirely new receivership (in *Tibbs*) over a legal entity (Cape Intermediate Holdings Limited) separate and distinct from that named in this Court’s underlying Order of Appointment (in *Park*).⁸ By *granting* an entirely new receivership, relying on the inapplicable doctrine of “misnomer,” the Court in fact also *modified* and *continued* a receivership.

Such ruling by this Court goes far beyond what transpired in *Payne & Keller* and fits squarely within S.C. Code Ann. § 14-3-330(4) (“The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: . . . “[a]n interlocutory order or decree in a court of common pleas . . . *granting, continuing, modifying,* or refusing the appointment of a receiver.” (emphasis added)). In fact, this Court’s December 6 Order was issued following briefing by the Receiver expressly requesting an amendment 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.”) & 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).”).

⁸ Cape PLC and Cape Intermediate Holdings Limited (CIHL) were separately named defendants in *Park*; however, the Order of Appointment only named and identified Cape PLC. Now, in its December 6 Order in *Tibbs*, the Court has now identified CIHL as the entity over which the Receiver has been appointed.

Similarly, the December 6 Order included inextricably linked issues as to personal jurisdiction over the Sparrows Defendants. Because these are issues on appeal, and properly within the appellate courts' ability to rule on, they directly affect the matters before this Court. Orders in other cases did not contain similar personal jurisdiction issues—issues which are foundational and touch nearly everything currently before this Court.

Respectfully, this Court's 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.

- e. **For the Same Reasons, the Court of Appeals' April 2024 Orders Regarding Factual Scenarios and Procedural Postures More Akin to *Payne & Keller* Are Also Inapplicable, Distinguishable, and Non-Dispositive.**

On April 12, 2024, the South Carolina Court of Appeals issued three Orders denying appeals brought pursuant to S.C. Code Ann. § 14-3-330(4), finding each not immediately appealable. *See Mitchell*, Appellate Case No. 2024-000341; *Link & Donaghy*, Appellate Case No. 2024-000342; 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, this 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 & 2024-000342). The *Link & Donaghy* appealability argument—while flowing from this 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 directly 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 set forth above regarding the *Payne & Keller* Orders, these separate Court of Appeals’ Orders are inapplicable, distinguishable, and non-dispositive to, and a far cry from, the factual scenario and procedural posture existing in this case, wherein the Court (in *Tibbs*) *granted* an entirely new receivership over a legal entity, CIHL, separate and distinct from Cape PLC over which this Court (in *Park*) appointed the Receiver. Here, the Court’s December 6, 2023 Order—under the specific facts and posture in this case—is immediately appealable. Nonetheless, determination of the appealability of the December 6 Order—the reason for Rule 205’s effect here—is matter for the appellate courts. *See Levi v. N. Anderson Cnty. EMS*, 409 S.C. 374, 379, 762 S.E.2d 44, 47 (Ct. App. 2014) (“An *appellate court* may determine the question of appealability of a decision from a lower court as a matter of law.” (emphasis added)). And, the appellate courts’ determination of that will be made anew, not based on these prior unrelated orders in unrelated cases. *See 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.”).

IV. The Derivative Third-Party Action, Although Improper, Cannot Proceed Unless and Until There Is a Finding of Liability in the Direct, First-Party *Tibbs* Action, Which Now Cannot Occur Due to the *Tibbs* Plaintiffs’ Tolling Agreement with Cape PLC (or CIHL).

The proceedings in the first-party *Tibbs* action—from which the Receiver purportedly derives his claims against the Sparrows Defendants (and the other Third-Party Defendants)—have not been resolved, even though counsel for the *Tibbs* Plaintiffs explained in an April 8, 2024 email to the Court, a copy of which is attached hereto as **Exhibit A**, that the only two remaining direct defendants in *Tibbs* were (1) ACL (whose “answer was struck and it is currently in the Court of

Appeals”) and (ii) Atlas Turner and, thereby, did not include Cape PLC (or CIHL). At the April 10, 2024 pre-trial hearing, it was disclosed that Cape PLC (or CIHL) was not included among the remaining direct defendants because it was a party to a “tolling agreement” with the *Tibbs* Plaintiffs.⁹ So, at present, there has neither been an adverse verdict against nor a settlement with Cape PLC (or CIHL) from which derivative liability could be attempted to be shifted to the Third-Party Defendants, including the Sparrows Defendants. Moreover, at present, that first-party potentiality and condition precedent has, in effect, been stayed (either indefinitely or pursuant to unknown specifics of the “tolling agreement” voluntarily entered into by the Receiver).

By bringing this third-party action, the Receiver has necessarily conceded that the claims asserted by Cape PLC (or CIHL) against the Sparrows Defendants are derivative of the *Tibbs* Plaintiffs’ claims against Cape PLC (or CIHL) in the first-party action.¹⁰ And, by virtue of this Court’s December 15, 2023 Form 4 Order denying the Sparrows Defendants’ Motion to Dismiss,

⁹ The specific terms of this “tolling agreement” have not been filed with the Court or disclosed to the Sparrows Defendants.

¹⁰ Under Rule 14(a), a defendant is permitted to implead and pursue claims against a third party only if it “is or may be liable to [defendant] for all or part of the plaintiff’s claim”; it “does not allow the defendant to assert a separate and independent claim.” Rule 14(a), SCRCP; *CNH Indus. Capital Am. LLC v. Able Contracting, Inc.*, No. 9:16-cv-2520-RMG, 2017 WL 512453, at *1 (D.S.C. 2017); *Laughlin v. Dell Fin. Servs., L.P.*, 465 F. Supp. 2d 563, 566 (D.S.C. 2006). “The third party claim must be derivative of the plaintiff’s claim” such that “the third-party defendant’s liability arises only if the defendant/third-party plaintiff is first held liable to plaintiff.” *CNH Indus. Capital*, No. 9:16-cv-2520-RMG, at *2; *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) (“The outcome of the principal claim must impact the third-party defendant’s liability[.]”); *see also Travelers Prop. Cas. Co. of Am. v. M.B. Kahn Constr. Co., Inc.*, No. 3:20-CV-01304-SAL, 2021 WL 1177861, at *29 (D.S.C. Mar. 29, 2021) (“Third-party claims require a very specific connection to the original claims—derivative liability. The third[-]party claim must be ‘derivative’ of the plaintiff’s claim because [d]erivative liability is central to the operation of Rule 14. Such a claim says, [i]f I am liable to plaintiff, then my liability is only technical or secondary or partial, and the third party defendant is derivatively liable and must reimburse me for all or part . . . of anything I must pay plaintiff.” (internal quotations and quotation marks omitted)). When “Rule 14(a)’s derivative-liability requirement” is not satisfied, the court should strike or sever the third-party action. *CNH Indus. Capital*, 2017 WL 512453, at *1. Rule 14 cannot be used—as seemingly being done here—to seek an expansive advisory opinion regarding hypothetical liabilities beyond the scope of the primary first-party action, especially when that first-party action is now stayed.

including based on Rule 14, SCRCP, the Court has accepted this representation from the Receiver, at least as a preliminary, pleading matter.

Now, even though the Court's Form 4 denial was issued approximately four months ago; even though the Court issued its March 12 Order on Appeal slightly over one month ago; and even though Rule 205, SCACR, and the nature of the pending appeals of this Court's December 6, 2023 Order constitute a jurisdictional bar as to the Court and the Receiver from proceeding, the Receiver's third-party action is purportedly on the eve of determination, via the mechanism of sanctions, seemingly untethered to whether the underlying *Tibbs* first-party trial proceeds to a verdict against Cape PLC (or CIHL) or not, or even if it will ever be tried. Such a scenario is unsupported in fact or law. *See generally* Rule 205, SCACR (providing that "[u]pon the service of the notice of appeal, the appellate court *shall have exclusive jurisdiction* over the appeal" (emphasis added)); *Stokes-Craven Holding Corp.*, 416 S.C. at 534, 787 S.E.2d at 494 (explaining that "Rule 205 divests the lower court or administrative tribunal of jurisdiction over '*matters affected by the appeal*'" (emphasis supplied by the Supreme Court) (quotation omitted); *Morris*, 295 S.C. at 40, 367 S.E.2d at 26 ("This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal."); *Tillman*, 398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (reiterating that "[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal" and explaining that this rule "deprives the lower court of the power to address a particular issue, or 'matter,' during the pendency of the appeal"); *Companion Prop. & Cas. Ins. Co. v. U.S. Bank Nat'l Ass'n*, No. 3:15-CV-01300-JMC, 2017 WL 3613874, at *7 (D.S.C. Aug. 23, 2017) ("Here, resolution of the third-party claims . . . for contribution and indemnification are contingent upon [the defendant] being found liable for [the plaintiff's] injuries [in the first-party action]. If, in a first trial, [the first-party defendant] is found not liable for [the plaintiff's]

injuries, [the] third-party claims against [the third-party defendants] would be resolved against [the first-party defendant/third-party plaintiff] and a second trial on [the third-party defendants'] liability . . . would be obviated. If, on the other hand, [the first-party defendant] is found liable to [the plaintiff] in a first trial, the factual basis for the scope of liability will have been developed and . . . the issues in the third-party claims might be narrowed significantly.”).

Notwithstanding the foregoing, and even if Rule 205, SCACR, did not pose a jurisdictional bar preventing this third-party action from continuing (which it does), only two procedural outcomes could exist in this instance. *First*, if the *Tibbs* Plaintiffs' claims against Cape PLC (or CIHL) in the first-party action are not resolved, which it has been represented they are not by virtue of a “tolling agreement,” then this third-party action of derivative claims asserted against the Sparrows Defendants cannot proceed to trial and this Court should not address pre-trial matters or entertain motions for sanctions. *See generally*, 6 C. Wright & Miller, Federal Practice and Procedure § 1451 (3d ed.). *Second*, if the claims of Cape PLC (or CIHL) are, in fact, not derivative of the *Tibbs* Plaintiffs' claims against Cape PLC (or CIHL) in the first-party action, then the Receiver's claims were improperly pled and this third-party action must be stricken or severed. *See, e.g.*, Am. Third-Party Compl. ¶ 127 (“Each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants, including their predecessors in interest, received a non-gratuitous benefit from Cape as a result of the liability-avoidance scheme described herein, including the domination of NAAC's risk-management decisions (resulting in the purchase of wholly inadequate insurance) and the extraction of massive cash payments and other assets to entities outside of the United States.”); *id.* at ¶ 135 (“But for the false or misleading statements made by each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants, or their predecessors in

interest, to hide the true nature of Cape’s unethical business practices and the known harms associated with its asbestos products, the funds would and should have been accessible to third-party claimants.”); *see also generally* *Raymond James & Assocs., Inc. v. Bassford*, No. 2:21-CV-01825-DCN, 2022 WL 673833, at *8 (D.S.C. Mar. 7, 2022) (staying third-party claims until either the filing of a separate action or the resolution of the underlying action); *Beach v. Hudson*, 298 S.C. 424, 427, 380 S.E.2d 869, 871 (Ct. App. 1989) (quoting 6 C. Wright & Miller, Federal Practice and Procedure § 1446 at 246A for the proposition that a “third-party claim may be asserted under Rule 14(a) only when the third party’s liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to defendant”).

V. Pre-Admitting Exhibits, as a Sanction, as to Some but Not All Third-Party Defendants Is Unsupportable.

As part of the requested sanctions, the Receiver has asked this Court to pre-admit 2,538 purported trial exhibits—satisfying Rule 901, SCRE—as to some, but not all, of the Third-Party Defendants. Such a request is unsupportable, given that evidence is either authentic or it is not; there can be no such thing as evidence being authentic as to certain Third-Party Defendants, but not as to all of them. *See* Rule 901(a), SCRE (“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”); *see also* Rule 901, SCRE, Note (“[T]he requirement of showing authentication or identity falls in the category of relevancy dependent upon fulfillment of a condition of fact and is governed by the procedure set forth in Rule 104(b).”); Rule 37(b)(2)(A), SCRCPP (permitting, as a sanction if warranted, “[a]n order that the matters regarding which the order was made or any other designated facts shall be taken to be established *for the purposes of the action* in accordance with the claim of the party obtaining the order”

(emphasis added)). For this additional reason, the Receiver's request for the pre-admission of exhibits should be rejected.

CONCLUSION

Sparrows Defendants respectfully submit that no sanction is warranted because they are simply trying to proceed through this matter in an orderly, consistent way, as directed by the South Carolina Appellate Court Rules and the myriad cases enforcing the jurisdictional boundaries of Rule 205, SCACR. There can be no urgency associated with this case, as it cannot proceed to trial unless and until there is any liability assigned to Cape PLC in the first-party action. Rule 14, SCRCF. Yet, since the underlying tort claims have been tolled by agreement between the *Tibbs* Plaintiffs and the Receiver, rendering this entire third-party action moot in its present status. In other words, without any liability owed to the *Tibbs* Plaintiffs, the Third-Party Plaintiff has nothing to try to impute through a third-party action. Given that, there is no basis at all to "sanction" the Sparrows Defendants, or any other Third-Party Defendant, for pursuing their appellate rights and abiding by the jurisdictional limitations set forth by Rule 205, SCACR.

For the foregoing reasons, the Sparrows Defendants respectfully request that the Receiver's Motion be refused or denied and they be awarded all such other and further relief to which they may be entitled in accordance with the precepts of Rule 205, SCACR, and other applicable law. In accordance with Rule 11, SCRCF, the undersigned counsel certifies that consultation on this matter would serve no useful purpose given the Receiver's positions on Rule 205, SCACR, discovery in general, and pre-trial matters; counsel for the Receiver has made a reciprocal certification in his Motion and other purported pre-trial filings.

Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, PA

/s/ Steven J. Pugh

Steven J. Pugh (S.C. Bar No. 14341)

Benjamin P. Carlton (S.C. Bar No. 101142)

1900 Barnwell Street

Columbia, South Carolina 29201

Tel.: (803) 771-4400

spugh@richardsonplowden.com

bcarlton@richardsonplowden.com

*Attorneys for Third-Party Defendants ArranCo US,
LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore,
LLC*

April 19, 2024

EXHIBIT A

From: Theile McVey
To: Toal, Jean; Diaz, Eva; JMTechman@ewhlaw.com; Brown, Stephen L.; Peter Protopapas; "Lindsay Valek"
Cc: Angela.Strickland@bowmanandbrooke.com; Brianna.Bowling@bowmanandbrooke.com;
 Patrick.Cleary@bowmanandbrooke.com; franklin.greene@bowmanandbrooke.com;
 morgan.drapeau@bowmanandbrooke.com; Jacquese.gray@bowmanandbrooke.com;
 Glee.henderson@bowmanandbrooke.com; wac@roecassidy.com; SingewaldC@WhiteandWilliams.com;
 JMTechman@EWHLaw.com; ASRogers@EWHLaw.com; plsisk@ewhlaw.com; PAMcGrath@ewhlaw.com;
 louis@milliganlawfirm.com; robert.meriwether@cs-law.com; jase.glenn@cs-law.com; Rebecca.sanford@cs-law.com;
 Sc-asbestos@cs-law.com; Matt.Patterson@nelsonmullins.com; James.Burns@nelsonmullins.com;
 mitch.brown@nelsonmullins.com; matt.patterson@nelsonmullins.com; matt.bogan@nelsonmullins.com;
 nick.charles@nelsonmullins.com; deirdre.mccool@nelsonmullins.com; kelli.martin@nelsonmullins.com;
 jo.lyons@nelsonmullins.com; mark.phillips@nelsonmullins.com; Ashley.peoples@nelsonmullins.com;
 Kelli.martin@nelsonmullins.com; Linda.wilson@nelsonmullins.com; Eileen.hindman@nelsonmullins.com;
 Susan.collings@nelsonmullins.com; ymcleod@maronmarvel.com; grouse@maronmarvel.com;
 bi@maronmarvel.com; FOcel@maronmarvel.com; cla@maronmarvel.com; kln@maronmarvel.com;
 JRenner@maronmarvel.com; CGourdine@maronmarvel.com; awilkinson@grsm.com; squerriere@grsm.com;
 ehawkins@grsm.com; jrvn@grsm.com; vrawl@grsm.com; wkleindienst@grsm.com; jldelon@grsm.com;
 Bahnson-GRSM@grsm.com; leslie.packer@elliswinters.com; ashley.brathwaite@elliswinters.com;
 curtis.shipley@elliswinters.com; joe.hammond@elliswinters.com; CovilParalegal@elliswinters.com;
 Asbestos@elliswinters.com; derrick.foard@elliswinters.com; Scottie.Lee@elliswinters.com;
 AGeddes@nexsenpruet.com; AWaring@nexsenpruet.com; aaustin@nexsenpruet.com; kjones@nexsenpruet.com;
 bjowers@nexsenpruet.com; rcavalchire@nexsenpruet.com; spugh@richardsonplowden.com;
 mwwhite@richardsonplowden.com; cmcqueen@richardsonplowden.com; wharte@richardsonplowden.com;
 jelliott@richardsonplowden.com; HElliott@RichardsonPlowden.com; cberthelsen@richardsonplowden.com;
 madillon@richardsonplowden.com; mjones@richardsonplowden.com; sgflynn@FoxRothschild.com;
 ncherry@FoxRothschild.com; atwilley@FoxRothschild.com; lrussell@foxrothschild.com; kkolb@foxrothschild.com;
 TPeck@foxrothschild.com; carlpierce@piercesloan.com; pattwilliams@piercesloan.com;
 bensmoot@piercesloan.com; carsonparker@piercesloan.com; Jameskennedy@piercesloan.com;
 elizabethtaylor@piercesloan.com; daniellynch@piercesloan.com; treypierce@piercesloan.com;
 willearly@piercesloan.com; hollyparker@piercesloan.com; robinspitz@piercesloan.com;
 kristinhoward@piercesloan.com; caseyhewett@piercesloan.com; Kimberly.Sullivan@wbd-us.com;
 Elizabeth.ONeill@wbd-us.com; WBD.SCAstbestos@wbd-us.com; sarah.wells@wbd-us.com; rosa.rubenstein@wbd-us.com;
 Michael.Bogle@wbd-us.com; Deborah.Lehman-Wooten@wbd-us.com; Debbie.Brockman@wbd-us.com;
 Philip.reid@vonbriesen.com; Maria.piraino@vonbriesen.com; Laurie.mcleroy@vonbriesen.com;
 dconner@hsblawfirm.com; sfrick@hsblawfirm.com; cphillips@hsblawfirm.com; tfreedle@hsblawfirm.com;
 sturner@hsblawfirm.com; Chris.Collier@lewisbrisbois.com; Rondell.Warren@lewisbrisbois.com;
 aries@smithlaw.com; ckiger@smithlaw.com; cparker@smithlaw.com; aserrat@smithlaw.com;
 cbona@smithlaw.com; dargabright@mcguirewoods.com; manzelmo@mcguirewoods.com;
 jrichardson@mcguirewoods.com; dargabright@mcguirewoods.com; EDiamond@mcguirewoods.com;
 mmontgomery@robinsongray.com; rhutchens@robinsongray.com; dwhite@gwblawfirm.com;
 rtate@gwblawfirm.com; drheney@gwblawfirm.com; wmaurides@gwblawfirm.com; ctowers@gwblawfirm.com;
 jlaftitte@gwblawfirm.com; pholland@gwblawfirm.com; jennamcgee@parkerpoe.com;
 connorhoy@parkerpoe.com; nicknybo@parkerpoe.com; jonathanhall@parkerpoe.com;
 mattlahiff@parkerpoe.com; kellygouin@parkerpoe.com; celestemallett@parkerpoe.com;
 Mark.Wall@WallTempleton.com; jcarroll@carrollweiss.com; mweiss@carrollweiss.com; scole@carrollweiss.com;
 tara.sullivan@klgates.com; jdunlap@vwlawfirm.com; swilliamson@vwlawfirm.com; tedge@vwlawfirm.com;
 fpatterson@vwlawfirm.com; BPrice@dmclaw.com; kmiller@DMCLaw.com; mpritt@dmclaw.com;
 bwagner@barnwell-whaley.com; olevine-sass@barnwell-whaley.com; fgordon@mgsattorneys.com;
 aspradlin@mgsattorneys.com; bmagram@mgsattorneys.com; oelhamzaoui@mgsattorneys.com;
 robert.meriwether@cs-law.com; manzelmo@mcguirewoods.com; jrichardson@mcguirewoods.com;
 fgordon@mgsattorneys.com; rskahen@mgsattorneys.com; oelhamzaoui@mgsattorneys.com;
 asrogers@ewhlaw.com; jmtchman@ewhlaw.com; BPrice@dmclaw.com; kmiller@dmclaw.com;
 mpritt@dmclaw.com; carlpierce@piercesloan.com; robinspitz@piercesloan.com; bensmoot@piercesloan.com;
 willearly@piercesloan.com; jameskennedy@piercesloan.com; pattwilliams@piercesloan.com;
 carsonparker@piercesloan.com; daniellynch@piercesloan.com; treypierce@piercesloan.com;
 robinspitz@piercesloan.com; kristinhoward@piercesloan.com; billysweeny@piercesloan.com;
 caseyhewett@piercesloan.com; mmcdonald@hsblawfirm.com; dconner@hsblawfirm.com;
 sfrick@hsblawfirm.com; tfreedle@hsblawfirm.com; sturner@hsblawfirm.com; robert.meriwether@cs-law.com;
 jase.glenn@cs-law.com; Rebecca.sanford@cs-law.com; mark.phillips@nelsonmullins.com;
 David.traylor@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; jenny.jordan@nelsonmullins.com; erika.fedolini@nelsonmullins.com;
 jack.slosson@nelsonmullins.com; James.Burns@nelsonmullins.com; matt.patterson@nelsonmullins.com;
 kelli.martin@nelsonmullins.com; kelly.taylor@nelsonmullins.com; ashley.peoples@nelsonmullins.com;
 yasmeen.klein@nelsonmullins.com; tyler.walker@nelsonmullins.com; matt.patterson@nelsonmullins.com;
 kelli.martin@nelsonmullins.com; kelly.taylor@nelsonmullins.com; ashley.peoples@nelsonmullins.com;
 Yasmeen.Ebbini@nelsonmullins.com; tyler.walker@nelsonmullins.com; jelliott@richardsonplowden.com;
 cberthelsen@richardsonplowden.com; spugh@richardsonplowden.com; wharte@richardsonplowden.com;
 mwwhite@richardsonplowden.com; cmcqueen@richardsonplowden.com; helliott@richardsonplowden.com;
 mmayden@richardsonplowden.com; MMayden@RichardsonPlowden.com; mdalton@richardsonplowden.com;
 jcataline@richardsonplowden.com; mjones@richardsonplowden.com; louis@milliganlawfirm.com;
 jackie@milliganlawfirm.com; sgflynn@FoxRothschild.com; ncherry@FoxRothschild.com;
 atwilley@FoxRothschild.com; TPeck@foxrothschild.com; sgflynn@foxrothschild.com; Ncherry@foxrothschild.com;

Dcarnes@foxrothschild.com; kkolb@foxrothschild.com; atwilley@foxrothschild.com; l Russell@foxrothschild.com;
vrawl@grsm.com; wkleindienst@grsm.com; krcraig@grsm.com; bbihun@grsm.com; sasmith@grsm.com;
Bahnson-GRSM@grsm.com; squerriere@grsm.com; awilkinson@grsm.com; VISTRA-GRSMTeam@grsm.com;
alegary@grsm.com; AGeddes@maynardnexsen.com; CKeibler@maynardnexsen.com;
AWaring@maynardnexsen.com; cshoun@maynardnexsen.com; aaustin@maynardnexsen.com;
mtrevino@maynardnexsen.com; bjowers@maynardnexsen.com; RCavalchire@maynardnexsen.com;
lsmith@maynardnexsen.com; psantos@maynardnexsen.com; Elizabeth.ONeill@wbd-us.com;
WBD.SCASBESTOS@wbd-us.com; Kimberly.sullivan@wbd-us.com; todd.carroll@wbd-us.com; sarah.wells@wbd-us.com;
Ted.Roberts@wbd-us.com; Brian.Zemil@wbd-us.com; Geoff.Pashke@wbd-us.com; Matt.Robusto@wbd-us.com;
Scott.Richmond@wbd-us.com; Michael.Bogle@wbd-us.com; chuck.baker@wbd-us.com;
Julie.wallace@wbd-us.com; Deborah.lehman-wooten@wbd-us.com; Rosa.Rubenstein@wbd-us.com;
Philip.Reid@vonbriesen.com; Rhyan.lindley@vonbriesen.com; Maria.Piraino@vonbriesen.com;
PREid@vonbriesen.com; RLindley@vonbriesen.com; Laurie.McLeRoy@vonbriesen.com;
leslie.packer@elliswinters.com; ashley.brathwaite@elliswinters.com; curtis.shipley@elliswinters.com;
derrick.foard@elliswinters.com; CovilParalegal@elliswinters.com; Asbestos@elliswinters.com;
Scottie.Lee@elliswinters.com; skozick@kernodelaw.com; jdunlap@vwlawfirm.com; swilliamson@vwlawfirm.com;
tedge@vwlawfirm.com; fpatterson@vwlawfirm.com; mmontgomery@robinsongray.com;
rhutchens@robinsongray.com; ltraywick@robinsongray.com; BLaffitte@robinsongray.com;
smcconnell@robinsongray.com; kwarnar@smithlaw.com; ckiger@smithlaw.com; aries@smithlaw.com;
Chona@smithlaw.com; JMTechman@ewhlaw.com; ASRogers@ewhlaw.com; plsisk@ewhlaw.com;
PAMcGrath@ewhlaw.com; KEBaird@ewhlaw.com; Chris.Collier@lewisbrisbois.com;
Taylor.stewart@lewisbrisbois.com; dwhite@gwblawfirm.com; rtate@gwblawfirm.com;
wmaurides@gwblawfirm.com; ctowers@gwblawfirm.com; jlaffitte@gwblawfirm.com; pholland@gwblawfirm.com;
mkalwaitys@dougallfirm.com; wcollins@brblegal.com; jdavis@ycrlaw.com; tgandy@ycrlaw.com;
mriddle@ycrlaw.com; pbell@ycrlaw.com; Mary.Abdalla@formanwatkins.com;
Chelsea.Lewis@formanwatkins.com; Steve.Collum@formanwatkins.com; ruth.maron@formanwatkins.com;
Catherine.pettis@formanwatkins.com; Mark.Wall@WallTempleton.com; Tommy.boger@walltempleton.com;
sarah.schrodetzki@walltempleton.com; ymcleod@maronmarvel.com; grouse@maronmarvel.com;
BI@maronmarvel.com; JRenner@maronmarvel.com; kln@maronmarvel.com; cla@maronmarvel.com;
FOcel@maronmarvel.com; cqourdine@maronmarvel.com; pdp@rplegalgroup.com; jspitz@rplegalgroup.com;
Lindsay@rplegalgroup.com; bb@rplegalgroup.com; blarrabee@rplegalgroup.com; jchandler@rplegalgroup.com;
murrell@smithrobinsonlaw.com; shanonp@smithrobinsonlaw.com; jon@smithrobinsonlaw.com;
Dot@smithrobinsonlaw.com; kjessee@barnwell-whaley.com; jchilders@barnwell-whaley.com;
James.Burns@nelsonmullins.com; robert.meriwether@cs-law.com; Bobbyjr.hood@hoodlaw.com;
Maryrose.williamson@hoodlaw.com; Melinda.accardo@hoodlaw.com; eshofner@hpylaw.com;
jay.thompson@murphygrantland.com; Nancy.patterson@morganlewis.com; Peter.moir@morganlewis.com;
cparker@smithlaw.com; Nancy.patterson@morganlewis.com; swainger@kaleolegal.com;
morgan.drapeau@bowmanandbrooke.com; angela.strickland@bowmanandbrooke.com;
patrick.cleary@bowmanandbrooke.com; deshawn.mitchell@bowmanandbrooke.com;
morgan.drapeau@bowmanandbrooke.com; Jacquese.gray@bowmanandbrooke.com;
Glee.henderson@bowmanandbrooke.com; Ashley.lord@bowmanandbrooke.com;
Brianna.Bowling@bowmanandbrooke.com; wac@roecassidy.com; SingewaldC@WhiteandWilliams.com;
DBurkoff@HunterMaclean.com; nlaybourn@huntermaclean.com; psmith@huntermaclean.com;
dwhite@gwblawfirm.com; rtate@gwblawfirm.com; drheney@gwblawfirm.com; wmaurides@gwblawfirm.com;
ctowers@gwblawfirm.com; jlaffitte@gwblawfirm.com; pholland@gwblawfirm.com; TPeck@foxrothschild.com;
sgflynn@foxrothschild.com; Ncherry@foxrothschild.com; l Russell@foxrothschild.com; kkolb@foxrothschild.com;
atwilley@foxrothschild.com; JMTechman@EWHLaw.com; ASRogers@EWHLaw.com; plsisk@ewhlaw.com;
PAMcGrath@ewhlaw.com; louis@milliganlawfirm.com; jackie@milliganlawfirm.com;
mark.phillips@nelsonmullins.com; robert.meriwether@cs-law.com; jase.glenn@cs-law.com; sc-asbestos@cs-law.com;
Matt.Patterson@nelsonmullins.com; mitch.brown@nelsonmullins.com;
matt.patterson@nelsonmullins.com; matt.bogan@nelsonmullins.com; linda.wilson@nelsonmullins.com;
deirdre.mccool@nelsonmullins.com; kelli.martin@nelsonmullins.com; James.burns@nelsonmullins.com;
Carolyn.blackwell@nelsonmullins.com; Ashley.Peoples@nelsonmullins.com; awilkinson@grsm.com;
squerriere@grsm.com; ehawkins@grsm.com; jrvn@grsm.com; vrawl@grsm.com; wkleindienst@grsm.com;
jldelon@grsm.com; Bahnson-GRSM@grsm.com; sasmith@grsm.com; leslie.packer@elliswinters.com;
ashley.brathwaite@elliswinters.com; curtis.shipley@elliswinters.com; joe.hammond@elliswinters.com;
CovilParalegal@elliswinters.com; Asbestos@elliswinters.com; derrick.foard@elliswinters.com;
Scottie.Lee@elliswinters.com; AGeddes@nexsenpruet.com; AWaring@nexsenpruet.com;
aaustin@nexsenpruet.com; kjones@nexsenpruet.com; bjowers@nexsenpruet.com;
rcavalchire@nexsenpruet.com; spugh@richardsonplowden.com; mwhite@richardsonplowden.com;
wharte@richardsonplowden.com; mjones@richardsonplowden.com; cmqueen@richardsonplowden.com;
jelliott@richardsonplowden.com; helliott@richardsonplowden.com; cberthelsen@richardsonplowden.com;
mdalton@richardsonplowden.com; carlpierce@piercesloan.com; pattiwilliams@piercesloan.com;
bensmoot@piercesloan.com; carsonparker@piercesloan.com; Jameskennedy@piercesloan.com;
elizabethtaylor@piercesloan.com; daniellynch@piercesloan.com; trepierce@piercesloan.com;
willleary@piercesloan.com; robinspitz@piercesloan.com; kristinhoward@piercesloan.com;
caseyhewett@piercesloan.com; jessicamiller@piercesloan.com; hollyparker@piercesloan.com;
Elizabeth.ONeill@wbd-us.com; WBD.SCASbestos@wbd-us.com; sarah.wells@wbd-us.com; Michael.Bogle@wbd-us.com;
Kimberly.Sullivan@wbd-us.com; Rosa.Rubenstein@wbd-us.com; Deborah.Lehman-Wooten@wbd-us.com;
Philip.Reid@vonbriesen.com; Laurie.McLeRoy@vonbriesen.com; Maria.Piraino@vonbriesen.com;
skozick@kernodelaw.com; dconner@hsblawfirm.com; sfrick@hsblawfirm.com; cphillips@hsblawfirm.com;
tfreedle@hsblawfirm.com; sturner@hsblawfirm.com; Chris.Collier@lewisbrisbois.com;
[Rondell.Warren@lewisbrisbois.com](mailto>Rondell.Warren@lewisbrisbois.com); aries@smithlaw.com; ckiger@smithlaw.com; cparker@smithlaw.com;
aserratt@smithlaw.com; cbona@smithlaw.com; mmontgomery@robinsongray.com;
rhutchens@robinsongray.com; WCollins@brblegal.com; MKalwaitys@brblegal.com;

Mark.Wall@WallTempleton.com; tara.sullivan@klgates.com; fgordon@mgsattorneys.com;
pborden@mgsattorneys.com; aspradlin@mgsattorneys.com; bmagram@mgsattorneys.com;
BPrice@dmclaw.com; kmiller@DMCLaw.com; mpritt@dmclaw.com; Joe.kilpatrick@huschblackwell.com;
jameskennedy@piercesloan.com; spugh@richardsonplowden.com; wharte@richardsonplowden.com;
mmcdonald@hsblawfirm.com; dconner@hsblawfirm.com; sfrick@hsblawfirm.com;
AGeddes@maynardnexsen.com; jdunlap@vwlawfirm.com; jay.thompson@murphygrantland.com;
wsawyer@murphygrantland.com; junumb@murphygrantland.com; kbickford@murphygrantland.com;
ichappell@murphygrantland.com; bb@rplegalgroup.com; blarrabee@rplegalgroup.com;
ichandler@rplegalgroup.com; sbrown@ycrlaw.com; tgandy@ycrlaw.com; amelling@burr.com;
ashuler@burr.com; landrews@burr.com; rwillis@williamsmullen.com; rlevy@williamsmullen.com;
styer@williamsmullen.com; kmartin-rothrock@williamsmullen.com; pkconway@conwaylawcorp.com;
jase.glenn@cs-law.com; rskahen@mgsattorneys.com; aelhamzaoui@mgsattorneys.com; Eshofner@hpylaw.com;
Nturner@hpylaw.com; robert.meriwether@cs-law.com

Subject: April Block remaining Defendants and proposed agenda
Date: Monday, April 8, 2024 12:48:19 PM
Attachments: [Proposed Agenda april 10.docx](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Chief Justice Toal:

I write to give you an update on the April block of cases. Below are the remaining defendants in each case.

