

Sep 05 2024

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

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

Civil Action No. 2023-CP-40-01759
Appellate Case No. 2024-001064

John A. Tibbs and Margaret B. Tibbs.....**PLAINTIFFS,**

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AiW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell

Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC.....**DEFENDANTS,**

and

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

v.

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

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

RETURN TO MOTION TO DISMISS APPEAL

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**ATTORNEYS FOR APPELLANTS ARRANCO US,
LLC, HAWK BIDCO (US) INC., AND SPARROWS
OFFSHORE, LLC**

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC¹ hereby file this Return to the Receiver’s Motion to Dismiss Appeals of Interlocutory Orders, filed on August 16, 2024 (the “Motion”),² and request this Court deny the Motion and allow this matter to proceed with briefing and consideration of the merits of the circuit court’s findings constituting contempt.

All arguments, authorities, and prior incorporations and adoptions by reference included in the Sparrows Appellants’ prior filings, including briefs and related materials filed with this Court, the Supreme Court, and the circuit court, are incorporated by reference herein.³

INTRODUCTION

Dismissal of this appeal would be error for at least five separate reasons, each of which is dispositive of Respondent’s Motion.

First, Respondent appears to conflate prior appeals with this one, using inflammatory language calling this appeal “inappropriate” and stating that this is part of a “playbook” to “delay and frustrate” litigation. A party availing itself of valid legal arguments supported by the law—to protect against violations of substantial rights—does not justify dismissal of a valid appeal just because the opposing party disagrees with those arguments.

¹ Appellants ArranCo US, LLC (“ArranCo”); Hawk Bidco (US) Inc. (“Hawk Bidco”); and Sparrows Offshore, LLC (“Sparrows Offshore”)—which were collectively referred to as the “Sparrows Defendants” before the circuit court—are referred to herein as the “Sparrows Appellants” as done in their prior filed appeal.

² The Motion to Dismiss Appeals was filed by Peter D. Protopapas Peter D. Protopapas, in his capacity as the court-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited. The Receiver is Respondent in this matter.

³ In making this filing and continuing to prosecute this appeal, the Sparrows Appellants do not intend to waive, and expressly preserve, all defenses to the underlying action, including the defense of lack of personal jurisdiction.

Second, it is uncontroverted that dismissal should be based on the facts of what occurred here, not prior appeals or matters foreign to this one. No party has “shifted their effort,” and there are no “insurance related entities” as Respondent incorrectly attempts to assert. Distracting from the actual effect of an order is not a valid means to seek dismissal of an appeal. Repeatedly stating this is a “third appeal” and that there is an “effort to disguis[e] orders” to cast aspersions on valid arguments is decidedly not a basis for dismissal under South Carolina law.

Third, as set forth below, South Carolina law actually *requires* a party to take an appeal of orders that may be interlocutory at the risk that an appellate court follows then-Chief Justice Toal’s reasoning in *Davis v. Parkview Apartments* that failure to appeal a discovery order waives rights as to that order in a later appeal.⁴

Fourth, Respondent is wrong in asserting there is no finding of contempt; under any definition or analysis of civil contempt under South Carolina law, the appealed May 23 Orders constitute contempt. And, while the circuit court and Respondent attempt to characterize orders in an attempt to insulate the lower court proceedings from appellate review, it is the *effect of an order*, not its title nor included language attempting to dictate appealability that controls the analysis to be applied by this Court. The circuit court issued findings that are contempt, an immediately appealable issue.⁵ At the same time, and as part thereof, the circuit court struck

⁴ *Davis v. Parkview Apartments*, 409 S.C. 266, 281 & n.15, 762 S.E.2d 535, 543 & n.15 (2014) (characterizing un-appealed discovery 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).

⁵ Various matters were heard at the April 25, 2024 hearing before former Chief Justice Toal. Discussions of various receiverships occurred, with procedure and arguments bleeding over, sometimes inapplicably, between cases. The Sparrows Appellants were subjected to these orders of contempt as a result of appeals and related assertion of arguments as to South Carolina’s clearly established law regarding Rule 205 of the South Carolina Appellate Court Rules, which have not been addressed on the merits by any appellate court to date. At that hearing, under the caption of

portions of the Sparrows Appellants’ pleadings through adoption of “adverse inferences” and erroneous preadmission of thousands of exhibits, essentially determining the matter on the Receiver’s pleadings.

Fifth, and finally, the circuit court’s refusal to address the request for a stay and injunction—thereby denying the injunctive relief that would effectuate the stay provisions of the South Carolina Appellate Court Rules and clearly established precedent—is an immediately appealable issue created in the May 23 Orders.

Each of these grounds warrants denial of the Respondent’s Motion. This Court should require Respondent to answer why a circuit court’s use of the appealed orders to find and punish for contempt and to shift the burden of proving a case onto defendants, in a purported third-party case scheduled for a bench trial, does not meet the grounds of appealability set forth herein. If put to this task, the Respondent would fail as he has neither legal nor factual support for any of his claims.

ARGUMENT

Respondent’s Motion is based on three incorrect arguments with no basis in fact or law: (1) the May 23 Orders are not contempt; (2) the May 23 Orders neither “determine the action” nor do they constitute the striking of any part of the Sparrows Appellants’ Answer in the lower court;

a different matter and discussing different parties, the issue of Rule 205—a key factor in the Court’s contempt orders—arose.

In discussing the exact same issue in those related cases, counsel for the Receiver made clear what was actually being sought: “Your Honor, I hate to use this word, but it applies, is nothing short of contemptuous. And how the Court deals with it, you know, that’s up to the Court. But unless a court deals with it, it’s not going to stop.” Transcript of April 25, 2024 Hearing in *McDowell v. A.O. Smith Corporation, et al.* and *J.F. Davis v. 3M Company, et al.* at 35:16–24 (counsel describing conduct as “contemptuous” and asking court to act accordingly).

and (3) the circuit court’s continued and repeated refusal and denial of injunctive relief actually did not occur. *See* Mot. In the orders on appeal, the circuit court issued sweeping rulings which—under the guise of “discovery sanctions” and in a case that is presently and improperly set for a *bench trial*,⁶ completely untethered from the first-party tort action from which the “third-party” complaint is supposed to be derivative—(i) admitted *over two thousand*—2,548, to be exact—exhibits as “genuine” against three sets of third-party defendants but somehow reserved them as not admitted nor genuine against another set of third-party defendants *and* (ii) imposed a number of dispositive “adverse inferences.” These adverse inferences are, again, with respect to only a subset of third-party defendants and they effectively determine Respondent’s underlying action.

The below-defined May 23 Orders do this first by finding for the Receiver on the factual and legal issues in his “day of reckoning” pleading and second by striking various defenses in the Sparrows Appellants’ responsive pleadings. To be clear, these adverse inferences against the Sparrows Appellants and others and pre-admitted exhibits were ordered by a court which is also set to be the sole decider of the outcome in the upcoming *bench trial*. *See* Order Granting the Receiver for Cape PLC’s Motion to Pre-Admit Exhibits (“Pre-Admission Order”); 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 (“Adverse Inference Order”), each filed May 23, 2024 [collectively, the “May 23 Orders”]. Whether alone or when combined with the granting of attorneys’ fees—erroneously also included as part of the Adverse Inference Order—these unjustifiable actions are findings of contempt and are immediately appealable. *Ex parte Cannon*,

⁶ The circuit court’s June 20, 2024 “Order Scheduling Trial Date,” setting the case for bench trial, is now on appeal as an order depriving the Sparrows Appellants of their constitutional jury trial rights, thereby impacting the mode of trial and their substantial rights.

385 S.C. 643, 660, 685 S.E.2d 814, 823 (Ct. App. 2009) (“[A] finding of contempt is immediately appealable.”).

Moreover, the General Assembly has set forth that the following types of orders are immediately appealable: “An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action” S.C. Code Ann. § 14-3-330(2). The May 23 Orders on appeal fall precisely under the Legislature’s statutory pronouncement of immediately appealable grounds.

As this Court is well aware, the circuit court’s decision as to how an order is entitled does not control an inquiry into appealability. *Spalt v. S.C. Dep’t of Motor Vehicles*, 423 S.C. 576, 584, 816 S.E.2d 579, 583 (2018) (“The label given to the order is not determinative of its immediate appealability.”). Accordingly, appellate courts must look to the effect of an order to determine what that order does. *See, e.g., id.* (noting appealability depends on “the substance of the order”); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011) (“[A]n appellate court should look to the effect of an interlocutory order to determine its appealability”); *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013) (explaining that whether an order is immediately appealable is a function of “substance rather than nomenclature”).

The circuit court’s Adverse Inference Order devotes a number of pages to appealability, reflective of an apparent effort to insulate its erroneous decision from appellate review. *See generally* Adverse Inference Order. Likewise, the Pre-Admission Order attempts to conduct its own appealability analysis. *See generally* Pre-Admission Order. But this Court is required to go

beyond the titles of such orders and Respondent-drafted and circuit-court-approved language included therein endeavoring to control the appealability inquiry and determine what the orders actually do. In making its appealability inquiry, appellate courts are “free to evaluate the trial court’s order as what it is—not merely what it appears to be—and hold that it is one which is immediately appealable.” *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 540, 773 S.E.2d 144, 147 (2015); *see also generally Towles v. United Healthcare Corp.*, 338 S.C. 29, 35, 524 S.E.2d 839, 842–43 (Ct. App. 1999) (holding that an order requiring discovery and permitting a defendant to re-seek to compel a matter to arbitration after the close of discovery was immediately appealable because “[t]he circuit court’s order favored litigation over arbitration”).

Even a cursory review of the content of the May 23 Orders, the bases for ruling, and the effect thereof reveals their true—and immediately appealable—nature.

I. The May 23 Orders Constitute Contempt.

The combined effect of the two May 23 Orders—by their unequivocal terms—is to punish the Sparrows Appellants, ruling in Respondent’s favor on the allegations forming the core of his pled claims and providing support for the “adverse inference” findings through “authenticated” evidence in an upcoming bench trial. This is merely contempt by misnomer. *Compare* Rule 37, SCRPC (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 of the May 23 Orders).

Contempt has been defined as:

Contempt is the voluntary and intentional doing or failing to do or inciting another to do or fail to do or disregarding of something the law or court forbids the doing of or requires done or given proper regard. This includes conduct that tends to bring the authority or administration of the court or law into disregard or disrespect. . . . It has been held to include purpose and an overt act even if the attempt failed. The power of contempt is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders or rules. The power is therefore not confined but inherent in all courts and necessary to the due and proper administration of justice.

Timothy L. Brown, *South Carolina Contempt Law*, at 1 (2d ed. 2011).

The elements of contempt are as follows:

- (A) The existence of a valid duty, order or obligation or prohibition;
- (B) Appropriate knowledge/notice (actual or imputed) of element (A), with sufficient time to comply; [and]
- (C) A willful, voluntary or even an attempted violation of the duty, order or obligation found in element (A).

Brown, *supra*, at 7; *see also Ex parte Cannon*, 385 S.C. at 660–61, 685 S.E.2d at 824 (“Contempt results from the willful disobedience of a court order A willful act is one . . . done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.” (internal quotations omitted)).

In the May 23 Orders, the circuit court purposefully did not use the word “contempt,” but the circuit court’s findings unmistakably equate to holding the Sparrows Appellants in contempt. Indeed, the Adverse Inference Order is predicated on the Sparrows Appellants’ alleged “flagrant violations of the Court’s March 12 Order” granting the Receiver’s motions to compel discovery. *See Adverse Inference Order* at 10–11. The circuit court further found that the Third-Party

Defendants’ “continued discovery misconduct” amounted to “willful disobedience”—the exact standard for contempt. *See id.* at 15.

The circuit court’s imposition of adverse inferences as a penalty for alleged willful violations of an order compelling discovery is the substantive equivalent of an appealable contempt sanction. *Davis*, 409 S.C. at 280, 762 S.E.2d at 543 (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.”). Reference to the fact that actions have been taken “despite repeated orders of this Court,” Adverse Inference Order at 4, and findings that the circuit court was using its inherent power are direct reference to the first element of contempt—existence of a valid duty. Here, the circuit court clearly believed its orders on prior motions to compel were valid and justifiable such that they created an obligation on the part of the Sparrows Appellants. The circuit court likewise held that there was knowledge of such an obligation and “willful disobedience” of the same, which is exactly why it took the action that it did. If that alone is not sufficient to make evident that these Orders were indeed contempt, the circuit court went well beyond that threshold by including conditions to its rulings that clearly align the orders with what case law has established as contempt and contempt sanctions.

“The purpose of civil contempt is ‘to coerce the defendant to do the thing required by the order for the benefit of the complainant.’” *Poston v. Poston*, 331 S.C. 106, 111, 502 S.E.2d 86, 88 (1998). Exactly in line with that hallmark of contempt, the circuit court stated: “The Court notes that these rebuttable inferences are subject to evidentiary challenge by these parties in these proceedings should these recalcitrant Third-Party Defendants elect to participate in these proceedings, as they are required to do by our rules and the orders of this Court.” *Compare* Adverse Inference Order at 16 (above-quoted) *with Miller*, 375 S.C. at 457, 652 S.E.2d at 761

(“The conditional nature of the punishment renders the relief civil in nature because the contemnor can end the sentence and discharge himself at any moment by doing what he had previously refused to do.”). Similarly, in describing the authority by which it ruled, the circuit court even referenced “inherent authority,” another feature of a contempt ruling. *Compare* Pre-Admission Order at 6, *with Miller*, 375 S.C. at 453, 652 S.E.2d at 759 (“The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice.”). If the circuit court were ruling on the basis of a statute or court rule, it would not need to note an abstract—and inapplicable—inherent authority. However, in a contempt ruling, such a statement would be important, which is presumably why it was included here.

The May 23 Orders aim to exact “hydrogen bomb” punishments against the Sparrows Appellants and others. *See, e.g., Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990) (“The sanction should be aimed at the specific misconduct of the party sanctioned. In other words, the sanction should be a rifle-shot, not a shotgun blast. In the instant case, the sanction was a hydrogen bomb.”). By dropping this “hydrogen bomb,” the adverse inferences and pre-admitted exhibits unquestionably function as a coercive civil contempt ruling, and the accompanying 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)).

The Sparrows Appellants have done exactly what the Supreme Court has required to appeal a discovery order: suffer contempt. *Davis*, 409 S.C. at 280–81, 762 S.E.2d at 543 (“[T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding.”); *see also Ex parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881–82 (1986) (“[A]n order directing a party to participate in discovery is interlocutory and not directly appealable Instead of appealing immediately, a non-party has two alternatives. He may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply.”). In fact, immediate appeal is required or the Sparrows Appellants risk waiver of the right to challenge the discovery orders. Accordingly, this Court should reject the Receiver’s arguments that the circuit court’s May 23 Orders are not immediately appealable. They are so.

II. The May 23 Orders in Effect Strike Portions of the Sparrows Appellants’ Answers and in Effect Determine the Action.

In addition to finding and punishing for contempt, the combined effect of the two May 23 Orders is to essentially determine the action—akin to a judgment on the pleadings—which is what it is in a bench trial.⁷ The adverse inferences against the Sparrows Appellants, in conjunction with the pre-admitted exhibits, “determines the action” such that nothing the Sparrows Appellants could ever do—despite the 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

⁷ At the specific request of one attorney for the Receiver, the circuit court has set this case for a bench trial on December 9, 2024. Acknowledgment of this trial setting should not be construed as waiver of any arguments relative to Sparrows Appellants common-law and constitutional rights to a trial by jury—if they are not dismissed before the trial date—an issue now also on appeal.

case” and “the right to a particular mode of trial, a well-established substantial right”). At the April 25, 2024 hearing before the circuit court, counsel for the Receiver stated “we can prove our case right now. We got the documents to prove it up.” Transcript of April 25, 2024 Hearing in *John A. Tibbs v. 3M Company, et al.*, at 8:6–10. Counsel added, “We know they did it. They did it. . . . The only question is are we going to be able to hold them accountable? We know they did it.” *Id.* at 9:11–23. This context around the Receiver’s requested May 23 Orders is important because it shows the Receiver was seeking entry of Orders that comported with “the documents to prove it up” and left nothing for the Court to do but take inferences and hold parties accountable for what the Receiver supposedly already “knows.”

The “inferences” adopted are the elements for each of Respondent’s pled causes of action against the Sparrows Appellants. The circuit court’s issuance of the May 23 Orders in effect strikes the Sparrows Appellants’ 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” *Thornton*, 391 S.C. at 304, 705 S.E.2d at 479; *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.”). By affecting a substantial right and mode of trial, the Sparrows Appellants are *required* to appeal to avoid waiver of their rights. *See, e.g., Davis*, 409 S.C. at 280, 762 S.E.2d at 543 (Toal, C.J) (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).

Respondent asserts that while an adverse inference is taken, it does not “require that *the jury draw it*.” Mot. to Dismiss at 12 (emphasis added). That *cannot* be applicable here. At Respondent’s request—contrary to certain third-party defendants’ jury trial demands—all issues are currently set to be tried before the circuit court in a *bench trial*. At a bench trial before the very judge who entered such hydrogen bomb contempt sanctions, there is no likelihood that the inference will not be drawn by the judge as factfinder. Of course, the inference will be taken as a matter of fact—a circuit court does not instruct itself before deliberating. Unless and until the circuit court orders the applicable issues be tried before a jury, the Receiver’s arguments that adverse inferences do not determine an action are wholly unavailing.

In summary, the circuit court made findings constituting contempt against the Sparrows Appellants and imposed punishment in the form of orders which in effect determine the action against them. These orders are, therefore, immediately appealable under § 14-3-330 as affecting a substantial right.

III. The Circuit Court Again Refused and Denied a Request for Injunction.

Respondent asserts there is a “brazen” attempt to appeal here. The Sparrows Appellants agree that the orders contain no reference to an injunction—but the circuit court’s refusal to address the Sparrows Appellants’ request for an injunction and stay, as required by the South Carolina Appellate Court Rules here, constitutes the denial and refusal of an injunction. *See, e.g., In re Fort Worth Chamber of Commerce*, No. 24-10266, --- F.4d ----, 2024 U.S. App. LEXIS 8336, at *7 (5th Cir. Apr. 5, 2024) (recognizing that “if a district court does not timely rule on a preliminary-injunction motion, it can effectively deny the motion” and render its decision immediately appealable); *see also Gray Line Motor Tours, Inc. v. New Orleans*, 498 F.2d 293, 296 (5th Cir. 1974) (“If, for example, an action has the effect of denying the requested relief without actually making a formal ruling, then the refusal of the district court to issue a specific order will be treated as equivalent to the denial of a preliminary injunction and will be appealable.”); *see also Helton v. Clements*, 787 F.2d 1016, 1017 (5th Cir. 1986) (explaining why refusal to rule can be akin to denial); *D.C. v. Trump*, 959 F.3d 126, 130 (4th Cir. 2020) (same). As even Respondent recognizes (Mot. to Dismiss at 9), the refusal of an injunction is immediately appealable. S.C. Code Ann. § 14-3-330(4).

What Respondent calls “eleventh-hour” requests are merely the Sparrows Appellants’ only method of putting before the circuit court—and possibly this Court—the requisite issues relative to lack of lower court jurisdiction until a remittitur has been issued on the appeal of the circuit court’s prior orders, which affect all matters below. *See* Rule 205, SCACR. This Court has made clear that parties before it are not to file “motions to clarify” and that the court will not take “action on any order which is not properly before it.” *See* Order in Appellate Case No. 2023-000727 (filed

Nov. 21, 2023).⁸ This issue was fully briefed in the Sparrows Appellants' Return to Motion to Dismiss Appeals of Interlocutory Discovery Order. Those arguments are fully incorporated herein by reference.

CONCLUSION

For the reasons set forth herein, the Sparrows Appellants respectfully request this Court deny the Receiver's Motion to Dismiss and resume the briefing timeline to determine the merits of their appeal of the May 23 Orders.⁹

Respectfully submitted,

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September 5, 2024

⁸ The circuit court referenced both the November 21 Order in Appellate Case No. 2023-000727 as well as the September 8 Order in the same case. Neither point addresses head-on the issue as to Rule 205. One discusses only a stay, which, as discussed below, has no bearing on the question posed by a Rule 205 analysis. The other, as noted above, never reached the Rule 205 question because of the manner in which it was placed before the Court.

⁹ Per Rule 208(b)(6), SCACR, the Sparrows Appellants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by similarly situated Appellants Mohed Altrad, Altrad Investment Authority S.A.S., ESAB Corporation, Charter Consolidated Ltd., and Central Mining & Investment Corporation Ltd.

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

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

Civil Action No. 2023-CP-40-01759
Appellate Case No. 2024-001064

John A. Tibbs and Margaret B. Tibbs.....**PLAINTIFFS,**

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AiW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell

Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC.....**DEFENDANTS,**

and

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

v.

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

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

APPENDIX TO RETURN

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OFFSHORE, LLC**

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

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

3M COMPANY *et al.*,

Defendants.

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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

Third-Party Plaintiff,

**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**

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 certain motions of 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”), specifically the Motion for Adverse Inference as to the Altrad and Charter Third-Party Defendants¹ filed on April 5, 2024 and Motion for Sanctions filed on April 12, 2024 (collectively, “Motions”). Having considered the Motions and record, along with the Third-Party Defendants’ responses, and having conducted a hearing in which the Third-Party Defendants presented oral argument on the Motions, the Court grants the Motions for the reasons set forth below.²

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”). The Charter Third-Party Defendants are Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation.

² The Motions exclude the five Third-Party Defendants that are not categorically refusing to participate in discovery: Anglo American PLC (individually and as successor in interest to Anglo

FACTUAL AND PROCEDURAL BACKGROUND

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

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

On June 9, 2021, less than five months after her diagnosis, and within five days of filing her lawsuit, Ms. Park passed away. On November 17, 2021, Ms. Park’s son, Keith, amended the complaint, appearing individually and as personal representative to Ms. Park’s estate (the “*Park* Plaintiffs”), to assert a wrongful death action. *See* First Amended Compl., *Park et al. v. Armstrong Int’l, Inc., et al.*, No. 2021-CP-4002727 (Nov. 17, 2021). The amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) (together with all predecessors in interest, “Cape”) as a defendant. Cape Intermediate Holdings Limited and Cape PLC—both referring to the same English company originally named Cape Asbestos Co. Ltd.—were identified as successors in interest to Cape Asbestos Company Ltd. *Id.* at 9; *see also id.* at ¶¶ 26–27. In December 2021, the *Park* Plaintiffs served the named Cape entities, which (as has been their practice for decades) never answered, moved, or otherwise responded.

American Corporation of South Africa Ltd.), De Beers PLC, De Beers Centenary AG, De Beers UK Ltd., and De Beers Consolidated Mines Pty. Ltd. (“Oppenheimer Third-Party Defendants”).

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

On March 17, 2023, this Court appointed a receiver for an entity identified as Cape PLC as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) pursuant to S.C. Code § 15-65-10(5), as well as § 15-65-10(4) in the alternative. Order, *Park et al. v. Armstrong Int'l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) (“Appointment Order”), at 1. Pursuant to the Appointment Order and South Carolina law, the Receiver has “power and authority [to] fully administer all assets of Cape, . . . engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape”—in proper satisfaction of claims against Cape—“whatever they may be.” *Id.* The Appointment Order further vested the Receiver with “rights, authority and powers with respect to” Cape’s property, including to “obtain from any . . . third party, any financial records belonging to or pertaining to” Cape. *Id.* at 2.

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

On June 30, 2023, the Receiver filed the Third-Party Complaint, asserting claims against the Third-Party Defendants for (i) unjust enrichment (first cause of action), (ii) constructive trust (second cause of action), (iii) alter ego and veil-piercing liability (third cause of action), and (iv) accounting (fourth cause of action). Each of the Third-Party Defendants named in the Third-Party Complaint is 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.

The 65-page Third-Party Complaint alleges a remarkable system of avoiding responsibility for the harm caused by Cape’s asbestos over a period of decades—which the Court summarizes (as more fully set forth in the Court’s December 6, 2023 order) to contextualize the findings and adverse inferences made herein, in resolution of the Receiver’s Motions. Although the Third-Party

Complaint categorized the Third-Party Defendants into three groups, only the Altrad Third-Party Defendants (Third-Party Compl. ¶ 119) and Charter Third-Party Defendants (*id.* ¶ 124) are subject to the sanctions issued herein, though certain allegations against the Oppenheimer Third Party Defendants (Third-Party Compl. ¶ 122) also relate to the alleged common history among the Charter Third-Party Defendants and Cape.

In sum, the Third-Party Complaint comprehensively described the alleged interconnected history of Cape and certain of these entities, including their alleged dominion over the South African commodity mining industry, and their alleged role in controlling, continuing, and/or benefiting from Cape's strategic exploitation of the U.S. asbestos market, as well as its accompanying alleged scheme to insulate itself, and its foreign affiliates and agents, from the resulting litigation exposure.

A. **Cape.**

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

In 1953, while under the control of Central Mining, Cape established North American Asbestos Corporation (“NAAC”) “to operate as [its] wholly controlled instrumentality for the ‘purpose of expediting and facilitating the movement’ of asbestos from South African mines into

the United States (including in South Carolina).” *See id.* ¶¶ 70, 72. The two decades following Cape’s formation of NAAC were Cape’s “most bountiful years.” *Id.* ¶ 70. Cape effectively enjoyed an asbestos monopoly, controlling 90% of the global supply of amosite asbestos and dominating the distribution of other types of asbestos. *Id.* ¶ 69.

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

At Cape’s direction and consistent with its company-wide policy, NAAC purchased “wholly inadequate” insurance coverage to address its massive future products liability exposure. *Id.* ¶ 80. In addition to allegedly maintaining egregious and inhumane labor practices for its indigenous workers in its South African mines, Cape—as supported by other members of the broader mining business empire—also is alleged to have actively suppressed information about

the known risks of asbestos in the United States and used misinformation to influence public opinions about asbestos. *See id.* ¶¶ 81–88.

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

Effective January 31, 1978, Cape liquidated NAAC, siphoning any remaining assets out of the United States to Cape Industries Overseas Ltd., an entity wholly owned by Cape Industries Ltd., in an effort to reduce the assets available to creditors. Third-Party Compl. ¶¶ 94–96. This strategy was allegedly taken directly from a common business practice among the global enterprise that allegedly included Cape, *i.e.*, distributing commodities mined in South Africa in the United States at great profits, draining those domestic profits for the benefit of foreign affiliates, and liquidating (at least formally) any U.S. presence when liability was imminent. *Id.* ¶ 97. Despite the dissolution of NAAC, the Third-Party Complaint alleges that Cape “contemplated ways to continue the flow of asbestos to U.S. customers and asbestos profits out of the United States.” *Id.* ¶ 98. For example, through NAAC’s final President, Cape allegedly facilitated the formation of Continental Products Corporation to act as a commission agent for the future sales of South African

asbestos in the United States. *Id.* ¶¶ 94–96, 99. The stated purpose for doing so was to “eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to [product liability] lawsuits.” *Id.* ¶ 101. Although Cape entered into certain agreements to address a fraction of the bodily harm caused by its asbestos around the world, including through a 2006 Scheme of Agreement with former employees in the United Kingdom, Cape has allegedly “done **nothing** about its massive unpaid responsibility for the death and illness caused by its asbestos products in South Carolina and elsewhere in the United States.” *Id.* ¶ 114.

B. The Altrad Third-Party Defendants.

Since 2017, Cape has been part of the Altrad Group, of which various entities, along with Mohed Altrad, its French-Syrian founder and President, have been named as Third-Party Defendants. Third-Party Compl. ¶¶ 113, 116–119 & nn. 39–40. Specifically, the “Altrad Third-Party Defendants” include:

- Cape subsidiaries or affiliates based in the United Kingdom: Cape Holdco Ltd., Cape UK Holdings NewCo Ltd., Cape Industrial Services Group, Ltd., and Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.);³
- Cape owners based in the United Kingdom and France: The foreign Altrad Group entities that now own and control Cape, *i.e.*, AIA and Altrad UK Ltd., with their majority shareholder and founder, Mohed Altrad (*id.* ¶ 116); and

³ The Receiver originally named The Law Debenture Corporation PLC (“Law Debenture”) as an Altrad Third-Party Defendant, based on public information suggesting that it was a “Person with Significant Control” of Cape as of 2016. Third-Party Compl. ¶ 113. After receiving additional information from Law Debenture’s counsel regarding the nature of its “control,” which was based on representing the interests of certain persons in the United Kingdom also injured by Cape asbestos, the Receiver dismissed Law Debenture on August 21, 2023, without prejudice.

- Cape U.S. affiliates: Certain Altrad Group U.S. subsidiaries, including Hawk Bidco US Inc., Arranco US, LLC, Sparrows Offshore, LLC, and the Sparrows Group, LLC, as were part of Sparrows Offshore Group, Ltd. d/b/a the “Sparrows Group” (n/k/a “Altrad Sparrows”) based in Aberdeen, Scotland.⁴ *Id.* ¶¶ 117, 119.

Notably, seven of the 12 Altrad Third-Party Defendants failed to respond to the Third-Party Complaint: Altrad UK Ltd.; Cape Industrial Services Ltd., n/k/a Altrad Services Ltd. (since June 1, 2021); Cape Holdco Ltd.; Cape Industrial Services Group Ltd.; Cape UK Holdings Newco Ltd.; Sparrows Offshore Group Ltd.; and The Sparrows Group LLC. As a result, on December 6, 2024, the Court entered default against those seven non-responding Altrad entities, several of which—including Altrad UK Ltd.—have the same registered address of Cape Intermediate Holdings Ltd. (*i.e.*, the current name of the Cape Asbestos Company Ltd.) in England at 6-7 Lyncastle Way Barleycastle Lane, Appleton, Warrington. In addition, in an email dated August 18, 2023, Todd Carroll, Esq., as counsel for Mohed Altrad and AIA, represented to the Receiver that he also represents one of the non-responding Third-Party Defendants, Altrad UK Ltd. *See* Ex. 87 to Omnibus Opp. to Personal Jurisdiction Motions (Oct. 18, 2023).

⁴ On July 11, 2022, Altrad completed the acquisition of “the Sparrows Group.” Press Release, *Altrad Completes Acquisition of Engineering and Maintenance Specialist Sparrows Group* (July 11, 2022), <https://www.altrad.com/en/newsreader/altrad-completes-acquisition-of-engineering-and-maintenance-specialist-sparrows-group.html>. Within two weeks of being served with the Third-Party Complaint on July 14, 2023, Sparrows Offshore Group Ltd. passed a resolution to liquidate on July 27, 2023 (while other Sparrows entities continue to operate at the same registered address, including Sparrows Offshore International Group Ltd.). As of October 2, 2023, Altrad announced the rebranding of the “Sparrows Group” to “Altrad Sparrows.” Aberdeen Business News, *Altrad Spreads Its Wings as Altrad Sparrows* (Oct. 2, 2023), <https://aberdeenbusinessnews.co.uk/sparrows-spreads-its-wings-as-altrad-sparrows/>.

C. The Charter Third-Party Defendants.

The Charter Third-Party Defendants include Charter Consolidated Ltd., its subsidiary, Central Mining & Investment Corporation Ltd. (“Central Mining”), and ESAB Corporation, as the ultimate parent company and successor in interest to Charter and Central Mining. *See* Third-Party Compl. ¶ 124. Cape, Central Mining, and Charter were all allegedly critical parts of a common South African mining enterprise, which had a majority of shares in Cape and controlled its board and directed its operations. *Id.* ¶¶ 50–52. In addition, Charter Consolidated Ltd. was created in 1965 by merging Central Mining with two other mining companies, which served as an “international investment arm” for the global mining enterprise. *Id.* ¶ 54. While Charter had direct and indirect interests in Cape from its founding, by 1969 Charter had acquired majority ownership of Cape. *Id.* ¶ 55. Cape was Charter’s primary operating company and principal industrial subsidiary, and, by extension, Cape and its subsidiaries were part of a group of companies that dominated the South African mining economy. *Id.* ¶¶ 55–56, 61–62.

By 1993, there were certain organizational changes, by which Charter Consolidated Ltd. was no longer part of the global mining enterprise that allegedly controlled Cape in the 1980s and decades prior, with “Charter” re-registering as a public company. *Id.* ¶ 123. Three years later, Charter sold its interest in Cape for approximately £48 million. *Id.* And in 2012, Charter, with its affiliated entities, was acquired by Colfax Corporation (“Colfax”) at a valuation of \$2.4 billion. *See id.* (disclosing Charter’s exposure to asbestos-related lawsuits in the United States but assessing that exposure as not “material” and making no reserves). In 2022, Colfax spun off ESAB Corporation, allegedly becoming the parent company of Charter and Central Mining. *Id.* ¶ 124.

IV. The Ongoing Refusals to Participate by These Third-Party Defendants.

For the trial block set to commence April 15, 2024, this case was set for a bench trial. It was continued during the April 10 pretrial hearing, however, because of the Altrad and Charter

Third-Party Defendants’ refusal to provide any discovery to the Receiver to prepare this case for trial. Despite receiving initial discovery requests more than nine months ago, the Altrad and Charter Third-Party Defendants have provided no substantive information in response.

On January 12, 2024, the Receiver filed motions to compel these Third-Party Defendants’ basic compliance with their discovery obligations, which the Court granted on March 12 (the “March 12 Order.”). Pursuant to the March 12 Order, the Court directed all 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,” and (iii) as to Arranco and Central Mining, “to designate witnesses for . . . Rule 30(b)(6) depositions” by March 19 and “produce those witnesses” by April 2. (Order at 13).

The Court-ordered deadlines to provide substantive responses to the Receiver’s discovery have long passed, and the Third-Party Defendants’ flagrant violations of the Court’s March 12 Order persist. In turn, this discovery misconduct has caused delays and prejudiced the Receiver’s ability to investigate and bring his claims, which have already been subjected to extensive motion practice. The Receiver has also been forced to exert additional time and resources in a continued effort to have these Third-Party Defendants come into even basic efforts at compliance with existing orders of the Court, including the March 12 Order, and the laws of this State—something that has yet to be achieved.

In defense of this coordinated strategy of non-participation, the only excuses offered by these Third-Party Defendants are frivolous: In essence, they claim a right—above the authority of this Court—to fully relitigate the merits (or lack thereof) of their numerous motions to dismiss and dissolve that were denied by the Court in early December 2023. They argue that Rule 205, SCACR,

poses a jurisdictional bar preventing this third-party action from continuing, because by simply appealing those denied motions to dissolve the receivership, they can deprive the trial court of jurisdiction for an indeterminate time period.⁵ These very same arguments, however, have been repeatedly dismissed by the Court of Appeals and Supreme Court.⁶ The Court of Appeals and Supreme Court have identified those attempts to appeal as interlocutory and governed by the limited scope of permissible appealability granted pursuant to S.C. Code Ann. § 14-3-330. Thus, the Supreme Court and Court of Appeals have made clear that—categorically—the denial of motions to dismiss and dissolve a receivership, like discovery orders, are not immediately appealable under South Carolina law. *See also* Order, *Tibbs et al. v. 3M Co. et al.*, Appellate Case No. 2024-000524 (Apr. 17, 2024) (dismissing as interlocutory these Third-Party Defendants’ separate attempt to appeal the Court’s March 12 discovery order, which they brazenly mischaracterized as a “refusal to enter an injunction”). Those decisions raise the same appealability issues invoked by the Altrad and Charter Third-Party Defendants in their pending appeal. Thus, the legal basis for the Third-Party Defendants’ refusal to participate in discovery and comply with

⁵ In contrast, the other participating Third-Party Defendants in this action (*i.e.*, in the “Oppenheimer” group) do not take this position currently, and instead have communicated an intent to participate in discovery and have reportedly made efforts in that respect.