Flynn

Atlas Turner

Goodwin

Atlas Turner

Mitchell

Atlas Turner

Tibbs

ACL (ACL's answer was struck and it is currently in the Court of Appeals)

Atlas Turner

Donaghy/Potter

Atlas Turner (currently in default)

Spirax Sarco

Link

Atlas Turner (currently in default)

Mr. Protopapas wrote to you and I understand that you will have a status conference on ACL and Atlas Turner Wednesday morning. I am attaching a proposed agenda to this

email but I am happy to make any changes. We have also delivered notebooks to both you and Ms. Diaz. By copy of this email, I am notifying defense counsel of my communication with the Court. Thanks, Theile

Theile McVey
Kassel McVey
Post Office Box 1476
1330 Laurel Street
Columbia, South Carolina 29202
803.256.4242
tmcvey@kassellaw.com
www.kasselmvey.com

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JOHN A. TIBBS,

Plaintiff,

vs.

C/A No.: 2023-CP-40-0179

3M COMPANY, ET AL.,

Defendants.

H E A R I N G
BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Thursday, April 25, 2024

TIME START: 1:03 p.m.

TIME END: 5:10 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202

APPEARANCES:

ATTORNEYS FOR THE RECEIVER:

GALLIVAN, WHITE & BOYD, P.A.
BY: JOHN T. LAY, ESQUIRE
-and- LINDSAY A. JOYNER, ESQUIRE
1201 Main Street, Suite 1200
Columbia, South Carolina 29201
803.779.1833
jlay@gwblawfirm.com
ljoyner@gwblawfirm.com

ATTORNEYS FOR THE DEFENDANTS

ALTRAD INVESTMENT AUTHORITY AND MOHED ALTRAD:

WOMBLE BOND DICKINSON, LLC
BY: M. TODD CARROLL, ESQUIRE
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
803.454.6504
todd.carroll@wbd-us.com

ATTORNEYS FOR THE DEFENDANTS

ARRANCO US, LLC; HAWK BIDCO (US),
INC.; AND SPARROWS OFFSHORE, LLC:

RICHARDSON, PLOWDEN & ROBINSON, P.A.
BY: STEVEN J. PUGH, ESQUIRE
1900 Barnwell Street
Columbia, South Carolina 29201
803.576.3721
spugh@richardsonplowden.com

ATTORNEYS FOR THE DEFENDANTS

CHARTER ENTITIES, ESAB, AND
CENTRAL MINING:

GORDON REES SCULLY MANSUKHANI, LLP
BY: A. VICTOR RAWL, ESQUIRE
40 Calhoun Street, Suite 350
Charleston, South Carolina 29401
843.714.2501
vrawl@grsm.com

APPEARANCES CONTINUED:

ATTORNEYS FOR THE DEFENDANTS
DE BEERS ANGLO AND OPPENHEIMER:

RICHARDSON, PLOWDEN & ROBINSON, P.A.
BY: JAMES H. ELLIOTT, JR., ESQUIRE
235 Magrath Darby Boulevard, Suite 100
Mount Pleasant, South Carolina 29464
843.805.6550
jelliott@richardsonplowden.com

I N D E X

	PAGE
Motions Before the Court	5
Certificate of Reporter	71

E X H I B I T S

(None were proffered.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - -

P R O C E E D I N G S

- - -

* * * * *

THE COURT: Okay. Give me some help here, Mr. Lay, about how we start this.

MR. LAY: We've got -- there are three interrelated motions from the receiver. One is to preadmit the exhibits that have been identified, and you've received a list of those exhibits.

THE COURT: Right. Right. Right. Right.

MR. LAY: There's a motion for an adverse inference.

THE COURT: Okay. I got them.

MR. LAY: And then the --

THE COURT: It's the motion to preadmit, your motion for adverse inference, your motion for sanctions. We start this thing off, though, with the Sparrows motions to enforce 205 and enjoin. That's this whole thing that's on appeal and can't be touched.

How do we want to start this thing? Do we want to start with that, or we want to go to the motions to preadmit and come back to it?

1 MR. LAY: I don't really care.

2 MR. PUGH: That's what we discussed. It
3 made more sense perhaps for you to hear the
4 motions --

5 THE COURT: Let John T. go first and then
6 we'll turn to you.

7 MR. PUGH: That's what we discussed. I
8 didn't want to mess with your agenda.

9 THE COURT: Listen, as confused as this
10 thing is, any order is appreciated.

11 Mr. Lay.

12 MR. LAY: Yes, ma'am. Again, we're here on
13 three motions. The motions for sanctions really
14 incorporates or summarizes the motion to
15 preadmit and the motion for adverse inference.
16 This all can be really argued collectively.

17 As the Court, I'm sure, remembers, we've
18 had a sorted history here in this case as well,
19 and I'm just here just in the Cape case. But
20 this case was set for a bench trial on
21 April 15th of just last month, and it was forced
22 to be continued at the April 10th hearing --
23 pretrial hearing as a result of, I mean, what
24 has been a complete and utter failure for
25 three-fourths of the defendants to participate

1 in discovery.

2 We've got four groups of defendants here.
3 We have the Sparrow defendants that Mr. Pugh
4 represents. We have the Altrad, owner
5 defendants, with Mr. Carroll represents. We
6 have the Charter defendants with Mr. Rawl
7 represents. And then we have a group called the
8 Oppenheimer defendants that Mr. Elliott
9 represents.

10 This motion is directed -- these motions
11 are directed to each group of those defendants
12 except the Oppenheimer defendants because there
13 has been some recent movement in participating
14 in the discovery process.

15 Now, we have some issues we're going to
16 have to deal with, but I'm dealing with -- these
17 motions, we're dealing with the groups of
18 defendants that have completely failed to
19 participate in discovery in any way whatsoever.

20 And I wanted to remind the Court, just by
21 way of background, some essential facts here.
22 This case has been filed since June of last
23 year. Discovery was served on the defendant
24 groups in July of last year. Deposition notices
25 were served in August and September of last

1 year. There was a motion practice process that
2 took place. You issued an order in December.
3 Communication to the Court and all parties
4 understanding that the discovery was going to
5 proceed. Discovery did not proceed.

6 There were additional motions. There were
7 additional deposition notices. There was
8 additional discovery. And there was complete
9 failure to respond primarily due to the
10 defendant's continued assertion of 205,
11 everything stay.

12 You issued an order pursuant to a motion to
13 compel that was filed in March of this year
14 where you ordered the parties to provide
15 responsive, substantive, and complete answers to
16 the receiver's discovery requests and begin the
17 production of documents. And you gave a
18 court-imposed deadline of March 26th.

19 We received from the Oppenheimer defendants
20 in March 15th for the first time initial
21 discovery. We produced 142,000 pages of
22 documents by March 25th. We produced another
23 30,000 documents by April 4th. All well within
24 the deadline.

25 We have gotten some pretty tepid responses,

1 in our view -- this is not to be argued today --
2 from the Oppenheimer defendants. We're trying
3 to get that worked out. We've got a pending
4 motion to compel, that's not on this agenda, we
5 filed yesterday. But we've got some discovery
6 issues we're dealing with with them that are
7 significant, but we try to do our best.

8 But there's still been a continued complete
9 failure of these other groups of defendants to
10 participate in discovery in any way. And they
11 continue to make the same assertion is that the
12 case is stayed. Your order doesn't matter. The
13 Court of Appeals orders don't matter. The
14 Supreme Court orders don't matter.

15 Everybody's saying over and over and over
16 and over again that the cases are not stayed
17 just because you've got an appeal on the
18 dissolution motion of a receiver.

19 We know the answer. We don't have to guess
20 that these other cases in which we have gotten
21 orders from Judge Verdin, we've gotten orders
22 from Judge Williams, we've gotten orders from
23 the entire Supreme Court, included appeals that
24 were both discovery and an attack on the
25 receivership itself, and they very clearly

1 stated move along, get going with discovery.
2 And it just hasn't happened. Don't know what
3 else to do.

4 In response to the trial date that was set
5 for April 15th, we can prove our case right now.
6 We got the documents to prove it up. We think
7 we can get there. But what does a prudent
8 receiver do? They want to make sure that we got
9 everything lined up.

10 What we know is this theory that they
11 really moved assets out of Cape, avoided
12 liability for Cape for the distribution of brown
13 asbestos throughout the United States. We know
14 they did it. They did it. The question is who
15 is responsible for all of this movement of
16 assets and removal from Cape from the United
17 States to avoid responsibility for its bad acts?

18 The only question is are we going to be
19 able to hold them accountable? We know they did
20 it. And if we're able to hold them accountable,
21 who's involved with that? We know a lot of
22 them, but we want to hold all of them
23 accountable.

24 Because of that, because we haven't gotten
25 a response to basic discovery requests that have

1 been outstanding since July of last year,
2 because we had not gotten a single witness
3 produced for simple 30(b)(6) notices and just
4 completely ignoring the attendance at these
5 depositions. I got letters. I'm not going ...

6 Because they have failed to respond with
7 our attempts to authenticate documents, just
8 authenticate these documents. If you have a
9 problem, tell us what the problem is.

10 There were 205 objections. There were
11 denials on the authentication of things like
12 their corporate disclosures, for goodness sakes.
13 Financial records of the companies. They're not
14 agreeing that they're authentic documents. We
15 know they're authentic. We just have to check
16 the box.

17 We've got a list of documents that the
18 authentication of these documents are going to
19 come in multiple ways, but we can short circuit
20 all that. It would be ancient documents. It's
21 public documents. It's self-authenticating
22 documents. It's documents that could be
23 authenticated simply by taking a 30(b)(6)
24 deposition and saying, here, here's the
25 deposition transcript, here's a witness that was

1 identified for your company. Is this an
2 authentic deposition?

3 I mean, those sorts of things that are very
4 simple ways to authenticate documents. We've
5 got a whole list of documents that we presented.

6 What is clear and why we are here, these
7 defendants are not going to stop. There's been
8 no change in position except for Mr. Elliott
9 with this initial engagement and some form of
10 discovery with the Oppenheimer defendants, the
11 other defendants. There's been no change in
12 position. There's not going to be a change in
13 position.

14 THE COURT: Mr. Lay, let's set this thing
15 in context for a moment. The caption of this
16 case is Tibbs against 3M. That is a tort case
17 that's brought in 2023.

18 MR. LAY: Yes, ma'am.

19 THE COURT: One of the defendants in that
20 case is Anglo American PLCs, right?

21 MR. LAY: Yes, ma'am.

22 THE COURT: And Cape individually and as
23 successor to Cape Asbestos Limited, which is in
24 a receivership, is another allied company with
25 the defendant tortfeasor in the Tibbs case,

1 correct?

2 MR. LAY: Yes, ma'am.

3 THE COURT: All right. Mr. Protopapas was
4 appointed as a receiver for Cape PLC as the
5 successor in interest to Cape Asbestos Company,
6 correct?

7 MR. LAY: Yes, ma'am.

8 THE COURT: And you are representing the
9 receiver --

10 MR. LAY: Yes, ma'am.

11 THE COURT: -- in connection with
12 marshaling assets in order to defend in the
13 Tibbs case?

14 MR. LAY: Yes, ma'am.

15 THE COURT: And one of the things you are
16 doing is suing an allied corporation, which has
17 control of some of the insurance assets, in that
18 the policies were issued to it. And it is the
19 insurers of these allied corporations who are
20 not cooperating with your third-party action
21 against them to discover these insurance assets.

22 MR. LAY: So it's the companies that have
23 been aligned with Cape that are subsidiaries,
24 parents, it's an amalgamation of interest
25 scenarios. There's a group of South African

1 companies, UK companies, U.S.-based companies
2 that are all associated with Cape. And the
3 theory is you made it so that Cape received all
4 of these profits from the distribution of brown
5 asbestos throughout the United States.

6 And when the tort system started trying to
7 hold defendants accountable for asbestos issues
8 that came about in the 1970s, there was a
9 conscious decision to shut Cape down and escape
10 the jurisdiction.

11 So those companies are responsible for
12 that. We think they did that wrongfully. We
13 don't think that was correct. There's been a
14 lot of literature. There's been -- we've got
15 treatises, we've got articles, we've got
16 documentaries that have all addressed this issue
17 of Cape, who would be as akin to the tobacco
18 litigation. It would be, you know, one of the
19 top tobacco producers escaping any and all
20 liability of any kind whatsoever. That's what
21 we're talking about.

22 So this is simply a receiver who's
23 representing this entity holding, these
24 companies that controlled Cape, holding them
25 accountable. I am sure that they got carriers

1 involved. These are direct actions against
2 these --

3 THE COURT: Against these companies that
4 allegedly stripped assets from Cape, which is
5 the defendant -- one of the defendants in the
6 Tibbs litigation. And as its receiver
7 marshaling assets, you are suing some of the
8 corporations you say attempted to strip or
9 did -- were successful in stripping Cape of its
10 assets in order to escape liability for torts --
11 tortious actions pursued in the courts in the
12 country.

13 MR. LAY: That's right. Yes, ma'am.

14 THE COURT: All right. That puts it in a
15 context.

16 So today, the activity that's being pursued
17 are -- is in aid marshaling the assets of these
18 various companies -- marshaling Cape's assets
19 with respect to these various companies in whom
20 you have tried to engage in discovery, and they
21 have so far been uncooperative with giving you
22 any information about them or the assets you're
23 trying to pursue.

24 MR. LAY: That's right. These defendants
25 completely refused to engage in a valid

1 discovery response process in any way or shape
2 whatsoever.

3 THE COURT: Now, how -- what is their -- I
4 mean, preadmit exhibits, adverse inference and
5 sanctions are all premised on violations of
6 discovery, right?

7 MR. LAY: It is a discovery violation. It
8 is a Rule 37 sanction.

9 THE COURT: Right. How do these companies
10 avoid responding to discovery in a legitimate
11 third-party suit? What's their -- how do they
12 say they escape any responsibility?

13 MR. LAY: It has been the same as some of
14 the arguments that you've heard here today.

15 THE COURT: This is a little bit different
16 twist on things. These are companies that have
17 direct assets that allegedly was stripped from
18 the receivership company.

19 MR. LAY: That's right. But they're
20 relying on 205 is their argument.

21 THE COURT: So are they saying that -- that
22 an appeal in the Tibbs case --

23 MR. LAY: They're saying they have
24 appealed -- these companies attack the efficacy
25 of the receivership.

1 THE COURT: Right.

2 MR. LAY: And they appeal that issue. You
3 made a ruling on it, that, no, the appointment
4 of the receiver was appropriate.

5 THE COURT: Right.

6 MR. LAY: That's up on appeal. And their
7 position -- and they can state the position
8 themselves, but I believe their position is
9 pursuant to Rule 205, with the attack on the
10 receiver on appeal, that stays the entire case.
11 So despite your order, despite the guidance that
12 we've gotten in other cases, that I believe
13 directly addressed this issue, they have
14 maintained case stayed, we're not responding,
15 pound sand.

16 THE COURT: Right. And in that regard,
17 they're a little bit different from the
18 arguments we've heard. There's similarity --
19 there's a little bit of difference between
20 straight insurers and these entities that are
21 regarded as having -- that are accused of
22 stripping the assets of the defendant.

23 MR. LAY: That's right. Part of it is
24 stripping assets. There's also control. I
25 mean, there are lots of different issues wrapped

1 in that. One of those is unjust enrichment.
2 Which is one of the equitable claims we have,
3 that they took assets of Cape inappropriately
4 because they were the controlling company and
5 were charged with making sure that Cape escaped
6 and without damage to what they did.

7 THE COURT: So while time is important in
8 terms of moving to try to identify their assets,
9 they say that that can all be stayed by an
10 appeal in the Tibbs action of the legitimacy of
11 the receivership.

12 Who lodged that appeal?

13 MR. LAY: So all of the third-party
14 defendants that Cape sued under the amalgamation
15 of interest theories -- I mean, I'm using that
16 broadly -- all of them, all four groups lodged
17 that appeal after moving to dissolve the
18 receivership, after attacking the receivership
19 on multiple grounds, that was then appealed.

20 THE COURT: Okay.

21 MR. LAY: Sitting there. Your -- we
22 recently got an order on your Motion to Compel
23 where instead of it going up, which would
24 clearly be interlocutory, it was reframed as a
25 denial of injunctive relief.

1 THE COURT: Right. And the Court --

2 MR. LAY: And the Court came back and
3 dismissed all that.

4 THE COURT: Exactly. Said that you can't
5 use the appeal of an injunction to mask or hide
6 what it really is, which is an appeal of an
7 interlocutory order.

8 MR. LAY: That's right.

9 THE COURT: All right. I think we've got
10 the context. So the first matter is Arranco
11 U.S., Hawk, and Sparrows Motion to Enforce 205
12 and Motion to Enjoin.

13 MR. LAY: My co-counsel rightfully wanted
14 me to explain this, and I think it is a good
15 issue to make sure you understand.

16 There's also on the dissolution motion, we
17 filed a Motion to Dismiss that appeal, too,
18 based on some of the orders that have come down.
19 They've gotten extensions on that. They
20 requested extensions, they hadn't gotten it yet.
21 We're trying to figure out how that's going to
22 play up. But we think that's going to
23 imminently occur.

24 Regardless, the motion on the appeal on
25 your order to compel captioned as a request for

1 injunction has been dismissed.

2 THE COURT: Okay.

3 MR. LAY: There's one appeal still open.
4 One issue.

5 THE COURT: Okay. So how do we need to
6 proceed now? Do we need to just march through
7 these motions? The first motion is the motion
8 by your adversaries to enforce 205 and to
9 enjoin. Is that the first thing we ought to
10 hear?

11 MR. LAY: I think we can do it that way.
12 Mr. Pugh was talking about that earlier.

13 THE COURT: Why don't you then begin with
14 number 2 and go forward. We'll come back to
15 number 1, which is the Motion to Enforce 205 and
16 Motion to Enjoin.

17 MR. LAY: All right. Again, on the --
18 we're at -- this is a motion to preadmit
19 exhibits. We've got a lot of exhibits that that
20 have come from libraries, that are public
21 documents that come from a lot of different
22 sources. And one of the things that we were
23 attempting to do in discovery through Requests
24 to Admit, through 30(b)(6) depositions, through
25 interrogatories and Requests to Production, is

1 to try to get authentication of documents, and
2 we have been thwarted.

3 So one of the things that we're trying to
4 do is find a half step, not a burn your house
5 down, not strike the answer, not setting this
6 for a hearing determine value of the unjust
7 enrichment, but a half step here because I think
8 we're in a situation where the behavior is not
9 going to stop.

10 The clinging to 205, clinging to the
11 concept that this case is stayed and I don't
12 care what anybody says, that is going to count
13 unless the defendants are held to account for
14 taking that position.

15 What is a reasonable half step to hold them
16 to account? What is a reasonable half step to
17 hold them to account that is related to the
18 problems that have been caused thus far?

19 This case has been filed for almost a year.
20 We haven't gotten a single response to discovery
21 until just a couple of weeks ago from Mr. --
22 from Mr. Elliott's clients, the Oppenheimer
23 defendants. So we have been thwarted for
24 months.

25 Your ability -- this is a bench trial. And

1 your ability -- and there's a great case that I
2 have cited for years. It's the Brown versus
3 Allstate case. And it's a case where you're
4 talking about in a bench trial, the Court can go
5 ahead and let it in, authenticate, bring it in.
6 And then you, as the trial judge, have the
7 discernment to decide what you're going to rely
8 on with your order when making a decision.

9 That's precisely what we're talking here.
10 And I want to get back into the appropriate
11 context. There's an argument, but it's not even
12 sanctioned under Rule 37, discovery sanction,
13 it's not even that. This is a legitimate
14 request to help with the efficiency of this
15 process. But there is reason to call it a
16 Rule 37 sanction because of the complete failure
17 to participate in any way.

18 So all we're talking about, we have these
19 lists of exhibits and we want to preadmit it.
20 We would ask the Court to kindly do that. That
21 would put us on more equal footing after all of
22 the months of delay that have occurred here. It
23 would send a message to the defendants it's time
24 to get busy. It's time to start engaging in
25 discovery because that's where we are. The

1 receiver needs to get its work done, and we need
2 to get this case moving.

3 So we're asking for the preadmission of
4 that list of exhibits that are before you in the
5 motion.

6 From a penalty standpoint, again, not to be
7 overly redundant, and I'm not trying to be
8 pejorative, but I just don't know what else can
9 be done. I don't like a sanction motion against
10 defendants. But we're in a situation where I --
11 you know, we're trying to advance the ball,
12 we're trying to live up to our obligations. Me,
13 as counsel for the receiver, the receiver trying
14 to live up to his expectations in this case of
15 advancing the ball on an important case.

16 And the Court has told them directly --
17 this Court has told them directly to get busy.
18 The Court of Appeals has told them, I believe in
19 no uncertain terms -- and it's an obtuse view,
20 reading of any order to suggest there's
21 something different about what the Court of
22 Appeals has done in other cases and what they
23 would do here.

24 Rule 205 does not stop the train on this
25 kind of case. It's a reason for that. And I

1 think we haven't really talked through what's
2 the reason for a dissolution motion that's in
3 effect. Why is that not stopping the train?
4 It's easy. There's case law on this.

5 When receivers get appointed, they get
6 appointed for lots of different reasons. They
7 get appointed because somebody is moving assets
8 inappropriately. Assets may be wasting. You've
9 got to identify assets, those sorts of things.
10 And if a series of appeals is enough to shut
11 down the receiver, then what's the use of them?
12 Because those assets would simply get moved.
13 They'd disappear. Whatever.

14 But that's the reason. That's the public
15 policy reasons for that. There is no stay of
16 the case because there's an attack on the
17 dissolution. We are marshaling and assimilating
18 assets. We're not out there wasting assets.
19 We're trying to secure assets. That's what
20 we're trying to do. And hold account to make
21 sure that the ability to access assets is there.
22 It's that simple.

23 The only way to make this stop is to do
24 something. In my humble opinion, if this Court
25 has got -- if it wants the 205 inappropriate

1 tactic to stop, there has to be something that
2 happens that holds them accountable.
3 Authentication of documents to preadmit is a
4 good start.

5 A second part of that would be the motion
6 for an adverse inference. And, you know, that's
7 a discovery issue. That's also a Rule 37
8 sanction. Where there's been something
9 inappropriate in discovery, there can be an
10 adverse inference.

11 And what we're asking for on the adverse
12 inference, in that motion, is that Altrad
13 third-party defendants with the alter ego of
14 Cape and otherwise liable as a matter of veil
15 piercing, including with respect to Cape's
16 ongoing liability avoidance scheme, and have
17 been unjustly enriched due to Cape's liability
18 avoidance scheme.

19 Second, each of the third-party Charter
20 defendants, relevant at all times, or including
21 with respect to the implementation of liability
22 afforded scheme in the 1980s, and before the
23 alter ego of Cape and otherwise liable as a
24 matter of veil piercing and have been unjustly
25 enriched due to Cape's liability avoidance

1 scheme with ESAB Corporation acting as the
2 corporate successor with respect to the
3 liability of Charter Consolidated, Central
4 Mining and Investment -- and Central Mining and
5 Investment.

6 The Sparrow defendants particularly have
7 argued that that's premature. It simply isn't.

8 This is -- adverse inference is a half step
9 too. If they choose, and they could choose
10 this. This is a choice to ignore the Court of
11 Appeals, the Supreme Court, your order is a
12 choice. These defendants have made a choice.

13 They can also choose to engage in
14 discovery. They've got an adverse inference.
15 If they start engaging in discovery, they can
16 present evidence to you to try to overcome the
17 adverse inference on the documents that have
18 been presented to you. That is a choice they
19 can make.

20 But they continued to completely thumb
21 their nose. These defendants are thumbing their
22 nose at the Court. Something has got to be
23 done. And I do think this half step, this
24 reasonable step is exactly what should be done
25 to try to get the engagement, the appropriate

1 engagement that respects the Court, that defends
2 this case on the merits.

3 I mean, I've heard from several of the
4 defendants "We shouldn't be in it." I get that.
5 That may be the case. We don't think so, but
6 that's what discovery is all about. We have got
7 affidavits from ESAB that they have no assets in
8 South Carolina. There's no personal
9 jurisdiction in South Carolina. They have no
10 involvement. No witnesses.

11 Well, this is a problem when you have this
12 many defendants. I mean, we're finding out now
13 that ESAB has a headquarters in Florence. They
14 have over 500 employees. Maybe it wouldn't be
15 just specific jurisdiction. That's a general
16 jurisdiction issue. They're here.

17 Now, if there's some explanation, I want to
18 hear it. But we're -- we look at the website,
19 it talks about them being subject to
20 South Carolina law, for goodness sakes. That's
21 something that should be dealt with in
22 discovery. Instead, there's a failure to
23 participate in any way so we can't have any
24 engagement at all.

25 All we're asking is let's get it started.

1 Let us do our job, and let's incentivize these
2 defendants to do what they're supposed to do.
3 It's not really punishment. It's
4 accountability. I'm not trying to cause pain.
5 I'm not trying to cause anybody to be upset.

6 But the defendants have got to engage.
7 That's what the system is all about. If you
8 have a series of defendants that can just thumb
9 their nose at the orders of the Court, where are
10 we? We've got to hold them to account. So
11 that's the reason the Motion for Sanctions
12 included all of those arguments.

13 Let me make sure there's no other ask in
14 that.

15 We are asking for attorneys' fees on this
16 motion from these defendants for having to bring
17 these motions. Which I have never done.

18 THE COURT: All right. Now, where do we go
19 from here? To Mr. Pugh?

20 MR. PUGH: Yes, Your Honor. May it please
21 the Court. Steve Pugh on behalf of -- and I
22 gave the court reporter my card earlier.

23 I represent Sparrows Offshore, LLC, which
24 was incorporated in 2003. I represent Arranco
25 U.S., LLC, which was incorporated in 2008. And

1 I represent Hawk Bidco U.S., Inc., which was
2 incorporated in 2012.

3 The last time we were together, Your Honor,
4 we had a discussion about this 205 issue. I
5 have sat through with Your Honor here today
6 over, I don't know, three hours or so of that
7 discussion. I don't intend to plow the same
8 ground with you.

9 What I did and attempted to do in the
10 response in opposition to their motion for
11 sanctions, in that motion I attempted to
12 differentiate and outline for Your Honor how in
13 the world do you think that those orders don't
14 apply to you? And that's on pages 8 through 16
15 of our response that was delivered to Your Honor
16 last Friday.

17 I think I can synthesize it down to this,
18 Your Honor. The receivership over Cape PLC was
19 created by Your Honor in the Park case. And in
20 the Park case, Cape PLC and another entity,
21 CIHL, were both named as defendants.

22 The receivership -- two separate
23 defendants. No question about that. The
24 receivership was created over Cape PLC in Park.

25 Then we fast forward into the Tibbs case,

1 and we've got the third-party complaint filed by
2 the receiver for Cape PLC, as to my clients, and
3 you've heard three other groups of third-party
4 Defendants who filed various motions.

5 And as a result of those motions, in
6 Your Honor's December 6th, 2023, order denying
7 those motions, the receivership -- we take the
8 position that a new receivership was granted
9 over CIHL, which had been a defendant in Park
10 but was not put into a receivership in Park.

11 And so we take the position that pursuant
12 to 14-3-330, we were specifically permitted to
13 take an appeal with regard to the granting
14 continuing modifying of receivership. And we
15 have so -- we have done so. And that appeal is
16 still with the Court of Appeals.