⁶ *See* Order Denying Rehearing, *Childers v. Davis Mech., et al.*, Appellate Case Nos. 2024-000005 and 2023-000727 (Sup. Ct. Apr. 17, 2024); Order Dismissing Appeal, *Childers v. Davis Mech., et al.*, Appellate Case Nos. 2024-000005 and 2023-000727 (Sup. Ct. Mar. 27, 2024); Order, *Childers v. Davis Mech., et al.*, Appellate Case No. 2023-000727 (Ct. App. Nov. 21, 2023); Order, *Childers v. Davis Mech., et al.*, Appellate Case No. 2023-000727 (Ct. App. Sept. 8, 2023); Order Denying Rehearing, *Link v. 3M Company, et al.*, Appellate Case No. 2024-000342 (Ct. App. Apr. 30, 2024); Order Dismissing Appeal, *Link v. 3M Company, et al.*, Appellate Case No. 2024-000342 (Ct. App. Apr. 12, 2024); Order Denying Rehearing, *Mitchell v. 3M Company, et al.*, Appellate Case No. 2024-000341 (Ct. App. Apr. 30, 2024); Order Dismissing Appeal and Denying Rule 205 Motion to Enforce, *Mitchell v. 3M Company, et al.*, Appellate Case No. 2024-000341 (Ct. App. Apr. 12, 2024); Order Denying Rehearing, *Welch v. Advance Auto Parts, Inc., et al.*, Appellate Case No. 2024-000337 (Ct. App. Apr. 30, 2024); Order Dismissing Appeal and Denying Rule 205 Motion to Enforce, *Welch v. Advance Auto Parts, Inc., et al.*, Appellate Case No. 2024-000337 (Ct. App. Apr. 12, 2024).

the Court's orders is legally untenable—indeed, frivolous and flatly inconsistent with those recent, directly applicable decisions of the Court of Appeals and Supreme Court—while appearing to further an improper purpose, *i.e.*, to delay progress in this matter.

In light of this ongoing discovery misconduct, the Receiver moved for relief. Specifically, as relevant here, the Receiver filed these Motions on April 5 and 12 requesting certain sanctions for the Altrad and Charter Third-Party Defendants' ongoing discovery misconduct, including (i) that certain inferences be drawn with respect to the Altrad and Charter Third-Party Defendants, including with respect to their alleged current and historical statuses, respectively, as the alter ego(s) of Cape, and alleged unjust enrichment from Cape's liability-avoidance scheme, and (ii) for an award of fees and costs associated with bringing the Motion for Sanctions and all associated motions. On April 25, 2025, the Court heard argument on those motions.

LEGAL STANDARD FOR SANCTIONS

The selection of a sanction for discovery violations is within the trial court's discretion. *Kershaw Cnty. Bd. of Educ.*, 302 S.C. 390, 396 S.E.2d 369 (1990). Thus, where a "party fails to obey an order to provide or permit discovery," then a court "may make such orders in regard to the failure as are just." Rule 37(b)(2), SCRPC. Sanctions can range up to default or dismissal, or more intermediate relief such as designating facts as established; and "[i]n determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 199, 511 S.E.2d 716, 719 (Ct. App. 1999) (citing *Laney v. Hefley*, 262 S.C. 54, 202 S.E.2d 12 (1974)). The sanction should

be aimed at the specific conduct of the party sanctioned. *Id.* at 198, 511 S.E.2d at 719 (citing *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.S.D. 439 (Ct. App. 1990)).

Among other facts, “courts also consider unnecessary time delays in determining the appropriateness of discovery sanctions.” *Jones v. Robinson*, 2023 WL 7685902, at *7 (S.C. Ct. App. Nov. 15, 2023). And where there “is some showing of *bad faith, willful disobedience, or gross indifference* to the rights of the adverse party,” even the most severe sanctions, such as “default or dismissal,” may be warranted. *Rickerson v. Karl*, 412 S.C. 215, 221, 770 S.E.2d 767, 770 (Ct. App. 2015) (emphasis in original); *see also Skywaves I Corp. v. Branch Banking & Trust Co.*, 423 S.C. 432, 458, 814 S.E.2d 643, 657 (Ct. App. 2018) (citing “several cases” involving “striking the answer of a defendant in recent years,” where the defendant “violated a court order”).

Without discovery sanctions, discovery procedures would be ineffectual, as improper conduct would “go unpenalized,” thereby “decreas[ing] the likelihood of others being deterred from similar conduct”; accordingly, over-leniency should be avoided. *Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 124, 512 S.E.2d 510, 524 (Ct. App. 1998); *see also, e.g., McNair v. Fairfield Cnty.*, 379 S.C. 462, 467, 665 S.E.2d 830, 832 (Ct. App. 2008) (affirming “severe sanction of dismissal” in light of “willful disobedience of previous orders” and “conduct in refusing to provide that which it has been ordered to produce,” which was “a serious affront to the integrity of the judicial system”); *Howe v. Air & Liquid Sys. Corp.*, 2021 WL 5626487, at *2 (S.C. Ct. App. Dec. 1, 2021) (affirming imposition of sanctions on common client of Todd Carroll, Esq., Elizabeth O’Neill, Esq., and Steven James Pugh, Esq., based on their client’s “failure to cooperate with the discovery process . . . despite numerous requests”). Ultimately, the “imposition of

sanctions is generally entrusted to the sound discretion” of the Court. *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987).

DECISION ON ADVERSE INFERENCES

It has long been the law of South Carolina that “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.” *Davis v. Sparks*, 235 S.C. 326, 333, 111 S.E.2d 545, 549 (1959). Here, more than six months after being served discovery, and more than a month since the Court imposed deadlines to comply with their discovery obligations, the Altrad and Charter Third-Party Defendants continue to refuse any effort at compliance with the Court’s orders and the discovery rules of this State. Despite multiple warnings by this Court and directives to **proceed with discovery**, these Third-Party Defendants have continued their misconduct, while filing multiple frivolous appeals that, based on clearly applicable appellate precedent, will inevitably be dismissed.

The Court finds that this continued discovery misconduct on the part of these Third-Party Defendants amounts to bad faith, willful disobedience, and gross indifference to the rights of the Receiver and this Court’s management of its docket. Based on this discovery misconduct, moreover, the Court further finds certain adverse inferences to be warranted (as detailed below) against the Altrad and Charter Third-Party Defendants on facts and matters underlying the Receiver’s claims. *See, e.g., Kershaw Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 394, 396 S.E.2d 369, 372 (1990) (affirming decision to allow adverse inference for lost evidence, while permitting the party to “explain the circumstances” and mount a defense, which was “drawn to facilitate discovery in . . . asbestos cases”); *Griffith v. Griffith*, 332 S.C. 630, 640–41, 506 S.E.2d

526, 531–32 (Ct. App. 1998) (finding trial judge “in error when she refused to consider an adverse inference” from a party’s “refusal to answer questions”). The Court notes that these rebuttable inferences are subject to evidentiary challenge by these parties in these proceedings should these recalcitrant Third-Party Defendants elect to participate in these proceedings, as they are required to do by our rules and the orders of this Court.

The Court further notes that the parties should treat this sanction as an intermediate form of relief, which stops short of more severe sanctions, such as striking their pleadings or holding them in default. While eventually those sanctions may also be warranted, to the extent these Third-Party Defendants continue to refuse to engage in discovery and comply with the Court’s orders, those sanctions are not the subject of this Order, nor should this Order be interpreted as tantamount thereto.

I. The Court’s Adverse Inferences Against the Charter Third-Party Defendants.

As to the Charter Third-Party Defendants,⁷ the Court draws the adverse inference that each of the Charter Third-Party Defendants was at relevant times the alter ego of Cape, requiring piercing of the corporate veil. Likewise, each of the Charter Third-Party Defendants is responsible for or has benefitted unjustly from Cape’s liability-avoidance scheme. In order to reach that inference, the following inferences are made against each of the respective Charter Third-Party Defendants:

⁷ The Court makes these adverse inferences independent of any other evidence that may support the Receiver’s claims against the Charter Third-Party Defendants. *See, e.g.*, Order (Dec. 6, 2023) at 14–15, 52–54, 65–70 (detailing allegations and documents regarding longstanding relationship between Central Mining and Cape; the alleged role of Charter Consolidated Ltd. as a liability buffer, or so-called “products-liability patsy,” in the Oppenheimer-dominated “Greater Group”; the common control of Charter Consolidated Ltd. by Oppenheimer Third-Party Defendants and their predecessors; and the control of ESAB Corporation over Central Mining and Charter Consolidated Ltd. currently).

Inferences as to Central Mining & Investment Corporation Ltd.

1. In the first decades of the twentieth century, Central Mining was one of the most powerful mining finance houses in South Africa.
2. Soon after it was formed in 1905, Central Mining controlled Cape Asbestos Co. Ltd.
3. Central Mining was responsible for and directed Cape's establishment of the North American Asbestos Corporation ("NAAC") in 1953.
4. NAAC was formed to act as Cape's wholly controlled instrumentality for the purpose of facilitating and expediting the movement of asbestos from South Africa to the United States.
5. Central Mining owned Cape and its subsidiaries, including NAAC, through 1965.
6. Central Mining dominated and controlled Cape and its subsidiaries, including NAAC, through 1965, including with respect to their financing and capitalization.
7. Central Mining was responsible for any sale of asbestos into the United States by Cape through 1965.
8. Central Mining knew of certain health hazards of asbestos exposure including death by the 1920s.
9. Central Mining was aware of medical literature authored by J. C. Wagner, C. A. Sleggs, and Paul Marchand, titled *Diffuse Pleural Mesothelioma and Asbestos Exposure in the North Western Cape Province*, as published in the British Journal of Industrial Medicine, at the time of its publication in 1960 or soon after.

Inferences as to Control of Cape in Era of Charter Consolidated Ltd.

10. In 1965, Central Mining merged with two other mining and investment companies, The British South Africa Company and The Consolidated Mines Selection Company Ltd., into Charter Consolidated Ltd.
11. With the merger of companies in 1965, Charter Consolidated Ltd. acquired a controlling interest in Cape, including a majority of Cape's preference shares.
12. Prior to the merger of companies in 1965, Charter Consolidated Ltd. knew of certain health hazard of asbestos exposure including death.
13. Charter Consolidated Ltd. and Central Mining were aware of, and responsible for, unsafe and unhealthy working conditions at Cape asbestos mines.
14. Charter Consolidated Ltd. and Central Mining were aware of, and responsible for, Cape's labor practices.
15. Charter Consolidated Ltd. and Central Mining were responsible for Cape's lobbying efforts, including through trade associations such as the U.K.-based Asbestosis Research Council and U.S.-based Asbestos Textile Institute.
16. Charter Consolidated Ltd. and Central Mining were responsible for efforts to misinform companies, persons, and the general public about the health hazards associated with asbestos.
17. Charter Consolidated Ltd. and Central Mining were responsible for operating NAAC in an undercapitalized manner, including through the siphoning of funds from NAAC.
18. Charter Consolidated Ltd. and Central Mining were responsible for NAAC's risk-management decisions and failure to purchase additional liability insurance to adequately satisfy the liabilities of Cape to asbestos personal-injury claimants.

19. Charter Consolidated Ltd. acquired a majority of Cape's common equity shares by 1969, making Cape the principal industrial subsidiary of Charter Consolidated Ltd.
20. Charter Consolidated Ltd. owned, dominated, and controlled Cape and its subsidiaries, including NAAC, between 1965 and 1996, including with respect to their financing and capitalization.
21. Charter Consolidated Ltd. and Central Mining exercised influence in Apartheid-era South Africa, thereby allowing Cape to profitably mine and export asbestos to the United States for decades.
22. Charter Consolidated Ltd. and Central Mining seconded employees and other officials to work for Cape, or otherwise financed and spent resources for Cape, including for operational, marketing, research and development, and lobbying activities.
23. Charter Consolidated Ltd. and Central Mining were both aware that Cape asbestos was being sold or ultimately distributed into the State of South Carolina.
24. Charter Consolidated Ltd. and Central Mining were responsible for a conscious pattern of the production, distribution, and sale of Cape asbestos nationally in the United States, including asbestos used in South Carolina.
25. Charter Consolidated Ltd. was responsible for any sale of asbestos into the United States by Cape between 1965 and 1996.
26. Charter Consolidated Ltd. was responsible for a decision to drop *Asbestos* from the name of "Cape Asbestos Company Ltd."
27. Charter Consolidated Ltd. was responsible for a decision to cease the appointment of Cape officials to the board of directors of NAAC.

28. Charter Consolidated Ltd. was responsible for the decision to interject another entity (Cape Industries Overseas Ltd.) between NAAC and Cape.
29. Charter Consolidated Ltd. was responsible for decisions to deplete NAAC of assets to avoid claimants.
30. Charter Consolidated Ltd. was responsible for the decision to close and liquidate NAAC.
31. Charter Consolidated Ltd. was responsible for the decision to allow default judgments in asbestos lawsuits to be entered against Cape and its subsidiaries.
32. Charter Consolidated Ltd. was responsible for designing ways to continue the flow of South African asbestos to U.S. customers and the counterflow of asbestos profits out of the United States after the liquidation of NAAC.
33. Charter Consolidated Ltd. was responsible for directing and facilitating the sale of Cape's asbestos mining interests in South Africa to Transvaal Consolidated Land & Exploration Company Ltd.
34. Charter Consolidated Ltd. had financial interests in Transvaal Consolidated Land & Exploration Company Ltd. when it bought Cape's asbestos mining interests in 1979.
35. Charter Consolidated Ltd. was responsible for directing the transfer of certain intellectual property owned by NAAC for future use by other companies selling South African asbestos in the United States, including in South Carolina.
36. After 1979, Charter Consolidated Ltd. profited from entities that continued to mine, distribute, or sell South African asbestos.
37. Charter Consolidated Ltd. was responsible for Cape's refocusing its business on asbestos removal.

38. Charter Consolidated Ltd. and Central Mining were both part of a scheme to facilitate Cape's escape from legal or financial responsibility for people harmed by Cape asbestos in the United States, including in South Carolina.
39. Charter Consolidated Ltd. and Central Mining were both part of a corporate arrangement to eliminate or reduce as much as possible their exposure in the United States to lawsuits brought against them for the sale of asbestos in the United States.
40. Charter Consolidated Ltd. and Central Mining intentionally designed complexity into their organization and corporate relationships in order to obfuscate those relationships and ownership interests while minimizing Cape's and their own liability risks, including for asbestos sold in the United States, including in South Carolina.
41. Charter Consolidated Ltd. and Central Mining refused to make adequate provisions or reserves of cash for Cape's and their own asbestos-related liabilities.
42. In 1996, Charter Consolidated Ltd. sold off its direct equity interests in Cape for approximately £48 million.

Inferences as to South Carolina Presence,⁸ Control by and Responsibility of ESAB Corporation

43. From 1989, ESAB Group, Inc. ("ESAB Group") maintained its principal place of business in Florence, South Carolina.⁹

⁸ Paragraphs 43 to 52 undermine the many representations made by ESAB Corporation to this Court regarding an alleged lack of ties to South Carolina.

⁹ Brief for Pl.-Appellant ESAB Grp., No. 11-1243, at 7 (4th Cir. Aug. 24, 2011). The Court may take judicial notice of judicial filings. *See* Rule 201(b), SCRE; *Rouse v. Nessel*, 2023 WL 4235614, at *1 n.1 (D.S.C. June 28, 2023) ("[A] court may take judicial notice of public filings, including court filings.").

44. In 1994, ESAB Group was acquired by Charter PLC (a new holding company formed in 1993) and continued to operate primarily from Florence, South Carolina.¹⁰
45. In or around October 2008, ESAB Group “became an indirect subsidiary of Charter International plc.”¹¹
46. Through at least 2012, “ESAB Group has maintained its principal place of business in Florence, South Carolina, where it ha[d] a manufacturing plant, executive offices, and sales, engineering, and research development divisions.”¹²
47. While operating in the United States, principally from Florence, South Carolina, ESAB Group initiated multiple lawsuits in South Carolina. *E.g.*, *ESAB Grp., Inc. v. Centricut, Inc.*, No. 4:96-cv-00168 (filed Jan. 19, 1996); *ESAB Grp. Inc. v. Centricut LLC*, No. 4:98-cv-01654 (filed Jun 8, 1998); *ESAB Grp. Inc. v. Arrowood Indem. Co. et al.*, No. 4:09-cv-01701 (filed on June 25, 2009).
48. As of 2011, ESAB Group employed “523 people at its Florence facilities, which include[d] a manufacturing plant, executive offices, the company’s information technology department, and a substantial portion of the company’s sales, engineering, and research and development divisions”; the company had “paid more than \$6 million in taxes to the State of South Carolina and Florence County”; and the company “derive[d] a substantial portion of its total revenue from its operations and facilities in Florence, South Carolina,”

¹⁰ See *ESAB Grp., Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 383 (4th Cir. 2012) (Floyd, J.).

¹¹ *Id.*

¹² *Id.*

including “generat[ing] approximately \$225 million in revenue from its Florence operations” from 2008 through the first half of 2009.¹³

49. In 2011, Colfax acquired Charter and ESAB Group, along with ESAB Group’s “North American headquarters . . . located in Florence, South Carolina.”¹⁴

50. In 2022, Colfax sold its interests in Charter’s businesses, including those associated with Cape-related liabilities—namely, ESAB Corporation.

51. ESAB Group is currently a wholly owned subsidiary of ESAB Corporation.¹⁵

52. ESAB Group’s Terms and Conditions of Sale, which appear on ESAB Corporation’s website, require its buyers to “expressly submit[] to the exclusive jurisdiction of the state and/or Federal courts located in Florence, South Carolina with respect to all lawsuits arising under or in connection with this Offer.”¹⁶

53. In 2022, the spinoff of ESAB Corporation, which was formally organized in 2021, was completed.

54. After the spinoff, ESAB Corporation served as the ultimate parent company of Charter Consolidated Ltd. and Central Mining.

¹³ Decl. of Neil C. Schemm, *The ESAB Grp., Inc. v. Arrowood Indem. Co.*, No. 4:09-cv-01701, ECF No. 25-2, at ¶¶ 10–14 (July 17, 2009).

¹⁴ “ESAB Acquired by Colfax Corporation,” ESAB News Release (Jan. 13, 2012), *available at* <https://web.archive.org/web/20121029032933/http://www.esabna.com/us/en/news/ESAB-Acquired-by-Colfax-Corporation.cfm>.

¹⁵ ESAB Grp., Inc. 401(k) Retirement Savings Plan, 2022 Form 11-K (July 12, 2023), *available at* <http://pdf.secdatabase.com/2169/0001983853-23-000006.pdf>; *see also* *KBC Asset Mgmt. NV v. DXC Tech. Co.*, 19 F.4th 601, 607 (4th Cir. 2021) (“We may also take judicial notice of the content of relevant Securities and Exchange Commission (‘SEC’) filings and other publicly available documents included in the record.”).

¹⁶ ESAB Terms and Conditions of Sales (accessed May 4, 2024), https://esab.com/us/nam_en/terms-and-conditions-of-sales/.