17 Mr. Lay is correct. Our reply or response
18 to their motion to dismiss is coming up, but
19 that appeal is still pending.

20 So without going line by line through the
21 other orders, which I have done or attempted to
22 do in my response in opposition, that's kind of
23 the global view of how we differentiate those
24 orders to the specifics of this case. Because
25 as Your Honor knows, that appealability standard

1 has to be viewed as to the case and on a
2 case-by-case basis. That's -- Your Honor knows
3 that far better than I do.

4 As to specific motions that have been filed
5 by the receiver, I'll kind of take those
6 globally unless you want me to address them
7 individually. I'm happy to do them either way,
8 Your Honor.

9 The first one was with regard to admission
10 or preadmission of exhibits. The proposed trial
11 exhibit list from the receiver contains 2,538
12 exhibits. I'm not sure how many pages that is,
13 but I think it's maybe more than a hundred
14 thousand. I'm not sure.

15 There are a sum total of 14 exhibits that
16 apply to my clients. 14 out of 2,538. And
17 those exhibits reference exactly how I began
18 this morning, which is my clients were born in
19 2003, 2008, and 2012. Yet in this case, my
20 clients are being called upon to answer for
21 conduct, to be the alter ego of, to have somehow
22 siphoned off assets and funds for actions that
23 occurred pursuant to the third-party claim
24 between 1953 and 1978. 40 to 50 years before my
25 clients ever existed.

1 So, Your Honor, we think that the sanctions
2 being requested -- and I appreciate Mr. Lay's
3 view of it, that this is an intended half step
4 and perhaps not the hydrogen bomb sanction
5 contemplated by Bloom Plantation, which we cite
6 in our responsive pleadings. But it effectively
7 holds my clients in default, strikes their
8 answer, and determines the case.

9 THE COURT: Come on now, Mr. Pugh. A
10 motion to preadmit exhibits strikes your answer?

11 MR. PUGH: And an adverse inference as to
12 the liability. So I grouped them together.
13 They've got both separate motions.

14 THE COURT: They're separate motions.

15 MR. PUGH: And they have the global
16 motions.

17 THE COURT: I understand that.

18 MR. PUGH: The motion for sanctions. So
19 that's how I was putting that together. I
20 understand your --

21 THE COURT: You don't cooperate with a
22 thing. They allege that they are trying to do
23 what the receivership appointed them to do,
24 which is pursue assets of Cape. And then you
25 come back and say "I'm entitled to all this

1 consideration about my liability being presented
2 and everything even though I'm not going to
3 cooperate one bit with any discovery, and I base
4 that on an appeal that's been sent back to the
5 circuit court."

6 And on 205 -- which I still cannot
7 understand this argument at all. 205 says
8 "Nothing in these rules shall prohibit the lower
9 court, commission, or tribunal from proceeding
10 with matters not affected by the appeal."

11 The Supreme Court and the Court of Appeals
12 have now a good many times sent things back to
13 the receivership court, to me, in the face of
14 appeals, on the legitimacy of the receivership,
15 saying that the receivership should continue and
16 marshal the assets and deal with things in a
17 fiduciary way pending anything else about this.

18 I'm frustrated about this, Mr. Pugh.

19 MR. PUGH: I know you are. I know you are.
20 You were frustrated two weeks ago, and I feel it
21 again today. And I knew you would be,
22 Your Honor. I'm not here to upset you.

23 THE COURT: All I can say is I have very
24 little respect for arguments that begin by
25 saying that these are legitimate appeals. And

1 further, that say that an appeal stops
2 everything in the circuit court when the
3 appellate authorities themselves have said now
4 several times that the receivership should
5 continue, and I should continue to move that
6 phase of it along.

7 And the reason they say that is because
8 there's another group of parties very much
9 affected by all of this. And that's the
10 plaintiffs that are bringing suits in my court
11 that involve ACL, Cape, and its allied
12 corporation in an assertion that they have
13 proffered into the stream of commerce things
14 that have damaged their plaintiffs.

15 And I'm supposed to manage that trial
16 docket and when cooperation is not forthcoming,
17 you use the receivership as a means of trying to
18 bring something to the chaos of discovery and
19 other things. And you're telling me you can
20 completely refuse to cooperate and yet avail
21 yourself and cover yourself with the protections
22 that ought to be afforded a legitimate and
23 cooperating litigator. I don't understand that
24 argument.

25 MR. PUGH: My argument is this, Your Honor.

1 The appeal I took -- the appeal we --

2 THE COURT: I have -- let me just say this.
3 I have made the ruling now a good many times
4 that these appeals do not stop these
5 receiverships. So I've made that ruling.

6 I don't agree one bit with the
7 interpretations of the appellate court statutes.
8 I'm not going to get into the arguments about
9 the receiverships. Those are up on the appeal,
10 and the legitimacy or illegitimacy of the
11 receiverships and the ambit of their authority
12 will be decided in some other forum.

13 But the appellate authorities who have
14 those cases that directly challenge the
15 legitimacy of the receiverships have told me go
16 ahead and proceed as a receivership court. In
17 the face of that, an argument by some
18 potentially liable company that may or may not
19 have been the ultimate recipient of script
20 assets from the receivership corporation or the
21 corporation in receivership, your arguments that
22 somehow appeals their status affect your ability
23 to participate in third-party litigation, I
24 can't -- I can't wrap my head around that.

25 MR. PUGH: My argument is simple to the

1 language that you read earlier, Your Honor. And
2 that is my appeal and my belief, my appeal
3 involves matters affected by --

4 THE COURT: Okay. Well, to the extent you
5 make that argument, let me just tell you right
6 now, and I'll solve it for everybody else around
7 me. I deny that argument. And I will
8 overrule -- I will rule against you on that
9 argument. I think you have a separate thing --
10 asked me to rule on 205. I don't know why I
11 should be doing that. I'm the trial court.

12 The appellate courts have already made that
13 ruling.

14 And so my ruling is this: I will not hear
15 anything further about the authority of this
16 Court to proceed with the receivership matters.
17 It is my understanding that both provisions of
18 Appellate Rule 205 and the rulings of the
19 South Carolina Supreme Court and the rulings of
20 the Court of Appeals indicate that the
21 receiverships that are under attack in certain
22 appeals pending in front of them shall continue
23 in the face of the appeal.

24 And I am going to abide by their rulings
25 and by my understanding of the Appellate Court

1 Rule 205. So you don't need to make any further
2 arguments about that.

3 MR. PUGH: May I make one other different
4 argument very briefly?

5 THE COURT: All right, sir.

6 MR. PUGH: Your Honor, the other argument
7 that we asserted in our responses in opposition
8 to the receiver's three motions was the issue
9 under Rule 14. And clearly as Your Honor and
10 everyone knows, the third-party claims are
11 derivative of the first-party claims and we
12 learned -- I learned for the first time a week
13 or so ago -- excuse me, on April 10, that there
14 was in place a tolling agreement apparently
15 between Cape PLC and the Tibbs plaintiffs.

16 And so, Your Honor, for that reason, again,
17 we believe that under Rule 14 that derivative
18 claims should not go forward or toll or in the
19 alternative should be severed from the
20 first-party Tibbs claims.

21 THE COURT: Rule 14 of the state court
22 Rules of Civil Procedure? Third-party practice.
23 Specifically what is it in that rule that you
24 say makes me unable to rule on requests for
25 preadmission and sanctions and so forth against

1 your clients?

2 MR. PUGH: Because frankly what they're
3 attempting to do at this juncture is put the
4 cart before the horse. There's been no
5 liability in the underlying Tibbs claim.
6 There's no judgment against Cape for whom they
7 stand in the shoes of. There's nothing for them
8 to proceed.

9 What they're really attempting to do is I
10 suppose some type of an expansive advisory
11 opinion regarding hypothetical liabilities that
12 may or may not occur in the underlying Tibbs
13 case.

14 THE COURT: No, sir, I don't agree with
15 that argument one bit.

16 The receiver is tasked by my orders of
17 appointment to marshal assets. And the receiver
18 for Cape is charged with marshaling the assets
19 of Cape. And the receiver has in the process of
20 doing that discovered that your client may be a
21 successor in interest who stripped assets from
22 Cape that ultimately wound up in the possession
23 of your client that formed the asset base of
24 your client's existence. That's essentially in
25 rough style what I think is being asserted.

1 The receiver is charged with pursuing those
2 assets, and that is what is being done in this
3 third-party litigation. I don't see anything in
4 Rule 14 that prevents discovery from being
5 engaged in to ascertain whether or not the
6 averments in the third-party complaint that your
7 client is the holder of certain assets that
8 should be with Cape can't be explored.

9 You talk about putting the cart before the
10 horse. You want me to in effect decide on the
11 front end that you have no responsibility since
12 you say you don't only because you were -- your
13 companies were formed in 2008 and 2006 and so
14 forth. That's not the question.

15 He is pursuing a claim against your client
16 that is based on contentions that your client
17 now has assets that should be in the possession
18 and control of Cape of which is the receiver.
19 And that is a straight-up piece of litigation
20 that's going to be pursued.

21 And what you said in response to that is
22 because although I'm not participant in the
23 receivership litigation at all, and I'm going to
24 refuse to answer anything, I can nevertheless be
25 absolved of any responsibility to participate in

1 discovery. I don't get that. It doesn't make
2 any sense to me.

3 MR. PUGH: What I was making the point of,
4 Your Honor, is that the claims they're pursuing,
5 we all, I believe, agree are derivative claims
6 from claims that are now, we learn, have been
7 tolled. That's the point I was making.

8 THE COURT: Okay. I'll ask Mr. Lay about
9 that or Mr. Smith. But if the claims are
10 tolled, tell me -- the claims against who --
11 okay. You say they are derivative of Cape's
12 claims against somebody else?

13 MR. PUGH: The Tibbs had a claim against
14 Cape.

15 THE COURT: No, no, no. Tibbs had a claim
16 against Cape for a tort.

17 MR. PUGH: Correct.

18 THE COURT: And whether they -- I don't
19 care what they've done with that claim. I've
20 appointed a receiver for Cape to discover where
21 its assets are. I don't care what's happened
22 with respect to Tibbs. The receiver has been
23 appointed. That's just a sideways argument that
24 the receivership is only valid as to Tibbs and
25 not to anything else, I guess.

1 MR. PUGH: My argument was simply that I
2 think we're all clear that the Tibbs claims
3 against Cape have then resulted in derivative
4 claims by Cape against third-party defendants.
5 That's the point I was making.

6 Those are derivative claims. And since the
7 underlying first-party claims in Tibbs have now
8 apparently been tolled, we're now going forward
9 on derivative claims without anything happening
10 in the first-party action? That's only the
11 point I was making, Your Honor.

12 THE COURT: Well, okay. I'll get back to
13 Mr. Lay and ask him to respond to that.

14 MR. PUGH: And I don't know -- I'm not
15 trying to get out of order here, but there were
16 other folks who filed similar responses. If you
17 want them to go, and then he can respond to them
18 all.

19 THE COURT: I want it to be in the briefest
20 possible way. If this is going to be some more
21 of the same kind of argument, I think I've heard
22 enough of it. But I'll turn to the rest of it.

23 MR. LAY: Can I do one thing?

24 THE COURT: Yes, sir.

25 MR. LAY: I just want to make sure. I'm

1 craving reference to our motion on what we're
2 seeking on the adverse inference. I'm going to
3 try to weed out any defenses. All of the
4 defendants, except for James Elliott's
5 Oppenheimer defendants. That's where we're
6 seeking the adverse inference on alter ego,
7 crave reference to that in the motion. I just
8 don't want that lost.

9 THE COURT: Right. I understand.

10 Mr. Carroll.

11 MR. CARROLL: Yes, ma'am. Thank you, Your
12 Honor.

13 THE COURT: On behalf of?

14 MR. CARROLL: John Carroll on behalf of the
15 Altrad Investment Authority and Mr. Altrad
16 individually.

17 Your Honor, as you imagine, my client -- my
18 clients join what Mr. Pugh's presented this
19 morning -- this afternoon, rather. We don't
20 think the Court has jurisdiction to proceed. We
21 don't think the receiver has jurisdiction to
22 proceed under Rule 205. I don't intend to
23 reargue that ground. Just want to say it on the
24 record.

25 The sanctions sought are the equivalent of

1 granting judgment against my clients. Given
2 that this is a bench trial, I don't know how you
3 can have an adverse inference in a bench trial.
4 The judge is the decider.

5 I agree with Mr. Pugh with regard to if
6 there's no liability to Ms. -- to the Tibbs
7 family, then this whole case is moot. Because
8 Rule 14 only allows a third party to try to
9 transmit the first-party liability to the
10 third-party defendants. If there is no
11 first-party liability, then there's nothing to
12 transmit the third-party defendants.

13 We've not seen the tolling agreement. I
14 assume you are going to ask Mr. Lay about the
15 status of that case. The first-party Tibbs
16 versus Cape case. I don't know any details
17 beyond what I just told you.

18 THE COURT: It's a tolling agreement
19 between who and who?

20 MR. CARROLL: My understanding is it's
21 between the plaintiffs and the receiver.

22 THE COURT: And it tolled what? The
23 statute of limitations?

24 MR. CARROLL: I don't know.

25 THE COURT: That's way too doggone vague

1 for me to make any sense.

2 MR. CARROLL: Your Honor, the last time --
3 Your Honor, the last time we were here, on
4 April 10th or whatever, there was -- Your Honor
5 had a lot of proceedings regarding the Tibbs
6 case. And it was represented to the Court at
7 the time that there were only two defendants
8 left in Tibbs, Atlas and ACL.

9 So when we got around to this case in that
10 hearing, I inquired so what happened to Cape?
11 Why are they not identified as a defendant any
12 longer? We were told, oh, there's been a
13 tolling agreement entered between the plaintiff
14 and the receiver. And I hadn't seen it.

15 THE COURT: All right.

16 MR. CARROLL: That's all I know.

17 THE COURT: All right.

18 MR. CARROLL: And then I think the last
19 point I wanted to note here is the --

20 THE COURT: How about the preadmit?

21 MR. CARROLL: Yes, ma'am. On the
22 preadmission, my clients are very similarly
23 situated to Mr. Pugh's. If you search this list
24 of 2,538 -- 2,538 exhibits, Altrad -- the name
25 Altrad shows up in maybe 40, and most of them

1 are just corporate disclosures.

2 THE COURT: What does it -- that argument
3 escapes me completely. Just because very few of
4 them apply to you, why wouldn't I preadmit all
5 of them?

6 MR. CARROLL: Well, it's a sanction for my
7 client not admitting the authenticity of
8 documents that it doesn't know anything about.

9 There's a video in here -- if you will
10 pardon me, there's a video in their list from a
11 YouTube poster named Cradle of Anal, A-N-A-L.
12 I'm sorry. That's on their list. How is my
13 client supposed to know anything about that?

14 They have The State newspaper article about
15 how Frank Martin's basketball team liked the
16 pregame dance of a rugby team that my client
17 owns. What does that have to do with anything?
18 It's a State newspaper article. That's hearsay.
19 That's irrelevant. I don't know if it's
20 authentic.

21 THE COURT: If you haven't filed any of
22 those things specifically, you're just saying
23 generally they can't do it because the
24 receivership is not any good. It's all under
25 appeal and so forth. But I take it that you

1 have not ticked down the specific list of these
2 exhibits to say which ones you think ought not
3 to be admitted.

4 MR. CARROLL: Correct. We have not because
5 we don't think any of this -- I don't think we
6 were allowed under 205 to participate.

7 THE COURT: I got it.

8 MR. CARROLL: But I want to point some of
9 this out because Your Honor is being asked to
10 issue a sanction against us. I want to tell you
11 what that sanction looks like. It's taking this
12 sea of materials that we wouldn't know anything
13 about anyway and saying that as a sanction for
14 us not saying we don't know it, it's authentic.

15 THE COURT: As a sanction for your not
16 participating in discovery.

17 MR. CARROLL: I understand, Your Honor.

18 THE COURT: Put aside all these other
19 arguments, if I decide that this matter moves
20 forward despite your arguments about the
21 effective appeals and so forth and so on, it's
22 very likely I would do, I've done that a number
23 of times, then you're responsible to respond to
24 discovery. And you have not done it, right?

25 MR. CARROLL: Well, and I would just point

1 out for the record our -- the receiver did send
2 us a set of requests to admit for the
3 authenticity of a very small universe of these
4 documents.

5 THE COURT: Right. And so what's the
6 problem going on with that?

7 MR. CARROLL: Our deadline hasn't come yet.
8 So I don't know how we can be sanctioned for not
9 doing something when a deadline hasn't yet
10 lapsed.

11 Your Honor, you understand our position.

12 THE COURT: But you otherwise have been
13 completely uncooperative with anything that has
14 to do with discovery requests, correct?

15 MR. CARROLL: Yes, ma'am. We have stood on
16 our arguments under Rule 205.

17 THE COURT: That's been since last year
18 when this thing was filed, right?

19 MR. CARROLL: I don't recall. Yes, ma'am.
20 Sometime in the fall.

21 THE COURT: Okay.

22 MR. CARROLL: Thank you.

23 THE COURT: All right.

24 MR. RAWL: Briefly, Your Honor. Vic Rawl.
25 For the record, I represent the Charter

1 Entities, ESAB, and Central Mining.

2 I incorporate the arguments made by
3 Mr. Pugh and Mr. Carroll. My client also stands
4 on the 205 argument. And just to be clear,
5 there are three appeals that relate to the 205.
6 The first would be the -- this case is in the
7 Tibbs action versus the ACL appeal, which was
8 related to the striking of the answer that was
9 appealed in September 13th, 2023. I don't think
10 anybody disputes that appeal is proper and now
11 on appeal.

12 THE COURT: Who was that struck?

13 MR. RAWL: This is the Tibbs matter.

14 THE COURT: I understand what it is, but
15 you're representing ESAB and some others now,
16 what impact does the striking of ACL's answers
17 have on you?

18 MR. RAWL: That would stay the Tibbs
19 matter.

20 THE COURT: Okay. This is that same
21 argument about the Tibbs matter is completely
22 stayed because of the appointment of a receiver,
23 right?

24 MR. RAWL: This is in the Tibbs matter.

25 The Notice of Appeal was filed September 13,

1 2023.

2 THE COURT: Yeah.

3 MR. RAWL: The next appeal, then, would be
4 the one that we're talking about where my
5 clients appealed the order where they relate to
6 both personal jurisdiction and to receivership.

7 THE COURT: I'm going to tell you
8 something, Mr. Rawl. Mr. Rawl, is it true that
9 ESAB has a large corporate presence in Florence
10 and information on the web that talks about
11 their South Carolina presence and so forth? Is
12 that true?

13 MR. RAWL: My understanding is that ESAB is
14 not a citizen of South Carolina for general
15 jurisdiction purposes.

16 THE COURT: No, sir. I'm not asking about
17 general jurisdiction. I'm talking about
18 jurisdiction of any kind. Do they have a large
19 plant in Florence?

20 MR. RAWL: I think they do. I think it
21 does. I don't know the answer to the question.
22 I don't think there's any claim that ESAB
23 doesn't do business --

24 THE COURT: It's not acceptable for you to
25 come into this court asserting lack of

1 jurisdiction on behalf of ESAB and then stand up
2 here in front of me and tell me that you don't
3 know whether they have a plant in Florence.

4 Now, I want you think about that one more
5 time and answer that question for me.

6 MR. RAWL: I apologize, Your Honor. I can
7 check and find out very quickly.

8 THE COURT: Do that.

9 MR. RAWL: I don't think that there is any
10 claim by ESAB that it doesn't do work in
11 South Carolina. The personal jurisdiction
12 argument was made because it was not organized
13 in South Carolina. It is not headquartered in
14 South Carolina.

15 THE COURT: And as you know, that doesn't
16 define jurisdiction in this particular matter at
17 all.

18 MR. RAWL: It's sold nothing to do with --
19 anything to do with Cape. ESAB was not formed
20 until a couple of years ago.

21 THE COURT: It's a matter of tracing
22 assets. That's what they're talking about
23 doing. And this business about not having a
24 citizenship in South Carolina, if you've got an
25 800-employee plant in South Carolina, you better

1 be domesticated in South Carolina. And I would
2 imagine they are.

3 MR. RAWL: I do not know, Your Honor.

4 THE COURT: Before you begin to represent
5 that client in my court on assertions about
6 jurisdiction of this court, I think you need to
7 find that out. So before this hearing is over,
8 I want you to have an answer for me on that.

9 MR. RAWL: I will do my best to find that
10 out, Your Honor.

11 THE COURT: Yes, sir.

12 MR. RAWL: Let me make a couple more
13 points. The third appeal which would relate to
14 the 205 argument is the actual appeal of the
15 order where the discovery stems from. It is
16 the -- this Court's March 12th, 2024 --

17 THE COURT: That's an order in discovery.
18 It is not immediately appealable. The statutes
19 are very -- I mean the rules are very clear on
20 that.

21 Do you question the notion that discovery
22 orders are not immediately appealable?

23 MR. RAWL: No, Your honor.

24 THE COURT: Well, that was a discovery
25 order, was it not?

1 MR. RAWL: It was not, Your Honor. That
2 was an appeal with regard to an injunction. My
3 client --

4 THE COURT: You can call it an injunction
5 or apple pie, but what we're really talking
6 about is the squabble over discovery, are you
7 not?

8 MR. RAWL: My client asked for this Court
9 to enjoin the receiver from continuing to act --

10 THE COURT: To engage in discovery. That
11 is the -- I'm going to tell you now, all right,
12 that is as disingenuous an argument as you could
13 possibly offer here.

14 You're challenging the ability of the
15 receiver to engage in discovery with your
16 client. And you wrap it up or tie it in a bow
17 that is called something else simply to try to
18 make it appealable. That's what's happening
19 here.

20 MR. RAWL: Your Honor, my client very much
21 believes that it should be able to have its
22 appeal decided --

23 THE COURT: Well, it can't have its appeal
24 decided on something that's interlocutory. And
25 squabbles over discovery, whether you

1 characterize your opposition to discovery by
2 saying that you are somehow challenging their
3 right to make a discovery request, but you are
4 not. Discovery matters are not immediately
5 appealable.

6 MR. RAWL: Your Honor, I understand that.
7 And the injunction that was requested was regard
8 to any action, you know, of those either in this
9 case or outside of this case.

10 THE COURT: Was it the actions that were
11 complained about were discovery actions, were
12 they not?

13 MR. RAWL: Your Honor, respectfully, we
14 made arguments about discovery, and we made
15 arguments about, you know, injunctive relief.

16 THE COURT: Well, the injunctive relief was
17 to try to enjoin them from engaging in
18 discovery, was it not?

19 MR. RAWL: That and more. It was more than
20 just discovery. And so -- and what Your Honor
21 said is that you were not ruling on that yet,
22 and that motion, I guess, is still pending. We
23 still have the request for the injunction that's
24 outstanding.

25 But my only point is, is with regard to the

1 sanctions that are being asked for today, they
2 derive from the March 12th, 2024, order, which
3 has been appealed by my client.

4 And, Your Honor, the appeals --

5 THE COURT: What's going to happen when
6 that appeal -- when that appeal of that
7 particular order, the discovery order we just
8 had, what's going to happen if that appeal is
9 denied?

10 MR. RAWL: That appeal has been dismissed,
11 Your Honor.

12 THE COURT: That -- your appeal of my order
13 of March the 12th has been dismissed, right?

14 MR. RAWL: It has.

15 THE COURT: And so what is your opinion
16 now? What is your position now? Oh, I've got a
17 motion to reconsider underway?

18 MR. RAWL: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. RAWL: And what the Court, when it
21 dismissed it, it's the same as what I had said
22 earlier, Your Honor, is that the remittitur has
23 not been sent down for -- to this Court.

24 THE COURT: Have you filed a Notice of
25 Appeal in that one?

1 MR. RAWL: What, Your Honor?

2 THE COURT: Have you filed a Notice of
3 Appeal in that matter?

4 MR. RAWL: Yes, Your Honor. My clients
5 have appealed two orders. They appealed the
6 first order that was --

7 THE COURT: I'm not talking about the first
8 order. I'm talking about this order in -- the
9 discovery order in March.

10 MR. RAWL: The March 12th order, the one
11 that we are talking about today, that the
12 receiver is claiming that no party has complied
13 with, that is the order that is on appeal. That
14 is the order that the Court of Appeals said is
15 more characterized as a discovery order.

16 THE COURT: You're darn right, it is not
17 appealable, right?

18 MR. RAWL: That's what the Court said. The
19 Court said that the remittitur will be sent as
20 provided by Rule 221(b) of the South Carolina
21 Rules. The remittitur has not yet been sent.

22 So from my client's standpoint, what the
23 receiver said earlier is, yes, they made a
24 motion to dismiss the primary appeal in the Cape
25 matter. And, you know, my client's response to

1 that is coming up.

2 My client wants to have an answer to the
3 question that is asked. If that's all -- if all
4 these appeals are dismissed, and the Court says,
5 no, these are not immediately appealable, you
6 know, the specific argument we're making here --
7 and Cape is markedly different than any other
8 case you have. Meaning the receivership orders
9 look the same. Say go after and find insurance
10 assets. But the receiver is not going after
11 insurance assets. The receiver is seeking to
12 self-pierce its own corporate veil in a
13 different matter and not typed in any underlying
14 liability.

15 THE COURT: All right. I'm not going to
16 hear those arguments. You are asking someone
17 else to hear those arguments right now, so I
18 don't need to -- I certainly don't need to waste
19 any time on those arguments.

20 MR. RAWL: From my client's standpoint,
21 their appeals are gone. They want to be able to
22 participate. But our understanding of the
23 rule -- of Rule 205 is that until the Court of
24 Appeals sends back this remittitur, that the
25 jurisdiction is exclusively with the Court of

1 Appeals. So that is only point I want to make,
2 Your Honor. Thank you so much.

3 THE COURT: Yeah. My understanding is
4 that, again, this entire scenario that you just
5 painted is a direct attempt to defy the
6 authority of the Appellate Court rules, the
7 Court of Appeals, the Supreme Court, and this
8 Court, where you've been told repeatedly that
9 orders of this type are not directly appealable.
10 And you've been told it in the context of
11 receiverships, which have been specifically
12 directed to proceed.

13 So that's kind of my take on what's
14 happening here. And I'm offended by it. I am
15 very offended by it.

16 MR. RAWL: Your Honor, I apologize. In no
17 way would I ever want to offend you. This is
18 very similar to the argument that I made to
19 Your Honor for a very long time in the ACL
20 matter. And if I -- I'll just incorporate that
21 argument I made earlier.

22 THE COURT: All right.

23 MR. RAWL: And I won't go through it again.
24 I definitely don't want to offend you, but my
25 client is really just trying to defend its --

1 THE COURT: As we proceed, I want you to
2 find out about that Florence corporation.

3 MR. RAWL: I will try right this minute,
4 Your Honor. I want to make sure nothing else is
5 argued and then find out shortly. I don't want
6 to miss any arguments.

7 THE COURT: I want you to find it out
8 before you leave here today.

9 MR. RAWL: Yes, ma'am.

10 THE COURT: All right. All right. Who
11 else? Is that it?

12 All right. Mr. Lay.

13 MR. LAY: Yes, ma'am. Just a couple of
14 things.

15 The Oppenheimer defendants, and we're
16 dealing with discovery with them, did it the way
17 the system contemplates that it be done.

18 There is an appeal. The appeal goes up.
19 They've been told they need to participate in
20 discovery. We're fussing about discovery, but
21 there's some engagement. You don't get to
22 selectively decide that I'm going to take my
23 ball and go home and not play ball because you
24 don't like the answer that you've been given and
25 say I'm not going to participate.

1 If they had participated in discovery, for
2 example, in any way -- and this isn't just about
3 not authenticating requests to admit, which they
4 know. It's a complete failure to engage in any
5 way in discovery. Discovery has been served
6 since July of last year. We got nothing from
7 three-fourths of these defendants. They know
8 that.

9 All they have to do is engage, and they
10 could have provided information if they think
11 they're not supposed to be involved in the case.
12 We think they are.

13 We've got -- you know, they're making
14 references to where a document was pulled off a
15 website that is at PBS. They know this. It's a
16 PBS document, is what it is. It just doesn't
17 exist anywhere other than this crazy website.
18 But it's an absolutely legitimate exhibit.

19 If they had engaged in discovery, they
20 would have known that there was a tolling
21 agreement. Well, good grief, we have a receiver
22 that's appointed, supposed to protect his
23 assets. He has no assets to defend any of these
24 cases. If he just simply throws his hands up
25 and says "I don't have any money," then there's

1 going to be default judgments in effect, how is
2 that protecting anybody?

3 Right now he's trying to assimilate assets
4 and making sure that Cape can be defended. And
5 this is the way these cases have been handled.
6 It does not obviate a claim. It doesn't moot a
7 claim. That's ridiculous. It preserves assets
8 potentially and makes sure that the receiver can
9 do their job and go get assets. It's that
10 simple. That's what this is all about.

11 Now, I mean, I don't want to lose sight of
12 this. I want to go back to this. There's been
13 a complete failure to respond to your March
14 order demanding that they start participating in
15 discovery, and we're still here. And the only
16 way to get a change in tactic, the only way to
17 get a change in direction and to make sure this
18 case proceeds the way it's supposed to, it is
19 for you to step the half step we're asking.

20 It is not a striking of the answer at all.
21 There are documents where there's going to be an
22 adverse inference. If they participate, they
23 put up their own evidence. And then you, as the
24 bench trial judge, can make a decision on what
25 should happen here. That's all we're asking.

1 We want to get started. We have a
2 scheduling order that we're trying to get
3 submitted. We want this case tried this year.
4 It needs to be tried. It's been sitting here
5 since June of last year.

6 We've got a confidentiality order that
7 we're trying to get worked out, and we're trying
8 to use the one that you have signed in the past.
9 We want to get that submitted to you. That's
10 where we are. We're ready. We're hungry. We
11 want to move the case forward, the way it needs
12 to moved forward and stop all this.

13 THE COURT: All right. Anything further?

14 All right. Since I'm on this one, I'll go
15 on and tell you what I'm going to do about Cape
16 and Tibbs, and then we can go back up to the
17 matters that were pending when we interrupted
18 for the discussion of the Cape matter.

19 I am going to grant the motion to preadmit.

20 I am going to take under advisement the
21 motion for sanctions. And I'm going to ask
22 Cape's receiver to draft for my consideration
23 exactly what an adverse inference document would
24 look like. I'm inclined to give consideration
25 to signing an order that directs certain adverse

1 inferences to be made because of the failure to
2 cooperate in discovery.

3 But I want to see exactly what the receiver
4 would have in mind.

5 Now, we've also got the third-party
6 defendants' adoption notice joinder in the
7 filings of other third-party defendants. I've
8 taken that into consideration in connection with
9 what I rule. So I understand that some parties
10 are adopting other parties' request for
11 remedies.

12 We've also got what was argued after that
13 with Defendant Altrad's adoption and notice of
14 joinder in the filings of other third-party
15 defendants. And I understand that and have
16 taken that into account in the rulings I have
17 made.

18 Mr. Lay, what I would ask you to do is to
19 prepare an order that reflects these rulings in
20 the Tibbs state receivership third-party matter.
21 Send them to me within ten days, which will --

22 Eva, let's give a date there so --

23 It would fall on May 6th. And then I would
24 give opposing parties until May the 13th to
25 respond to what is filed by Mr. Lay. So that

1 that gives you specific dates that I'm talking
2 about.

3 Now, then we've got these motions to
4 enforce 205 and enjoin. I have already made my
5 positions pretty clear about that bunch of
6 activity in connection with the matters
7 Mr. Robinson argued earlier today and the
8 directions I made.

9 I would similarly, Mr. Robinson, ask you to
10 share with Mr. Lay, who is here for these
11 arguments as well. I'm going to go on and rule
12 on these things, although it carries with it the
13 peril that we start this vicious cycle of
14 spiraling appeals. And I hope at some point if
15 these matters are ruled on as I think they will,
16 we will address the expense of all of that.

17 But in the meantime, I want you to consult
18 with Mr. Robinson on -- I'm not going to repeat
19 them all now, but I made a good many
20 observations and rulings with respect to the
21 interplay between the rules of appellate
22 practice and the circuit court rules in
23 connection with my basic holding that these
24 matters are not stayed because there's no valid
25 appeal of things that are being considered in

1 the matters that have come before me today.

2 And the receivership continues and
3 therefore the same applies here as it did in
4 some of these other cases. It's a slightly
5 different situation. And those receiverships,
6 the insurance assets are being marshaled. And
7 this receivership is insurance and other assets
8 of the receivership corporation that is being
9 marshaled, but the concepts are the same.

10 Now, what we've still got is Atlas Turner,
11 Goldfein, but let's go back for a minute.

12 MR. ELLIOTT: Your Honor, before we move
13 on --

14 THE COURT: Mr. Elliott.

15 MR. ELLIOTT: James Elliott for the
16 De Beers Anglo defendants.

17 THE COURT: We're still now back in Cape
18 and I've already made my ruling?

19 MR. ELLIOTT: No. I want to let you
20 finish, and then I wanted to say just this:
21 None of those motions are directed at my
22 clients. One of the rulings has to do with
23 preadmitting evidence into the case.

24 THE COURT: Right.

25 MR. ELLIOTT: I just want to make it clear

1 on the record that is not a ruling that evidence
2 is going to be preadmitted against my client.
3 And I just want to make that clear. None of
4 these motions are directed at my client. None
5 of them are for that one in particular because
6 it's maybe one trial.

7 THE COURT: Sure. Sure.

8 MR. ELLIOTT: I understand that's not going
9 to be directed at my client. We may have the
10 same document.

11 THE COURT: I understand, Mr. Elliott. And
12 Mr. Lay and Mr. Smith are nodding agreement with
13 that. So I think we understand that's what the
14 situation is. And you're on the record and
15 please know that I tell you now, as presiding am
16 judge over this matter, that I agree with that.

17 MR. ELLIOTT: Thank you.

18 THE COURT: And all parties do. But you
19 are not affected by these other rulings with
20 regard the noncooperating third-party
21 defendants.

22 All right. Now, let's go back for a minute
23 to the Asbestos Corporation Limited Lewis --
24 where are we now? As I understand it, I -- my
25 rules -- Mr. Robinson, I'm just looking at the

1 agenda. Have I given you enough directive or do
2 I need to give further direction about these
3 motions? The motions to dismiss in Lewis?

4 MR. ROBINSON: So, Your Honor, of course in
5 the Davis matter you gave us very specific items
6 that you wanted to --

7 THE COURT: But we still haven't done
8 anything about Lewis.

9 MR. ROBINSON: Correct. When we break, you
10 had heard all the arguments in Lewis, but have
11 not made any announcement regarding your rulings
12 in that case.

13 THE COURT: Now, do you regard the record
14 as clear enough on both the Motions to Dismiss
15 and the Motions for Protective Order?

16 The Motion for Protective Order, just as
17 Motion to Stay All Discovery, et cetera, et
18 cetera, which is another way of saying the
19 appeal -- the appeals stay everything. And I
20 already indicated what my rulings are about that
21 in the Motion to Dismiss. The appeals don't
22 affect the ongoing ability of this Court to deal
23 with receivership matters.

24 These Motions for Protective Orders are all
25 Motions to Stay all further discovery. I think

1 they're all by you, Mr. Rawl, are they not?

2 MR. RAWL: Your Honor, I made some and then
3 several of the other defendants made some as
4 well. I would probably say I made more than
5 others.

6 THE COURT: Well, I'm trying to look and
7 see what -- who else I see.

8 Okay. 19 and 20 were Liberty Mutual and
9 CLMI.

10 Ms. Mastrianni.

11 MS. MASTRIANNI: Yes, ma'am.

12 THE COURT: You're -- she's Allstate.

13 MS. MASTRIANNI: Correct. We don't have a
14 discovery motion pending.

15 THE COURT: All right. Who is Liberty
16 Mutual?

17 MR. GOTTSCHALL: That's me.

18 THE COURT: Mr. Gottschall.

19 Mr. Gottschall, your motion for a protective
20 order/injunction, this is just the same old
21 routine you've been arguing for some time. You
22 take the position that you're entitled to a
23 protective order and an injunction because these
24 matters are on appeal, right?

25 MR. GOTTSCHALL: In part, Your Honor, we're

1 asking the Court in its discretion to also
2 consider that if the ACL's appeal is successful,
3 as to Liberty Mutual, there's no loss, no harm
4 in staying discovery at this time.

5 THE COURT: Sure. But that's all an
6 argument in aid of the Motion for Protective
7 Order and Motion for Injunctive Relief, which
8 has the appeal -- has the effect of having me
9 say that the appeal stays everything, right?

10 MR. GOTTSCHALL: That would be one avenue
11 if the Court ruled that way.

12 THE COURT: Right. Right. Okay. And I've
13 indicated in the direction I've given
14 Mr. Robinson that I don't think that the appeal
15 stays these things.

16 So, Mr. Robinson, that's going to apply to
17 these various motions for protective orders.

18 Now, who has CLMI?

19 MR. MANOS: I do, Your Honor.

20 THE COURT: Yeah, Mr. Manos. The rationale
21 I've already given in the Motion to Dismiss part
22 of this thing would apply to these Motions for
23 Injunction and for a protective order. I regard
24 them as proxies for a contention that everything
25 is stayed by appeal in these receiverships.

1 And I've also indicated a good many other
2 opinions I have about the interplay between the
3 Appellate Court rules and the rulings of both
4 the Court of Appeals and the Supreme Court.
5 We've outlined that in detail.

6 But basically, Mr. Robinson, collaborate
7 with Mr. Lay on being sure that we cover all
8 these motions and generally use the same
9 rationale that I've used in saying that I don't
10 think the appeal stays anything here.

11 - - -

12 (The hearing recessed at 2:28 p.m.)

13 - - -

14 * * * * *

15 THE COURT: Anything else to come before
16 this court?

17 MR. ROBINSON: Your Honor, one last
18 question that you've asked that has not been
19 answered, and that's of Mr. Rawl about ESAB
20 being in Florence.

21 THE COURT: That's correct.

22 MR. ROBINSON: One of my colleagues pointed
23 out that question is still pending out there.

24 THE COURT: Mr. Rawl, what have you got for
25 me?

1 MR. RAWL: I stayed through that last
2 hearing just so I can answer the question. My
3 client has no assets in South Carolina.

4 THE COURT: Do you hear that, Mr. Robinson?

5 MR. ROBINSON: I did hear it, and it's on
6 the record, Your Honor.

7 THE COURT: Very good. Thank you so much.

8 - - -

9 (The hearing concluded at 5:15 p.m.)

10 - - -

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

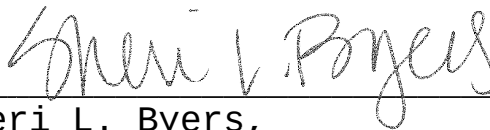
CERTIFICATE OF REPORTER

I, Sheri L. Byers, Registered Professional Reporter and Notary Public of the State of South Carolina at Large, do hereby certify:

That the foregoing proceedings were taken before me on the date and at the time mentioned on page 1 and the proceedings were recorded stenographically by me and were thereafter transcribed under my direction; that the foregoing transcript as typed is a true, accurate and complete record of the proceedings to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 29th day of April, 2024, at Lexington, Lexington County, South Carolina.



Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
November 1, 2033

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	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.	)	
Cape PLC, individually and as successor	)	<u>MOHED ALTRAD AND ALTRAD</u>
in interest to Cape Asbestos Company	)	<u>INVESTMENT AUTHORITY SAS'S</u>
Limited, by and through its duly	)	<u>OBJECTIONS TO THE RECEIVER'S</u>
appointed Receiver Peter D. Protopapas,	)	<u>PROPOSED ORDERS</u>
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
Anglo American PLC, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	

The Altrad Defendants object to the Receiver's proposed orders sanctioning them for standing on their Rule 205 objections by creating "adverse inferences" against them on every material fact and by "preadmitting" 2538 exhibits without any consideration as to their authenticity.

First, these motions, as well as all discovery and any other activity by the Receiver, are blocked by Rule 205, SCACR, and the absence of jurisdiction in this Court over all of the issues presented that involve the Receiver. *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016); *Tilman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012). The Receiver has never explained why he believes Rule 205 does not usurp jurisdiction

from this Court, and the reason is obvious: the case law is uniformly contrary to the Receiver's position.

While the Receiver's proposed order brands the appeals in this case as "plainly frivolous," they are anything but. They are fully authorized by South Carolina Code § 14-3-330(4), and they are consistent with numerous cases in South Carolina jurisprudence, including *Hazel v. Blitz USA, Inc.*, 433 S.C. 120, 857 S.E.2d 4 (2021), and *Williams v. Northwestern Security Life Insurance Co.*, 307 S.C. 462, 415 S.E.2d 809 (1992). To be sure, these appeals are not "plainly frivolous" because neither the Receiver nor any appellate court has provided any explanation at all as to why South Carolina Code § 14-3-330(4) does not expressly authorize the Altrad Defendants' appeals here. There is no way to square this statute and its plain language with any of the orders dismissing any appeals from any receiverships to date, which is no doubt why Judge Verdin held that an order in the *Payne & Keller* case was rightly appealed. The fact that the Supreme Court later vacated that ruling without explanation or discussion does not render the statute any less applicable to this situation, where the Altrad Defendants have appealed orders from this Court that have created, continued, and modified receivership appointments and refused to issue injunctions that are mandated by Rule 205 and the full body of case law that has developed enforcing that rule.

Second, the Altrad Defendants' conduct in this case has been fully informed by and fully consistent with every procedural requirement of South Carolina law—including the appealability statute (S.C. Code Ann. § 14-3-330), the Appellate Court Rules, and the unbroken body of case law enforcing Rule 205—and every norm of Due Process—including the complete lack of personal jurisdiction in a South Carolina state court over these defendants, who don't have even a single contact with the state and who have never purposefully availed themselves of anything with respect to South Carolina.

The Receiver's proposed orders assert that the Altrad Defendants have been operating in bad faith and seek to hold the Altrad Defendants in contempt simply for standing on their well-settled rights under South Carolina law and the United States Constitution. It is unimaginable to hold a litigant in contempt and grant judgment against it for enforcing its rights under the law, yet that is precisely what the Receiver has asked the Court to do. The Court should decline the Receiver's request to hold the Altrad Defendants in contempt, and it should decline the Receiver's request to effectively grant judgment in his favor through a series of "adverse inferences" when the Altrad Defendants have done nothing more than follow the law as it always has been in South Carolina and the United States.

Third, virtually none of the materials that are the subject of the motion to "preadmit" exhibits have been the subject of any attempted discovery as it relates to the Altrad Defendants. To be sure, the Altrad Defendants have been served with requests to admit the authenticity of only 90 exhibits, of which only 3 referenced the Altrad Defendants in any way, and of which 0 have anything to do with the claims presented against the Altrad Defendants. Responses to those requests weren't even due before the Court heard and orally granted the Receiver's motion to "preadmit" 2538 so-called exhibits.¹

There is a complete mismatch between what has happened in litigation and the requested sanction. There is no known precedent in South Carolina or anywhere else for a court to declare *carte blanche* that 2538 exhibits are somehow "authentic" under Evidence Rule 901—including, for instance, a YouTube video posted by a creator named "Cradle of Anal" (Receiver's proposed

¹ The Receiver cannot rely on the latitude normally afforded judges regarding admitting evidence in a bench trial, as the presumption that a judge will "disregard prejudicial or inadmissible evidence" cannot apply when the judge knowingly admits evidence that entirely lacks a Rule 901 foundation. *State v. Inman*, 395 S.C. 539, 565–66, 720 S.E.2d 31, 45 (2011).

Exhibit 2524) that itself purports to be a video created by someone else in 1994 (rendering the unauthenticated video inadmissible hearsay-within-hearsay), 33 years before the Altrad Defendants had any involvement with this whole situation according to Paragraph 116 of the Receiver's own third-party complaint—when only 3 out of 2538 (approximately 0.1%) of those proposed exhibits have even been an attempted subject of discovery having anything to do with the Altrad Defendants in the first place. This does not even pretend to comport with any sense of Due Process.

There is also no known precedent in South Carolina or anywhere else for a court to declare that exhibits are "authentic" as to some litigants but not as to others. The Receiver's attempt to erect an illusory barrier between some third-party defendants to which the exhibits are "authentic" and others to which the exhibits are not "authentic" fails as a matter of logic and law. The Court should decline to enter the Receiver's proposed order accordingly.

Fourth, the order containing the Receiver's proposed battery of "adverse inferences" is likewise incongruent to what has happened in discovery. The Altrad Defendants have stood on their rights secured by South Carolina law and the United States Constitution, and the Receiver's proposed response is to have the Court "infer" every material fact against the Altrad Defendants and shift the burden of "disproof" to the Altrad Defendants.

Make no mistake: the Receiver's third-party complaint fails as a matter of law and as a matter of fact. By the Receiver's own admission, his pleading seeks damages "for decades" of conduct that relate back to the 19th and 20th Centuries. (Third-Party Compl. ¶¶ "Introductory Statement," 39–115.) But also by the Receiver's own admission, the Altrad Defendants did not have any involvement with this entire situation until 2017, generations after the complained-about

activity. (*Id.* ¶ 116.) In addition to the obvious legal defects that plague it, the third-party complaint facially collapses on itself with respect to the Altrad Defendants as a matter of fact.

The Altrad Defendants have denied every material allegation made against them. (Altrad Defs.’ Ans. ¶¶ 116–119, 125–146 (Jan. 2, 2024).) If the Court enters the Receiver’s proposed order, the Court will have stricken, at a minimum, the Altrad Defendants’ first defense: that the factual allegations against them are denied. There is simply no other way to understand the proposed order—it relieves the Receiver of his burden of proof as to the Altrad Defendants’ very first defense, infers as a matter of fact that every material allegation against the Altrad Defendants, and shifts the burden of “disproof” to the Altrad Defendants.

Fifth, the “adverse inference” order contains statements regarding the history of these proceedings that are patently and demonstrably wrong:

- On Page 3, the proposed order says that “Cape” “refused to participate” in the *Park* lawsuit. This is false. Cape PLC was never served with a shred of paper in the *Park* case, and there is nothing in the record (in that case, in this case, or in any other case) to suggest otherwise. It did not “refuse to participate”; it was never served in the first place..
- On Page 3, the proposed order says that the *Park* plaintiffs named “Cape Intermediate Holdings Limited and Cape PLC” as defendants, but that “both referr[ed] to the same English company originally named Cape Asbestos Company Ltd.” This is false. The *Park* plaintiffs named both companies separately and treated them both separately, as evidenced by the fact that the *Park* plaintiffs identified only “Cape PLC” as the entity over which they sought a receiver to be appointed.
- On Page 3, the proposed order says that “the *Park* Plaintiffs served the named Cape entities.” This is false. The record indicates that only the First Amended Summons—not the operative summons, and no actual complaint—was mailed only to Cape Intermediate Holdings Limited, and that nothing was ever sent to Cape PLC.
- On Pages 4 through 5, the proposed order says that the third-party complaint describes the “alleged dominion over the South African commodity mining industry” and “Cape’s strategic exploitation of the U.S. asbestos market.” As it relates to the Altrad Defendants, this is false. The third-party complaint specifically notes that the Altrad Defendants had no involvement with this situation whatsoever until 2017.

- On Pages 11 through 12, the proposed order describes appeals that are squarely consistent with South Carolina law to be “frivolous.” This is false. Notably, not a single order listed on those pages actually explains why appeals of orders that grant, continue, and modify receivership appointments, and appeals of orders that refuse to issue injunctions, are not immediately appealable under a South Carolina statute that specifically authorizes appeals in exactly those situations.

Sixth, the “adverse inference” order contains proposed “inferences” that are directly contrary to the Receiver’s own pleadings:

- In Paragraph 116 of the third-party complaint, the Receiver alleges that the Altrad Defendants’ first involvement with this entire situation began in 2017, more than a century after the complained-about conduct. Yet, the very first proposed “inference” against the Altrad Defendants on Page 27 of the proposed order is that they were “at relevant times the alter ego of Cape.” This is literally impossible. The “relevant times” happened generations before any involvement of the Altrad Defendants according to the Receiver’s own allegations.
- Also in Paragraph 116 of the third-party complaint, the Receiver alleges that the Altrad Defendants purchased “Cape.” Yet, the second proposed “inference” against the Altrad Defendants on Page 27 of the proposed order is that they are “responsible for or ha[ve] benefitted unjustly from Cape’s liability-avoidance scheme.” This, too, is literally impossible. If the Altrad Defendants acquired Cape PLC in 2017, then there is no way they could be “responsible for” conduct from generations prior. And there is no way they received any “unjust benefit” because Altrad UK Limited “acquired Cape PLC through a public tender offer to purchase all shares of Cape PLC, except the IDC Scheme Share,” in 2017. (Aff. Alcock ¶ 41 (Aug. 29, 2023).) If the Altrad Defendants actually purchased Cape PLC, as the Receiver himself alleges, then there is no way they can have received an “unjust benefit” from anything the company did historically. The Receiver’s own theory of the case makes zero sense as it relates to the Altrad Defendants.
- The bulk of the remaining “inferences” involving the Altrad Defendants are unclear as to what, exactly is being inferred, as the Receiver’s proposed order generically refers to an entity as “Cape.” (Proposed Order at 27–31.) But what “Cape” is matters a great deal, as Cape PLC is the entity over which the Receiver was purportedly appointed, yet the proposed order pretends that the appointment was over “Cape Asbestos Company Ltd., n/k/a Cape Intermediate Holdings Ltd.,” which is false and is a fiction of the Receiver’s own making. Cape Intermediate Holdings Limited is not even a party to this litigation, and it is not even a subject of any claim by the *Tibbs* plaintiffs. It cannot possibly comport with Due Process to make “inferences” about a relationship between the Altrad Defendants and an entity that is not even a party to these proceedings.

Seventh, several of the “inferences”—including “Inferences” 30 through 46—are not even proposed factual findings, but instead are proposed legal conclusions regarding the Receiver’s various claims. Including these in any order would be the equivalent of granting judgment in the Receiver’s favor on all such claims, striking the Altrad Defendants’ defenses to such claims, or both. The Court should refuse to take this overreaching step, especially in light of the fact that the bulks of these “inferences” are simply untrue, *and the Receiver knows it*. There is no commingling of funds, disregard of corporate formalities, operation as a single enterprise, amalgamation of corporate interests, “control” over other corporate entities, or any of the other pejorative passages that the Receiver has tried to mix into the proposed order—both of the Altrad Defendants have already testified to this under oath in August 2023. (Aff. Altrad (Aug. 23, 2023); Aff. Alcock on behalf of AIA (Aug. 29, 2023).)

Eighth, the Receiver’s proposed request for fees is blocked as a matter of law. Rule 6(c), SCRCF, requires all affidavits in support of a motion to be served with the motion itself. The Receiver sought fees in his motion, but failed to file or serve anything at all to support a fee award. Because the record is empty on this point, there is no evidentiary basis to award fees now—and there is no legal basis to award them in the first place, as everything the Altrad Defendants have done in this litigation has been consistent with South Carolina and United States law and undertaken in good faith.

Ninth, the Altrad Defendants adopt and incorporate by reference all other arguments presented in their written and oral submissions in opposition to these motions by the Receiver, as well as all written and oral submissions presented by any of the other Third-Party Defendants in opposition to these motions and the Receiver’s proposed orders.

CONCLUSION

The Court should deny the Receiver's motions and refuse to enter the Receiver's proposed orders that amount to contempt findings, that strike the Altrad Defendants' pleadings and defenses, that are loaded with factually incorrect statements, and that find no basis in law. As drafted, the Receiver's proposed orders hold the Altrad Defendants and others in contempt for simply following long-settled law, and they propose to fully decide the claims at issue through illusory "inferences" that are both inconsistent with the Receiver's own pleadings and demonstrably false based on evidence already in the record. The proposed orders are shocking in their brazenness in their attempt to hold the Altrad Defendants in contempt and to effectively decide this case while the Court and the Receiver both lack jurisdiction to proceed, and the Court should refuse to enter either order accordingly.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll

S.C. Bar No. 74000

todd.carroll@wbd-us.com

Kevin A. Hall

S.C. Bar No. 15063

kevin.hall@wbd-us.com

1221 Main Street, Suite 1600

Columbia, SC 29201

(803) 454-6504

M. Elizabeth O'Neill

S.C. Bar No. 104013

elizabeth.oneill@wbd-us.com

One Wells Fargo Center

301 S. College Street, Suite 3500

Charlotte, NC 28202-6037

(704) 350-6310

Attorneys for Third-Party Defendants Mohed
Altrad and Altrad Investment Authority S.A.S.

May 13, 2024

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:
v.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
*****	)	
	)	
CAPE PLC, individually and as successor in	)	
interest to CAPE ASBESTOS COMPANY	)	
LIMITED, by and through its duly appointed	)	
Receiver Peter D. Protopapas,	)	
	)	AFFIDAVIT OF ALTRAD
	)	INVESTMENT AUTHORITY SAS
Third-Party Plaintiff,	)	IN SUPPORT OF MOTION TO
	)	DISMISS THIRD-PARTY
v.	)	COMPLAINT FOR LACK OF
	)	PERSONAL JURISDICTION
	)	
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	
	)	

RICHARD MICHAEL ALCOCK, being first sworn under oath states as follows:

1. I am over the age of eighteen (18) years old. I am a resident of the United Kingdom. I have personal knowledge of the matters set forth herein. I am competent to give this Affidavit.
2. I am a director of Altrad Investment Authority SAS (“AIA”). I make the following statements based upon my own personal knowledge and belief.
3. On December 23, 2010, AIA was organized under the laws of France (registered number 529222879) as a French SAS (Société par Actions Simplifiée) and has always been organized under the laws of France.
4. AIA conducts no operations and does not have, and never has had, its principal place of business in South Carolina. AIA’s head office is located at 16, Avenue de la Gardie, 34510 Florensac, France. AIA’s administrative headquarters and effective place of business is located at 150 rue Le Pérugin, 34000 Montpellier, France.

5. AIA is a holding company for a group of companies which provide industrial services (principally for the oil and gas, energy, power generation, process, environment and construction sectors) and also the manufacturing and distribution of equipment dedicated to the construction and building market.
6. AIA has never milled, mined, or sold asbestos anywhere (and has never done so in South Carolina), and has never produced, manufactured, or distributed asbestos or asbestos-containing products for use in any state, including South Carolina.
7. AIA has never been registered as a foreign company authorized to transact business or otherwise licensed in South Carolina, and AIA has never transacted any business in South Carolina.
8. AIA has never had any members, managers, officers, or directors residing in or with a principal place of business in South Carolina, and the members, managers, officers, and directors of AIA have never held any member, manager, officer, or board meeting in South Carolina.
9. AIA has never had a registered agent in South Carolina.
10. AIA has never owned or operated any manufacturing, sales, distribution, or other facilities in South Carolina, and AIA has never had an office or agency in South Carolina.
11. AIA has never owned, leased, or held an interest in or possession of any real or tangible property within South Carolina and has no offices in South Carolina.
12. AIA has never had any employees deliberately working or residing in South Carolina, nor has AIA had any employees working incident to South Carolina.
13. Prior to retaining counsel for this lawsuit, AIA has never recruited any South Carolina residents, directly or through an intermediary located in South Carolina, for employment inside or outside of South Carolina.
14. AIA has never had a mailing address, post office box, bank account, or other account with any financial institution in South Carolina, and has no other indicia of residence within South Carolina.
15. AIA has never owed or paid corporate, employment, or real property taxes in South Carolina.
16. AIA has never paid sales tax to South Carolina.
17. AIA has never had insurance policies that afford coverage of any kind for specific entities located in South Carolina, and AIA has not sought to procure insurance for any person or property, tangible and intangible, in South Carolina.
18. AIA has never invested any dollars in business operations in South Carolina.

19. Prior to retaining counsel for this lawsuit, AIA has never entered into any contracts or ventures with any persons or entities within South Carolina, and AIA has had no such contracts, by mail or otherwise, with a South Carolina resident to be performed, in whole or in part, in South Carolina.
20. AIA has never contracted to supply services, goods, or things in South Carolina, and AIA has never supplied services or delivered goods or things in South Carolina.
21. AIA has never marketed or advertised, or engaged in solicitation with respect to, its goods, services, or general business in South Carolina.
22. AIA has not received tax deductions as a result of contributions made to any organizations in South Carolina.
23. AIA has never received any business incentives or tax credit from South Carolina to conduct business in South Carolina.
24. AIA has never appeared in a lawsuit or other legal proceeding in South Carolina.
25. AIA has never consented to the exercise of jurisdiction over it in South Carolina and has never initiated litigation in South Carolina.
26. AIA has never owned, used, possessed, or held a mortgage or other lien on any real property in South Carolina.
27. AIA has never owned a motorized vehicle registered in South Carolina and has never paid any automobile excise tax to any municipality or town located in South Carolina.
28. AIA has never owned a water vessel (boat) registered in South Carolina and has never paid any boat excise tax to any municipality or town located in South Carolina.
29. AIA has never acquired ownership, possession, or control of any asset or thing of value present within South Carolina.
30. AIA has never had any subsidiaries incorporated in South Carolina or with their principal place of business in South Carolina.
31. AIA has never entered into any franchise agreements between it and any entities licensed to do business in South Carolina.
32. AIA has never opened, conducted, engaged in, or carried on a business or business venture in South Carolina.
33. AIA has never committed a tortious act in whole or in part in South Carolina.
34. AIA has never caused tortious injury or death to persons or property within South Carolina arising out of an act or omission committed outside South Carolina.

35. AIA has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in South Carolina, and are so used or consumed.
36. AIA has never had any direct or indirect ownership interest, or any form of control, over North American Asbestos Corporation (“NAAC”), or any other direct or indirect subsidiary of NAAC.
37. Prior to 2017, AIA had no direct or indirect ownership interest, or any form of economic interest, in Third-Party Plaintiff Cape PLC, Cape Intermediate Holdings Limited, any direct or indirect subsidiary of Cape PLC, any direct or indirect subsidiary of Cape Intermediate Holdings Limited, or any predecessor or successor to those entities.
38. Prior to 2017, AIA exerted no direct or indirect influence or control, and never sought to directly or indirectly influence or control, over Third-Party Plaintiff Cape PLC, Cape Intermediate Holdings Limited, any direct or indirect subsidiary of Cape PLC, any direct or indirect subsidiary of Cape Intermediate Holdings Limited, or any predecessor or successor to those entities.
39. Prior to 2017, AIA had no affiliation or connection with Third-Party Plaintiff Cape PLC, Cape Intermediate Holdings Limited, any direct or indirect subsidiary of Cape PLC, any direct or indirect subsidiary of Cape Intermediate Holdings Limited, or any predecessor or successor to those entities.
40. Prior to 2017, Cape PLC was a publicly traded company on the London Stock Exchange, and its shares were owned by the general public.
41. In 2017, Altrad UK Limited, a wholly-owned subsidiary of AIA, acquired Cape PLC through a public tender offer to purchase all shares of Cape PLC, except the IDC Scheme Share, which resulted in Cape PLC becoming a wholly-owned subsidiary of Altrad UK Limited (“Cape PLC Acquisition”).
42. At no time has Cape PLC or any of its direct or indirect subsidiaries been combined with, merged into, or transferred their liabilities to AIA or any of AIA’s other direct or indirect subsidiaries, including in connection with the Cape PLC Acquisition.
43. Before and after the Cape Acquisition, AIA and all of its direct and indirect subsidiaries, including Cape PLC, have maintained their own separate corporate structures, observed corporate formalities, have duly appointed and functioning corporate management and executive officers, have maintained separate corporate records, have maintained appropriate corporate controls and accounting for all financial distributions and payments, have been adequately capitalized to meet their ongoing operational and financial obligations, if any, and in all ways have operated in a manner consistent with their existence as separate corporate entities.
44. Before and after the Cape Acquisition, AIA and all of its direct and indirect subsidiaries, including Cape PLC, have maintained separate bank accounts from each other, have not

commingled assets or funds with each other, have maintained separate books and records from each other, and have maintained appropriate corporate controls and accounting for all financial distributions and payments.

45. Cape PLC and its direct and indirect subsidiaries are distinct business entities with separate corporate structures, separate corporate formalities, and separate financials from its direct and indirect parent companies, including Altrad UK Limited and AIA.
46. AIA has never had any direct or indirect influence or control, or sought to directly or indirectly influence or control, any corporate entity, in a manner that prevents that organization from maintaining its independent existence and corporate structure, observing all corporate formalities, having duly appointed and functioning corporate management and executive officers, maintaining separate corporate records, maintaining appropriate corporate controls and accounting for all financial distributions and payments, being adequately capitalized to meet its ongoing operational and financial obligations, and in all ways operating in a manner consistent with its corporate existence as an independent entity.
47. Since the time of its organization, AIA has maintained its own separate corporate structure, observed all corporate formalities, has duly appointed and functioning corporate management and executive officers, has maintained corporate records, is adequately capitalized to meet its ongoing operational and financial obligations, maintained appropriate corporate controls and accounting for all financial distributions and payments, and in all ways has operated in a manner consistent with its corporate existence as an entity separate and apart from any other corporate entity, including its parent entities.
48. Since the time of its organization, AIA has maintained separate bank accounts from all other entities, has not commingled assets or funds with any other entity, has maintained separate books and records from all other entities, and has maintained appropriate corporate controls and accounting for all financial distributions and payments.