55. ESAB Corporation obfuscated the relationship between ESAB and its post-spinoff subsidiaries—including Charter Consolidated Ltd. and Central Mining—and also historically with Cape, with the purpose of frustrating creditors and avoiding liability.
56. ESAB Corporation is the successor in interest to Central Mining and Charter Consolidated Ltd.
57. ESAB Corporation can appoint executive personnel and directors of Charter Consolidated Ltd. and Central Mining.
58. There is common ownership between Central Mining, Charter Consolidated Ltd., and ESAB Corporation.
59. There was common ownership among Central Mining, Charter Consolidated Ltd., and Cape before 1996.
60. There was common ownership among Central Mining, Charter Consolidated Ltd., Cape, and ESAB Group between 1994 and 1996.
61. Cape was financially dependent upon Central Mining and Charter Consolidated Ltd. before 1996.
62. ESAB Group was financially dependent upon Charter PLC between 1994 and 1996, as well as for many years after.
63. Central Mining and Charter Consolidated Ltd. are financially dependent upon ESAB Corporation.
64. The Charter Third-Party Defendants have failed to properly observe corporate formalities over their existence.

65. The Charter Third-Party Defendants have done nothing to address Cape’s massive unpaid responsibility for the death and illness caused by Cape’s asbestos products in South Carolina and elsewhere in the United States.
66. The Charter Third-Party Defendants have taken possession of property, including cash and other assets, which they should have not taken from Cape and should have remained available to bodily-injury claimants in the United States, including in South Carolina.
67. The Charter Third-Party Defendants have destroyed corporate records and publicly misrepresented the nature of Cape’s business and liability-avoidance scheme in the United States.
68. The Charter Third-Party Defendants are responsible for the absence of corporate records with respect to Cape, with Charter Consolidated Ltd. and Central Mining responsible for the destruction of records referenced with respect to the Barlow World Rand Mines Archive. See <https://researcharchives.wits.ac.za/5-3-14> (referencing “certain boxes [that] have been destroyed” or “negative material on miners’ phthisis and asbestos [that] have been removed – perhaps even before the collection came to Barlows”).

General Inferences as to Alter Ego Liability

69. The Charter Third-Party Defendants—with Cape prior to 1996—are subject to the same total dominion and control, and ability to be influenced with respect to major business decisions and are mere instrumentalities for the purposes of committing fraud or other violations of statutory or legal duties—namely, by ESAB Corporation currently, and by Charter Consolidated Ltd. previously.
70. The Charter Third-Party Defendants—with Cape prior to 1996—are part of a single business enterprise or single enterprise-in-fact, have an amalgamation of corporate

interests, entities, and activities, and have unified, integrated, and intertwined business operations and resources to achieve and act with a common business purpose.

71. The Charter Third-Party Defendants—with Cape prior to 1996—have acted with bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of legal distinctions among the Charter Third-Party Defendants, and that inequitable consequences and fundamental unfairness have been caused from such blurring of legal distinctions and their activities and assertions of corporate separateness, including in an attempt to shield fraud, evasion of existing obligations, circumvention of statutes, criminal conduct, and the like with respect to the Cape liability-avoidance scheme, and that adherence to the fiction of separate corporate identities would defeat justice.

General Inferences as to Unjust Enrichment

72. The Charter Third-Party Defendants participated in, or otherwise directed or facilitated, Cape's liability-avoidance scheme.
73. The Charter Third-Party Defendants have financially benefited from Cape's liability-avoidance scheme, including receiving diverted funds directly or indirectly from Cape and retaining the benefits of Cape's asbestos business.
74. It would be inequitable for the Charter Third-Party Defendants to retain any financial benefit or monetary value from the liability-avoidance scheme without contributing to the compensation of persons harmed by Cape asbestos, including by returning the financial benefit or monetary value of the funds obtained from Cape.

II. The Court's Adverse Inferences Against the Altrad Third-Party Defendants.

As to the Altrad Third-Party Defendants (inclusive of both the “Altrad Owners” and “Altrad Sparrows” groups),¹⁷ the Court draws the adverse inference that each of the Altrad Third-Party Defendants was at relevant times the alter ego of Cape, requiring piercing of the corporate veil. Likewise, each of the Altrad Third-Party Defendants is responsible for or has benefitted unjustly from Cape’s liability-avoidance scheme. In order to reach that inference, the following inferences are made against each of the respective Altrad Third-Party Defendants:

Inferences as to AIA and Mohed Altrad

1. Mohed Altrad is the majority shareholder of the Altrad Group.
2. Mohed Altrad controls the Altrad Group, including AIA.
3. In 2022, Mohed Altrad was convicted of corruption offenses in France, punished by the imposition of an 18-month suspended jail term.
4. Mohed Altrad has been convicted of a crime involving dishonesty or false statement.
5. AIA is the head company of the Altrad Group and the ultimate parent of all of the Altrad Third-Party Defendants.

Inferences as to Altrad and Cape

6. AIA acquired Cape in 2017 through its wholly owned subsidiary, Altrad UK Ltd.

¹⁷ The Court makes these adverse inferences independent of any other evidence that may support the Receiver’s claims against the Altrad Third-Party Defendants. *See, e.g.*, Order (Dec. 6, 2023) at 9–12, 38–50 (detailing allegations and documents regarding AIA’s common control of Altrad Third-Party Defendants; the alleged domination of AIA by Mohed Altrad as the founder, face, and owner of more than 90% of AIA shares; the mass termination of “Sparrows” executive management after being acquired by Altrad; the liquidation of a Scottish “Sparrows” entity within two weeks of being served the Receiver’s complaint; the rebranding of “Sparrows” entities as “Altrad Sparrows”; and efforts to acquire and integrate Cape, with its affiliates, into the Altrad Group as a profitable, wholly owned subsidiary that—with other Altrad Third-Party Defendants with defaults entered against them—continues to avoid responding to claims in the United States.

7. Altrad UK Ltd. was incorporated for the specific purpose of acquiring Cape.
8. Altrad UK Ltd. functions as a wholly owned subsidiary of AIA.
9. Altrad UK Ltd. is financed by AIA.
10. AIA and Mohed Altrad own Altrad UK Ltd.
11. AIA and Mohed Altrad dominate and control Altrad UK Ltd.
12. AIA and Mohed Altrad were aware of Cape's asbestos-related liabilities and liability-avoidance scheme prior to the acquisition of Cape.
13. AIA and Mohed Altrad acquired Cape with the intent to continue Cape's liability-avoidance scheme and refusal to respond to litigation in the United States.
14. Since the acquisition of Cape, AIA and Mohed Altrad have dominated and controlled Cape, including with respect to its financing and capitalization.
15. AIA and Mohed Altrad can appoint executive personnel and directors of Cape.
16. The Altrad Group has incorporated Cape into its enterprise, including through rebranding efforts, such as changing the name of Cape Industrial Services Ltd. to Altrad Services Ltd.
17. The Altrad Group set aside substantial proceeds to address certain non-US historical claims relating to asbestos exposure.
18. AIA and Mohed Altrad are responsible for Cape's continued failure to respond to litigation against Cape in the United States.

Inferences as to Altrad and Altrad Sparrows

19. The Altrad Group acquired an enterprise known as the "Sparrows Group" in July 2022.
20. In July 2023, the Sparrows Offshore Group Ltd. passed a resolution to liquidate.
21. AIA and Mohed Altrad were responsible for the decision to liquidate the Sparrows Offshore Group Ltd.

22. The service of the Third-Party Complaint on the Sparrows Offshore Group Ltd. earlier in July 2023 contributed to the decision to liquidate the Sparrows Offshore Group Ltd.
23. Hawk Bidco US Inc., Arranco US, LLC, and Sparrows Offshore, LLC (“Altrad Sparrows Third-Party Defendants”) are U.S. subsidiaries of the Altrad Group.
24. AIA and Mohed Altrad own the Altrad Sparrows Third-Party Defendants.
25. AIA and Mohed Altrad dominate and control the Altrad Sparrows Third-Party Defendants.
26. The Altrad Sparrows Third-Party Defendants are financially dependent upon AIA and Mohed Altrad.
27. AIA and Mohed Altrad can appoint executive personnel and directors of the Sparrows Third-Party Defendants.
28. AIA and Mohed Altrad were responsible for the termination of the executive leadership at the Sparrows Group in April 2023.
29. The Altrad Group has incorporated the Altrad Sparrows Third-Party Defendants into its enterprise, including through rebranding efforts, such as changing the name of “Sparrows” to “Altrad Sparrows.”

Inferences as to All Altrad Third-Party Defendants

30. There is common ownership between the Altrad Third-Party Defendants and Cape.
31. The Altrad Third-Party Defendants intentionally designed complexity into their corporate relationships in order to obfuscate those relationships and ownership interests while minimizing Cape’s and/or their own liability risks, including for asbestos.
32. The Altrad Third-Party Defendants are part of a scheme to facilitate Cape’s escape from legal or financial responsibility for people harmed by Cape asbestos.

33. AIA and Mohed Altrad are responsible for Cape's and other non-responding Altrad Third-Party Defendants' failure to respond to litigation involving Cape in the United States, including with respect to the actions brought by the Park and Tibbs plaintiffs in this Court.
34. The Altrad Third-Party Defendants have refused to make adequate provisions or reserves of cash for Cape's and their own asbestos-related liabilities.
35. The Altrad Third-Party Defendants have failed to properly observe corporate formalities over their existence.
36. The Altrad Third-Party Defendants have done nothing to address Cape's massive unpaid responsibility for the death and illness caused by Cape's asbestos products in South Carolina and elsewhere in the United States.
37. The Altrad Third-Party Defendants have taken possession of property, including cash and other assets, which they should have not taken from Cape.
38. The Altrad Third-Party Defendants have destroyed corporate records and publicly misrepresented the nature of Cape's business and liability-avoidance scheme in the United States.

General Inferences as to Alter Ego Liability

39. The Altrad Third-Party Defendants—with Cape—are subject to the same total dominion and control, and ability to be influenced with respect to major business decisions and are mere instrumentalities for the purposes of committing fraud or other violations of statutory or legal duties—namely, by Mohed Altrad and AIA.
40. The Altrad Third-Party Defendants—with Cape—are part of a single business enterprise or single enterprise-in-fact, have an amalgamation of corporate interests, entities, and

activities, and have unified, integrated, and intertwined business operations and resources to achieve and act with a common business purpose.

41. Mohed Altrad acts as the alter ego and “guiding spirit” of the Altrad Group.
42. Mohed Altrad controls decision-making within the Altrad Group, including for Cape.
43. The Altrad Third-Party Defendants—with Cape—have acted with bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of legal distinctions among the Altrad Third-Party Defendants, and that inequitable consequences and fundamental unfairness have been caused from such blurring of legal distinctions and their activities and assertions of corporate separateness, including in an attempt to shield fraud, evasion of existing obligations, circumvention of statutes, criminal conduct, and the like with respect to the Cape liability-avoidance scheme, and that adherence to the fiction of separate corporate identities would defeat justice.

General Inferences as to Unjust Enrichment

44. The Altrad Third-Party Defendants are part of the Cape liability-avoidance scheme, or have otherwise directed or facilitated the liability-avoidance scheme.
45. The Altrad Third Party Defendants have financially benefited from Cape’s liability-avoidance scheme, including receiving diverted funds directly or indirectly from Cape and retaining the benefits of Cape’s asbestos business.
46. It would be inequitable for the Altrad Third-Party Defendants to retain any financial benefit or monetary value from the liability-avoidance scheme without contributing to the compensation of persons harmed by Cape asbestos, including by returning the financial benefit or monetary value of the funds obtained from Cape.

DECISION ON REQUEST FOR ATTORNEYS’ FEES

A court may award reasonable expenses, including attorneys' fees, for a party's failure to make or cooperate in discovery. Rule 37(b), SCRCP (stating such payment "shall" be made unless the "failure was substantially justified" or "an award of expenses [is otherwise] unjust"); *see also*, *e.g.*, *Davis v. Parkview Apartments*, 409 S.C. 266, 270, 762 S.E.2d 535, 537 (2014) (affirming award of attorneys' fees and costs as sanctions for refusal to comply with discovery rulings); *Arnal v. Arnal*, 363 S.C. 268, 297-98, 609 S.E.2d 821, 836 (Ct. App. 2005), *aff'd as modified*, 371 S.C. 10, 636 S.E.2d 864 (2006) (court imposed sanctions awarding attorneys' fees for discovery abuse); *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 644, 579 S.E.2d 151, 154 (Ct. App. 2003) (trial court granted attorneys' fees for failure to participate in discovery); *Hundley ex rel. Hundley v. Rite Aid of S.C., Inc.*, 339 S.C. 285, 305, 529 S.E.2d 45, 56 (Ct. App. 2000) (trial court assessed attorneys' fees for discovery abuses); *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999) (trial court awarded attorneys' fees for failure to comply with discovery order). "As a general rule," moreover, "the amount of attorneys fees to be awarded in a particular case is within the discretion of the trial judge." *Jones v. Robinson*, 2023 WL 7685902, at *10 (S.C. Ct. App. Nov. 15, 2023).

Consistent with the Court's other findings herein, and following a hearing on these issues, the Court finds that the Altrad and Charter Third-Party Defendants' persistent refusal to participate in discovery amounts to bad faith, willful disobedience, and gross indifference to the rights of the Receiver and the Court's management of its docket, and accordingly, the failure of these Third-Party Defendants falls short of substantial justification. Accordingly, the Court finds that the Receiver is entitled to reasonable attorneys' fees and costs as a sanction against the Altrad Third-Party Defendants and Charter Third-Party Defendants for the litigation activities to date necessary for addressing these Third-Party Defendants' frivolous positions and proceedings, culminating in

these Motions. The Receiver is ordered to produce within thirty (30) days from this order evidence of its reasonable attorneys' fees and costs for this Court's *in camera* review.

* * * * *

For the reasons set forth herein, the Court **GRANTS** the Receiver's Motions and, accordingly, (i) draws the adverse inferences set forth herein given the discovery misconduct of the Altrad Third-Party Defendants and Charter Third-Party Defendants, and (ii) concludes that an award of reasonable attorneys' fees and costs in favor of the Receiver is proper, and accordingly, the Receiver must submit evidence *in camera* of such fees and costs within 30 days of this order.

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/Sanctions

So Ordered

Jean H. Toal

Electronically signed on 2024-05-23 15:38:06 page 34 of 34

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

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

3M COMPANY *et al.*,

Defendants.

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

**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

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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

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*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.

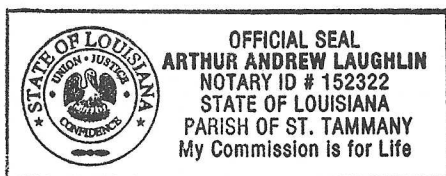
Dated this 20th day of August, 2023.

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,	)	
Plaintiffs,	)	Civil Action No. 2023-CP-40-01759
v.	)	In Re:
3M COMPANY, <i>et al.</i> ,	)	Asbestos Personal Injury Litigation
Defendants.	)	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 PLCS, <i>et al.</i> ,	)	
Third-Party Defendants.	)	

**AFFIDAVIT OF
ADAM C. WOOD
IN SUPPORT OF MOTION TO
DISMISS THIRD-PARTY
COMPLAINT FOR LACK OF
PERSONAL JURISDICTION**

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.

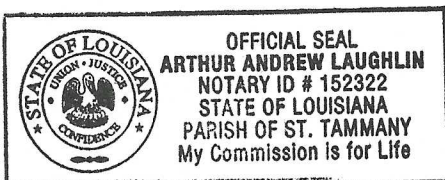
Dated this 20th day of August, 2023.

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

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 PLCS, *et al.*,

Third-Party Defendants.

) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL CIRCUIT

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

) In Re:

) Asbestos Personal Injury Litigation

) Coordinated Docket

**AFFIDAVIT OF
ADAM C. WOOD
IN SUPPORT OF MOTION TO
DISMISS THIRD-PARTY
COMPLAINT FOR LACK OF
PERSONAL JURISDICTION**

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.

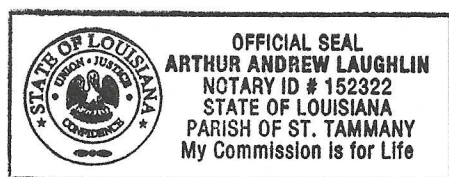
Dated this 20th day of August, 2023.

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	)	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

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(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

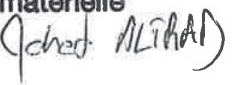
Notary Public for _____

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

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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
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

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E X H I B I T S

(None were proffered.)

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P R O C E E D I N G S

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* * * * *

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 - - -

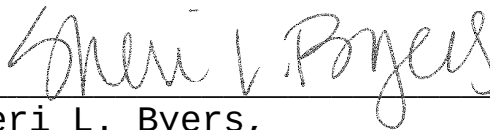
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I, Sheri L. Byers, Registered Professional Reporter and Notary Public of the State of South Carolina at Large, do hereby certify:

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

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I N D E X

Motions Before the Court	3
Certificate of Reporter	55

NO EXHIBITS

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: All right. I assume that everyone has
3 the latest and the greatest agenda. This thing is kind of a
4 moving target.

5 Okay. Madam Court Reporters, do you all have the
6 agendas? And have all the attorneys given their cards to
7 you and otherwise indicated who they are and who they
8 represent?

9 THE COURT REPORTER: Yes, Your Honor.

10 THE COURT: All right. You all are familiar with
11 how I operate, but just to reiterate, there are a lot of
12 different cases here. I'll try to call the case numbers as
13 I proceed into each one of these motions.

14 The lawyers will identify themselves every time
15 they take the podium and tell you who they represent.

16 So I hope that it goes without saying if things
17 get confusing, there are a lot of moving parts to this
18 thing, you are the most important people in this room to
19 take this record, so you interrupt any time you need to to
20 be sure we are in sync with what you are taking against the
21 record.

22 THE COURT REPORTER: Yes, Your Honor.

23 THE COURT: Very good. These are many motions
24 involving various cases on the asbestos docket or cases
25 involving matters related to the asbestos docket. So I'll

1 start with matters involving Davis Mechanical. And the
2 first is Donald McDowell against A.O. Smith and many others.
3 This is 2023-CP-40-06157.

4 This is Columbia Casualty and Continental's Motion
5 to Dismiss Strike and/or Sever Third-Party Complaint.

6 Mr. Rawl.

7 MR. MANOS: Teddy Manos. I don't see Mr. Rawl in
8 the courtroom but I'm happy to go try to give him a quick
9 call if I can.