[Continued on next page]

49. AIA is a distinct business entity with a separate corporate structure, separate corporate formalities, and a separate existence from Third-Party Plaintiff Cape PLC and its predecessor or subsidiary companies.

Dated this 29th day of August, 2023.

Richard M Alcock
RICHARD MICHAEL ALCOCK

SWORN TO AND SUBSCRIBED BEFORE ME,
ON THIS THE 29th DAY OF AUGUST, 2023

R B Houlker Notary Public
Notary Public for England and Wales United Kingdom
Commission Expires: On my death
Print Name: Roger Brierley Houlker



Roger Brierley Houlker
Brookhouse Farm Sandy Lane
Swettenham Congleton CW12 2LN
01477 571256

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:
v.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
*****	)	
	)	
CAPE PLC, individually and as successor in	)	
interest to CAPE ASBESTOS COMPANY	)	AFFIDAVIT OF MOHED ALTRAD
LIMITED, by and through its duly appointed	)	IN SUPPORT OF MOTION TO
Receiver Peter D. Protopapas,	)	DISMISS THIRD-PARTY
	)	COMPLAINT FOR LACK OF
Third-Party Plaintiff,	)	PERSONAL JURISDICTION
	)	
v.	)	
	)	
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	

MOHED ALTRAD, being first sworn under oath states as follows:¹

1. I am over the age of eighteen (18) years old. I have personal knowledge of the matters set forth herein. I am competent to give this Affidavit.
2. I am a citizen of France and reside in Montpellier, France.
3. I have never held or applied for United States citizenship.
4. I have never resided in the United States or South Carolina as a temporary or permanent resident.
5. I have never visited South Carolina for any purpose.
6. I am a 75-year-old French citizen with no connection to South Carolina whatsoever.

¹ References to "I" (e.g., "I have...") refer to Mr. Altrad in his personal capacity only (unless otherwise specified)

7. I have no assets of any sort in South Carolina.
8. I have never owned, leased or held interest in any real or tangible property in South Carolina.
9. I have never had any accounts at any banks or other financial institutions in South Carolina.
10. I have never had a mailing address, post office box, or other indicia of South Carolina residency.
11. I have never owned a motorized vehicle registered in South Carolina and have never paid any automobile excise tax to any municipality or town located in South Carolina.
12. I have never owned a water vessel (boat) registered in South Carolina and have never paid any boat excise tax to any municipality or town located in South Carolina.
13. I have never acquired ownership, possession, or control of any asset or thing of value present within South Carolina.
14. I have not sought to procure insurance for any person or property, tangible and intangible, in South Carolina.
15. I have never sought licensure, accreditation or any other type of certification or authorization to conduct business in or directed toward South Carolina.
16. I have never opened, conducted, engaged in, or carried on a business or business venture in South Carolina.
17. I have never invested any dollars in business operations in South Carolina.
18. Prior to retaining counsel for this lawsuit, I have never recruited any South Carolina residents, directly or through an intermediary located in South Carolina, for employment inside or outside of South Carolina.
19. I have never owed or paid corporate, employment, or real property taxes in South Carolina.
20. I have never paid sales tax to South Carolina.
21. I have never had any employees deliberately working or residing in South Carolina, nor have I had any employees working incident to South Carolina.
22. Prior to retaining counsel for this lawsuit, I have never entered into any contracts or ventures with any persons or entities within South Carolina, and I have executed no such contracts, by mail or otherwise, with a South Carolina resident to be performed, in whole or in part, in South Carolina.
23. I have never contracted to supply services, goods, or things in South Carolina, and I have never supplied services or delivered goods or things in South Carolina.

24. I have not received tax deductions as a result of contributions made to any organizations in South Carolina.
25. I have never appeared in a lawsuit or other legal proceeding in South Carolina.
26. I have never consented to the exercise of jurisdiction over it in South Carolina and have never initiated litigation in South Carolina.
27. I have never committed a tortious act in whole or in part in South Carolina.
28. I have never caused tortious injury or death to persons or property within South Carolina arising out of an act or omission committed outside South Carolina.
29. I have never had any personal involvement, in any capacity, in the milling, mining, or sale of asbestos anywhere in the world, nor have I ever had any personal involvement in the production, manufacture, or distribution of asbestos or asbestos-containing products for use in any state of the United States, including South Carolina.
30. I have never had any direct or indirect ownership interest, or any form of control, over North American Asbestos Corporation ("NAAC"), or any other direct or indirect subsidiary of NAAC.
31. Prior to 2017, I had no affiliation or connection with Third-Party Plaintiff Cape PLC, Cape Intermediate Holdings Limited, any direct or indirect subsidiary of Cape PLC, any direct or indirect subsidiary of Cape Intermediate Holdings Limited, or any predecessor or successor to those entities.
32. I am the President of Altrad Investment Authority SAS ("AIA").
33. I have an indirect ownership interest in AIA because I am the 100% shareholder of a separate entity that is a shareholder of AIA.
34. Prior to 2017, Cape PLC was a publicly traded company on the London Stock Exchange, and its shares were owned by the general public.
35. In 2017, Altrad UK Limited, a wholly-owned subsidiary of AIA, acquired Cape PLC through a public tender offer to purchase all shares of Cape PLC, except the IDC Scheme Share, which resulted in Cape PLC becoming a wholly-owned subsidiary of Altrad UK Limited.
36. I have never had any direct or indirect influence or control, or sought to directly or indirectly influence or control, any corporate entity, in a manner that prevents that organization from maintaining its independent existence and corporate structure, observing all corporate formalities, having duly appointed and functioning corporate management and executive officers, maintaining separate corporate records, maintaining appropriate corporate controls and accounting for all financial distributions and payments, being adequately capitalized to meet its ongoing operational and financial obligations, and in all ways operating in a manner consistent with its corporate existence as an independent entity.

37. I have never used the corporate form of any entity for any improper or fraudulent purpose to cause harm to anyone.
38. I have maintained my personal bank accounts separate and apart from business entities in which I have a direct or indirect ownership interest, and I have not commingled personal and corporate assets or funds.
39. I have never agreed to accept the imposition of personal liability for the acts or debts of any corporate entity named as a defendant or third-party defendant in this South Carolina lawsuit.

Dated this 29 day of August, 2023.



MOHED ALTRAD

SWORN TO AND SUBSCRIBED BEFORE ME,
ON THIS THE ____ DAY OF AUGUST, 2023

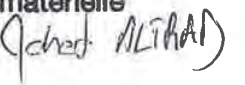
Notary Public for _____

Commission Expires: _____

Print Name: _____

[SEAL]



Vu pour certification matérielle
de la signature de 
Mo Alexis Foucart
Le 29/8/23 - 

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY, et al.,

Defendants.

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as
successor in interest to ANGLO AMERICAN
CORPORATION OF SOUTH AFRICA LTD., et
al.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

**THIRD-PARTY DEFENDANTS CHARTER CONSOLIDATED LTD., ESAB
CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION
LTD.’S OBJECTION TO PROPOSED ORDER GRANTING THE PURPORTED
RECEIVER FOR CAPE PLC’S MOTION FOR SANCTIONS AND MOTION FOR
ADVERSE INFERENCE AS TO THE ALTRAD AND CHARTER DEFENDANTS AND
PROPOSED SANCTIONS ORDER GRANTING THE RECEIVER CAPE PLC’S
MOTION TO PRE-ADMIT EXHIBITS**

Third-Party Defendants Charter Consolidated Ltd. (“Charter”), ESAB Corporation (“ESAB”), and Central Mining and Investment Corporation Ltd. (“Central Mining” and, collectively with Charter and ESAB, the “Charter Third-Party Defendants”), by and through their

undersigned counsel, respectfully submit this objection (“the Objection”) to the Proposed Order Granting the Receiver (“Receiver”) for Cape PLC’s Motion for Sanctions and Motion for Adverse Inference as to the Altrad and Charter Third-Party Defendants (“Proposed Sanctions Order”) and to the Proposed Order Granting the Receiver for Cape PLC’s Motion to Pre-Admit Exhibits (“Proposed Order to Pre-Admit,” and collectively with the Proposed Sanctions Order, “Proposed Orders”).¹

I. INTRODUCTION

The Court should reject the Proposed Orders because the specified sanctions are all-encompassing and unjustified, going well beyond the “rifle shot” allowed to address the Charter Third-Party Defendants’ conduct made in good-faith reliance on the South Carolina Appellate

¹ The Charter Third-Party Defendants incorporate by reference and adopt the arguments advanced in the objections and oppositions to the Proposed Orders filed by other third-party defendants, in THIRD-PARTY DEFENDANTS CHARTER CONSOLIDATED LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD.’S MEMORANDUM IN OPPOSITION TO CAPE PLC’S MOTION FOR ADVERSE INFERENCE AS TO THE ALTRAD AND CHARTER THIRD-PARTY DEFENDANTS, and incorporated by reference, adopted, and joined in THIRD-PARTY DEFENDANTS CHARTER CONSOLIDATED LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD.’S ADOPTION AND NOTICE OF JOINDER IN FILINGS OF OTHER THIRD-PARTY DEFENDANTS.

Further, by filing this Objection, the Charter Third-Party Defendants do not waive, but instead specifically preserve, their objections to personal jurisdiction in South Carolina, for the reasons explained in the Motions to Dismiss for Lack of Personal Jurisdiction filed on September 1, 2023 and Memorandums in Support filed on October 23, 2023, as well as the Responses and Objections to Third-Party Plaintiff’s Proposed Sanctions Order Denying Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction filed on December 4, 2023. The Charter Third-Party Defendants maintain their objections to personal jurisdiction in South Carolina, notwithstanding the Court’s denial of their Motion to Dismiss on December 6, 2023. Moreover, the Charter Third-Party Defendants do not waive, but instead specifically preserve, all other objections previously made regarding these proceedings through their written motions, oral arguments, and in responsive pleadings, including that the Court lacks subject matter jurisdiction, that the purported Receiver was unlawfully appointed, that the purported Receiver lacks standing, and that all third-party claims against the Charter Third-Party Defendants should be dismissed for failure to state a claim.

Court Rules (“SCACR”). Sanctions, whether monetary or evidentiary, must be aimed directly at the particular misconduct at issue and should have the limited effect of a “rifle-shot, not a shotgun blast.” Granting an adverse inference sanction, in particular, cannot equate to a finding of fact or law. Here, at all times, the Charter Third-Party Defendants acted in good faith based on long-standing principles of appellate procedure. Although the Receiver and the Court disagreed with the substance of the Charter Third-Party Defendants’ appeal, that does not elevate the decision to make the appeal and the subsequent application of Rule 205, SCACR (“Rule 205”) to the level of bad faith or willful misconduct.

Moreover, the proposed “adverse inferences,” which the Receiver is giving notice of for the first time in the Proposed Sanctions Order, are even more inappropriate here, as they have the effect of conclusions of law on the ultimate issues in this case. The award of any sanction (let alone the draconian relief sought by the Receiver) is wholly unwarranted, and the Court should reject the Proposed Sanctions Order and deny the Receiver’s Motion for Sanctions and Motion for Adverse Inference.

The Court should also reject the Receiver’s Proposed Order to Pre-Admit because it improperly equates the *authenticity* of an exhibit with its *admissibility*. Even if the Court were to deem all of the requested exhibits authentic, that does not mean that the exhibits would be admissible. There are numerous other South Carolina Rules of Evidence (“SCRE”) that affect the ultimate admissibility of an authentic exhibit, including rules regarding relevance (Rules 401 and 402, SCRE), hearsay (Rules 801 to 806, SCRE), and more probative than prejudicial (Rule 403, SCRE). Any one of these rules—all of which the Receiver fails to address—are reasons to deny the admissibility of an exhibit, even if it is authentic. Thus, even if an order were warranted (which it is not), it would therefore need to be limited solely to a ruling that the specific exhibits listed are

deemed *authentic* under Rule 901 without the need for any further evidentiary showing – and certainly should not be accompanied by any taking of judicial notice.

Finally, the Court should reject the Proposed Orders because the specified sanctions are based on the Receiver’s assertion that Charter Third-Party Defendants failed to comply with this Court’s Order dated March 12, 2024, which granted Receiver’s motion to compel (and as alleged by Charter Third-Party Defendants, denied their motions for protective order and refused their request for injunction). However, this Order was appealed, and the South Carolina Court of Appeals has not returned the Remittitur. Accordingly, the exclusive jurisdiction over this Order is with the Court of Appeals, and this Order may not be the basis for the sanctions sought.²

II. RELEVANT PROCEDURAL BACKGROUND

The dispute underlying the Proposed Orders arises out of the Charter Third-Party Defendants’ good-faith reliance on Rule 205 during the pendency of their December 2023 and March 2024 appeals challenging the legitimacy of the Receiver and his appointment. Relying on the long-standing appellate requirement that “[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal,”³ the Charter Third-Party Defendants abstained from engaging in substantive discovery because all issues affected by the purported Receiver’s appointment and his purported authority to engage in this litigation were pending before the South Carolina Court of Appeals. This is because an appellate ruling in the Charter Third-Party Defendants’ favor in the December 2023 and/or March 2024 appeals would

² Charter Third-Party Defendants further assert that the March 12, 2024 Order is void *ab initio* because the circuit court lacked subject matter jurisdiction because of the prior appeals pending in this matter. *See* Rule 205.

³ *See id.*

have resulted in the dissolution of the receivership, which in turn would have precluded the purported Receiver from pursuing any third-party claims against the Charter Third-Party Defendants or the other third-party defendants (collectively with the Charter Third-Party Defendants, the “Third-Party Defendants”), thereby requiring immediate dismissal of the third-party complaint and nullifying any discovery sought thereunder. All third-party claims against the Charter Third-Party Defendants have therefore been “affected” by the pendency of the appellate process, depriving the circuit court of jurisdiction in the meantime.

The Receiver’s Motions

Rather than abide by Rule 205, on April 3, 2024, the Receiver filed a cursory four-page motion to pre-admit (“Motion to Pre-Admit”) as a purported sanction for the lack of participation by the Charter Third-Party Defendants and others in the discovery process.⁴ Without referencing (let alone rebutting) the Rule 205 arguments asserted by the various Third-Party Defendants as their good-faith basis for not engaging in discovery, the Motion to Pre-Admit claimed difficulties in authenticating the Receiver’s 2,538 proposed trial exhibits without the Third-Party Defendants’ participation in discovery and suggested that “a finding that all the Receiver’s Trial Exhibits are authentic is an appropriate sanction under the circumstances” pursuant to Rule 901, SCRE.⁵ The Receiver offered no caselaw specifically permitting authentication as a sanction for abstaining from discovery, on Rule 205 grounds or otherwise. The Motion to Pre-Admit also sought preadmission of each of the Receiver’s 2,538 trial exhibits, citing the interests of efficiency, time,

⁴ See The Receiver for Cape PLC’s Motion to Pre-Admit Exhibits, dated April 3, 2024.

⁵ See Motion to Pre-Admit, at p. 5.

minimizing burden, and avoiding arguments during trial (but no cases imposing wholesale preadmission of trial exhibits as a sanction).⁶

On April 5, 2024, the Receiver filed a motion purporting to seek adverse inferences (“Adverse Inference Motion”) against the Charter Third-Party Defendants and others.⁷ Consisting of just over two pages of text, the Adverse Inference Motion requested that, because the Charter Third-Party Defendants refrained from engaging in discovery on Rule 205 grounds, the Court further sanction them by “inferring” the ultimate conclusions of law sought by the Third-Party Complaint:

Here, the Altrad and Charter Third-Party Defendants have refused to comply with discovery requests or produce witnesses despite this Court’s orders to the contrary. It should therefore be inferred by this Court that... (2) each of the Charter Third-Party Defendants was at relevant times, including with respect to the implementation of a liability-avoidance scheme in the 1980s and before, the alter ego of Cape, or otherwise liable as a matter of veil piercing, and have been unjustly enriched due to Cape’s liability-avoidance scheme, with [ESAB] acting as the corporate successor with respect to the liability of [Charter] and [Central Mining].⁸

Similar to the Motion to Pre-Admit, the Adverse Inference Motion cited no case law supporting a judicial inference of conclusions of law.

The Charter Third-Party Defendants filed their opposition (“Opposition”) to the Adverse Inference Motion on April 9, 2024. The Opposition was premised on Rule 205 (given the pendency of the two appeals), as well as the fact that it would be inappropriate for a court, engaging in a bench trial, to award an adverse inference closely mirroring the third-party claims pleaded and the prayer for relief sought before litigation on the merits occurs. The Charter Third-Party

⁶ See *id.*, at p. 5.

⁷ See The Receiver for Cape PLC’s Motion for Adverse Inference as to the Altrad and Charter Third-Party Defendants (“Adverse Inference Motion”).

⁸ See Adverse Inference Motion, at p. 3.

Defendants also filed and served an adoption and notice of joinder in the other Third-Party Defendants' relevant submissions, including oppositions to the Motion to Pre-Admit.

On April 12, 2024, the Receiver filed its Sanctions Motion. Like the Motion to Pre-Admit and the Adverse Inference Motion, the three-page Sanctions Motion did not cite any legal authority supporting the requested relief or attempt to rebut the Charter Third-Party Defendants' reliance on Rule 205. Instead, it simply amalgamated the sanctions sought by the prior two motions, with the addition of a request for attorneys' fees:

The Receiver therefore requests, as a sanction for these Third-Party Defendants' ongoing refusal to participate in discovery, that this Court:

(1) find that the authentication requirements of Rule 901, SCRE, have been met as to all the Receiver's exhibits related to these Third-Party Defendants (as previously identified in Exhibit A to the Receiver's Motion to Pre-Admit Exhibits filed on April 3, 2024) and find that these exhibits therefore are admissible at trial against these Third-Party Defendants;

* * *

(3) infer as to [Central Mining], [Charter], and [ESAB], that each was at relevant times, including with respect to the implementation of a liability-avoidance scheme in the 1980s and before, the alter ego of Cape, or otherwise liable as a matter of veil piercing, and have been unjustly enriched due to Cape's liability-avoidance scheme, with [ESAB] acting as the corporate successor with respect to the liability of [Charter] and [Central Mining]; and

(4) award him all fees and costs associated with bringing this Motion and all associated motions.⁹

The Charter Third-Party Defendants filed their opposition to the Sanctions Motion on April 24, 2024.¹⁰ Among other things, the Opposition to Sanctions Motion reminded the Court about

⁹ See Sanctions Motion, at p. 4.

¹⁰ See Third-Party Defendants Charter Consolidated Ltd., ESAB Corporation, and Central Mining and Investment Corporation Ltd.'s Memorandum in Opposition to Cape PLC's Motion for Sanctions ("Opposition to Sanctions Motion").

the Charter Third-Party Defendants’ good-faith invocation of Rule 205 (and the Court’s lack of jurisdiction pursuant to same), as well as the Receiver’s prior remarks that the first-party action in the *Tibbs* case was tolled. The Opposition to Sanctions Motion further explained that in light of the foregoing, neither the Receiver’s requests for adverse inferences nor pre-admission of trial exhibits were appropriate and, if granted, would be the functional equivalent of striking the Third-Party Defendants’ Answer and holding them in default.

The April 25, 2024 Hearing

At the April 25, 2024 hearing on the Motion to Pre-Admit, Adverse Inference Motion, and Sanctions Motion, the Receiver reiterated its sanctions requests on the purported grounds set forth in its prior written submissions. Specifically as to the Motion to Pre-Admit, the Receiver appeared to conflate authentication with admission, seemingly arguing that an *authentication* determination by the Court would automatically also result in *admission* without regard to other evidentiary objections:

And it’s a case where you’re talking about in a bench trial, the Court can go ahead and let it in, authenticate, bring it in. And then you, as the trial judge, have the discernment to decide what you’re going to rely on with your order when making a decision. That’s precisely what we’re talking here.¹¹

In response to the Receiver’s arguments, counsel for the various Third-Party Defendants reminded the Court that their collective abstention from discovery was based on good-faith reliance on Rule 205 during the pendency of their appeals challenging the Receiver’s authority to act, voiced their concerns that “inferring” legal conclusions of liability in a bench trial would be akin to granting judgment against them, and that unless and until there has been a judgment entered against Cape in the underlying *Tibbs* claim, there can be no liability against Cape upon which the

¹¹ See Apr. 25 Hrg. Tr., at 22:3-9.

Receiver can premise its claims against the Third-Party Defendants.¹² At the conclusion of the April 25, 2024 hearing, the Court indicated it would grant the Motion to Pre-Admit, take the Sanctions Motion under advisement, and permit the Receiver and the Third-Party Defendants to submit proposed orders and objections thereto.¹³

The Proposed Orders

On May 6, 2024, the Receiver submitted its Proposed Orders. Unlike the Motion for Adverse Inference and Sanctions Motion, which combined contained only five pages of text, the Proposed Sanctions Order contains 32 pages of text, including 10 pages of 74 enumerated proposed “inferences” against the Charter Third-Party Defendants – none of which had been presented to the Court in any of the underlying motion papers or during the April 25, 2024 hearing, and a number of which had never been identified or otherwise raised previously in this action.

Moreover, rather than simply propose evidentiary facts to which the factfinder should give greater weight for the Receiver (which is how adverse inferences work), the Proposed Sanctions Order sets forth dozens of specific legal findings, that, if drawn as “inferences,” would in effect resolve the ultimate issues in the Third-Party Complaint in favor of the Receiver. Allowing adverse judicial inferences on these topics – which involve complex issues such as corporate domination, control, and interrelationships; legal responsibility and liability for various alleged acts; the existence of enterprises-in-fact; accusations of acting with bad faith, abuse, fraud, wrongdoing, injustice, and criminal conduct; circumvention of statutes; engaging in a liability-

¹² See *id.*, at 29:3-30:16, 42:19-43:4; 38:4-13.

¹³ See *id.*, at 61:19-62:25.

avoidance scheme; spoliation; and receiving improperly diverted funds¹⁴ – would amount to striking the Charter Third-Party Defendants’ pleadings and holding them in default.

Nevertheless, in an apparent effort to obscure the Proposed Sanctions Order’s overreach, the Receiver insists that “inferring” things like the Charter Third-Party Defendants broke laws, committed fraud, and financially benefited from a decades-long liability is simply “an intermediate form of relief [that] stops shorts of more severe sanctions...”¹⁵ The Proposed Sanctions Order also seeks attorneys’ fees without disclosing the substance or dollar amount of the fees sought to the Charter Third-Party Defendants, instead contemplating an *in camera* review only.¹⁶

As for the Proposed Order to Pre-Admit, it cites legal authority indicating that a judge is presumed to disregard inadmissible evidence, yet in the same breath urges the Court to deem each and every one of the Receiver’s 2,538 trial exhibits admissible (thus removing any evaluation as to admissibility altogether) to avoid “lawyers arguing about exhibits during the trial day.”¹⁷ As proposed by the Receiver, this would preclude the Third-Party Defendants from disputing – i.e., “arguing” – any aspect of admissibility at trial.

Perhaps even more troubling, the Proposed Order to Pre-Admit would have the Court not just wholesale admit several thousand trial exhibits identified by the Receiver, but also commit to taking judicial notice of many of them. Footnote 4 of the Proposed Order to Pre-Admit asks the Court to hold that although “[it] has not studied all of the...trial exhibits,” it believes “[i]t could

¹⁴ See Proposed Sanctions Order, at pp. 16-26.

¹⁵ See *id.*, at p. 16.

¹⁶ See *id.*, at p. 33.

¹⁷ See Proposed Order to Pre-Admit, at pp. 5, 6.

take judicial notice” of them.¹⁸ None of the Receiver’s motions have suggested (let alone requested) this relief, and to now introduce it as an additional possible sanction in a footnote in a proposed order is wholly improper.

III. OBJECTIONS

A. The Receiver’s Proposed Sanctions Order Should Be Rejected Because Sanctions Are Not Warranted.

Sanctions are not warranted against the Charter Third-Party Defendants because their non-participation in discovery has been premised on their good-faith reliance on Rule 205. In South Carolina, sanctions are only appropriate where there has been intentional misconduct or willful disobedience of a discovery order.¹⁹ To that end, a party’s failure to produce evidence in South Carolina *absent explanation* may permit a party to request sanctions such as an adverse inference “either [as] a jury argument by counsel or a jury instruction by the trial court, or both.”²⁰ But such an adverse inference may be drawn “only where, under all the circumstances of the case, the failure to produce such witness [or evidence] creates suspicion of a willful attempt to withhold competent testimony.”²¹

Additionally, sanctions awarded in South Carolina “should be reasonable, and the Court should not go beyond the necessities of the situation to foreclose a decision on the merits of a

¹⁸ See Proposed Order to Pre-Admit, at p. 6.

¹⁹ See *Rickerson v. Karl*, 770 S.E.2d 767, 771 (S.C. Ct. App. 2015).

²⁰ See *In re Gonzalez*, 409 S.C. 621, 630, 763 S.E.2d 210, 214 (S.C. 2014).

²¹ See *Baker v. Port City Steel Erectors, Inc.*, 261 S.C. 469, 476, 200 S.E.2d 681, 683 (S.C. 1973); *Davis v. Sparks*, 235 S.C. 326, 111 S.E.2d 545 (S.C. 1959) (indicating sanctions may be appropriate against a party that never produced a legitimate reason for not complying with a discovery order).

case.”²² Any sanction awarded “should be aimed at the specific misconduct of the party sanctioned.”²³ In other words, the sanction should be a “rifle-shot, not a shotgun blast” and certainly not “a hydrogen bomb,” for example, by denying defendants “the opportunity to present a defense.”²⁴ “The courts have generally held that *Rogers* requires some element of bad faith, willfulness, or callous disregard of the rights of other litigants in order to justify imposition of such a sanction” of holding a party in default and striking their pleading.²⁵

Here, the effect of adopting the Proposed Sanctions Order despite the Charter Third-Party Defendants’ good-faith reliance on Rule 205 would unquestionably be nuclear. Declaring adverse inferences of alter-ego relationships, unjust enrichment, criminal activity, and more, as coupled with preadmitting the Receiver’s trial exhibits, will be a “hydrogen bomb” destructive to the Charter Third-Party Defendants’ substantial constitutional and statutory rights. Moreover, the Charter Third-Party Defendants’ lack of participation during the pendency of the appellate process challenging the Receiver’s authority to act has not been willful, callous, or in bad-faith; to the contrary, it has been premised on core principles of appellate law and procedure from the outset. Accordingly, the award of any sanction (let alone the draconian relief sought by the Receiver) is wholly unwarranted, and as a result, the Proposed Sanctions Order must be rejected.

B. The Receiver’s Proposed Sanctions Order Should Be Rejected Because It Improperly Seeks Conclusions of Law on the Ultimate Issues in the Third-Party Action.

²² See *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (S.C. Ct. App. 1990) (citing *Societe Int’l Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 207 (1958)).

²³ See *id.* at 154, 440.

²⁴ See *id.*

²⁵ See *id.* at 154-55, 440 (quoting 4A J. Moore, J. Lucas & D. Epstein, *Moore’s Fed. Pract.* ¶ 37.03[2], at 89 (2d ed. 1990)).

The Receiver's proposed "adverse inferences" should also be rejected because, if accepted, they would foreclose a decision on the merits. In South Carolina, an adverse inference is a rule that permits the factfinder, under certain circumstances, to infer that a party's failure or refusal to produce certain evidence suggests the evidence would have been adverse to the party:

In the absence of explanation, the failure or refusal of a party to produce evidence may create an adverse inference where such evidence is within his knowledge, and within his power to produce, is not equally accessible to his opponent, and is such as he would naturally produce if it were favorable to him.²⁶

Adverse inferences cannot equate to a finding of fact or law; rather, the rule permits the factfinder only to infer that the evidence, if presented, would have been unfavorable to the party that failed or refused to present it.²⁷ The inference has the effect only of authorizing the factfinder to give greater weight to the evidence of the adverse party, or to give less weight to the evidence of the party who had failed to call the witness or produce evidence, than it might otherwise have done.²⁸ Importantly, an adverse inference may "not go beyond the necessities of the situation to foreclose a decision on the merits."²⁹

Additionally, although a court may draw an adverse inference as factfinder in a bench trial, it "must remain circumspect in their drawing of inferences before the actual evidence is presented"

²⁶ See *Sparks*, 225 S.C. at 333, 111 S.E.2d at 549 (holding adverse inference not warranted where party failed to call certain individual as witness because he was not party's employee and party did not have control over him).

²⁷ See *Baker*, 261 S.C. at 476, 200 S.E.2d at 683 ("When the presumption is drawn, it cannot be treated as independent evidence of a fact otherwise unproved but can only be considered in determining the credibility or probative force of the evidence presented.").

²⁸ See *id.*

²⁹ *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 542-43, 489 S.E.2d 679, 682 (S.C. Ct. App. 1997).

as “the overriding purpose of the inherent [sanctions] power is to achieve the orderly and expeditious disposition of cases [such that] the use of the power should reflect our judicial system’s strong presumption in favor of adjudication on the merits.”³⁰ Importantly, an adverse inference cannot support a liability finding.³¹

Here, if the Court were to “infer” the myriad accusations of criminal activity, veil-piercing, siphoning funds, intercorporate entanglement, and other wrongdoing and legal conclusions set forth in the Proposed Sanctions Order, the Charter Third-Party Defendants would already have lost this case before any factfinding ever began. Such “inferences” go straight to the heart of the allegations of alter ego and unjust enrichment asserted in the Third-Party Complaint, and therefore would have the practical effect of striking the Charter Third-Party Defendants’ pleadings and

³⁰ *Ashraft-Hassan v. Embassy of France in the U.S.*, 130 F. Supp. 3d 337, 340 (D.D.C. 2015).

³¹ See, e.g., *S.E.C. v. Presto Tel., Inc.*, 237 F. App’x 198, 201 (9th Cir. 2007) (“[I]n the Ninth Circuit the moving party in a summary judgment proceeding must present evidence in addition to the negative inference arising as a result of the invocation [of the Fifth Amendment].”); *Stichting Ter Berhartiging Van de Belangen v. Schreiber*, 407 F.3d 34, 55 (2d Cir. 2005) (“Even assuming a jury might draw [adverse inferences], however, we are required at summary judgment to draw all reasonable inferences in favor of the non-moving party. . . . Doing so, we cannot conclude that Pluimer’s silence resolves all genuine issues of fact on the question of Saybolt’s reliance on Schreiber’s advice.”); *Brenner v. C.F.T.C.*, 338 F.3d 713, 718-19 (7th Cir. 2003) (noting that “drawing adverse inferences from the invocation of one’s Fifth Amendment privilege cannot by itself support a finding of liability” but “it is permissible to rely on an adverse inference when respondent’s silence is only one of a number of factors and is given no more weight than is warranted by the record”); *LaSalle Bank Lake View v. Seguban*, 54 F.3d 387, 390-91 (7th Cir. 1995) (holding adverse inference from Fifth Amendment silence is permissible in civil case but must be accompanied by other evidence to support liability); *State Farm Life Ins. Co. v. Gutterman*, 896 F.2d 116, 119 n.3 (5th Cir. 1990) (“This circuit has also limited the value of the negative inference by recognizing that a party seeking summary judgment can not rely solely on the other party’s exercise of her fifth amendment rights.”); see also *Trenwick Am. Reins. Corp. v. IR, Inc.*, 764 F. Supp. 2d 274, 304 (D. Mass. 2011) (noting that “plaintiffs may be entitled to *some* adverse inferences” based on defendants’ failure to comply with discovery order but that “the inferences plaintiffs seek are inappropriate” because they are far broader than the scope of the discovery requests)

defenses (akin to holding them in default, and therefore essentially resulting in a finding of contempt) if accepted by the Court. As a result, the Proposed Sanctions Order must be rejected.³²

Additionally, even if the Receiver's request for fees were appropriate (it is not), the Receiver's request that its fee application be reviewed *in camera* is improper. Because the Receiver is an arm of the Court, the fees incurred by the Receiver in the process of seeking to carry out this Court's orders must be submitted for examination at an open hearing and subject to dispute from each entity who may be forced to pay such fees.³³ And certainly, the Receiver has not presented any evidence that would permit the Court to balance the interests and need for closure of the proceeding, as required to rebut the presumption that judicial proceedings are open to the public.³⁴

C. Pre-Admission of the Receiver's Trial Exhibits Is Improper.

The South Carolina Rules of Evidence provide that authentication is *a* prerequisite to admission, not *the* prerequisite to admission.³⁵ Even if sanctions against the Charter Third-Party Defendants were warranted here (which they are not), the Receiver's suggestion that by

³² Entry of these "inferences" would affect a substantial right, thus requiring appeal to avoid the Charter Third-Party Defendants' waiver of their rights. *See, e.g., Davis v. Parkview Apts.*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) (Toal, C.J.) (characterizing un-appealed rulings as "law of the case" and declining to address merits of orders underlying sanctions when each individual order was not appealed).

³³ *See State v. Price*, 441 S.C. 423, 439, 895 S.E.2d 633, 641 (2023) ("Article I, section 9 of the South Carolina Constitution provides, 'All courts shall be public...' Section 14-5-10 provides, 'The circuit courts herein established shall be courts of record, and the books of record thereof shall, at all times, be subject to the inspection of any person interested therein.'").

³⁴ *See id.* at 443, 643 (internal citations omitted).

³⁵ *See* Rule 901, SCRE ("The requirement of authentication or identification as *a* condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.") (emphasis added).

authenticating a document, the Court can automatically “bring it in” and “rely on [it] . . . when making a decision”³⁶ has no legal support.

The Supreme Court of South Carolina's decision in *Kershaw County Board of Education v. United States Gypsum Company* – upon which the Receiver relies in its Proposed Sanctions Order – illustrates this.³⁷ The court there affirmed the trial court's decision to admit certain “historical [state of the art] documents” in an asbestos case only after finding the documents both authentic *and* relevant.³⁸ Indeed, admission is a multi-pronged analysis of which authentication is only one step, with a trial court also required to evaluate whether the proffered evidence is relevant under Rules 401 and 402, SCRE, is a fair and accurate representation of the evidence, and is more probative than prejudicial under Rule 403, SCRE.³⁹ Depriving the Charter Third-Party Defendants of this important process, especially when they have not acted willfully but rather have proceeded according to long-standing appellate rules, would be wholly improper here.

Finally, injecting an additional proposed sanction of judicial notice at the last moment, slipped into a footnote at the end of the Proposed Order to Pre-Admit, is neither warranted nor

³⁶ See Apr. 25 Hrg. Tr., at 22:3-9.

³⁷ See *Kershaw Cty. Bd. of Ed. v. U.S. Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990).

³⁸ See *id.* at 398, 373 (“Gypsum challenges the admissibility of the documents surrounding the Saranac studies because the documents were unauthenticated and irrelevant. First, we agree with the trial court's determination of the authenticity of the Saranac documents...Additionally, we hold the documents were relevant.”).

³⁹ See, e.g., *Webb v. CSX Trasp., Inc.*, 364 S.C. 639, 654, 364 S.C. 639, 648 (“A computer animation is admissible if is: 1) authentic under Rule 901, SCRE; 2) relevant under Rules 401 and 402, SCRE; 3) a fair and accurate representation of the evidence; and 4) more probative than prejudicial under Rule 403, SCRE.”); *Clark v. Cantrell*, 339 S.C. 369, 385, 529 S.E.2d 528, 537 (2000) (analyzing decision to admit video animation at trial by determining whether animation was authenticated; whether animation was relevant; and whether probative value of animation substantially outweighed danger of unfair prejudice, confusing the issues, or misleading the jury).

supported by law. Contrary to the characterizations in Footnote 4 of the Proposed Order to Pre-Admit, a “large portion” of the trial exhibits do not “relate to subjects and facts of general knowledge and the like” but in fact go to “primary issues in dispute” as set forth more fully above and therefore are not subject to judicial notice.⁴⁰ Indeed, “[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”⁴¹ This request, like the other requests set forth in the Proposed Orders, is improper, unwarranted, and should be denied.

IV. CONCLUSION

For the reasons stated above, the Charter Third-Party Defendants respectfully request the Court reject the Proposed Orders, deny the Receiver’s request for sanctions and any adverse inferences, and deny the Receiver’s request to pre-admit and/or take judicial notice of exhibits.

Dated: May 13, 2024

GORDON REES SCULLY MANSUKHANI, LLP

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

*Counsel for Third-Party Defendants
 Charter Consolidated Ltd., ESAB
 Corporation, and Central Mining and
 Investment Corporation Ltd*

⁴⁰ See *Bowers v. Bowers*, 349 S.C. 85, 94, 561 S.E.2d 610, 615 (S.C. Ct. App. 2002) (holding that court’s act of taking “judicial notice” of increased property values in area where marital residence of parties to divorce proceeding was located was “highly improper” because the valuation of residence and/or appreciation therein was one of the “primary issues in dispute”).

⁴¹ See Rule 201(b), SCRE.

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,	)	
	)	
v.	)	
	)	
3M COMPANY, <i>et al.</i> ,	)	THIRD-PARTY DEFENDANTS
	)	SPARROWS OFFSHORE, LLC,
Defendants.	)	HAWK BIDCO (US) INC., AND
	)	ARRANCO US, LLC'S OBJECTIONS
*****	)	TO THE RECEIVER FOR CAPE
CAPE PLC, individually and as successor in	)	PLC'S: (1) PROPOSED ORDER ON
interest to CAPE ASBESTOS COMPANY	)	MOTION FOR SANCTIONS AND
LIMITED, by and through its duly appointed	)	MOTION FOR ADVERSE
Receiver Peter D. Protopapas,	)	INFERENCE AS TO THE ALTRAD
	)	AND CHARTER THIRD-PARTY
Third-Party Plaintiff,	)	DEFENDANTS AND (2) PROPOSED
	)	ORDER ON MOTION TO PRE-
v.	)	ADMIT EXHIBITS
	)	
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	
	)	

Third-Party Defendants ArranCo US, LLC ("ArranCo"); Hawk Bidco (US) Inc. ("Hawk Bidco"); and Sparrows Offshore, LLC ("Sparrows Offshore") [collectively, the "Sparrows Defendants"] hereby object to both: (1) the Proposed Order Granting the Receiver for Cape PLC's Motion for Sanctions and Motion for Adverse Inference as to the Altrad and Charter Third-Party Defendants; and (2) the Proposed Order Granting the Receiver for Cape PLC's Motion to Pre-Admit Exhibits (collectively, the "Proposed Orders").

In making this filing, the Sparrows Defendants do not waive, and specifically preserve, all defenses asserted and objections previously made regarding these proceedings through its written motions, oral arguments, memoranda and briefs, responsive pleadings, served responses, and

appellate filings, including, *inter alia*: the Court lacks personal jurisdiction over each of the Sparrows Defendants; the Court lacks subject matter jurisdiction; the Receiver was improperly appointed in a separate case; the Cape PLC receivership was improperly continued and modified and an entirely new receivership was granted over the separate entity named Cape Intermediate Holdings Limited (“CIHL”) in this case; the Receiver lacks standing; the Receiver’s claims are improperly pled, should be severed, and/or fail under Rules 12(b) and 14, SCRCP; these proceedings and the claims asserted and relief sought against the Sparrows Defendants violate their fundamental procedural and substantive constitutional rights and protections; and these proceedings are, or should be, stayed or mooted by virtue of the tolling agreement entered into by and between the *Tibbs* Plaintiffs and the Receiver by which the first-party action (from which the Receiver’s third-party claims are necessarily derived) is now presumably stayed.¹

BACKGROUND

This *non-insurance* and *non-insurance carrier* case arises out of the Third-Party Complaint filed by Peter D. Protopapas (the “Receiver”), who was appointed Receiver over an entity named Cape PLC in a separate asbestos lawsuit entitled *Park v. Armstrong International, Inc., et al.*, 2021-CP-40-02727. On March 6, 2023, counsel for the Parks filed a lengthy motion seeking

¹ In addition to the grounds contained herein, this Objection is further based on all pleadings, filings, motions, objections, appellate filings and designations, briefs, federal and state jurisprudence, federal and state constitutional law, statutory authority, and any other material properly before this Court, the South Carolina Court of Appeals, and the Supreme Court of South Carolina. Without limiting the foregoing, the Sparrows Defendants further adopt and incorporate herein all other motions, objections, and arguments asserted, and authorities cited, by any of the other Third-Party Defendants in response and/or opposition to the Proposed Orders; the Receiver’s prosecution of the claims asserted in the Third-Party Complaint; the discovery served, sought, or otherwise produced by the Receiver (including through deposition notices); any motion filed, or request for relief sought, by the Receiver; and/or with respect to the timing and conduct of trial and preliminary matters thereto.

appointment of a Receiver over “Cape PLC and its subsidiaries, affiliates, successors, and assigns.” See *Park* First & Second Am. Compls. (respectively filed Nov. 17, 2021 and Dec. 23, 2021). Thereafter, in *Park*, this Court granted the Motion to Appoint a Receiver pursuant to subsections 15-65-10(4) and (5) of the South Carolina Code (2005). After incorrectly noting “Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case,” the order appointing the Receiver over “Cape PLC” and “its subsidiaries and global affiliates” set forth the following expansive rights and duties, finding:

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.

Thereafter, the Receiver for Cape PLC filed a Third-Party Complaint in this case. The Receiver’s Third-Party Complaint alleges the named Third-Party Defendants—aggregated into three “groups” of non-insurer entities, denoted as the “Altrad Third-Party Defendants” (inclusive of the Sparrows Defendants²), the “Oppenheimer Third-Party Defendants,” and the “Charter Third-Party Defendants”—“are responsible for the sale and use of asbestos or asbestos-containing

² The Third-Party Complaint in *Tibbs* also named Sparrows Offshore Group Ltd. and The Sparrows Group, LLC. These are separate and unrelated entities with no affiliation to the Sparrows Defendants and are, therefore, not included, in any respect, to the defined terms “Sparrows Defendants.” The circumstances behind the *non-relation* are readily apparent from publicly available information, have been further extensively briefed to this Court, both in filings leading up to this Court’s December 6, 2023 Order and thereafter, all of which are incorporated herein, and are specifically differentiated in further detail in the specific objections below. Sparrows Offshore Group Ltd. *has never been affiliated or related* to Cape PLC, CIHL, or any Altrad entity, and The Sparrows Group, LLC *has never been affiliated or related* to any of the Sparrows Defendants, Cape PLC or CIHL, or any Altrad entity. See *infra* fn.9.

products throughout the United States, including in South Carolina”; “created sham transactions to feign exits of the asbestos industry in the United States, leaving shells and an absence of insurance coverage to account for their massive liability exposure”; and “amused themselves with the supposed ingenuity of their scheme to avoid any responsibility.” *Tibbs* Third-Party Compl. The Receiver’s pleading alleges each grouping was in some way involved in the mining, importation, sale, or distribution of asbestos into the United States on behalf of Cape PLC. *See generally id.*

These allegations are demonstrably incorrect and historically and logistically impossible. As referenced throughout this litigation, each of the Sparrows Defendants was **formed** in **Delaware** in the **2000s**³ and then **later acquired** in **mid-2022**⁴ by an entity distantly, and only recently related, via multiple tiers of corporate hierarchy, to the Cape PLC entity over which the Receiver was appointed in *Park* and even more distantly to the separate CIHL entity over which this Court has deemed this receivership to exist in this case. The Third-Party Complaint filed by the Receiver seeks “a day of reckoning” for conduct relating to asbestos that occurred decades prior in an industry in which the Sparrows Defendants have never participated, to which they have no relation, and for which they have received no benefit.

On December 6, 2023, this Court entered an order denying, among other things, the Motion to Dissolve the Receivership. In so ruling, the Court granted a new receivership over CIHL, who

³ Hawk Bidco was created in **September of 2012**. ArranCo was created in **March of 2008**. Sparrows Offshore was created in **July 2003**. This is decades after every material allegation by the Receiver in his Third-Party Complaint as to Cape PLC, NAAC, and any wrongdoing alleged to have occurred in South Carolina—a state with which these entities do not have contact.

⁴ It is a **legal impossibility** for The Sparrows Group, LLC to have been acquired along with the Sparrows Defendants in **mid-2022**, as The Sparrows Group, LLC was not created until **March 2, 2023**.

was a separate named defendant in the *Park* case and *not* named in the *Tibbs* first-party tort action. In addition, the Court modified and continued the Cape PLC receivership it created in *Park*. As a result of that granting, modifying, and continuing of a receivership, the Sparrows Defendants perfected an appeal⁵ and filed an initial brief in that matter on February 22, 2024. Since the filing of the Notice of Appeal of the December 6 Order—which occurred on December 18, 2024—the Sparrows Defendants have been repeatedly subjected to discovery requests and orders of this Court which they maintain, pursuant to long-established published South Carolina precedent, cannot be carried out due to Rule 205, SCACR. In the face of that self-executing rule having no exception, the Receiver has sought relief in the form of “pre-admission” of over 2,500 exhibits, “adverse inferences” in a bench trial, and monetary sanctions, including attorneys’ fees.

ARGUMENT

For the reasons set forth herein, the Sparrows Defendants object to the preadmission of any exhibits and entering of any sanctions, inferences, fees, or costs, pursuant to the clear language of Rule 205, SCACR, and the positions set forth in previous briefing and herein. Insofar as this Court is inclined to maintain its position as to Rule 205 and intends to enter the Receiver’s Proposed Order on Pre-Admission, the Sparrows Defendants maintain such an Order would be directly contrary to facts submitted by the Receiver already in the record and those of which the Court may

⁵ The Receiver filed a Motion to Dismiss the appeal of the December 6 Order. While the Court of Appeals has granted that request in the interim, the Sparrows Defendants’ time to file a Petition for Rehearing has not yet passed. Accordingly, remittitur has not yet been issued, exclusive jurisdiction over the appeal remains with the Court of Appeals, and this Court is still enjoined from action pursuant to Rule 205. To be clear, the Sparrows Defendants intend to exercise their rights to seek rehearing from the Court of Appeals and, to the extent necessary, subsequent review from the South Carolina Supreme Court as to their appeals.

properly take judicial notice⁶ and would be in error and violative of Rule 37, SCRCP and its case law progeny. The Sparrows Defendants maintain the same as to the Proposed Order as to Sanctions and Adverse Inferences, which, as to the Receiver's Motion for Sanctions, the Court ruled it was not granting, and as to the Motion for Adverse Inferences, this Court previously indicated it is not inclined to enter, but merely wanted to review the proposed inferences and reserve its ruling for another day.

I. Rule 205 Requires These Proposed Orders Not Be Entered.

In addition to all reasons set forth in the Sparrows Defendants' Second Injunction Motion (filed April 9, 2024),⁷ which are incorporated fully herein, the Receiver's Proposed Orders cannot be entered because this Court lacks jurisdiction and authority and the Receiver is without authority to proceed with this matter as all issues regarding the purported Receiver's appointment, his purported authority to engage in litigation, and this Court's exercise of personal jurisdiction over the Sparrows Defendants remain pending before the South Carolina Court of Appeals notwithstanding the interim Order granting the Receiver's Motion to Dismiss. *See* Rule 205, SCACR (providing that "[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal" (emphasis added)); *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) (explaining that "Rule 205 divests the

⁶ *See, e.g., Matter of Harry C.*, 280 S.C. 308, 309, 313 S.E.2d 287, 288 (1984) ("Judicial notice takes the place of proof. It simply means that the court will admit into evidence and consider, without proof of the facts, matters of common and general knowledge."); *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984) (holding that "original judicial notice of adjudicative facts . . . should be limited to matters which are indisputable").

⁷ While the Court has stated that it intends to deny both the Sparrows Defendants' April 9, 2024 "Second" Injunction Motion and their earlier Cross-Motion for Injunction filed February 16, 2024, no written Order has yet been entered as to either; however, subsequent actions taken by the Court operate as a *de facto* denial of the injunction requests.

lower court or administrative tribunal of jurisdiction over ‘matters affected by the appeal’” (emphasis supplied by the Supreme Court) (quoting *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012))); *Morris v. Morris*, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) (“This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal.”); *Tillman*, 398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (reiterating that “[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal,” and explaining that this rule “deprives the lower court of the power to address a particular issue, or ‘matter,’ during the pendency of the appeal”); *Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App. 2002) (“Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter.”); Jean H. Toal, et al., *Appellate Practice in South Carolina* 121 (3d ed. 2016) (confirming that “[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal”); *see also Tillman*, 398 S.C. at 255, 728 S.E.2d at 51 (“Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court’s power to proceed with the action and address matters not affected by the appeal. Rather, the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a ‘matter affected by the appeal’ under Rules 205 and 241(a).”).

Given the above-described issues on appeal, should the December 6 Order be reversed as to any of those issues, the result would be the Receiver’s third-party action against the Sparrows Defendants would be dismissed and/or the Receiver would have no power or authority to take any action on behalf of Cape PLC (or CIHL), including pursuing the relief sought in the Receiver’s Third-Party Complaint, engaging in discovery, or preparing for trial, instantly mooted issues relating to the adverse inferences and admission of exhibits sought by the Receiver as a sanction.

Accordingly, as a result of the Notice of Appeal filed with the South Carolina Court of Appeals on December 18, 2023, the Court is unable to act on any matter affected by the currently pending appeal—again, which would include awarding an adverse inference, preadmitting exhibits, and other related trial matters—until such appeal is decided and remittitur returned. Rule 205, SCACR, mandates this result and provides no exception. The Sparrows Defendants respectfully submit that the Court should recognize the application of this rule and should either abstain from entering or rejecting the Receiver’s Proposed Orders until such time as is appropriate after remittitur, pursuant to Rule 205, for this Court to act.

Moreover, there is no need for the Court to proceed as requested by the Receiver because any urgency to act created by an impending trial date of the underlying case has been obviated by the purported tolling agreement (which the Third-Party Defendants have never seen) between the *Tibbs* Plaintiffs and the Receiver and the fact that the Receiver’s third-party claims are wholly derivative of the presumably-now-stayed first party action which has not even been set for trial.

II. Objections to Proposed Order on Pre-Admission of Exhibits.

a. Generally

As set forth above, this Court should refrain from ruling in any way on the Motion to Pre-Admit the offered exhibits as to any Third-Party Defendant in this matter. Insofar as this Court remains inclined to grant the Receiver’s request, “pre-admitting” exhibits and deeming them authentic is inappropriate and not supported in law. In fact, and especially as to the Sparrows Defendants, exhibits which are irrelevant, concern unaffiliated entities, and are demonstrably incorrect by other items put into the record by the Receiver (of which the Court can take judicial notice) should not be pre-admitted and to do so would constitute a fiction and an abuse of discretion. *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 736 (1989) (finding sanction was

abuse of discretion where “no evidence in the record to reasonably support” it). Likewise, a finding of authenticity pursuant to Rule 901 of the South Carolina Rules of Evidence involves “authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Rule 901, SCRE. Accordingly, evidence is either authentic—meaning what the Receiver claims it is—or it is not. *State v. Heyward*, 441 S.C. 484, 498, 895 S.E.2d 658, 666 (2023) (“What is required to authenticate a particular piece of evidence is necessarily determined by what the proponent claims the evidence is. ‘The requirement of authentication . . . as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.’” (citing Rule 901(a), SCRE)). The Court cannot authenticate irrelevant and incorrect documents, even as a sanction.

Additionally, there can be no such thing as evidence being authentic as to certain Third-Party Defendants, but not as to all of them. *See* Rule 901(a), SCRE (“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”); *see also* Rule 901, SCRE, Note (“[T]he requirement of showing authentication or identity falls in the category of relevancy dependent upon fulfillment of a condition of fact and is governed by the procedure set forth in Rule 104(b).”); Rule 37(b)(2)(A), SCRCPP (permitting, as a sanction if warranted, “[a]n order that the matters regarding which the order was made or any other designated facts shall be taken to be established *for the purposes of the action* in accordance with the claim of the party obtaining the order” (emphasis added)). Here, the documents sought to be admitted are either deemed authentic as to all, or none. The concept that evidence and facts can somehow

be authentic as to some parties as a sanction for conduct incorrectly characterized as contemptuous further indicates the very reason entering this Proposed Order would be an error of law.

b. If Admitted, the Pre-Admitted Exhibits Require Dismissal of the Sparrows Defendants

Of the over 2,500 exhibits the Receiver seeks to have pre-admitted through the Proposed Order, less than 1% of the exhibits refer or apply to “Sparrows.” Yet, of the less-than-1% exhibits that facially reference or apply to any of the Sparrows Defendants, approximately half of such exhibits pertain to the *unrelated* Sparrows Offshore Group Ltd. entity (which such non-relation is, again, detailed below). The remainder of the “Sparrows Defendants” exhibits sought to be admitted reflect a complete absence of facts and circumstances on which this Court can (i) continue to exercise personal jurisdiction over them or (ii) make any findings of alter-ego, single business enterprise, unjust enrichment, or the like.

Accordingly, the Court—which found in favor of the Receiver at the personal jurisdiction stage based on pleading deference to the Receiver, though the Sparrows Defendants assert this was error—*cannot* admit such exhibits as to the Sparrows Defendants and then continue this case as to them, even as a sanction. Specifically, the findings in this Court’s December 6 Order are fundamentally disproven by the facts contained in these particular exhibits. Indeed, at minimum, each of the Sparrows Defendants are foreign entities with **no contacts with South Carolina** (*see* Receiver Exs. 2457–2466, Cape_Receiver_00141371–436), whose initial connection with the Altrad Third-Party Defendants was in **mid-2022** (*see* Receiver Exs. 106–108, Cape_Receiver_00002299–306). As the Court is aware, 2022 is **44 years after the dissolution of NAAC**, and even **5 years** after an Altrad entity made a **public-tender-offer purchase of Cape PLC in the UK**. Accordingly, the Court’s admission of these exhibits works only to mandate dismissal of the Sparrows Defendant, as these documents fundamentally disprove the preliminary

personal jurisdiction findings of the December 6 Order and the allegations in the Third-Party Complaint as to the Sparrows Defendants.

More fundamentally, it appears the Receiver is seeking to conflate the three Sparrows Defendants (Hawk Bidco, created in **September of 2012**; ArranCo created in **March of 2008**; and Sparrows Offshore created in **July 2003**) with Sparrows Offshore Group Ltd.⁸ As set forth repeatedly in this litigation, Sparrows Offshore Group Ltd. **is wholly unrelated** to each of the Sparrows Defendants and has **never been related to** Cape PLC, CIHL, or any Altrad entity.⁹ The

⁸ Tellingly, of the 2,538 exhibits the Receiver seeks to have pre-admitted, not a single exhibit pertains to “The Sparrows Group, LLC,” an unaffiliated entity—created in **March 2023**—for which the Sparrows Defendants have repeatedly disavowed a relation, as more fully described below and the filings incorporated herein.

⁹ The Sparrows Offshore Group Limited’s “Strategic report for the year ended 31 December 2021” itself indicates:

Sparrows Offshore Group Limited *was* a holding company of the Sparrows Offshore Group (“the Group”). The Group is involved in crane operation, maintenance and associated services to the oil and gas, renewables energy and industrial markets. On 11 July 2022 *the Company’s subsidiary, Hawk Newco Limited, and trading subsidiaries of the Sparrows Group were sold to Altrad UK Limited*, a subsidiary of the Altrad Group.

The Board intends to place the [Sparrows Offshore Group Limited] into a Members Voluntary Liquidation at some point in the future. The financial statements are therefore prepared on a basis other than going concern.

See Receiver Ex. 2,438, Cape_Receiver_00139210 (emphasis added) (explaining details of transaction by which Sparrows Offshore Group Limited *was not* purchased by any Altrad entity). In a similar fashion, the Receiver’s citation to the unrelated and unaffiliated entity, Hawk Bidco Limited, should be equally disregarded. *See* Receiver Ex. 2,459, Cape_Receiver_00141373 (Annual Report and Financial Statements for Hawk Bidco Limited). As clear from publicly available records, Hawk Bidco Limited is an active United Kingdom entity that was incorporated on December 6, 2019, was formerly known as AGHOCO 1908 Limited, and is owned by Project Hawk Topco Limited, a Jersey entity. Both Hawk Bidco Limited and Project Hawk Topco Limited are unrelated to and unaffiliated with any of the Sparrows Defendants, Cape PLC, CIHL, and any

Receiver's own exhibits sought to be preadmitted make this clear. *See* Receiver Exs. 2436–2443. Using exhibits pertaining to an entity that shares nothing more than the “Sparrows” name to conjure jurisdiction and allege liability, without any legitimate connection, is so clearly factually incorrect that admission of these exhibits in this case is and will continue to be wholly unsupported in the record and thus, is an action outside of this Court's discretion. Instead, the required action upon pre-admission of these documents is to revisit the Court's earlier rulings as to the Sparrows Defendants and to dismiss them from this case.

The exhibits which the Receiver seeks to have the Court authenticate only establish that the Sparrows Defendants should be immediately dismissed from this case. Since those documents cannot meet the burden of proof as to alleged liability of the Sparrows Defendants, the Receiver seeks to remedy that fatal evidentiary flaw in the form of adverse inferences.

III. Objections to Proposed Order on Motion for Sanctions and Adverse Inferences

On April 25, 2024, this Court held a hearing on the motions which precipitated the Proposed Orders. At that hearing, the Court indicated it would not be granting sanctions, but that it merely wanted to see and review the Proposed Order as to the adverse inferences being sought by the Receiver. The Court *did not* indicate as to whether it would rule on the Receiver's requests for adverse inferences. Moreover, the Sparrows Defendants assert that because they continue to have a good faith basis for refusing to participate in discovery under Rule 205, SCACR, the Court should exercise its discretion to impose no sanction or adverse inference. *See Metts v. Mims*, 384 S.C. 491, 499, 682 S.E.2d 813, 818 (2009) (noting, in such circumstances, that it is within the discretion of the trial court to forego sanctions.). But, to the extent the Court intends to rule on

Altrad entity. The Receiver's submission of such financial statements of Hawk Bidco Limited is irrelevant and meaningless as to these Sparrows Defendants.

this particular Proposed Order, the Sparrows Defendants assert a hearing on the specifics of the adverse inferences is required before such an order is entered.

a. Entering the Adverse Inferences Is Tantamount to a Finding of Contempt, the Striking of an Answer and Holding the Sparrows Defendants in Default, and a Final Ruling on the Merits and Affects the Sparrows Defendants' Substantial Rights¹⁰

The combined effect of the two Proposed Orders—by their unequivocal terms—is to punish the Sparrows Defendants by ruling in favor of the Receiver on the *sine qua non* allegations in the Third-Party Complaint and then by providing support for those findings through “authenticated” evidence in a bench trial. This is merely contempt by another name. *Compare* Rule 37, SCRCP (outlining appropriate sanctions) *with Miller v. Miller*, 375 S.C. 443, 457, 652 S.E.2d 754, 761 (Ct. App. 2007) (describing contempt in manner similar to the relief sought in the Proposed Orders); *see also Richardson v. Halcyon Real Est. Servs., LLP*, 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023) (drawing distinction between Rule 37 sanctions and final orders that “reserve no further questions or directions for future determination,” which would be the effect

¹⁰ As the Sparrows Defendants explained in their memoranda in opposition to the Receiver’s Motions for Sanctions, Adverse Inferences, and Pre-Admission of Exhibits, sanctions awarded in South Carolina “should be reasonable, and the Court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case.” *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990) (citing *Societe Int’l Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 207 (1958)). Any sanction awarded “should be aimed at the specific misconduct of the party sanctioned.” *Balloon Planation*, 303 S.C. at 154, 399 S.E.2d at 440. “In other words, the sanction should be a rifle-shot, not a shotgun blast” and certainly not “a hydrogen bomb,” for example, by denying defendants “the opportunity to present a defense.” *Id.* “The courts have generally held that *Rogers* requires some element of bad faith, willfulness, or callous disregard of the rights of other litigants in order to justify imposition of such a sanction” of holding a party in default and striking their pleading. *Id.* at 154–55, 399 S.E.2d at 440 (quoting 4A J. Moore, J. Lucas & D. Epstein, *Moore’s Federal Practice* ¶ 37.03[2], at 89 (2d ed. 1990)). If the Court enters this particular Proposed Order (even though it has no power to do so per Rule 205, SCACR), the result would be an impermissible sanction, equivalent to striking the Sparrows Defendants’ Answer and holding them in default and/or in contempt, thereby affecting and infringing upon their substantial rights.

of the Proposed Orders here). Nor can these adverse inferences be fairly characterized as mere interlocutory discovery orders that are not immediately appealable. Indeed, the sanctions order and adverse inferences are predicated on Third-Party Defendants’ alleged “flagrant violations of the Court’s March 12 Order” granting the Receiver’s motions to compel discovery and denying the Sparrows Defendants’ request for an injunction. *See* Receiver’s Proposed Order at 10–11. Imposing adverse inferences as a penalty for alleged violation of an order compelling discovery is the equivalent of an appealable contempt sanction. *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) (Toal, C.J.) (“[T]o challenge the specific rulings of . . . discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding.”).