10 THE COURT: Well, I got that sassy little note
11 from him saying -- all right. There he is. -- I'm back
12 from vacation. By the way, here's a whole bunch of other
13 motions I'm going to file with you. I got that yesterday.

14 So Mr. Rawl.

15 MR. RAWL: Thank you, Your Honor.

16 THE COURT: All right. McDowell versus A.O. Smith
17 is the first thing on the roster. These are the motions of
18 Columbia Casualty and Continental to dismiss, strike, and/or
19 sever a third-party complaint. The first of which is -- in
20 terms of material that I've got is Davis Mechanical's
21 response in opposition. So that will be heard and a reply.

22 So you're the moving party, you may proceed.

23 MR. RAWL: Thank you, Your Honor. We will rest on
24 our briefs on that one, as well as the next Davis Mechanical
25 matter.

1 THE COURT: Well, you may rest on your brief, but
2 I've called this very, very long roster to try to get at
3 these various motions and dispose of them. So you can stand
4 on your brief, if you wish.

5 I will turn to the opposition and see if they wish
6 to be heard.

7 MR. ROBINSON: Your Honor, John Robinson on behalf
8 of the receiver for Davis Mechanical.

9 As the Court is aware, Mr. Rawl filed a number of
10 motions in the McDowell case. He has motions to dismiss,
11 strike, and/or sever third-party complaint in the F.
12 Davis -- James Franklin Davis case. He has a -- Continental
13 has a motion to dismiss, strike, and, of course, sever
14 third-party complaint.

15 And, Judge, you haven't called the next case, but
16 it's ACL. Basically the same motions in the ACL. And he
17 represents a number of different defendants in that ACL
18 case. He filed a motion as to each of his defendants. I
19 think we have a total of 11 listed in that case along with
20 Motions for a Protective Order, some of which are also
21 Mr. Rawl's.

22 THE COURT: Well, not to mention doesn't he have a
23 little extra added move for motions at the end that style
24 themselves as Motions for Protective Order and Request for
25 Injunctive Relief.

1 I'll just say this to you, Mr. Rawl. This Court
2 is not fooled by this slew of motions. They're all about an
3 attack on the receivership. There are now some -- I can get
4 Mr. Robinson to detail them, but are some seven orders or
5 more from the Court of Appeals of the Supreme Court that
6 deal with nonappealable orders.

7 And one of them -- one of Judge Verdin's orders
8 specifically talks about the improper use of turning
9 something injunction -- or injunctive relief when, in fact,
10 it's just another means of trying to attack the
11 establishment of the receiverships.

12 These are burdensome to this Court, and they are
13 extremely burdensome to the appellate courts. Not only
14 because each of them has to be dealt with, but because the
15 filings are voluminous with these -- some of these motions
16 and repetitive.

17 So I'm not going to simply let you rest on your
18 briefs on this. I want some defense by you, Mr. Rawl, as to
19 why you and your clients, your insurance clients, continue
20 to bombard this receivership with motions that you don't
21 even want to argue because their only premise is to serve as
22 the platform for an appeal.

23 If I'm wrong about that, I want to know about
24 that, and I want you to tell me about that. If I'm right
25 about that, I want to understand why that continues in the

1 light of the uniform rulings by the Court of Appeals and now
2 by the Supreme Court itself in accepting certification of
3 something, dismissing the whole cause of action, and sending
4 it back to this Court because it's not appealable.

5 And further, the thing that really makes me so
6 unhappy about this is that in the beginning orders that
7 started all this, when the receiverships were first started,
8 in the memorandum that Mya sent out when we heard these
9 things a year and a half ago, of what my ruling would be,
10 she, at my request, sent out to all the parties something
11 that highlighted in bold print, These matters are not
12 appealable.

13 So I'm frustrated. I have set these receiverships
14 up for one reason and one reason only, to marshal assets
15 which are insurance. Which is where you and your clients
16 come in. They're all insurance companies, or they're the
17 manager of insurance companies.

18 And I'm going to have some special things to say
19 when we get to Resolute. And I'm just not comprehending
20 after two years or more of litigation about this that we
21 don't move on to the normal thing of marshaling assets.

22 So I want some information rather than just, hey,
23 decide it on the merits so I can go appeal.

24 MR. RAWL: I'll be happy to, Your Honor.
25 Initially with regard to the Davis Mechanical

1 receivership --

2 THE COURT: Oh, by the way, excuse me, this is
3 Mr. Vic Rawl, who hasn't come yet and presented his card to
4 you, but he represents a good many insurance companies. And
5 in this particular action, he represents Columbia Casualty
6 and Continental.

7 All right.

8 MR. RAWL: Thank you, Your Honor.

9 With regard to the Davis Mechanical receivership,
10 we did file a motion to dismiss and -- but the motion to
11 dismiss and the motion to serve and the Rule 14 motion in
12 the Davis Mechanical matters are different than the motions
13 that were filed with regard to the ACL receivership.

14 There is no appeal pending in Davis Mechanical.
15 There's no --

16 THE COURT: There's no valid appeal pending in ACL
17 either.

18 MR. RAWL: Your Honor, with regard, I just want to
19 let you know why, Your Honor, I was saying that --

20 THE COURT: This doesn't depend on matters being
21 appealed. You don't have that extra hook going for you,
22 hey, you can't do anything because it's on appeal. The
23 courts have dealt with that. But this thing is simply an
24 attempt to attack the receivership again and serve as a
25 platform for you making an appeal.

1 MR. RAWL: Your Honor, respectfully, yes, my
2 clients do attack the receivership when it comes to the ACL
3 receivership. There has been no attack on the receivership
4 in the Davis Mechanical matters.

5 THE COURT: Then what is the point of these
6 motions?

7 MR. RAWL: Well, Your Honor, with regard to the
8 Davis Mechanical motions to dismiss, the point of those
9 motions are that there is -- there's no controversy because
10 a third-party action does not relate to the underlying
11 action in the case. It is a motion, Your Honor, you have
12 dealt with numerous times.

13 THE COURT: Right. And I ruled on it extensively
14 in the *Childers* case.

15 MR. RAWL: And, Your Honor, with regard to the
16 Davis Mechanical, J.F. Davis case, we had an agreement in
17 January of '23 to submit those -- the motion to dismiss and
18 the motion to strike on the briefs. And apparently that
19 didn't -- I don't know if that ever happened, but
20 J.F. Davis, we've gone forward with the discovery. They
21 deposed my client. We have a stipulation as to what
22 coverage is in place in the Davis Mechanical matter.

23 And so I pointed that out to the receiver
24 yesterday. We've already -- they dismissed CIC out of the
25 case. The motion is moot as to CIC.

1 THE COURT: Why don't you withdraw it instead of
2 asking me to rule upon it?

3 MR. RAWL: I understand Your Honor is going to
4 deny it and I want to still preserve the right to my
5 client --

6 THE COURT: What right are you reserving? The
7 right to appeal when a client is out of a case?

8 MR. RAWL: Your Honor, we're not looking to set up
9 some type of appeal of a receivership.

10 THE COURT: If you gone on with activity in this
11 case, what possible reason could you have pursuing that
12 motion other than to serve as a platform if I deny your
13 motion for you to appeal? Can you tell me now you won't
14 appeal it?

15 MR. RAWL: Yes, Your Honor. I don't think in
16 regard to -- it is a 12(b) (6), a motion to strike, a motion
17 to sever under Rule 14. This is not -- we're not attacking
18 the receivership and J.F. Davis. I can tell you there's no
19 intention, to my knowledge, to appeal this. I think the
20 J.F. Davis matter is close to being resolved.

21 I mean -- and the McDowell case, we do make a
22 12(b) (8) argument, Your Honor, because there's several cases
23 pending with -- where J.F. Davis is a third-party plaintiff
24 that has brought third-party actions against my client.

25 Realistically, ever since we entered into the

1 stipulation, which was several months ago, at this point
2 with regard to the coverage in place by my clients with
3 regard to J.F. Davis, Your Honor, I don't want to waive any
4 arguments. But this is, you know -- this is not ACL, where
5 my clients are arguing that the receivership is improper and
6 the receiver is going beyond his authority because that
7 receivership has been entered into over an active Canadian
8 company.

9 But the primary arguments you've heard, Your
10 Honor, with regard to those appeals are that my clients do
11 believe that because of the underlying appeal by ACL in the
12 *Tibbs* matter, which is fully briefed now with the Court of
13 Appeals, that Rule 205 does divest this Court of all
14 jurisdiction for anything related to either the --

15 THE COURT: Even though the Court of Appeals, the
16 very court you're citing, says otherwise, do they not?

17 MR. RAWL: I do not think so, Your Honor.

18 But to be clear, I was only trying to
19 differentiate Davis Mechanical and ACL. I very much would
20 like to argue the motions in ACL. Which include not only
21 the same motion -- 12(b) motions, motions to sever, those
22 motions which I understand, you know, denial of a 12(b)
23 motion is not automatically appealable.

24 My clients are arguing that a modification or a
25 grant or a continuance of a receivership appointment is

1 appealable. But those matters in the ACL case are markedly
2 different than Davis Mechanical.

3 Davis Mechanical was a defunct corporation. Davis
4 Mechanical is not in the case of appealing the appointment
5 of the receiver. I mean, it is -- it is, Your Honor, a
6 different animal. And I am happy to argue fully the
7 arguments that you've heard in numerous of the receivership
8 cases prior to ACL, Atlas, and Cape, which were the first
9 receiverships that were appointed over active foreign
10 corporations.

11 And so with regard to Davis Mechanical, I put
12 those in a different bucket. And, yes, my clients do
13 believe that the third-party action is improper because it
14 is not a derivative. It is not a derivative of the
15 underlying case. You know, and they do believe there is no
16 active case in controversy because the coverage -- the
17 coverage dispute is different than what is in the underlying
18 case. And all of the cases that state that you can't
19 disclose to the jury the existence of insurance, you know,
20 for those reasons.

21 THE COURT: Let me ask you this: With respect to
22 the claims against the insurance company and the third-party
23 matters, how do you concede that those matters would be put
24 before a jury? Those are matters of requests for a
25 declaration with respect to coverage. We don't ask juries

1 to do that. That's what judges do.

2 MR. RAWL: I think that --

3 THE COURT: I've seen that argument several times
4 before in some of these other asbestos cases where the
5 contention is the whole thing has to go before a jury. I
6 recently split New-Indy that settled yesterday or is just
7 about to settle into a nonjury piece and jury piece. Just
8 as I did with Penn National.

9 This concept that you ask juries to opine on a
10 declaration with respect to the coverage is a law question
11 pure and simple for the Judge.

12 MR. RAWL: Your Honor, I've not made a motion. I
13 understand that some parties have made motions that the
14 underlying cases should be tried to a jury. Personally, I
15 think there are times that would be appropriate, especially
16 if there are mixed issues of law and equity, that the legal
17 issues would go first to a jury and then after that the
18 equitable issues would go to the Court.

19 However, I've not made a motion in Davis
20 Mechanical or, frankly, in any of my cases at this point to
21 argue that, you know, whether it should be a jury trial or a
22 nonjury trial. So I'm not exactly sure what arguments were
23 being made by New-Indy or those other entities. But I have
24 not made that argument here.

25 Again, with regard to the coverage for in Davis

1 Mechanical, my client has entered into a stipulation with
2 the receiver as to what the coverage is. So ...

3 THE COURT: It should have been enough to file
4 with this Court and say the motion is going to need to be
5 heard now.

6 MR. RAWL: I mean, I think that there are issues
7 that are related to a client other than -- I mean, to a
8 defendant other than mine is what I've had conversation --

9 THE COURT: You -- I don't care if they relate to
10 some other defendant. With respect to you and your clients,
11 the stipulation with respect to coverage dissolves these
12 cases except for these concepts you have that somehow or
13 another are desires to being teed up for an appeal. You say
14 you're not going to do that.

15 MR. RAWL: There is no intention that I'm aware of
16 to appeal anything in J.F. Davis. It is a 12(b)(6).

17 THE COURT: How about in McDowell?

18 MR. RAWL: Rule 14. McDowell is a copy of --

19 THE COURT: Right.

20 MR. RAWL: The two motions are identical --

21 THE COURT: Yes.

22 MR. RAWL: -- other than there's a 12(b)(8) in
23 McDowell because there are now numerous cases. J.F. Davis
24 was the first one, you know, where the receiver brought my
25 client to a third-party action.

1 I think all of J.F. Davis is resolved other than
2 the claim that is lingering against, you know, my client,
3 but that is a matter where the stipulation was entered into.

4 In speaking with the receiver, what I'll say, Your
5 Honor, is I think that there is, you know, an issue of fact
6 that relates to a client -- a third-party defendant other
7 than mine, which is why J.F. Davis third-party actions
8 against my clients are outstanding at all.

9 But, you know, my arguments with regard to
10 J.F. Davis is for Your Honor -- you know, for my client is,
11 is markedly different than the arguments in ACL and the
12 Lewis matter where, Your Honor, I would like to keep them
13 separate.

14 THE COURT: Yeah, keep them separate. A lot going
15 on in that other one than what's going on in here.

16 MR. RAWL: Yes, there are lots of things I would
17 like to point out to Your Honor and I would like to argue
18 those motions.

19 THE COURT: Yes. You're going to get to.

20 MR. RAWL: Thank you so much, Your Honor.

21 But with regard to J.F. Davis, I wasn't trying to
22 be rude to the Court in any way by saying we rely on the
23 briefs. But those are -- while my client does believe that
24 the motion should be granted, you know, we make the motion
25 so we don't waive the argument. But we understand what

1 Your Honor's ruling is going to be.

2 THE COURT: Okay.

3 MR. RAWL: And which is why I did not want to take
4 up the time with the Court.

5 THE COURT: I appreciate that.

6 Anything further, Mr. Robinson?

7 MR. ROBINSON: Yes, Your Honor.

8 So I was trying to think of a word that
9 encapsulates a response, and the first word that came to
10 mind is outright false, unfortunately. That's the word that
11 comes to mind. I am prepared to address these motions, and
12 I would like to put them on the record.

13 First of all --

14 THE COURT: Go forward.

15 MR. ROBINSON: -- let me disabuse the -- Mr. Rawl
16 and this Court from any belief that this case is close to
17 settling.

18 Was there a stipulation as to what we believe were
19 uncontested policy, a partial stipulation? Yes.

20 Are there a number of contested policies for which
21 Mr. Rawl's clients still contest? Yes.

22 So a stipulation regarding -- a partial
23 stipulation regarding one or a handful of policies when
24 there are a number of allegations in the complaint regarding
25 coverage outside of those stipulations is not -- would not

1 be accurate to say we are close to settling this case. I
2 wish we were, but we're not.

3 The other thing I heard was -- and the coverage
4 still remains unclear as to the other cases -- as to the
5 other policies.

6 The other thing I heard, and I anticipated that I
7 would hear this, based on the briefs that Mr. Rawl filed as
8 late as two days ago in this case, in the McDowell case, was
9 that these are different. These are different than -- these
10 motions, these 12(b) motions, these Rule 14, these Rule 8
11 motions are different.

12 So my -- we always say surround yourself by
13 smarter people than you, which, fortunately, I have sitting
14 next to me Shanon Peake from my office. So we were
15 preparing to respond to this motion this week, Ms. Peake
16 made me a chart. And we've heard of circular arguments.
17 And the best she could come up with were the arguments
18 presented by Mr. Rawl, and others in the ACL, because we
19 made one chart.

20 As I said, you're going to hear, if you decide --
21 I didn't interrupt you.

22 MR. RAWL: Are you arguing Davis Mechanical or
23 ACL?

24 MR. ROBINSON: Your Honor, if he could address the
25 Court. This is not a time for me --

1 THE COURT: Mr. Rawl.

2 MR. RAWL: Your Honor, I apologize. I have not
3 made my arguments with regard to ACL.

4 THE COURT: I know. You referred to ACL in your
5 argument to me, and the reference was this is different. He
6 is now trying to address that by saying, no, they're not
7 different.

8 I'm going to allow him some leeway to do that,
9 although I'm not going to allow him to get into his full
10 argument or present his full chart. So worry not about
11 that. You will be on equal ground. But he is responding.

12 You're the one that raised this in trying to
13 distinguish between the ACL, Cape and all of that in this
14 case. So it's fair game for him to reply.

15 Take your seat, and he will respond.

16 MR. RAWL: Thank you, Your Honor.

17 MR. ROBINSON: Your Honor, I understand that this
18 might get uncomfortable, but the facts are the facts and
19 they have to get in the record.

20 In preparing this chart for the hearing today,
21 Ms. Peake took out Mr. -- from Mr. Rawl's motions, his
22 memorandum, and including his reply that was filed this week
23 in this case, Davis, to clarify, Davis and McDowell --

24 THE COURT: I'm aware.

25 MR. ROBINSON: -- and the J.F. Davis.

1 And so in this chart, she took his arguments that
2 he made in this case, in Davis, and she took the grounds
3 upon which he is seeking to have this case dismissed, and
4 she, as it relates to Lewis, in the same exercise, so I
5 bring this up in the context of that. She took the
6 arguments that he made in the Lewis case, the 12 arguments,
7 the 14, the 8 arguments, and she made a chart of all the
8 arguments that are being made by Mr. Rawl in these cases,
9 and others. When we get to ACL, we'll talk about those.

10 And we took the briefs that Mr. Rawl filed and
11 others from the *Childers* case, from the *Mitchell* case, and
12 we compared them. And I'm sure it will not surprise you.

13 THE COURT: It doesn't. I've done the very same
14 thing, I just didn't do it as neatly as Ms. Peake did. That
15 goes all over my dining room table.

16 MR. ROBINSON: They are different. One has the
17 word Childers, C-H-I-L-D-E-R-S.

18 THE COURT: Other than the names of the parties,
19 they are almost identical.

20 MR. ROBINSON: One has Davis, D-A-V-I-S. And one,
21 the paragraphs are numbered; the other, paragraphs are not
22 numbered. But we went through line by line.

23 And so to say to this Court in Davis that these
24 are different than things you've heard before, I think the
25 facts and the record speak for itself. But I submit to you

1 that there is nothing new.

2 And when Shanon and I were talking about which
3 appeal case should we identify, the question quickly went to
4 which one can we not include?

5 Because as I pointed out yesterday, and it
6 occurred to me yesterday, that the last time we were here,
7 which I think was April 10th, there were a number of
8 appeals. I think I brought my chart. I said there are 19
9 appeals that have been filed.

10 I have a notebook for you, Your Honor. I said I
11 was going to bring them. And I will give Mr. Rawl a copy of
12 them. I have a notebook of the -- may I approach?

13 THE COURT: Yes, you may.

14 MR. ROBINSON: -- of all the orders I sent to you
15 yesterday. These are orders from the South Carolina Supreme
16 Court.

17 THE COURT: And the Court of Appeals.

18 MR. ROBINSON: And the Court of Appeals. And
19 those orders include -- well, they're listed in the -- they
20 include issues about motions to dissolve, motions to dismiss
21 or dissolve a receivership. They include issues relating to
22 discovery orders misidentified as injunctive orders.

23 And they include Mr. Rawl's own motion in the
24 Court of Appeals in the ACL case -- relating to ACL, which
25 we'll talk about in a few minutes, denying his motion to

1 enforce his Rule 205 arguments. Judge Williams signed that
2 order and included it.

3 Now, when we get to ACL, and I hear he's prepared
4 and ready to argue that. I guess we'll find out how he gets
5 beyond that binding order in that case.

6 Now, again, Your Honor, the idea that all of these
7 appeals and the findings in those appeals don't apply to
8 your rulings in other receivership cases is nonsensical.

9 Judge Williams, in every order he signed on April
10 the 12th, and then another one on I think April 19th, cites
11 the *Childers* case as precedent for denying the orders -- the
12 appeal and dismissing the appeals. He cites it as one of
13 the grounds to dismiss those appeals in these other cases.

14 One carrier -- and it's even argued on an
15 appealability memo in front of the Court of Appeals, before
16 the Court of Appeals had made their final decision, that
17 that appeal in *Childers*, which was not the same appeal they
18 were arguing it in, that appeal could be determinative of
19 whether the Court of Appeals case should move forward or not
20 when they were arguing the appealability issue.

21 When the Court of Appeals denied and dismissed,
22 they all of a sudden changed lanes. Oh, the *Childers* appeal
23 doesn't apply to any other case. Well, it did when they
24 were trying to use it as a reason that things should just
25 stay in limbo. But once it got decided, all of a sudden it

1 wasn't applicable.

2 Judge, you put your finger on it a couple of
3 times. Everything we're going to be doing potentially for
4 the next several hours, which I submit will be a waste of
5 this Court's time, will be talking about issues that you
6 have already decided, that the Court of Appeals has decided,
7 that the Supreme Court has decided.

8 You know, I see that there are motions for
9 protective orders and injunctive relief. But we already
10 know that play level. It's a catch-22. You deny it -- I
11 mean, you deny it, it's going to be, oh, you denied an
12 injunction so that's immediately appealable.

13 I don't know what's going to happen when you issue
14 orders in these cases. We have 40 motions. If they get
15 appealed in the next 30 days, which I presume they will,
16 eventually something has to happen to stop it. And
17 unfortunately, issuing rules on law is not the answer at
18 this point. It has not been the answer. We're two years
19 into this in a lot of these cases and we're still arguing
20 about the same thing.

21 So, you know, Judge, as it relates to the data,
22 which is what we're talking about, Davis Mechanical, we
23 submit that nothing new has been provided. And your orders
24 in prior cases and the arguments -- and I don't want to say
25 it without actually putting it in the record.

1 So, Your Honor, in Davis, which I believe in
2 the -- in our notebook to you, and you may have this in
3 another form, in Continental CCC's motion to dismiss in the
4 McDowell case is our tab number 1.

5 THE COURT: All right. I've got it.

6 MR. ROBINSON: I'd like to hand to the Court --
7 I'd like to hand to the Court, so what tab 1, as I said, is
8 Mr. Rawl's Motion to Dismiss.

9 THE COURT: Yes. That's Notice of Motion and
10 Motion by Third-Party Defendants Columbia Casualty and
11 Continental Casualty desist and/or Strike the Third-party
12 Complaint to Strike. We know why that is. That's because
13 striking of opinion is at least arguably appealable. Or in
14 the Alternative to Sever the Third-Party Complaint or in the
15 Further Alternative for a More Definite State. That's the
16 motion.

17 MR. ROBINSON: All right. So, Your Honor, I would
18 like to hand to you what Mr. Rawl filed in the *Mitchell*
19 case, if I may approach.

20 THE COURT: Yes, sir.

21 MR. ROBINSON: In the *Mitchell* case, on
22 October 23rd, 2023, Mr. Rawl -- Mr. Rawl filed a Notice of
23 Motion by the Continental Insurance Company to Dismiss,
24 Stay, and/or strike the Third-Party Complaint and/or the
25 Alternative Complaint or in Future or in Further Alternative

1 for a More Definite State.

2 THE COURT: Right.

3 MR. ROBINSON: Filed with this Court on
4 October 23, 2023.

5 THE COURT: Right.

6 MR. ROBINSON: So when I saw the arguments that
7 this is different, of course my curiosity took me to his
8 prior filings. And if you will look in tab number 1.

9 THE COURT: Yes, sir.

10 MR. ROBINSON: On page 3.

11 THE COURT: Yes, sir.

12 MR. ROBINSON: And then if you will go to -- get
13 to the right page here.

14 I'm sorry, if you will go to page 7. Page 7.

15 THE COURT: Yes, sir.

16 MR. ROBINSON: And then go to page 11 of what he
17 filed in the other case.

18 THE COURT: The J.F.?

19 MR. ROBINSON: The *Mitchell* case.

20 THE COURT: The *Mitchell* case. Okay. 11 in the
21 *Mitchell* case, and 7 in this one?

22 MR. ROBINSON: I think that's right. I apologize.
23 When I say circular argument, I'm not ...

24 THE COURT: You're talking about page 7. It's the
25 receiver's -- what you're talking about is compare --

1 MR. ROBINSON: Yes, Your Honor.

2 THE COURT: -- in this case is the motion in this
3 case, page 7 of his motion, that's styled the receiver,
4 Plaintiff should be stricken and/or the alternative severed
5 pursuant to Rule 14(a). With page 11 of *Mitchell* filing the
6 claims in the third-party complaint against Continental
7 should be stricken pursuant to 14(a) or in the alternative
8 severed.

9 And, of course, beginning with paragraph 15,
10 numbered 15 in this filing, and beginning with an unnumbered
11 paragraph in section III in the *Mitchell* case is same-same.

12 MR. ROBINSON: Yes, Your Honor. You can actually
13 go further back in his motion.

14 THE COURT: Yeah.

15 MR. ROBINSON: If you will go to page 2 where they
16 outline his paragraph.

17 THE COURT: Right.

18 MR. ROBINSON: And in this case, the paragraph
19 starts off with, To stay a cause of action for declaratory
20 judgment, a party must demonstrate.

21 THE COURT: Yes.

22 MR. ROBINSON: If you will go to page 9 in the
23 *Mitchell* case, To stay a cause of action for declaratory
24 judgment, a party must demonstrate.

25 THE COURT: Yes.

1 MR. ROBINSON: You can go all the way to -- if you
2 go to the second -- what is numbered as number 3 in the
3 McDowell case.

4 THE COURT: Right.

5 MR. ROBINSON: The third-party complaint
6 alleges -- well, they refer to Davis Mechanical here, and in
7 the *Mitchell* case they refer to ACL.

8 THE COURT: Right.

9 MR. ROBINSON: If you go to paragraph 4 and on
10 page 10 of the *Mitchell* case --

11 THE COURT: Yeah.

12 MR. ROBINSON: -- the duty to defend which is the
13 subject of multiple declarations sought cannot be.

14 THE COURT: Same-same.

15 MR. ROBINSON: Yeah. And then you go all the way
16 down, that paragraph ends with the words 12(b)(6).

17 THE COURT: Yeah. And the 12(b)(8), that's the
18 only thing that's new, right?

19 MR. ROBINSON: Well, it's in a different -- hold
20 on a second.

21 THE COURT: No, *Mitchell* has 12(b)(8) in it,
22 doesn't it?

23 MR. ROBINSON: Let me pull out my circular chart.

24 THE COURT: Yeah -- no, I don't think --

25 MR. ROBINSON: 12(b)(8) was addressed in the

1 *Childers*.

2 THE COURT: In *Childers*, that's right. Not in
3 *Mitchell*.

4 MR. ROBINSON: That's right. 12(b)(8) was
5 addressed in *Childers*.

6 THE COURT: But, again, same concept.

7 MR. ROBINSON: Your Honor, that's right. And,
8 again, what order do we pick as opposed to which one doesn't
9 apply?

10 THE COURT: Yeah.

11 MR. ROBINSON: So in paragraph -- I'm sorry, on
12 page -- let me get to the next one. Now we're on page 7 of
13 the McDowell memorandum and page 11 of the *Mitchell*
14 memorandum.

15 THE COURT: Right.

16 MR. ROBINSON: It begins in paragraph 15 on page
17 7, Rule 14(a) provides the defendant may commence a
18 third-party complaint. That matches identical. That
19 paragraph ends with the word "is."

20 THE COURT: 15, 16.

21 MR. ROBINSON: Yeah, 15, 16, 17, 18, 19, 20, 21 is
22 identical to the following pages in *Mitchell*. When we get
23 to -- there is -- if you will look at paragraph 22 on page
24 10.

25 THE COURT: Yeah.

1 MR. ROBINSON: Paragraph 22 says, Under these
2 circumstances, the claims by receiver against third-party
3 defendants in the third-party complaint should be stricken
4 or in the alternative severed into a separate action.

5 THE COURT: Right.

6 MR. ROBINSON: So that is -- let me go all the way
7 down to -- okay. You will find that on page 14 of the --

8 THE COURT: Of *Mitchell*.

9 MR. ROBINSON: *Mitchell*. They do reword it. It
10 says, For these reasons --

11 THE COURT: Right. Right.

12 MR. ROBINSON: -- the claims by the receiver
13 against Continental in this third-party complaint should be
14 stricken or in the alternative severed into a separate
15 action.

16 THE COURT: Right.

17 MR. ROBINSON: So that is a different phraseology
18 in the *Mitchell* case. And in the *Mitchell* case, Your Honor,
19 for a reason.

20 THE COURT: I get your point, Mr. Robinson. That
21 is -- Ms. Peake has done a much more detailed job of
22 comparison, but it's something that struck me about this
23 thing, as I lined all this stuff up and looked at it myself,
24 and what the dilemma it raises is this: I have posed the
25 question to Mr. Rawl as to whether I'm going through the

1 same rigmarole with appeals and delays and the Court has to
2 rule and so forth before we get back to the central question
3 here, which is how to manage this receivership and marshal
4 the insurance assets.

5 And the dilemma is this: They're begging me to go
6 on and rule on these things in your favor, is essentially
7 what's being presented today. Please rule on these things.
8 You held that ruling since January of 2023. Please rule on
9 these things today.

10 And I can only assume so they appeal. Because for
11 sure they're going to do that if that's the ruling I make in
12 the ACL matters. Because that's a scorched earth situation.

13 In fact, it's very interesting there's a little
14 internal memo that found its way into these pleadings in
15 which the principals with asbestos are quite specific in
16 their directives to counsel here about doing everything they
17 can to delay. And we won one in Quebec one time when we put
18 them through the rotator like we are being put through now
19 and finally we got our Canadian courts to rule for us. I
20 mean, there's no education in the second kick and this is
21 now about the 16th or 17th kick.

22 So what am I going to do with these things?

23 All right. So one way to handle it is to do what
24 I'm doing today, have a complete hearing. Which I indicate
25 the Court is offended by this attempt to manipulate trial

1 court procedure for the sole purpose of delay while it
2 appeals. Which is very definitely my feeling about this
3 matter.

4 So the question is rule or not rule or keep them
5 in limbo?

6 So I want to move forward with the receivership as
7 the Court of Appeals and the Supreme Court have indicated I
8 should do.

9 MR. ROBINSON: So, Your Honor, the reason I picked
10 the *Mitchell* case is because you issued an order. Again, I
11 could have picked a number, but the *Mitchell* case is pretty
12 square on it. You issued an order on February 26th denying
13 Continental's motion.

14 THE COURT: Of this year.

15 MR. ROBINSON: That's right, of this year.
16 Denying Continental's motions to strike or in the
17 alternative sever, an alternative definite statement to
18 enforce Rule 205, or in the alternative strike. Well, those
19 are Century's. But the one that's Continental was
20 dismissed, stay, strike, serve, definite statement.

21 THE COURT: Right.

22 MR. ROBINSON: So you issued an order in that case
23 based on the brief we just went over.

24 THE COURT: Right.

25 MR. ROBINSON: You issued an order. They appealed

1 that order, along with every other order that you've issued.

2 THE COURT: Right.

3 MR. ROBINSON: And Judge Williams, Chief Judge of
4 the Court of Appeals, in a slew of orders that he issued in
5 April.

6 THE COURT: April 12th or 17th?

7 MR. ROBINSON: 12th. This is the *Mitchell* order.

8 THE COURT: Right.

9 MR. ROBINSON: It's in your notebook as the
10 *Mitchell* order.

11 THE COURT: Right.

12 MR. ROBINSON: Chief Judge Williams issued an
13 order addressing --

14 THE COURT: This very thing.

15 MR. ROBINSON: -- your order on *Mitchell*, which
16 was in response to the arguments he's making today.

17 And Judge Williams stated, The appeal rises out of
18 a circuit court order denying appellate's motion to dismiss
19 and dissolve the receivership as well as an order denying
20 appellate's motion for protection from discovery.

21 First sentence: These orders are not immediately
22 appealable.

23 Now, again, the order on appeal denied the motion
24 to dismiss, dissolve, stay, arguments presented in *Mitchell*,
25 same arguments presented today in *Davis*, and we'll see in

1 ACL. I'm bringing this to the Court's attention so that the
2 information is available, and we don't have to rehash it 40
3 different times for 40 different motions.

4 In the *Mitchell* case, Judge Williams says the
5 orders are not appealable. He says a trial court's denial
6 of a motion to strike is not immediately appealable. The
7 denial of a motion based on lack of subject's jurisdiction
8 is not immediately appealable. The denial of a motion based
9 on the lack of personal jurisdiction is not immediately
10 appealable.

11 Dismissing -- and then he cites *Childers* -- first
12 Davis Mechanical -- dismissing is not immediately appealable
13 an order denying the appellate's request to resolve a
14 receivership.

15 Then he goes to discovery. Discovery orders
16 not -- in general for interlocutory and not immediately
17 appealable because they do not, within the meaning of the
18 appealability statute, involve the merits or action or
19 affect the substantial right. To challenge specific rules
20 of the discovery order, the normal course is refuse to
21 comply, suffer contempt, and appeal from the contempt
22 filing. And then it cites another: Holding discovery
23 orders for interlocutory and not immediately to appeal.

24 Then Judge Williams goes further. Appellate,
25 Continental Insurance Company, in that case, filed a motion

1 to enforce this Court's exclusive jurisdiction.

2 We did not file a response. We didn't -- the time
3 was not -- we hadn't even filed a response. Respondents did
4 not file a return. The motion is denied to enforce Rule
5 205. For the foregoing reasons this appeal is dismissed.
6 The remitter will be sent as provided by Rule 221.

7 So, Your Honor, we have before us the issues, a
8 decision by this Court, a decision by the Court of Appeals
9 that cites the *Childers* case, the Supreme Court order, as
10 binding precedent in another case. And we're back before
11 you on the same exact issues.

12 And although I did see just now an email that came
13 in from him yesterday asking about hearing these on brief.
14 You know, that came in yesterday afternoon I think at 3:00,
15 and unfortunately, I was not on the email, so it went to I
16 believe my client and somebody else. It was forwarded to
17 me. But, you know, this issue that's in this case is going
18 to be repeated over and over today.

19 And the question is: How do we stop it? You
20 know, Your Honor, we would like an order denying the
21 motions. And we believe, and the Court of Appeals keeps
22 saying, interposing appeals for the purpose of delay will
23 not be tolerated.

24 In the *Childers* case -- and I'll just point this
25 out. In the *Childers* case, I think it is extraordinarily

1 informative that the Supreme Court accepted the
2 certification of the appeal, dispensed with briefing,
3 vacated an order denying sanctions against one of the
4 carriers and their attorneys, and dismissed the appeal as
5 not immediately appealable.

6 And we talked with -- Shanon and I talked a little
7 bit about the fact that the order for sanctions in that case
8 was vacated and we tossed different ideas as to why that
9 might have happened. One suggestion was, well, perhaps, you
10 know, it was intended because they vacated it because if the
11 appeal wasn't to be there in the first place, there
12 shouldn't have been any orders. The problem is that theory
13 doesn't hold true in that case. There were several orders
14 in the *Childers* case by the Court of Appeals.

15 Judge Verdin issued an order saying that these
16 matters were not stayed and the receivership court could
17 continue. It would not be stayed during these appeals.

18 She issued a subsequent order, when they asked her
19 to clarify it again, saying your motion for clarification is
20 denied. These matters continue not to be stayed. So she's
21 ruled that they're not stayed during these appeals. We know
22 that.

23 The Supreme Court -- you know, we have to assume
24 that the Supreme Court doesn't issue orders by mistake. I
25 think that's an assumption all lawyers should take heed of.

1 They purposefully vacated an order for sanctions. They did
2 not touch Judge Verdin's order ruling that these matters
3 were not stayed.

4 THE COURT: And they specifically found the matter
5 was not appealable.

6 MR. ROBINSON: That's correct, Your Honor. So
7 with that, you know, I hear often in the course of these
8 hearings, which are about every four weeks, that we have to
9 do this to preserve our clients' rights to appeal. I am not
10 aware of any duty of any lawyer to preserve a nonmeritorious
11 issue.

12 In fact, I believe the rules require when you are
13 arguing against precedent, which in this case they now are,
14 that you are required to notify the Court that you are
15 arguing against precedent. And that's not happening.

16 The precedent has been set. We have it. The
17 Court of Appeals is now using it across the board as
18 precedent. The Supreme Court has made a final decision, and
19 we're here arguing the same thing. To argue that issue over
20 and over before you, you know, Your Honor, I hate to use
21 this word, but it applies, is nothing short of contemptuous.
22 And how the Court deals with it, you know, that's up to the
23 Court. But unless a court deals with it, it's not going to
24 stop.

25 Our sanctions motion that I referenced is not

1 before you, but we'll -- it's not on the agenda today, but
2 because it was vacated, that will be heard at some other
3 point, but just generally today, that is the landscape that
4 we find ourselves in.