Further, the entering of these adverse inferences would constitute an error of law for at least two reasons. First, it would essentially determine the action—akin to a judgment on the pleadings, which is what it is in a bench trial. It, in effect and in conjunction with the pre-admitted exhibits, “determines the action” such that nothing the Sparrows Defendants could ever do—despite the Proposed Orders having language to the contrary—would properly rebut the inference. *See Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005) (describing order which effectively determines the action because it affects “the overall litigation and trial of the case” and “the right to a particular mode of trial, a well-established substantial right”).

Second, these “inferences” are essentially the elements for each cause of action in the Third-Party Complaint. Entry of these “inferences” would affect a substantial right and mode of trial and would *require* appeal to avoid the Sparrows Defendants’ waiver of their rights. *See, e.g., Davis*, 409 S.C. at 280, 762 S.E.2d at 543 (characterizing un-appealed rulings as “law of the case” and refusing to address merits of orders underlying sanctions when each individual order was not

appealed even though the orders themselves were, on their face, un-appealable). As such, the entering of this Proposed Order works to essentially strike the Sparrows Defendants' Answer—which denied the Receiver's various claims (including alter-ego, veil piercing, and unjust enrichment)—and renders any defense that could be asserted non-viable, thereby affecting a substantial right, as set forth in South Carolina case law, and “remov[ing] a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial.” *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011); *see also, e.g., Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005) (“Orders affecting a substantial right ‘discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.’”); *Henderson v. Wyatt*, 8 S.C. 112, 112 (1877) (“An order to involve the merits must finally determine some substantial matter forming the whole or a part of some cause of action or defense in the case in which the order is entitled.”); *Jefferson by Johnson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988) (“Subsection (2)(c) permits the direct appeal of orders which affect a substantial right by striking out an answer.”); *McLaughlin v. Strickland*, 279 S.C. 513, 516, 309 S.E.2d 787, 789–90 (Ct. App. 1983) (“McLaughlin contends that the case is not properly before us because the order denying Strickland's motion was interlocutory and therefore not appealable. Since the order effectively forecloses Strickland from contesting the case on the merits, it affects a substantial right and is appealable.”).

Given the foregoing, this Court should not enter this *Balloon Plantation* “hydrogen bomb” Proposed Order and should refuse to make or issue any of the adverse inferences requested by the Receiver. If this Court nevertheless enters this “hydrogen bomb,” the purported adverse inferences included therein function as a coercive civil contempt ruling (and the accompany attorneys' fees

award sought is a civil compensatory fine). *See, e.g., Jarrell v. Petoseed Co.*, 331 S.C. 207, 209–10, 500 S.E.2d 793, 794 (Ct. App. 1998) (“Civil contempt sanctions serve two functions: to coerce future compliance and to remedy past noncompliance A civil compensatory fine is analogous to a tort judgment for damages caused by wrongful conduct.” (internal citations omitted)).

b. Entering the Adverse Inferences Is Factually Unsupported and Would Be an Abuse of Discretion

Aside from the aforementioned clearly established South Carolina law which mandates this Court not take any action on matters affected by the issues in the pending appeal of this Court’s December 6 Order, both the Receiver and the Sparrows Defendants have entered into the record—as a part of their various dispositive motions, which have been incorporated herein by reference—numerous factual assertions that render the inferences sought in the Proposed Order demonstrably incorrect. As set forth below, this Court cannot enter these inferences as to the Sparrows Defendants because to do so would be in error.

The case law cited in the Proposed Order seems to assert these inferences are permitted under a court’s discretionary ability to issue sanctions. *See Kershaw Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 394, 396 S.E.2d 369, 372 (1990) (noting in the context of inference sanctions, a trial court can still abuse its discretion); *Griffith v. Griffith*, 332 S.C. 630, 641, 506 S.E.2d 526, 532 (Ct. App. 1998) (noting context of Fifth Amendment invocation made inference appropriate). However, as this Court is aware, complete errors of fact, as set forth below, constitute an abuse of discretion and would make these inferences wholly erroneous and reversible as to the Sparrows Defendants. *See Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (“An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when *grounded in factual conclusions, is without evidentiary support.*” (emphasis added)).

This Court should not enter any of the adverse inferences sought by the Receiver, including because of the numerous factual errors contained therein. For a court to take an adverse inference of something, the underlying proposition has to be true and correct. As set forth herein, that is not the case with regard to the adverse inferences sought against the Sparrows Defendants, and should the Court issue the adverse inferences sought, such action would amount to an abuse of discretion. *See, e.g., Clark*, 339 S.C. at 389, 529 S.E.2d at 539 (noting abuse of discretion standard).

Inferences Sought as to Unrelated & Unaffiliated Entities

Contrary to the adverse inferences sought, both the facts in the record and those public, authoritative records which this Court may and should take judicial notice clearly indicate that Sparrows Offshore Group Ltd. and The Sparrows Group, LLC are not related to the Sparrows Defendants and *have never been* related to Cape PLC, CIHL, or any Altrad entity. *See supra* fn.2 & fn.9; Cape_Receiver_00139210 & Cape_Receiver_00139281. In particular, this reality was referenced in footnote one to each of the Sparrows Defendant's separately filed Motions to Dismiss Third-Party Complaint for Lack of Personal Jurisdiction and for Stay of Discovery (filed Aug. 21, 2023)—the first filing each made in this third-party action. A similar reservation was made in footnote one to the Sparrows Defendants Motion to Dissolve the Cape PLC Receivership (also filed Aug. 21, 2023). Those filings have been incorporated by reference into numerous other filings since, and this lack of affiliation was also read into the record by counsel for the Sparrows Defendants at the October 25, 2023 hearing:

Mr. Pugh: Good afternoon, Your Honor. Steve Pugh on behalf of Defendants ArranCo US, LLC; Hawk Bidco US Inc.; and Sparrows Offshore, LLC. Those are, collectively, the Sparrow defendants.

I would note for the record that I and my firm do not represent Sparrows Offshore Group Limited or The

Sparrows Group, LLC, as those are *unaffiliated entities*,
so . . .

Oct. 25, 2023 Tr., at 18:7–15 (emphasis added).

Likewise, the Sparrows Defendants’ December 4, 2023 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 (the “Dec. 4 Objections”) explained, in detail, as to the lack of relationship (at ¶¶ 18–19):

18. As to the recent 2023 United Kingdom liquidation of separate and unrelated Third-Party Defendant, Sparrows Offshore Group Ltd., no competent evidence has been put forth showing that—contrary to the repeated disclaimer of the Sparrows Defendants—such entity is currently related to any of the Sparrows Defendants. Instead, the readily accessible and public government “Companies House” records of the United Kingdom confirms the Sparrows Defendants’ disclaimer of affiliation, as Sparrows Offshore Group Ltd. is owned by Hawk Caledonia LP, which is in turn owned by Dr. John Luis Garcia (i.e., not any Altrad entity or Third-Party Defendant Mohed Altrad). *See* Ex. C. UK Companies House Records for Sparrows Offshore Group Ltd. The only reasonable inference to be made from such government records is that, unlike these Sparrows Defendants, this Sparrows Offshore Group Ltd. entity *was not* purchased by an Altrad entity in mid-2022 and, therefore, has never had any relationship—distant or otherwise—with Cape PLC, any Altrad entity, or Mr. Altrad. Such reality has now been confirmed by the Receiver by submitting, on December 4, 2023, the 2022 year-end financial statements for an unnamed entity, Sparrows Offshore International Group Limited, which at the very end explains: “*Until 11 July 2022 Hawk Caledonia LP, a limited partnership incorporated in Scotland, was the ultimate parent undertaking and controlling party.*” (Emphasis added). That is, until the mid-2022 Altrad acquisition, Hawk Caledonia LP—as then and current remaining parent of Sparrows Offshore Group Ltd.—was a part of the “Sparrows Group”; however, as of and since the mid-2022 Altrad acquisition, Hawk Caledonia LP and its remaining subsidiary, Sparrows Offshore Group Ltd., have become and remained separate entities with no current relation or affiliation to these Sparrows Defendants or any Altrad entity.¹¹

¹¹ Receiver Ex. 2,442 (Cape_Receiver_00139281); *see also* Receiver Ex. 2,438 (Cape_Receiver_00139229) (confirming Hawk Caledonia LP—which was not purchased by any Altrad entity as part of the mid-2022 acquisition—as the immediate and ultimate parent of Sparrows Offshore Group Ltd.).

19. With regard to the non-response of separate and unrelated Third-Party Defendant, The Sparrows Group, LLC, the filings in this case indicate that such entity was not properly served with the Third-Party Complaint. The Receiver's Proof of Service for this entity, filed August 28, 2023, along with a styled "Proof of Delivery," asserts that this entity was served, on July 26, 2023, through its purported Registered Agent, Corporation Service Company, located at 1209 N Orange Street, Wilmington, DE 19801. *See* Ex. D. However, the Delaware Secretary of State records indicate that this particular entity utilizes the corporate registered agent services of "Harvard Business Services, Inc.," located at 16192 Coastal Hwy., Lewes, DE 19958. *See* Ex. E. Accordingly, this separate, unrelated entity's non-response is wholly inconsequential. Moreover, even if properly served, the use of the "Sparrows Group" as a marketing moniker for a group of entities does not create a connection between the Sparrows Defendants and another limited liability company entity bearing a legal entity name of "The Sparrows Group LLC." That is particularly so in this instance where the Delaware Secretary of State records reflect that "The Sparrows Group LLC" was created in March 2023. *See id.* It is both a legal and factual impossibility for any Altrad entity to have acquired The Sparrows Group LLC in mid-2022 (as alleged in the Third-Party Complaint) where that entity was not created until March 2023.¹²

Accordingly, Sparrows Offshore Group Ltd. is unrelated to the Sparrows Defendants, is not represented by the same counsel, or any counsel in this litigation, and has never been related

¹² Even though belied by the evidence before it and the public record (*see supra* fn.2 & fn.9), the December 6 Order of this Court adopted this legal impossibility as purported factual deference to the Receiver. *See* Dec. 6 Order at p.48, n.29 ("As alleged, the "Sparrows Group" acquired by the Altrad Group in **July 2022** also included Sparrows Offshore Group, Ltd. (based in Aberdeen, Scotland) and the Sparrows Group LLC (a Delaware LLC created in **March 2023**) At this stage, factual disputes should be resolved in favor of the Receiver" (emphasis added)). Conceptually, assuming proper service had been made over this separate and unrelated Delaware entity, for which the Receiver now offers no exhibits for pre-admission, it strains reason for the three moving Delaware Sparrows Defendants entities, through counsel, to appear before this Court while a fourth Delaware entity that the Receiver claims to be part of the same "Sparrows Group" (even though it was **only created nine months after the mid-2022** Altrad acquisition) and similarly situated has not. This is especially so where the Sparrows Defendants' initial responsive motions to the Receiver's Third-Party Complaint was filed even before the deadline for The Sparrows Group LLC to respond (assuming proper service, which is denied).

to or affiliated with either Cape PLC, CIHL, or any Altrad entity, as it was not part of the mid-2022 acquisition. *See supra* fn.2 & fn.9; Cape_Receiver_00139210 & Cape_Receiver_00139281.

Even the Receiver’s Proposed Order appears to recognize this fact by using the *past tense* to describe the *former* relationship. *See, e.g., id.* (explaining true nature of transaction); Receiver’s Proposed Order, at p.8–9 (“Certain Altrad Group U.S. subsidiaries, including [the Sparrows Defendants], as *were part of* Sparrows Offshore Group, Ltd. . . .” (emphasis added)). As such, any service perfected on an entity that has never been affiliated with Cape PLC, CIHL, or any Altrad entity—and, therefore, could not have any successor or alter-ego liability—is wholly irrelevant, as is any decision made by such entity to liquidate since that time. The same is true with respect to The Sparrows Group, LLC, an entity created in March 2023 that has *never had* any affiliation or relation to any of the Sparrows Defendants or to Cape PLC or CIHL or to any Altrad entity. As such, the adverse inferences sought regarding unaffiliated and unrelated entities—Sparrows Offshore Group Ltd. and The Sparrows Group, LLC—are devoid of factual support (*see* Proposed Order at p.28–29), and it would be an abuse of discretion for the Court to enter such adverse inferences.

Inferences Sought as to Corporate Separateness

The Sparrows Defendants have provided this Court and the Receiver with affidavits that indicate, under oath, that each entity has maintained separate corporate structure, observed all corporate formalities, has duly appointed and functioning corporate management and executive officers, has maintained corporate records, is financially independent and adequately capitalized to meet its ongoing operation and financial obligations, and in all ways has operated in a manner consistent with its corporate existence as a separate entity and apart from any other corporate entity, including its parent entities. *See* Exs. A to Sparrows Defendants’ 12(b)(2) Motions to

Dismiss, filed Aug. 21, 2023 (Affidavits of Adam C. Wood), copies of which are compiled and attached hereto as **Exhibit A**. Moreover, the affidavits establish there are no commingled assets as well as separate books and records. *See id.* Finally, those affidavits establish that each Sparrows Defendant is wholly separate from Cape PLC and CIHL, each have never had any direct or indirect ownership in or control over Cape PLC or CIHL, and each have never participated in the asbestos industry for the entirety of their corporate history (which, again, began in the 2000s), including before, during, and after the mid-2022 Altrad acquisition. *See id.*

As before, the adverse inferences sought in this regard (*see* Proposed Order at p.28–31) directly contradict the averments in the affidavits submitted by the Sparrows Defendants and the record before the Court and/or authoritative information about which the Court can, and should, take judicial notice. Instead, as before, the Receiver is attempting to convert information contained in foreign, non-government website articles—with no specific applicability to these Sparrows Defendants—into purported factual basis underlying the related adverse inferences sought as to the Sparrows Defendants.¹³ As the Sparrows Defendants explained in their Dec. 4 Objections (at ¶¶ 20–21), with equal applicability here as to the Receiver’s Proposed Order and the adverse inferences sought:

20. Equally inadequate is the foreign, non-governmental website referenced for the first time in the proposed order regarding purported “Sparrows Group” leadership changes: <https://vertikal.net/en/news/story/41603/sparrows-leadership-team-to-go>. Fundamentally, this website suffers from the same complete absence of any facts which could support imposition of personal jurisdiction over these non-resident Sparrows Defendants as a matter of law: no references to South Carolina, the word “asbestos,” or the names “Cape,” “Cape Asbestos,” “Cape Industrial Holdings Limited,” “NAAC,” or any other Cape entity. The vertikal.net website actually contains statements which *contradict* the proposed order’s articulated reasons for exercising personal jurisdiction

¹³ *See* Receiver’s Trial Exhibit List Nos. 110 & 112 (Cape_Receiver_00002321–22; Cape_Receiver_00002326–29).

over the Sparrows Defendants. For example, the article notes the departures of certain officers from the “standalone headquarters in Aberdeen” Scotland. None of these Sparrows Defendants were organized or have their principal place of business in Aberdeen, Scotland; as alleged in the Third-Party Complaint, each are Delaware, USA, entities with principal places of business outside of South Carolina. Furthermore, this article notes that the leadership structure of the “Sparrows Group” would move to a regional operational model and that “regional directors and managers w[ould] be responsible for the leadership of the business,” “[m]any of [whom] have been in the company for over 10 years” (i.e., predating the Altrad acquisition in mid-2022). Such declarations are very much at odds with the proposed order’s personal jurisdiction findings relative to these Sparrows Defendants.

21. For the same reasons, the additional foreign, non-governmental website regarding “Sparrows Group” rebranding to “Altrad Sparrows,” which was referenced for the first time in the proposed order, is also inadequate: <https://aberdeenbusinessnews.co.uk/sparrows-spreads-its-wings-as-altrad-sparrows/>. It too has no reference to South Carolina; also does not contain the word “asbestos” or the names “Cape,” “Cape Asbestos,” “Cape Industrial Holdings Limited,” “NAAC,” or any other Cape entity; and does not provide any information or insight regarding degree of control over marketing and operational policies. Like the above article, this Scottish article *contradicts* the proposed order’s articulated reasons for exercising personal jurisdiction over the Sparrows Defendants by noting that “[t]he rebrand is a continuation of the acquisition, but will not impact existing or future customers, as the business continues to operate autonomously.”

None of the foregoing provides the necessary foundation or support for the Receiver’s sought adverse inferences—contrary to the Sparrows Defendants’ submitted affidavits, the record before the Court, and baseline logic and common sense—that, *inter alia*, each of the Sparrows Defendants, which were **created in the 2000s** and **acquired in mid-2022**: “was at relevant times the alter ego of Cape, requiring the piercing of the corporate veil” (Proposed Order at p.27); “is responsible for or has benefitted unjustly from Cape’s liability-avoidance scheme (*id.*); is “part of a scheme to facilitate Cape’s escape from legal or financial responsibility for people harmed by Cape asbestos” (*id.* at p.29); has “refused to make adequate provisions or reserves of cash for Cape’s and their own asbestos-related liabilities” (*id.* at p.30); has “taken possession of property,

including cash and other assets, which they should have not taken from Cape” (*id.*); has “directed or facilitated the liability-avoidance scheme” (*id.* at p.31); and has “benefitted from Cape’s liability-avoidance scheme, including receiving diverted funds directly or indirectly from Cape and retaining the benefits of Cape’s asbestos business” (*id.*). Contrary to the attempted characterization of such adverse inferences as an “intermediate form of relief,” if entered in this bench trial setting, such inferences are, in fact, tantamount to striking the Sparrows Defendants’ Answer (in which they have included a general denial and have further denied each of the same or similar allegations as included as part of the Receiver’s Third-Party Complaint), holding them in default and/or in contempt, and a final ruling on the merits, all of which affects the Sparrows Defendants’ substantial rights. The Court should not enter any of the requested adverse inferences.

c. Costs and Fees Render this Sanction Essentially Contempt and Cannot Be Submitted for *In Camera* Review

As an initial matter, the Receiver is not entitled to fees and costs because the Court indicated it was going to grant only the April 3 Motion to Preadmit Exhibits. The request for fees and costs was contained in the broader April 12 Motion for Sanctions, which the Court indicated it was not granting. Neither the April 3 Motion to Preadmit Exhibits nor the April 5 Motion for Adverse Inference as to the Altrad and Charter Third-Party Defendants contained a request for costs and fees. Yet, the Proposed Order includes a request that attorneys’ fees be awarded with inspection of evidence in support to be conducted in chambers by the Court.

Aside from the preliminary, fundamental issues set forth above regarding requested relief corresponding to a motion the Court indicated it was not going to grant, such a request, if awarded, adds to the presumption that entry of this order is essentially a finding of contempt as to the Sparrows Defendants. *Tirado v. Tirado*, 339 S.C. 649, 654, 530 S.E.2d 128, 131 (Ct. App. 2000) (characterizing contempt in the same way it is characterized in the Proposed Order). Second, the

Receiver is an arm of the Court, as this Court has stated repeatedly. Accordingly, fees incurred in the process of seeking to carry out this Court's orders should not be sealed or examined in chambers, but, if to be awarded, must be submitted for examination at an open hearing and subject to dispute from each entity who may be forced to pay such fees. *See State v. Price*, 441 S.C. 423, 439, 895 S.E.2d 633, 641 (2023) ("Article I, section 9 of the South Carolina Constitution provides, 'All courts shall be public' Section 14-5-10 provides, 'The circuit courts herein established shall be courts of record, and the books of record thereof shall, at all times, be subject to the inspection of any person interested therein.'"). As the Supreme Court held recently:

"Judicial proceedings . . . are presumptively open to the public" *Cap. U-Drive-It*, 369 S.C. at 10, 630 S.E.2d at 469. To overcome this presumption, the party seeking to close any proceeding must present evidence supporting the closure, and the court considering closure must make specific "findings which explain the balancing of interests and the need for closure of the proceeding," *Columbia Newspapers*, 286 S.C. at 119, 333 S.E.2d at 338, including the three specific findings required by *Hearst-Argyle Television*, 369 S.C. at 74, 631 S.E.2d at 89.

State v. Price, 441 S.C. at 443, 895 S.E.2d at 643. As such, while the award of fees and costs is unwarranted here, if the Court is nevertheless inclined to award the Receiver attorneys' fees or costs, the Sparrows Defendants request that the Court refuse to conduct an in-chambers review thereof.

CONCLUSION

For the reasons set forth herein, the Sparrows Defendants respectfully request the Court withhold from entering either of the two Proposed Orders at this time as a result of Rule 205, SCACR. In the alternative, due to the facts in the record that make the inferences as to each entity wholly inaccurate, the Sparrows Defendants request that the Court refuse to enter the Proposed Order as to Sanctions and Adverse Inferences or, if to be entered, would request all such inferences regarding the Sparrows Defendants be struck from the Proposed Order before it is entered.

Similarly, the Sparrows Defendants would respectfully request the Court refuse to pre-admit exhibits offered by the Receiver—or, alternatively, to dismiss the Sparrows Defendants based on the content of such pre-admitted exhibits and the authoritative information from which the Court may take judicial notice—and deny the Receiver’s request for attorneys’ fees (and any *in camera* review thereof), each for the reasons set forth herein. Finally, the Sparrows Defendants pray for all such other and further relief to which they may be entitled.

RICHARDSON, PLOWDEN & ROBINSON, PA

/s/ Steven J. Pugh

Steven J. Pugh (S.C. Bar No. 14341)

Benjamin P. Carlton (S.C. Bar No. 101142)

1900 Barnwell Street

Columbia, South Carolina 29201

Tel.: (803) 771-4400

spugh@richardsonplowden.com

bcarlton@richardsonplowden.com

*Attorneys for Third-Party Defendants ArranCo US,
LLC, Hawk Bidco (US) Inc., and Sparrows Offshore,
LLC*

May 13, 2024

EXHIBIT A

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:
v.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
*****	)	
	)	
CAPE PLC, individually and as successor in	)	
interest to CAPE ASBESTOS COMPANY	)	
LIMITED, by and through its duly appointed	)	
Receiver Peter D. Protopapas,	)	
	)	AFFIDAVIT OF
	)	ADAM C. WOOD
Third-Party Plaintiff,	)	IN SUPPORT OF MOTION TO
	)	DISMISS THIRD-PARTY
v.	)	COMPLAINT FOR LACK OF
	)	PERSONAL JURISDICTION
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	

Adam C. Wood, being first sworn under oath states as follows:

1. I am over the age of eighteen (18) years old. I am a resident of Slidell, Louisiana, and I am competent to give this Affidavit.
2. I am a Director of ArranCo US, LLC ("ArranCo"). I make the following statements based upon my own personal knowledge and belief.
3. On March 19, 2008, ArranCo was organized under the laws of Delaware and has always been organized under the laws of Delaware.
4. ArranCo is and has always been an independent holding company. ArranCo conducts no operations and does not have, and never has had, its principal place of business in South Carolina.

5. ArranCo has never milled, mined, or sold asbestos anywhere (and has never done so in South Carolina), and has never produced, manufactured, or distributed asbestos or asbestos-containing products for use in any state, including South Carolina.
6. ArranCo has never been registered as a foreign limited liability company authorized to transact business or otherwise licensed in South Carolina, and ArranCo has never transacted any business in South Carolina.
7. ArranCo has never had any members, managers, officers, or directors residing in or with a principal place of business in South Carolina, and the members, managers, officers, and directors of ArranCo have never held any member, manager, officer, or board meeting in South Carolina.
8. ArranCo has never had a registered agent in South Carolina.
9. ArranCo has never owned or operated any manufacturing, sales, distribution, or other facilities in South Carolina, and ArranCo has never had an office or agency in South Carolina.
10. ArranCo has never owned, leased, or held an interest in or possession of any real or tangible property within South Carolina and has no offices in South Carolina.
11. ArranCo has never had any employees working or residing in South Carolina.
12. ArranCo has never recruited any South Carolina residents, directly or through an intermediary located in South Carolina, for employment inside or outside of South Carolina.
13. ArranCo has never had a mailing address, post office box, bank account, or other account with any financial institution in South Carolina, and has no other indicia of residence within South Carolina.
14. ArranCo has never owed or paid corporate, employment, or real property taxes in South Carolina.
15. ArranCo has never paid sales tax to South Carolina.
16. ArranCo has never had insurance policies that afford coverage of any kind for specific entities located in South Carolina, and ArranCo has not sought to procure insurance for any person or property, tangible and intangible, in South Carolina.
17. ArranCo has never invested any dollars in business operations in South Carolina.
18. ArranCo has never entered into any contracts with any persons or entities within South Carolina, and ArranCo has had no contracts, by mail or otherwise, with a South Carolina resident to be performed, in whole or in part, in South Carolina.

19. ArranCo has never contracted to supply services, goods, or things in South Carolina, and ArranCo has never supplied services or delivered goods or things in South Carolina.
20. ArranCo has never marketed or advertised, or engaged in solicitation with respect to, its goods, services, or general business in South Carolina.
21. ArranCo has not received tax deductions as a result of contributions made to any organizations in South Carolina.
22. ArranCo has never received any business incentives or tax credit from South Carolina to conduct business in South Carolina.
23. ArranCo has never appeared in a lawsuit or other legal proceeding in South Carolina.
24. ArranCo has never consented to the exercise of jurisdiction over it in South Carolina and has never initiated litigation in South Carolina.
25. ArranCo has never owned, used, possessed, or held a mortgage or other lien on any real property in South Carolina.
26. ArranCo has never owned a motorized vehicle registered in South Carolina and has never paid any automobile excise tax to any municipality or town located in South Carolina.
27. ArranCo has never owned a water vessel (boat) registered in South Carolina and has never paid any boat excise tax to any municipality or town located in South Carolina.
28. ArranCo has never acquired ownership, possession, or control of any asset or thing of value present within South Carolina.
29. ArranCo has never had any affiliates, subsidiaries, or corporately related companies in South Carolina.
30. ArranCo has never entered into any franchise agreements between it and any entities licensed to do business in South Carolina.
31. ArranCo has never opened, conducted, engaged in, or carried on a business or business venture in South Carolina.
32. ArranCo has never committed a tortious act in whole or in part in South Carolina.
33. ArranCo has never caused tortious injury or death to persons or property within South Carolina arising out of an act or omission committed outside South Carolina.

34. ArranCo has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in South Carolina, and are so used or consumed.
35. ArranCo has never had any direct or indirect ownership interest in Third-Party Plaintiff Cape PLC or any of its subsidiaries or predecessors, and neither Third-Party Plaintiff Cape PLC nor any of its subsidiaries or predecessors has ever had any direct or indirect ownership interest in ArranCo.
36. ArranCo is not now nor has it ever been a parent company to Third-Party Plaintiff Cape PLC or any of its predecessor or subsidiary companies.
37. ArranCo has not exercised and does not maintain any actual control over Third-Party Plaintiff Cape PLC or any of its predecessor or subsidiary companies.
38. ArranCo has never had a board member, officer, or director who also served, at any time, as a board member, officer, or director of Third-Party Plaintiff Cape PLC, North American Asbestos Corporation ("NAAC"), or any of the other entities identified in paragraphs 25 through 111 of the Third-Party Complaint in the above-captioned litigation, except with respect to Hawk Bidco (US) Inc. and Sparrows Offshore, LLC, which respectively are separate, independent parent holding and subsidiary operating companies to ArranCo having the same directors.
39. ArranCo has never had any direct or indirect influence or control, or sought to directly or indirectly influence or control, the decisions made by Third-Party Plaintiff Cape PLC, NAAC, or any of the other entities identified in paragraphs 25 through 111 of the Third-Party Complaint in the above-captioned litigation, except with respect to Hawk Bidco (US) Inc. and Sparrows Offshore, LLC, which respectively are separate, independent parent holding and subsidiary operating companies to ArranCo having the same directors.
40. Since the time of its organization, ArranCo has maintained its own separate corporate structure, observed all corporate formalities, has duly appointed and functioning corporate management and executive officers, has maintained corporate records, is adequately capitalized to meet its ongoing financial obligations, and in all ways has operated in a manner consistent with its corporate existence as an entity separate and apart from any other corporate entity, including its parent entities.
41. Since the time of its organization, ArranCo has not commingled assets or funds with any other entity and has maintained separate books and records from all other entities.
42. ArranCo is a distinct business entity with a separate corporate structure, separate corporate formalities, and a different line of business than Third-Party Plaintiff Cape PLC and its predecessor or subsidiary companies.

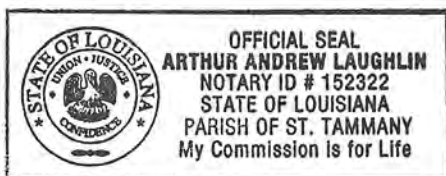
Dated this 20th day of August, 2023.

Adam C. Wood [sign]
ADAM C. WOOD

SWORN TO AND SUBSCRIBED BEFORE ME,
ON THIS THE 20 DAY OF AUGUST, 2023

Arthur Andrew Laughlin
Notary Public for the State of Louisiana
Commission Expires: Life term
Print Name: Arthur Andrew Laughlin

[SEAL]



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:
v.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
*****	)	
	)	
CAPE PLC, individually and as successor in	)	
interest to CAPE ASBESTOS COMPANY	)	
LIMITED, by and through its duly appointed	)	
Receiver Peter D. Protopapas,	)	
	)	AFFIDAVIT OF
	)	ADAM C. WOOD
Third-Party Plaintiff,	)	IN SUPPORT OF MOTION TO
	)	DISMISS THIRD-PARTY
v.	)	COMPLAINT FOR LACK OF
	)	PERSONAL JURISDICTION
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	

Adam C. Wood, being first sworn under oath states as follows:

1. I am over the age of eighteen (18) years old. I am a resident of Slidell, Louisiana, and I am competent to give this Affidavit.
2. I am a Director of Hawk Bidco (US), Inc. ("Hawk Bidco"). I make the following statements based upon my own personal knowledge and belief.
3. On September 5, 2012, Hawk Bidco was incorporated under the laws of Delaware and has always been incorporated under the laws of Delaware.
4. Hawk Bidco is and has always been an independent holding company. Hawk Bidco conducts no operations and does not have, and never has had, its principal place of business in South Carolina.