5 THE COURT: All right, sir.

6 Mr. Rawl, you may reply.

7 MR. RAWL: Yes, Your Honor.

8 I'm trying to figure out where to start.

9 So I'd like to go back to the J. -- to the Davis
10 Mechanical receivership and -- and just the history. It
11 wasn't a partial stipulation. It was a stipulation with the
12 policies.

13 But with regard to that matter, that motion was
14 made in 2022, the motion to dismiss. And at that time
15 Your Honor had heard very similar motions to dismiss. You
16 know, the same argument, which is that there is no justicial
17 controversy, that the third-party action should not be a
18 third-party action because it's not derivative. It doesn't
19 meet Rule 14.

20 And, Your Honor --

21 THE COURT: Again, of course, I cover all that in
22 my order saying this is not about a normal third-party tort
23 situation. This is about coverage -- insurance coverage for
24 a -- in the case of *Childers*, in the case of a receivership
25 corporation -- and I guess that's a 12(b)(8) argument you're

1 making there -- is not applicable.

2 MR. RAWL: So, Your Honor, had ruled on these
3 issues --

4 THE COURT: Right. What you've got to address is
5 this, Mr. Rawl. Yes, I ruled on once, and what happens --
6 and I've said in the rulings many times, These matters are
7 not appealable. And yet they continue to be appealed for
8 the sole reason of trying to delay the marshaling of the
9 assets and/or to attack the establishment of the
10 receivership.

11 MR. RAWL: So, Your Honor, when this motion was
12 filed in 2022, there weren't any appeals pending in any of
13 these matters. I mean maybe Covil.

14 THE COURT: I was about to say --

15 MR. RAWL: With regard to the *Childers* matter or
16 those -- this motion was made. And, Your Honor, this motion
17 was made, and my client answered, and we immediately entered
18 into discovery. There was nothing about the J.F. Davis or
19 Davis Mechanical matters or my clients done anything to try
20 to slow it down. We have cooperated with the receiver
21 throughout those cases.

22 Yes. Did they make motions to dismiss and motions
23 to strike third-party actions or motions to sever into to a
24 stand-alone action that me and my clients do not think that
25 the coverage matters should be attached to the underlying

1 cases? Yes, they still don't think that.

2 And as Mr. Robinson pointed out, my clients make
3 that argument every time because they think it is the right
4 argument to make.

5 Now, with regard to J.F. Davis and Davis
6 Mechanical -- and I apologize, I don't have it right here --
7 the reason I sent the email yesterday is because I have an
8 email from January of 2023 where we agreed to submit this
9 motion to dismiss on the briefs to Your Honor because we
10 know how you're going to rule.

11 This is not trying to set up an appeal. This is a
12 12(b) (6) and a Rule 14 motion. The newer case, McDowell,
13 that has J.F. Davis, the only thing different about my
14 motion to dismiss in McDowell is they are almost identical.
15 The arguments are exactly the same except there's a 12(b) (8)
16 because they're not numerous.

17 This is marketedly different than the ACL cases.

18 With regard to *Mitchell* and ACL, if you look at
19 that argument, the primary argument, you know, for the
20 motion to dismiss was that the ACL had appealed the order
21 appointing the receiver and the order striking its answer.
22 Which we argue, pursuant to Rule 205, divested the Court and
23 the receiver of jurisdiction, and, therefore, you didn't
24 have the authority to bring the third-party action during
25 the pendency of the appeal that was challenging his

1 authority to act.

2 THE COURT: But, of course, that then changed when
3 the Court of Appeals now, not once, but several times, has
4 directly ruled on that issue.

5 MR. RAWL: And, Your Honor, respectfully, I don't
6 know what the Court of Appeals means. I read these orders.

7 THE COURT: I think I do.

8 MR. RAWL: Your Honor has been very clear about
9 Your Honor's belief that these matters are not immediately
10 appealable.

11 THE COURT: The Supreme Court said so.
12 Specifically said so in the last line of the order in
13 *Childers* that deals with some of these very same issues.
14 And it took the unprecedented step of taking a matter which
15 was then pending in the Court of Appeals certifying it to
16 themselves and dismissing the entire appeal because the
17 matter was not appealable.

18 MR. RAWL: And that is exactly, Your Honor, what
19 this order says. And this is an order from the Supreme
20 Court in *Childers*.

21 THE COURT: Well, then, that has direct
22 application to what we're talking about, Mr. Rawl. And I am
23 impatient now with the idea that oh, you're reading some
24 things I don't see in here. When the Supreme Court says
25 that the *Childers* matters, which involve some of the very

1 same issues, are not appealable, and when the Court of
2 Appeals has issued numerous orders speaking specifically
3 about the receivership, saying that the receivership
4 continues, and dismissing most of them on the basis that
5 they're not appealable anyway, I -- and in this case of
6 Judge Williams specifically referring to this 205 argument
7 you all make and saying it's not a valid argument.

8 I don't get this kind of injured-innocence-type
9 argument you're giving me that all we're trying to do is
10 just kind of get some clarity on -- you've got clarity on
11 this. I don't need to make any rulings on these motions if
12 they're going to be the platform for delay of these matters.

13 MR. RAWL: Your Honor, I'm only trying to
14 differentiate the J.F. -- I mean, the Davis Mechanical
15 appeal and my motion to dismiss from ACL. They were all
16 intermixed a minute ago by counsel for the receiver -- well,
17 counsel -- I'm not saying who --

18 THE COURT: If they're so different and we now
19 understand what we understand about the way the Supreme
20 Court and the Court of Appeals looked at these matters, then
21 why are you still pursuing these motions?

22 MR. RAWL: I am pursuing these motions -- well,
23 again, in J.F. -- in Davis Mechanical, I understand what
24 Your Honor's ruling is going to be. These are different
25 cases where my client has been sued against in a different

1 matter. And while I know what the ruling is going to be,
2 and I didn't delay anything because the ruling, you know,
3 based on the January of 2023 email, I have given to
4 Your Honor because we knew how it was going to come out. We
5 just need for our protection.

6 THE COURT: Why do you need it?

7 MR. RAWL: I mean, because we made the motion to
8 dismiss. And eventually, I don't know, I thought these
9 cases were close to settlement. They dismissed one of my
10 clients out of J.F. Davis on CIC. I have a stipulation of
11 dismissal there.

12 I was under the impression that the case was
13 almost resolved. I was surprised that these motions were
14 put on the roster, frankly, because I thought that these
15 were close to being resolved.

16 THE COURT: Yeah, and I just don't understand why
17 they're not withdrawn if we're in the stage we're in now.

18 MR. RAWL: Well, if there's a settlement, then
19 they would be withdrawn. There's no settlement yet. My
20 client does not want to waive the arguments, you know, that
21 have been made. And that is all there is to it in
22 J.F. Davis. There's no attempt to delay anything.
23 Discovery has been done. They've deposed my client. We've
24 done the stipulations.

25 THE COURT: I think I understand.

1 MR. RAWL: So with regard to ACL, Your Honor, that
2 is a different animal.

3 THE COURT: We're going to go through that step by
4 step.

5 MR. RAWL: And I'm happy to address each one of
6 these orders that was just handed up to Your Honor by
7 Mr. Robinson and starting with the Supreme Court. And what
8 the order says is, you know, with regard to the -- it says
9 we dismiss the appeal because the underlying circuit court
10 order at issue is not immediately appealable.

11 I'll tell you, I'm frustrated personally because
12 I -- there are lots of different arguments, you know, in
13 *Childers* --

14 THE COURT: The Supreme Court has ruled. A
15 rehearing was requested. It has been denied.

16 MR. RAWL: It was.

17 THE COURT: It's over.

18 MR. RAWL: It's a hundred percent over for the --
19 for whatever carriers were -- I'm not in was -- the Court's
20 not involved in this appeal or this case, but whichever
21 carriers were bringing --

22 THE COURT: You think your situation is somehow
23 different than theirs are with respect to the ruling that
24 the Supreme Court made at that circuit judge's order in this
25 case is not appealable? You somehow think with regard to

1 this case would be different?

2 MR. RAWL: If we're referring to the ACL
3 matters -- and one of the appeals that was dismissed,
4 Your Honor, it was an appeal that I filed on behalf of my
5 client. And other than the *Childers* Supreme Court issue
6 where those entities did do a request for rehearing, which
7 was denied. It was denied. And, Your Honor, the date it
8 was denied, the remittitur was returned.

9 THE COURT: Exactly.

10 MR. RAWL: And so that -- I agree, Your Honor, for
11 *Childers* and *Payne & Keller*.

12 THE COURT: And does it not have any precedential
13 value with respect to the rest of these matters?

14 MR. RAWL: Not according to the rules of appellate
15 court. Under Rule 268, this is an order that is not
16 published. It was not in the advance sheets. And it does
17 not give an explanation as to why.

18 THE COURT: You're going to say this is not a
19 precedent for my activity in connection with this asbestos
20 docket? That's an interesting argument, Mr. Rawl, but you
21 don't need to pursue it any further with me.

22 MR. RAWL: And I understand. But my reading of
23 the appellate court rules is that, no, because it is an
24 order, and it is not published, and it does not have
25 reasoning pursuant to 268, it is limited to *Childers*. And

1 if we go to each one of the orders in the --

2 THE COURT: Well, Mr. Rawl, I think I understand
3 exactly what's going on here. You can stand up there all
4 day long and tell me, oh, we're close to settling. We don't
5 have any intention to appeal. We're just kind of for the
6 record preserving our clients' issues. We want you to rule
7 on these things. I understand what's happening here.

8 You all are going to take the position now that no
9 matter what the Supreme Court says, that you still got the
10 right in all these other cases that are styled the very same
11 way, that recite practically the same averments to the
12 letter, that every one of them is going to be appealed no
13 matter what you say in the court today about the status of
14 these particular two cases. I think I got it.

15 MR. RAWL: Your Honor, you can look at my motions,
16 and you were talking about Davis Mechanical again. There's
17 no argument about 205. There's no argument that the Court
18 doesn't have jurisdiction.

19 THE COURT: Well, that happens after you take the
20 bogus appeal is when all those arguments get made.

21 MR. RAWL: Your Honor, never have I ever done an
22 appeal unless I made the argument to you first. I made the
23 205 argument to you first. I asked you to recognize that
24 because of the pending appeals and because the remittitur
25 had not been returned from the Court of Appeals that under

1 205 --

2 THE COURT: And I have ruled that they were not
3 immediately appealable, and therefore, I didn't have to do
4 anything. And what you're saying is I still get to go up
5 the chain with each and every case, even though the
6 appellate courts have made it clear that these type of
7 matters are not immediately appealable.

8 So if they don't take your appeal and rule on them
9 in connection with the appeal, then it's not precedent in
10 anything else. But I get the argument you're making. But
11 at 80 times around the sun, I didn't fall off the turnip
12 truck yesterday. I understand what's going on here.

13 MR. RAWL: Your Honor, I want to be very
14 straightforward with the Court. With regard to the other
15 appeals that involve my clients, and some of those aren't in
16 here, you know, and *Mitchell* and there are others where the
17 order is not yet final. My client still has the time to
18 request a rehearing of those matters. My client doesn't
19 intend to request a rehearing in those matters. And, you
20 know, I am hoping that there will be something that is more
21 clear than dismissed for a lack of appealability where it
22 will actually address the statutes and say why it's not
23 appealable.

24 But, Your Honor, we don't have --

25 THE COURT: Mr. Rawl, I know you all don't accept

1 this, but in South Carolina we don't have interlocutory
2 appeals. We are busy enough with the five-member court and
3 an enormous volume of appeals in both it and the
4 intermediate Court of Appeals that we don't have immediate
5 interlocutory appeals in South Carolina.

6 And, therefore, if a matter is resolved in a way
7 that does not otherwise involve an appeal, those matters
8 don't get heard. No need for them to be. Because they are
9 interlocutory matters that deal with the matter that will be
10 ongoing.

11 It's not through some largess on your part that
12 you decided to continue and cooperate despite the fact that
13 I have not ruled on these motions. It's because these
14 motions are not dispositive motions, and particularly in
15 your view, where your view is that it's just kind of for the
16 record anyway, we know how you're going to rule.

17 But I'm going to deny these motions. That simply
18 means the matter continues on. And the way the appellate
19 courts look at it, they don't need to be involved unless the
20 whole thing comes to them in a final, full-blown appeal that
21 involves not only an initial procedural issue where your
22 position has been denied, but also the substantive issues
23 involving the trial of the case itself.

24 So this argument you're making now that everybody
25 gets the right to pursue these -- what the Court has told

1 you are unappealable issues, until the Court gives up and
2 finally rules on your interlocutory issue, they're not going
3 to do that. They've already said they're not going to do
4 that. They said it in an order because it's confined to the
5 ambit of this interlocutory matter. But it certainly
6 indicates the precedent the Court sets to how it's going to
7 deal with other interlocutory appeals like it.

8 And at a certain point in time, I think the Court
9 is going to have to do something more than just deal with
10 these matters by having their dockets burdened with these
11 voluminous filings by parties who simply won't accept the
12 basic tenet of the rules of South Carolina which is we don't
13 have interlocutory appeals.

14 And so when your motions do not get granted for
15 immediate relief, dispositive relief, you go on and try the
16 case. And that's how the system works. Feds are different.
17 But, heck, you can take the entire book of business of the
18 whole federal court system from the district courts,
19 magistrate court, all the way through every appellate court,
20 and the Supreme Court itself, and put it altogether and it
21 wouldn't fill up a month's worth of docket of trial courts
22 in the state of New York.

23 State courts are a very different animal, and they
24 are enormously burdened relative to the resources that are
25 brought to bear. That's why somebody like me is taking this

1 in retirement.

2 But to have these nonsensical things just because
3 you can manipulate the system and then have the temerity to
4 say, well, the Supreme Court one of these days is going to
5 come to its senses and rule on this interlocutory motions,
6 and then I'll have an answer and then I may abide by it in
7 that case, if it's in my favor. I am exasperated by that
8 kind of approach.

9 I think the world of you, as you know. Known you
10 since you were a pup, and you're one of the finest lawyers
11 in this state. But your clients are asking you to do some
12 things that ought not to be asked of a lawyer who practices
13 law in the state of South Carolina. Which is they are
14 asking you to disobey the appellate court rules of the state
15 of South Carolina for the purpose of delaying any trial on
16 the issues that are adjoined in the pleadings filed against
17 them in this state. And I don't take kindly to that.

18 MR. RAWL: I understand, Your Honor. You know, if
19 I can just address with regard to J.F. Davis --

20 THE COURT: I think I understand your position.
21 You just want me to rule on it so you can appeal if you
22 can't settle. I got that.

23 MR. RAWL: Your Honor, with regard to J.F. Davis,
24 my clients don't mind if they stay out unrulled. This is --

25 THE COURT: Good. Withdrawn them. Withdrawn

1 them.

2 MR. RAWL: I can't withdraw them, Your Honor. I
3 can't withdraw the arguments that are to protect my
4 clients --

5 THE COURT: I understand your position. You want
6 me to rule on them.

7 MR. RAWL: Yes. Yes. I don't want to withdraw
8 them, whether you rule on them or not, it actually --

9 THE COURT: I got that.

10 MR. RAWL: With regard to comparing the briefs, I
11 think if Your Honor remembers correctly, I emailed the Court
12 to make sure that my motions to dismiss in the ACL matter
13 were added. And I told the Court these motions are
14 identical. If you read one --

15 THE COURT: Mr. Rawl, I understand exactly what
16 you did. And I have indicated on this record very
17 deliberately that I am very frustrated with that approach
18 because it is an approach aimed at delaying normal trial of
19 matters in this court that deal with these receiverships and
20 the marshaling of assets. And to the extent they are tied
21 to other specific litigation, delaying the resolution of
22 that litigation.

23 And you can tell me with a smile as sweetly as you
24 can that that's not really what's intended, but the
25 arguments you make, in essence, defy the authority of the

1 Supreme Court to set its procedural rules to exclude
2 interlocutory appeals.

3 And the whole purpose of asking to submit these
4 things to and me just rule on is so an assembly line can be
5 established to appeal these things again to the appellate
6 court. That is my view of what's happening here. I know
7 you disagree with that. I think the record is very complete
8 now about your position on that and the Court's position on
9 that.

10 I've just got to decide how I'm going to proceed
11 and whether I'm going to continue to fuel the tactic that
12 has now been adopted with regard to these receiverships and
13 the marshaling of assets and unfortunately having a side
14 effect of impacting the trial of asbestos claims in this
15 court.

16 And I'm going to have to decide how I need to deal
17 with that. But I am very, very disappointed that clients
18 can't be told no sometimes because that's not how the rules
19 operate in the state rather than to engage in this fiction
20 that I'm just protecting my client's interests by tying up
21 the courts with this kind of repetitive litigation.

22 MR. RAWL: Your Honor, I apologize. I was only
23 trying to make the point that I do use the same language,
24 you know. And with regard to Rule 14, you know, I don't
25 rewrite these arguments when I'm trying to do a basic

1 12(b)(6), which I agree, Your Honor, a 12(b)(6) case isn't
2 appealable for the Rule 14 motions.

3 So, I mean, to the point that the receiver was
4 making that if you look at some of my briefs, that the
5 language over the past couple of years, frankly, Your Honor,
6 is identical with regard to the Rule 14 arguments.

7 THE COURT: I understand. I understand.

8 MR. RAWL: That is only --

9 THE COURT: I understand what you're saying,
10 Mr. Rawl. This is about the third or fourth time you've
11 said that. I understand.

12 MR. RAWL: So if I may, Your Honor, just with
13 regard to several of these appellate rulings that have been
14 handed up to, Your Honor, my client will be seeking
15 rehearing on those.

16 THE COURT: My prediction is that that rehearing
17 is going to be treated similarly as others. Many of the
18 hearing motions have already been ruled upon and denied.
19 Unless you thought of some different and new argument that I
20 haven't yet heard about, my bet is that they'll be denied.
21 But the fact that you continue to do that is a defiance of
22 the clear rules of South Carolina Appellate Procedure that
23 restrict interlocutory appeals.

24 MR. RAWL: And, Your Honor, you know, I do think
25 that the cases that I'm referring to are different than

1 *Childers*, and I am going to explain to the Court of Appeals
2 how -- to the extent that's what that Supreme Court order
3 means, I'm going to explain to the Court of Appeals how
4 these other matters are different and --

5 THE COURT: That's not a matter you need to
6 explain to me.

7 MR. RAWL: Right. I hope I win, but, I mean,
8 Your Honor may be -- but with regard to each of these orders
9 that were handed up, they have the same effect as 268. I
10 think they're all limited to the underlying case itself.