5. Hawk Bidco has never milled, mined, or sold asbestos anywhere (and has never done so in South Carolina), and has never produced, manufactured, or distributed asbestos or asbestos-containing products for use in any state, including South Carolina.
6. Hawk Bidco has never been registered as a foreign corporation authorized to transact business or otherwise licensed in South Carolina, and Hawk Bidco has never transacted any business in South Carolina.
7. Hawk Bidco has never had any officers or directors residing in or with a principal place of business in South Carolina, and the officers and directors of Hawk Bidco have never held any officer or board meeting in South Carolina.
8. Hawk Bidco has never had a registered agent in South Carolina.
9. Hawk Bidco has never owned or operated any manufacturing, sales, distribution, or other facilities in South Carolina, and Hawk Bidco has never had an office or agency in South Carolina.
10. Hawk Bidco has never owned, leased, or held an interest in or possession of any real or tangible property within South Carolina and has no offices in South Carolina.
11. Hawk Bidco has never had any employees working or residing in South Carolina.
12. Hawk Bidco has never recruited any South Carolina residents, directly or through an intermediary located in South Carolina, for employment inside or outside of South Carolina.
13. Hawk Bidco has never had a mailing address, post office box, bank account, or other account with any financial institution in South Carolina, and has no other indicia of residence within South Carolina.
14. Hawk Bidco has never owed or paid corporate, employment, or real property taxes in South Carolina.
15. Hawk Bidco has never paid sales tax to South Carolina.
16. Hawk Bidco has never had insurance policies that afford coverage of any kind for specific entities located in South Carolina, and Hawk Bidco has not sought to procure insurance for any person or property, tangible and intangible, in South Carolina.
17. Hawk Bidco has never invested any dollars in business operations in South Carolina.
18. Hawk Bidco has never entered into any contracts with any persons or entities within South Carolina, and Hawk Bidco has had no contracts, by mail or otherwise, with a South Carolina resident to be performed, in whole or in part, in South Carolina.

19. Hawk Bidco has never contracted to supply services, goods, or things in South Carolina, and Hawk Bidco has never supplied services or delivered goods or things in South Carolina.
20. Hawk Bidco has never marketed or advertised, or engaged in solicitation with respect to, its goods, services, or general business in South Carolina.
21. Hawk Bidco has not received tax deductions as a result of contributions made to any organizations in South Carolina.
22. Hawk Bidco has never received any business incentives or tax credit from South Carolina to conduct business in South Carolina.
23. Hawk Bidco has never appeared in a lawsuit or other legal proceeding in South Carolina.
24. Hawk Bidco has never consented to the exercise of jurisdiction over it in South Carolina and has never initiated litigation in South Carolina.
25. Hawk Bidco has never owned, used, possessed, or held a mortgage or other lien on any real property in South Carolina.
26. Hawk Bidco has never owned a motorized vehicle registered in South Carolina and has never paid any automobile excise tax to any municipality or town located in South Carolina.
27. Hawk Bidco has never owned a water vessel (boat) registered in South Carolina and has never paid any boat excise tax to any municipality or town located in South Carolina.
28. Hawk Bidco has never acquired ownership, possession, or control of any asset or thing of value present within South Carolina.
29. Hawk Bidco has never had any affiliates, subsidiaries, or corporately related companies in South Carolina.
30. Hawk Bidco has never entered into any franchise agreements between it and any entities licensed to do business in South Carolina.
31. Hawk Bidco has never opened, conducted, engaged in, or carried on a business or business venture in South Carolina.
32. Hawk Bidco has never committed a tortious act in whole or in part in South Carolina.
33. Hawk Bidco has never caused tortious injury or death to persons or property within South Carolina arising out of an act or omission committed outside South Carolina.

34. Hawk Bidco has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in South Carolina, and are so used or consumed.
35. Hawk Bidco has never had any direct or indirect ownership interest in Third-Party Plaintiff Cape PLC or any of its subsidiaries or predecessors, and neither Third-Party Plaintiff Cape PLC nor any of its subsidiaries or predecessors has ever had any direct or indirect ownership interest in Hawk Bidco.
36. Hawk Bidco is not now nor has it ever been a parent company to Third-Party Plaintiff Cape PLC or any of its predecessor or subsidiary companies.
37. Hawk Bidco has not exercised and does not maintain any actual control over Third-Party Plaintiff Cape PLC or any of its predecessor or subsidiary companies.
38. Hawk Bidco has never had a board member, officer, or director who also served, at any time, as a board member, officer, or director of Third-Party Plaintiff Cape PLC, North American Asbestos Corporation ("NAAC"), or any of the other entities identified in paragraphs 25 through 111 of the Third-Party Complaint in the above-captioned litigation, except with respect to ArranCo US, LLC and Sparrows Offshore, LLC, which respectively are separate, independent holding and operating subsidiary companies to Hawk Bidco having the same directors.
39. Hawk Bidco has never had any direct or indirect influence or control, or sought to directly or indirectly influence or control, the decisions made by Third-Party Plaintiff Cape PLC, NAAC, or any of the other entities identified in paragraphs 25 through 111 of the Third-Party Complaint in the above-captioned litigation, except with respect to ArranCo US, LLC and Sparrows Offshore, LLC, which respectively are separate, independent holding and operating subsidiary companies to Hawk Bidco having the same directors.
40. Since the time of its incorporation, Hawk Bidco has maintained its own separate corporate structure, observed all corporate formalities, has duly appointed and functioning corporate management and executive officers, has maintained corporate records, is adequately capitalized to meet its ongoing financial obligations, and in all ways has operated in a manner consistent with its corporate existence as an entity separate and apart from any other corporate entity, including its parent entities.
41. Since the time of its incorporation, Hawk Bidco has not commingled assets or funds with any other entity and has maintained separate books and records from all other entities.
42. Hawk Bidco is a distinct business entity with a separate corporate structure, separate corporate formalities, and a different line of business than Third-Party Plaintiff Cape PLC and its predecessor or subsidiary companies.

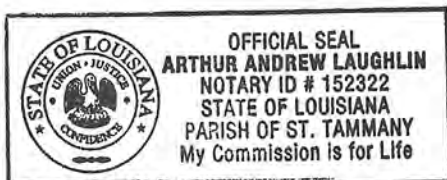
Dated this 20th day of August, 2023.

Adam C. Wood [sign]
ADAM C. WOOD

SWORN TO AND SUBSCRIBED BEFORE ME,
ON THIS THE 20th DAY OF AUGUST, 2023

Arthur Andrew Laughlin
Notary Public for the State of Louisiana
Commission Expires: Life term
Print Name: Arthur Andrew Laughlin

[SEAL]



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:
v.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
*****	)	
	)	
CAPE PLC, individually and as successor in	)	
interest to CAPE ASBESTOS COMPANY	)	
LIMITED, by and through its duly appointed	)	
Receiver Peter D. Protopapas,	)	
	)	AFFIDAVIT OF
	)	ADAM C. WOOD
Third-Party Plaintiff,	)	IN SUPPORT OF MOTION TO
	)	DISMISS THIRD-PARTY
v.	)	COMPLAINT FOR LACK OF
	)	PERSONAL JURISDICTION
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	

Adam C. Wood, being first sworn under oath states as follows:

1. I am over the age of eighteen (18) years old. I am a resident of Slidell, Louisiana, and I am competent to give this Affidavit.
2. I am a Director and the Senior Vice President of Sparrows Offshore, LLC ("Sparrows Offshore"). I make the following statements based upon my own personal knowledge and belief.
3. On July 11, 2003, Sparrows Offshore was organized under the laws of Delaware and has always been organized under the laws of Delaware.
4. Sparrows Offshore's principal place of business is and always has been located in Harris County, Texas.

5. The nature of Sparrows Offshore's business is the manufacture, sale, rental, and maintenance of cranes and ancillary goods and services.
6. Sparrows Offshore has never milled, mined, or sold asbestos anywhere (and has never done so in South Carolina), and has never produced, manufactured, or distributed asbestos or asbestos-containing products for use in any state, including South Carolina.
7. Sparrows Offshore has never been registered as a foreign limited liability company authorized to transact business or otherwise licensed in South Carolina.
8. Sparrows Offshore has never had any members, managers, officers, or directors residing in or with a principal place of business in South Carolina, and the members, managers, officers, and directors of Sparrows Offshore have never held any member, manager, officer, or board meeting in South Carolina.
9. Sparrows Offshore has never had a registered agent in South Carolina.
10. Sparrows Offshore has never owned or operated any manufacturing, sales, distribution, or other facilities in South Carolina, and Sparrows Offshore has never had an office or agency in South Carolina.
11. Sparrows Offshore has never owned, leased, or held an interest in or possession of any real or tangible property within South Carolina and has no offices in South Carolina.
12. Sparrows Offshore has never had any employees deliberately working or residing in South Carolina, nor has Sparrows Offshore had any employees working incident to South Carolina, except for the infrequent occasion where Sparrows Offshore has sent a technician into South Carolina, on a temporary basis, to conduct an inspection or perform warranty service work, which has occurred less than five (5) times since Sparrows Offshore's organization in 2003.
13. Sparrows Offshore had a single employee who transferred to South Carolina, from Louisiana, as an accommodation for family reasons and worked remotely from South Carolina from February 2018 to October 2018.
14. Sparrows Offshore has never recruited any South Carolina residents, directly or through an intermediary located in South Carolina, for employment inside or outside of South Carolina.
15. Sparrows Offshore has never had a mailing address, post office box, bank account, or other account with any financial institution in South Carolina, and has no other indicia of residence within South Carolina.
16. Sparrows Offshore has never owed or paid corporate or real property taxes in South Carolina.

17. Sparrows Offshore has never paid sales tax to South Carolina.
18. Sparrows Offshore has never had insurance policies that afford coverage of any kind for specific entities located in South Carolina, and Sparrows Offshore has not sought to procure insurance for any person or property, tangible and intangible, in South Carolina.
19. Sparrows Offshore has never invested any dollars in business operations in South Carolina.
20. Sparrows Offshore has never entered into any contracts with any persons or entities within South Carolina, and Sparrows Offshore has had no contracts, by mail or otherwise, with a South Carolina resident to be performed, in whole or in part, in South Carolina.
21. Sparrows Offshore has never contracted to supply services, goods, or things in South Carolina, and Sparrows Offshore has never supplied services or delivered goods or things in South Carolina, except as noted in Paragraph 12, above, and as related to infrequent crane maintenance performed in Texas and shipped back to South Carolina, which has occurred less than five (5) times since Sparrows Offshore's organization in 2003.
22. Sparrows Offshore has never marketed or advertised, or engaged in solicitation with respect to, its goods, services, or general business in South Carolina.
23. Sparrows Offshore has not received tax deductions as a result of contributions made to any organizations in South Carolina.
24. Sparrows Offshore has never received any business incentives or tax credit from South Carolina to conduct business in South Carolina.
25. Sparrows Offshore has never appeared in a lawsuit or other legal proceeding in South Carolina.
26. Sparrows Offshore has never consented to the exercise of jurisdiction over it in South Carolina and has never initiated litigation in South Carolina.
27. Sparrows Offshore has never owned, used, possessed, or held a mortgage or other lien on any real property in South Carolina.
28. Sparrows Offshore has never owned a motorized vehicle registered in South Carolina and has never paid any automobile excise tax to any municipality or town located in South Carolina.
29. Sparrows Offshore has never owned a water vessel (boat) registered in South Carolina and has never paid any boat excise tax to any municipality or town located in South Carolina.
30. Sparrows Offshore has never acquired ownership, possession, or control of any asset or thing of value present within South Carolina.

31. Sparrows Offshore has never had any affiliates, subsidiaries, or corporately related companies in South Carolina.
32. Sparrows Offshore has never entered into any franchise agreements between it and any entities licensed to do business in South Carolina.
33. Sparrows Offshore has never opened, conducted, engaged in, or carried on a business or business venture in South Carolina.
34. Sparrows Offshore has never committed a tortious act in whole or in part in South Carolina.
35. Sparrows Offshore has never caused tortious injury or death to persons or property within South Carolina arising out of an act or omission committed outside South Carolina.
36. Sparrows Offshore has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in South Carolina, and are so used or consumed.
37. Sparrows Offshore has never had any direct or indirect ownership interest in Third-Party Plaintiff Cape PLC or any of its subsidiaries or predecessors, and neither Third-Party Plaintiff Cape PLC nor any of its subsidiaries or predecessors has ever had any direct or indirect ownership interest in Sparrows Offshore.
38. Sparrows Offshore is not now nor has it ever been a parent company to Third-Party Plaintiff Cape PLC or any of its predecessor or subsidiary companies.
39. Sparrows Offshore has not exercised and does not maintain any actual control over Third-Party Plaintiff Cape PLC or any of its predecessor or subsidiary companies.
40. Sparrows Offshore has never had a board member, officer, or director who also served, at any time, as a board member, officer, or director of Third-Party Plaintiff Cape PLC, North American Asbestos Corporation ("NAAC"), or any of the other entities identified in paragraphs 25 through 111 of the Third-Party Complaint in the above-captioned litigation, except with respect to ArranCo US, LLC and Hawk Bidco (US) Inc., which are separate, independent holding parent companies to Sparrows Offshore having the same directors.
41. Sparrows Offshore has never had any direct or indirect influence or control, or sought to directly or indirectly influence or control, the decisions made by Third-Party Plaintiff Cape PLC, NAAC, or any of the other entities identified in paragraphs 25 through 111 of the Third-Party Complaint in the above-captioned litigation, except with respect to ArranCo US, LLC and Hawk Bidco (US) Inc., which are separate, independent holding parent companies to Sparrows Offshore having the same directors.
42. Since the time of its organization, Sparrows Offshore has maintained its own separate corporate structure, observed all corporate formalities, has duly appointed and functioning corporate management and executive officers, has maintained corporate records, is

adequately capitalized to meet its ongoing operational and financial obligations, and in all ways has operated in a manner consistent with its corporate existence as an entity separate and apart from any other corporate entity, including its parent entities.

43. Since the time of its organization, Sparrows Offshore has maintained separate bank accounts from all other entities, has not commingled assets or funds with any other entity, and has maintained separate books and records from all other entities.
44. Sparrows Offshore is a distinct business entity with a separate corporate structure, separate corporate formalities, and a different line of business than Third-Party Plaintiff Cape PLC and its predecessor or subsidiary companies.

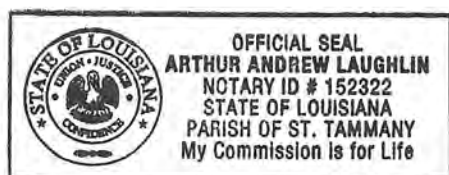
Dated this 20th day of August, 2023.

Adam C. Wood [sign]
ADAM C. WOOD

SWORN TO AND SUBSCRIBED BEFORE ME,
ON THIS THE 20 DAY OF AUGUST, 2023

Arthur Andrew Laughlin
Notary Public for the State of Louisiana
Commission Expires: Life time
Print Name: Arthur Andrew Laughlin

[SEAL]



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.*,

In Re:

Defendants.

Asbestos Personal Injury Litigation
Coordinated Docket

**ORDER GRANTING THE RECEIVER
FOR CAPE PLC'S MOTION TO PRE-
ADMIT EXHIBITS**

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as
successor in interest to ANGLO AMERICAN
CORPORATION OF SOUTH AFRICA LTD.;
DE BEERS PLC, individually and as successor
in interest to DE BEERS S.A.; DE BEERS
CENTENARY AG; DE BEERS
CONSOLIDATED MINES LTD., n/k/a DE
BEERS CONSOLIDATED MINES
PROPRIETARY LTD.; DE BEERS UK LTD.;
DE BEERS JEWELLERS LTD.; DE BEERS
JEWELLERS US, INC.; ANGLO AMERICAN
US HOLDINGS INC.; ELEMENT SIX US

CORP.; ELEMENT SIX TECHNOLOGIES US
 CORP.; ELEMENT SIX TECHNOLOGIES
 (OR) CORP.; FIRST MODE HOLDINGS, INC.;
 PLATINUM GUILD INTERNATIONAL
 (U.S.A.) JEWELRY INC.; LIGHTBOX
 JEWELRY INC.; FOREVERMARK US INC.;
 ANGLO AMERICAN CROP NUTRIENTS
 (U.S.A.), LLC; CHARTER CONSOLIDATED
 LTD.; ESAB CORPORATION; CENTRAL
 MINING & INVESTMENT CORPORATION
 LTD.; CAPE HOLDCO LTD.; THE LAW
 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 Motion to Pre-Admit Exhibits filed by Third-Party Plaintiff Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd. (“Cape”), by and through its duly appointed Receiver Peter D. Protopapas (the “Receiver”), which was filed on April 3, 2024. Having considered the Motion to Pre-Admit Exhibits (the “Motion”) and supporting materials, the Court grants the Motion for the reasons set forth below.

PROCEDURAL BACKGROUND

On June 30, 2023, the Receiver filed a Third-Party Complaint against numerous Third-Party Defendants 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. In doing so, the Receiver categorized the Third-Party Defendants into three groups:

- The Altrad Third-Party Defendants (Third-Party Compl. ¶ 119), which is comprised of two separate subgroups of responding Third Party Defendants, represented by separate law firms: the Altrad Owners Third-Party Defendants, and the Altrad Sparrows Third-Party Defendants;¹
- The Charter Third-Party Defendants (*id.* ¶ 124);² and
- The Oppenheimer Third-Party Defendants (*id.* ¶ 122).³

Within a month of filing the Third-Party Complaint, the Receiver began propounding discovery requests, including serving the First Sets of Interrogatories and Requests for Production on the Third-Party Defendants (“Discovery Requests”) beginning on July 20, 2023 and serving

¹ The Altrad Third-Party Defendants are Mohed Altrad and Altrad Investment Authority S.A.S. (“Altrad Owners Third-Party Defendants”), along with the U.S. subsidiaries of the Altrad Group that have responded to the Receiver’s third-party action, *i.e.*, ArranCo US LLC (“Arranco”), Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (“Altrad Sparrows Third-Party Defendants”).

² The Charter Third-Party Defendants are Central Mining & Investment Corporation Ltd. (“Central Mining”), Charter Consolidated Ltd., and ESAB Corporation.

³ The Motion excludes the five Third-Party Defendants that are not categorically refusing to participate in any discovery: 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 UK Ltd., and De Beers Consolidated Mines Proprietary Ltd. (“Oppenheimer Third-Party Defendants”).

notices of depositions of certain of the Third-Party Defendants pursuant to Rule 30(b)(6), SCRCF, with those depositions scheduled for October 2023. Despite these persistent efforts by the Receiver to advance this matter, throughout the intervening ten months, the Third-Party Defendants have flatly refused to participate in discovery, despite repeated orders of this Court. The stated justification for the Third-Party Defendants' blatant refusal to participate in any discovery has been the filing of a series of appeals, including plainly frivolous appeals of non-appealable discovery orders.

Indeed, most recently, on March 12, 2024, this Court ordered the Third-Party Defendants "(i) to provide responsive, substantive, and complete answers to the Receiver's Discovery Requests with 14 days of entry of this Order and (ii) to begin producing documents in response to the Receiver's Requests for Production the same day." Order at 13. As part of that March 12 Order, this Court required Arranco and Central Mining to produce 30(b)(6) witnesses for deposition within 21 days of the Order. *Id.* The Altrad Third-Party Defendants and the Charter Third-Party Defendants have persisted in their complete refusal to comply with this Order.

In light of the continuing refusal of the Altrad Third-Party Defendants and the Charter Third-Party Defendants to participate in the discovery process, and ahead of an April 15, 2024 bench trial setting, on April 3, 2024, the Receiver filed the Motion, which sought a ruling that all exhibits included on the Receiver's trial exhibit list (submitted as Exhibit A to the Motion) were admitted and deemed authentic.

FINDINGS

It is well established in South Carolina that judges sitting without a jury have wide latitude "to admit all evidence" and then "evaluate the evidence and ascertain the truth." *Brown v. Allstate Ins. Co.*, 344 S.C. 21, 27, 542 S.E.2d 723, 726 (2001). As the Supreme Court stated in *Brown*,

when it reversed the majority opinion of the Court of Appeals:

The majority essentially adopts a new rule for trial judges sitting without a jury. According to the majority, if incompetent evidence is admitted on the ultimate issue of the trial, the trial judge must affirmatively reject this evidence, even if it is clear he is making a judgment based on competent evidence in the record. We reject this rule because it would require trial judges to rule on all admitted evidence in a bench trial. A trial judge's role in a bench trial is to admit all evidence and then evaluate it in a non-jury setting. The majority's rule is, therefore, unnecessarily burdensome and would inhibit the trial judge's ability to evaluate the evidence and ascertain the truth.

Id. “[I]n the context of a bench trial[,] a judge is presumed to disregard prejudicial or inadmissible evidence.” *State v. Inman*, 395 S.C. 539, 565–66, 720 S.E.2d 31, 45 (2011). This is because “[a] judge, unlike a juror, is uniquely suited by training, experience[,] and judicial discipline to disregard potentially prejudicial comments and to separate, during the mental process of adjudication, the admissible from the inadmissible, even though he has heard both.” *Id.* (quoting *Cole v. Commonwealth*, 428 S.E.2d 303, 305 (Va. Ct. App. 1993)).

Judicial economy is best served by allowing judges the ability to use their training, skill, and experience to make these evidentiary determinations while considering the legal issues in a case. Unlike in a jury trial—where it might be imperative to keep jurors from hearing inadmissible evidence due to the possibility of prejudice—this Court, as fact finder and judge in a bench trial, is the one who makes the ultimate determination on the admissibility of evidence and the legal issues in the case. These determinations can and should occur at the same time. Because this Court determines whether the evidence is admissible and then evaluates it as the fact finder, there is no need to keep inadmissible evidence from the fact finder to prevent prejudice. *See Lucas v. Vanover*, No. 2006-UP-233, 2006 WL 7286027, at *4 (S.C. Ct. App. Apr. 27, 2006) (“[T]he role of the circuit court in this matter was to admit all evidence, admissible or inadmissible, and then

evaluate it as the fact finder. The *Brown v. Allstate* rule does not require the circuit court to make an affirmative statement that it did not rely on the incompetent evidence in rendering its decision . . . only [to] reference the competent evidence . . . in its order.”). This Court has the inherent power to manage its docket in the most efficient manner to avoid unnecessary costs or use of the Court’s time. *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936). Pre-Admitting evidence will save this Court and the parties the time and burden of lawyers arguing about exhibits during the trial day.

This Court’s determination that the Receiver’s exhibits are authentic is also appropriate as a sanction for the persistent and baseless refusal of the Altrad Third-Party Defendants and the Charter Third-Party Defendants to participate in the discovery process.⁴ There is no active stay of discovery in this case, nor has one been obtained either from this Court or the Court of Appeals.

⁴ While the Court has not studied all of the pre-admitted and now authenticated trial exhibits submitted by the Receiver, the Court has observed that a large portion of them, including many cited by the Receiver as support for allegations in the Third-Party Complaint, appear to be ones over which the Court could take judicial notice, since they relate to subjects and facts of general knowledge and the like. See *Matter of Harry C.*, 280 S.C. 308, 310, 313 S.E.2d 287, 288 (1984) (“The Courts will take judicial notice of subjects and facts of general knowledge, and also of facts in the field of any particular science which are capable of demonstration by resort to readily accessible sources of indisputable accuracy, and judges may inform themselves as to such facts by reference to standard works on the subject.”); see also, e.g., Edward J. Imwinkelried, *Evidentiary Foundations* 556 (12th ed. 2023) (noting that Federal Rule of Evidence 201(b), like the South Carolina corollary, “uses the expression, ‘cannot reasonably be questioned,’ rather than referring to ‘certainty.’ The courts are increasingly applying (b)(2) to information posted on government websites and even private sources such as Google Maps.”); 2 McCormick On Evid. § 330 (8th ed. 2022) (“Information obtained from online sources is becoming a frequently used basis for judicial notice. To this point, government and corporate websites and well-recognized mapping services are among the most commonly relied upon sources.”); *Owens-Ill. Glass Co. v. Am. Coastal Lines, Inc.*, 222 F. Supp. 923, 927 (S.D.N.Y. 1963) (taking judicial notice of Moody’s manual from 1958); *Pettaway v. Miami Air Int’l, Inc.*, 624 F. Supp. 3d 1268, 1279 & n.13 (M.D. Fla. 2022) (taking judicial notice of “historical facts raised by the parties,” including regarding international relations involving Guantanamo Bay); *Record Museum v. Lawrence T’ship*, 481 F. Supp. 768, 771 (D.N.J. 1979) (taking judicial notice of “the phenomenon known as the Counterculture of the Seventies”); *Connealy v. Walsh*, 412 F. Supp. 146, 151 (W.D. Mo. 1976) (stating that “the history of the Missouri . . . is judicially noticeable”).

When a party fails to meaningfully participate in discovery or to appear for a deposition, South Carolina Rule of Civil Procedure 37(d) permits the Court to “make such orders in regard to the failure as are just.” “Whatever sanction is imposed should serve to protect the rights of discovery provided by the rules.” *Kershaw County Bd. Of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 395, 396 S.E.2d 369, 372 (1990). “The court is allowed to make such orders as it deems just under the circumstances and the selection of a sanction is discretionary with the court.” *Pioneer Elecs. (USA), Inc. v. Cook*, 294 S.C. 135, 137, 363 S.E.2d 112, 113 (Ct. App. 1987).

Because the Altrad Third-Party Defendants and the Charter Third-Party Defendants have not meaningfully responded to written discovery and have failed to produce witnesses for deposition, the Receiver has been unable to authenticate documents that otherwise would have been authenticated under Rule 901 during the normal course of discovery. Given this discovery misconduct, a determination that all the Receiver’s trial exhibits are authentic is appropriate under the circumstances.

* * * * *

For the reasons set forth herein, the Court **GRANTS** the Motion to Pre-Admit Exhibits in its entirety and further finds that each of the exhibits on Exhibit A thereto is authentic.

AND IT IS SO ORDERED.

[JUDGE’S SIGNATURE PAGE FOLLOWS]



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 2024-05-23 14:45:37 page 8 of 8

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B.
TIBBS,
Plaintiffs,
v.
3M COMPANY *et al.*,

Defendants.

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and
as successor in interest to ANGLO
AMERICAN CORPORATION OF SOUTH
AFRICA LTD.; DE BEERS PLC,
individually and as successor in interest to
DE BEERS S.A.; DE BEERS CENTENARY
AG; DE BEERS CONSOLIDATED MINES
LTD., n/k/a DE BEERS CONSOLIDATED
MINES PROPRIETARY LTD.; DE BEERS
UK LTD.; DE BEERS JEWELLERS LTD.;
DE BEERS JEWELLERS US, INC.;
ANGLO AMERICAN US HOLDINGS INC.;
Element Six US Corp.; ELEMENT SIX
TECHNOLOGIES US CORP.; Element Six
Technologies (OR) Corp.; First Mode
Holdings, Inc.; PLATINUM GUILD
INTERNATIONAL (U.S.A.) Jewelry Inc.;
Lightbox Jewelry Inc.; FOREVERMARK
US INC.; ANGLO AMERICAN CROP
NUTRIENTS (U.S.A.), LLC; CHARTER
CONSOLIDATED LTD.; ESAB
CORPORATION; CENTRAL MINING &
INVESTMENT CORPORATION LTD.;
CAPE HOLDCO LTD.; The Law 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.

ORDER SCHEDULING TRIAL DATE

This third-party action was previously scheduled for trial on April 15, 2024. On April 10, 2024 during a pre-trial status conference, the Court granted a continuance due to the lack of participation in the discovery process by the Third-Party Defendants.

The matter is now scheduled for a bench trial on the week of December 9, 2024 at the Richland County Judicial Center, Courtroom 3B, beginning at 9:30 AM. Additionally, a pre-trial conference is scheduled for December 5th at the Richland County Judicial Center, Courtroom 3B, beginning at 9:30 AM.

AND IT SO ORDERED.

[ELECTRONIC SIGNATURE ON FOLLOWING PAGE]



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 2024-06-19 15:07:08 page 3 of 3

RECEIVED

Sep 05 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting Circuit Court Judge

Civil Action No. 2023-CP-40-01759

Appellate Case No.
2024-001446

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.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC;

Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC,

Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff / Respondent

v.

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

Third-Party Defendants,

of which

Mohed Altrad, Altrad Investment Authority S.A.S, Arranco US LLC, Hawk Bidco (US) Inc., Sparrows Offshore, LLC, Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation are the

Appellants.

PROOF OF SERVICE

I certify that a true copy of the Motion to Dismiss and Expedite of Peter D. Protopapas, Receiver in this case has been served on the following, this 5th day of September, 2024, by

emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to subsection (g)(3) of the South Carolina Supreme Court's March 20, 2020 Order, as amended May 29, 2020. Pursuant to subsection (g)(3) of the South Carolina Supreme Court's Order, service on the attorneys admitted pro hac vice is accomplished by service on the associated South Carolina lawyer.

Counsel Served: **E-Mail**

A. Victor Rawl, Jr. vrawl@grsm.com
William James Blount wblount@grsm.com
John Nichols john@bluesteinattorneys.com

Attorneys for Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

M. Todd Carroll todd.carroll@wbd-us.com
Kevin A. Hall kevin.hall@wbd-us.com
M. Elizabeth O'Neill elizabeth.oneill@wbd-us.com
Attorneys for Appellants Mohed Altrad and Altrad Investment Authority SAS

Steven J. Pugh spugh@richardsonplowden.com
Benjamin P. Carlton bcarlton@richardsonplowden.com
Carmen V. Ganjehsani cganjehsani@richardsonplowden.com
Ashwin R. Sanzgiri asanzgiri@richardsonplowden.com
Attorneys for Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

SMITH ROBINSON, LLC

s/ Jonathan M. Robinson
G. Murrell Smith, Jr. (S.C. Bar 66263)
Jonathan M. Robinson (S.C. Bar # 68285)
Shanon N. Peake (S.C. Bar #102723)
3200 Devine Street
Columbia, South Carolina 29205
(803) 254-5445

Attorneys for Receiver Peter D. Protopapas

September 5, 2024.

From: [Dot Faulkenberry](#)
To: [vrawl@grsm.com](#); [Will Blount](#); [John Nichols](#); ["todd.carroll@wbd-us.com"](#); [kevin.hall@wbd-us.com](#); [O'Neill, Elizabeth](#); [spugh@richardsonplowden.com](#); [bcarlton@richardsonplowden.com](#); [cganjehsani@richardsonplowden.com](#); [asanzgiri@richardsonplowden.com](#)
Cc: [Shanon Peake](#); [Jon Robinson](#); [Lindsay Joyner](#); ["jlay@gwblawfirm.com"](#)
Subject: Tibbs v Cape PLC, et al. Appellate Case No. 2024-001446
Date: Thursday, September 5, 2024 11:17:00 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[2024.09.05 MTD and Expedite Briefing on Mode of Trial Appeals, 2.pdf](#)
[Appendix 2, 1.pdf](#)

Please find attached for service a copy of the Receiver's Motion to Dismiss and Expedite that we are filing with the court today.

Thank you,

Dot



Columbia

3200 Devine Street
Columbia, SC 29205

Camden: 803.432.1992

Sumter: 803.778.2471

Dot Faulkenberry

Paralegal

Office: [803.254.5445](#)

Direct: [803.704.1101](#)

Email: Dot.faulkenberry@smithrobinsonlaw.com

Follow us: [f](#) [in](#)

CONFIDENTIALITY NOTICE: The information transmitted, including any attachments, is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer, intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.