11 Your Honor, if I may switch now to ACL, I would
12 like to argue --

13 THE COURT: Well, wait a minute. We've got to go
14 through the agenda here. I want to be sure we've got
15 everything before we go to ACL. You want to go to the
16 second Roman -- II on the agenda, which is Lewis. Just one
17 moment.

18 All right. I'm going to do something I rarely do.
19 I am taking under advisement the motions in McDowell and
20 Davis.

21 What I would like to have done is, Mr. Robinson, I
22 would like for you to prepare a proposed order denying these
23 motions. I would like that proposed order to detail what I
24 have discussed here this morning about what I regard as a
25 frivolous attempt to platform to use my denial as a platform

1 for lodging yet another appeal of an unappealable
2 interlocutory order.

3 Plus, the direct statement in the appellate court
4 rules that the denial of a motion is ordinarily not
5 appealable. Both those provisions of the appellate rules
6 are at play here.

7 I'd like you to have that to me within a week.
8 Today is Thursday. So by next Thursday, I would like to see
9 a proposed order with a copy, of course, to Mr. Rawl. And
10 Mr. Rawl will have until the following Thursday to respond.
11 And then I will decide whether I am going to make a ruling
12 on the matter.

13 But I want the proposed order to explore the
14 issues we've explored thus far this morning with respect to
15 this Court's deep concern about the failure to obey the
16 appellate rules of this state under the guise of preserving
17 matters for appeal.

18 They are preserved when the Court rules, and they
19 are not appealable until the case comes to an end. And then
20 if the controversy still exists between the parties, an
21 appeal is lodged. And that appeal can include all rulings
22 that the Court has made which are not immediately
23 appealable. Including this one.

24 And that has been the system with respect to
25 motions to dismiss, motion for summary judgment, and the

1 like forever. All the rest of these motions to strike,
2 sever, and so forth are disguised attempts to platform other
3 provisions of the appellate rules so as to be able to
4 propound to appeal authorities interlocutory rulings by the
5 Court for review.

6 In that regard, I regard the many orders that have
7 been issued by the Court of Appeals and the *Childers* order
8 by the Supreme Court as a good guidepost for the position I
9 take as a circuit court judge that these matters are not
10 appealable, that the positions are reserved by the filings
11 that are made, and that these are simply an attempt to delay
12 the normal procedures of these cases at trial.

13 Now, it's 10 of 11. We need to have mercy on
14 these court reporters. Let's take a 15-minute break. Come
15 back about five after.

16 The court will be in recess.

17 MR. RAWL: Thank you, Your Honor.

18 (WHEREUPON, the hearing recessed at 10:52 a.m..)
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20
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)

County of Richland)

I, Cynthia D. Weaver, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the Court of Common Pleas for Richland County, South Carolina, on the 25th of April, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 3, 2024

Cynthia D. Weaver
Official Court Reporter
State of South Carolina

STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
COUNTY OF RICHLAND) COURT OF COMMON PLEAS

Thursday, April 25, 2024

1:03 p.m. until 3:30 p.m. and also 5:09 p.m. until 5:10 p.m.

BEFORE: The Honorable Chief Justice (Ret.) Jean Toal

JOHN A. TIBBS,

Plaintiff,

VS.

Case No. 2023-CP-40-01759

3M COMPANY, ET AL.,

Defendants.

APPEARANCES:

ATTORNEYS FOR THE RECEIVER:

GALLIVAN, WHITE & BOYD, P.A
JOHN T. LAY, ESQUIRE
LINDSAY A. JOYNER, ESQUIRE

ATTORNEYS FOR THE RECEIVER:

RIKARD AND PROTOPAPAS, LLC
ROBERT T. BONDS, ESQUIRE
PETER D. PROTOPAPAS, ESQUIRE

Cynthia D. Weaver
Official Court Reporter

CONTINUED

1 ATTORNEYS FOR THE DEFENDANTS:
2 ALTRAD INVESTMENT AUTHORITY AND MOHED ALTRAD:

3 WOMBLE BOND DICKINSON, LLC
4 M. TODD CARROLL, ESQUIRE

5 ATTORNEYS FOR THE DEFENDANTS:

6 ARRANCO US, LLC; HAWK BIDCO (US),
7 INC.; AND SPARROWS OFFSHORE, LLC:

8 RICHARDSON, PLOWDEN & ROBINSON, P.A.
9 STEVEN J. PUGH, ESQUIRE

10 ATTORNEYS FOR THE DEFENDANTS:

11 CHARTER ENTITIES, ESAB, AND
12 CENTRAL MINING:

13 GORDON REES SCULLY MANSUKHANI, LLP
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15 ATTORNEYS FOR THE DEFENDANTS:

16 DE BEERS ANGLO AND OPPENHEIMER:

17 RICHARDSON, PLOWDEN & ROBINSON, P.A.
18 JAMES H. ELLIOTT, JR., ESQUIRE
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E X H I B I T S

None

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Okay. Give me some help here,
3 Mr. Lay, about how we start this.

4 MR. LAY: So we've got -- there are three
5 interrelated motions from the receiver. One is to preadmit
6 exhibits that have been identified, and you've received a
7 list of those exhibits.

8 THE COURT: Right. Right. Right. Right.

9 MR. LAY: There's a motion for an adverse
10 inference.

11 THE COURT: Okay. I got them.

12 MR. LAY: And then the last --

13 THE COURT: It's the motion to preadmit, your
14 motion for adverse inference, your motion for sanctions. We
15 start this thing off, though, with the Sparrows motions to
16 enforce 205 and enjoin. That's this whole thing that's on
17 appeal and can't be touched.

18 So, all right, how do we want to start this thing?
19 Do we want to start with that, or we want to go to the
20 motions to preadmit and come back to it?

21 MR. LAY: I don't really care.

22 MR. PUGH: That's what we discussed. It made more
23 sense perhaps for you to hear the motions --

24 THE COURT: Let John T. go first and then we'll
25 turn to you.

1 MR. PUGH: Yes, ma'am. That's what we discussed.
2 I didn't want to mess with your agenda.

3 THE COURT: Listen, as confused as this thing is,
4 any order is appreciated.

5 Mr. Lay.

6 MR. LAY: Yes, ma'am. Again, we're here on three
7 motions. The motions for sanctions really incorporates or
8 summarizes the motion to preadmit and the motion for adverse
9 inference. This all can be really argued collectively.

10 As the Court, I'm sure, remembers, we've had a
11 sorted history here in this case as well, and I'm here just
12 in the Cape case. But this case was set for a bench trial
13 on April 15th of just last month, and it was forced to be
14 continued at the April 10th hearing -- pretrial hearing as a
15 result of, I mean, what has been a complete and utter
16 failure for three-fourths of the defendants to participate
17 in discovery.

18 We've got four groups of defendants here. You've
19 got Sparrow defendants that Mr. Pugh represents. We have
20 the Altrad, owner defendants, with Mr. Carroll represents.
21 We have the Charter defendants with Mr. Rawl represents.
22 And then we have a group called the Oppenheimer defendants
23 that Mr. Elliott represents.

24 This motion is directed -- these motions are
25 directed to each group of those defendants except the

1 Oppenheimer defendants because there has been some recent
2 movement in participating in the discovery process.

3 Now, we got some issues we're going to have to
4 deal with, but I'm dealing with -- these motions, we're
5 dealing with the groups of defendants that have completely
6 failed to participate in discovery in any way whatsoever.

7 And I wanted to remind the Court, just by way of
8 background, some essential facts here. This case has been
9 filed since June of last year. Discovery was served on the
10 defendant groups in July of last year. Deposition notices
11 were served in August and September of last year. There was
12 a motion practice process that took place. You issued an
13 order in December. Communication to the Court and all
14 parties understanding that the discovery was going to
15 proceed. Discovery did not proceed.

16 There were additional motions. There were
17 additional deposition notices. There was additional
18 discovery. And there was complete failure to respond
19 primarily due to the defendant's continued assertion of 205,
20 everything stay.

21 You issued an order pursuant to a motion to compel
22 that was filed in March of this year where you ordered the
23 parties to provide responsive, substantive, and complete
24 answers to the receiver's discovery requests and begin the
25 production of documents. And you gave a court-imposed

1 deadline of March 26th.

2 We received from the Oppenheimer defendants in
3 March 15th for the first time initial discovery. We
4 produced 142,000 pages of documents by March 25th. We
5 produced another 30,000 documents by April 4th. All well
6 within the deadline.

7 We have gotten some pretty tepid responses, in our
8 view -- this is not to be argued today -- from the
9 Oppenheimer defendants. We're trying to get that worked
10 out. We've got a pending motion to compel, that's not on
11 this agenda, we filed yesterday. But we've got some
12 discovery issues we're dealing with, with them that are
13 significant, but we try to do our best.

14 But there's still been a continued complete
15 failure of these other groups of defendants to participate
16 in discovery in any way. And they continue to make the same
17 assertion is that the case is stayed. Your order doesn't
18 matter. The Court of Appeals orders don't matter. The
19 Supreme Court orders don't matter.

20 Everybody's saying over and over and over and over
21 again that the cases are not stayed just because you've got
22 an appeal on the dissolution motion of the receiver.

23 We know the answer. We don't have to guess that
24 these other cases in which we have gotten orders from Judge
25 Verdin, we've gotten orders from Judge Williams, we've

1 gotten orders from the entire Supreme Court, included
2 appeals that were both discovery and an attack on the
3 receivership itself, and they very clearly stated move
4 along, get going with discovery. And it just hasn't
5 happened. Don't know what else to do.

6 In response to the trial date that was set for
7 April 15th, we can prove our case right now. We got the
8 documents to prove it up. We think we can get there. But
9 what does a prudent receiver do? They want to make sure
10 that we got everything lined up.

11 What we know is this theory that they really moved
12 assets out of Cape, avoided liability for Cape for, you
13 know, the distribution of brown asbestos throughout the
14 United States. We know they did it. They did it. The
15 question is who is responsible for all of this movement of
16 assets and removal from Cape from the United States to avoid
17 responsibility for its bad acts?

18 The only question is are we going to be able to
19 hold them accountable? We know they did it. And if we're
20 able to hold them accountable, who's involved with that? We
21 know a lot of them, but we want to hold all of them
22 accountable.

23 Because of that, because we haven't gotten a
24 response to basic discovery requests that have been
25 outstanding since July of last year, because we had not

1 gotten a single witness produced for simple 30(b)(6) notices
2 and just completely ignoring the attendance at these
3 depositions, I got letters, I'm not coming.

4 Because they have failed to respond with our
5 attempts to authenticate documents, just authenticate these
6 documents. If you have a problem, tell us what the problem
7 is.

8 There were 205 objections. There were denials on
9 the authentication of things like their corporate
10 disclosures, for goodness sakes. Financial records of the
11 companies. They're not agreeing that they're authentic
12 documents. We know they're authentic, we just got to check
13 the box.

14 We've got a list of documents that the
15 authentication of these documents are going to come in
16 multiple ways, but we can short circuit all that. It would
17 be ancient documents. It's public documents. It's
18 self-authenticating documents. It's documents that could be
19 authenticated simply by taking a 30(b)(6) deposition and
20 saying, here, here's the deposition transcript, here's a
21 witness that was identified for your company. Is this an
22 authentic deposition?

23 I mean, those sorts of things that are very simple
24 ways to authenticate documents. We've got a whole list of
25 documents that we presented.

1 What is clear and why we are here, these
2 defendants are not going to stop. There's been no change in
3 position except for Mr. Elliott with this initial engagement
4 and some form of discovery with the Oppenheimer defendants,
5 the other defendants. There's been no change in position.
6 There's not going to be a change in position.

7 THE COURT: Mr. Lay, let's set this thing in
8 context for a moment. The caption of this case is Tibbs
9 against 3M. That is a tort case that was brought in 2023.

10 MR. LAY: Yes, ma'am.

11 THE COURT: One of the defendants in that case is
12 Anglo American PLCS, right?

13 MR. LAY: Yes, ma'am.

14 THE COURT: And Cape, individually and as
15 successor to Cape Asbestos Limited, which is in a
16 receivership, is another allied company with the defendant
17 tortfeasor in the Tibbs case, correct?

18 MR. LAY: Yes, ma'am.

19 THE COURT: All right. Mr. Protopapas was
20 appointed as a receiver for Cape PLC as the successor in
21 interest to Cape Asbestos Company, correct?

22 MR. LAY: Yes, ma'am.

23 THE COURT: And you are representing the
24 receiver --

25 MR. LAY: Yes, ma'am.

1 THE COURT: -- in connection with marshaling
2 assets in order to defend in the Tibbs case?

3 MR. LAY: Yes, ma'am.

4 THE COURT: And one of the things you are doing is
5 suing an allied corporation, which has control of some of
6 the insurance assets, in that the policies were issued to
7 it. And it is the insurers of these allied corporations who
8 are not cooperating with your third-party action against
9 them to discover these insurance assets.

10 MR. LAY: So it's the companies that have been
11 aligned with Cape that are subsidiaries, parents, it's an
12 amalgamation of interest scenarios. There's a group of
13 South African companies, UK companies, U.S.-based companies
14 that are all associated with Cape. And the theory is you
15 made it so that Cape received all of these profits from the
16 distribution of brown asbestos throughout the United States.

17 And when the tort system started trying to hold
18 defendants accountable for asbestos issues that came about
19 in the 1970s, there was a conscious decision to shut Cape
20 down and escape the jurisdiction.

21 So those companies are responsible for that. We
22 think they did that wrongfully. We don't think that was
23 correct. There's been a lot of literature. There's been --
24 we've got treatises, we've got articles, we've got
25 documentaries that have all addressed this issue of Cape,

1 who would be as akin to the tobacco litigation. It would
2 be, you know, one of the top tobacco producers escaping any
3 and all liability of any kind whatsoever. That's what we're
4 talking about.

5 So this is simply a receiver who's representing
6 this entity holding these companies that controlled Cape
7 holding them accountable. I am sure that they got carriers
8 involved. These are direct actions against these --

9 THE COURT: Against these companies that allegedly
10 stripped assets from Cape, which is the defendant -- one of
11 the defendants in the Tibbs litigation. And as its receiver
12 marshaling assets, you are suing some of the corporations
13 you say attempted to strip or did -- were successful in
14 stripping Cape of its assets in order to escape liability
15 for torts -- tortious actions pursued in the courts in the
16 country.

17 MR. LAY: That's right. Yes, ma'am.

18 THE COURT: All right. That puts it in a context.

19 So today, the activity that's being pursued are --
20 is in aid of marshaling the assets of these various
21 companies -- marshaling Cape's assets with respect to these
22 various companies in whom you have tried to engage in
23 discovery, and they have so far been uncooperative with
24 giving you any information about them or the assets you're
25 trying to pursue?

1 MR. LAY: That's right. These defendants
2 completely refused to engage in a valid discovery response
3 process in any way or shape whatsoever.

4 THE COURT: Now, how do they -- what is their -- I
5 mean, preadmit exhibits, adverse inference and sanctions are
6 all premised on violations of discovery, right?

7 MR. LAY: It is a discovery violation. It is a
8 Rule 37 sanction.

9 THE COURT: Right. How do these companies avoid
10 responding to discovery in a legitimate third-party suit?
11 What's their -- how do they say they escape any
12 responsibility?

13 MR. LAY: It has been the same as some of the
14 arguments that you've heard here today.

15 THE COURT: This is a little bit different twist
16 on things. These are companies that have direct assets that
17 allegedly was stripped from the receivership company.

18 MR. LAY: That's right. But they're relying on
19 205 is their argument.

20 THE COURT: So are they saying that -- that an
21 appeal in the Tibbs case --

22 MR. LAY: They're saying they have appealed --
23 these companies attack the efficacy of the receivership.

24 THE COURT: Right.

25 MR. LAY: And they appeal that issue. You made a

1 ruling on it, that, no, the appointment of the receiver was
2 appropriate.

3 THE COURT: Right.

4 MR. LAY: That's up on appeal. And their
5 position -- and they can state the position themselves, but
6 I believe their position is pursuant to Rule 205, with the
7 attack on the receiver on appeal, that stays the entire
8 case. So despite your order, despite the guidance that
9 we've gotten in other cases, that I believe directly
10 addressed this issue, they have maintained case stayed,
11 we're not responding, pound sand.

12 THE COURT: Right. And in that regard, they're a
13 little bit different from the arguments we've heard.
14 There's similarity -- there's a little bit of difference
15 between straight insurers and these entities that are
16 regarded as having -- that are accused of stripping the
17 assets of the defendant.

18 MR. LAY: That's right. Part of it is stripping
19 assets, it's also control. I mean, there are lots of
20 different issues that are wrapped in that. One of those is
21 unjust enrichment. Which is one of the equitable claims we
22 have, that they took assets of Cape inappropriately because
23 they were the controlling company and were charged with
24 making sure that Cape escaped and without damage to what
25 they did.

1 THE COURT: So while time is important in terms of
2 moving to try to identify their assets, they say that that
3 can all be stayed by an appeal in the Tibbs action of the
4 legitimacy of the receivership.

5 Who lodged that appeal?

6 MR. LAY: So all of the third-party defendants
7 that Cape sued under the amalgamation of interest
8 theories -- I mean, I'm using that broadly -- all of them,
9 all four groups lodged that appeal after moving to dissolve
10 the receivership, after attacking the receivership on
11 multiple grounds, that was then appealed.

12 THE COURT: Okay.

13 MR. LAY: Sitting there. Your -- we recently got
14 an order on your Motion to Compel where instead of it going
15 up, which would clearly be interlocutory, it was reframed as
16 a denial of injunctive relief.

17 THE COURT: Right. And the Court --

18 MR. LAY: And the Court came back and dismissed
19 all that.

20 THE COURT: Exactly. Said that you can't use the
21 appeal of an injunction to mask or hide what it really is,
22 which is an appeal of an interlocutory order.

23 MR. LAY: That's right.

24 THE COURT: All right. Thank you. I think we've
25 got the context.

1 So the first matter is Arranco U.S., Hawk, and
2 Sparrows Motion to Enforce 205 and Motion to Enjoin.

3 MR. LAY: My co-counsel rightfully wanted me to
4 explain this and I think it is a good issue to make sure you
5 understand.

6 There's also on the dissolution motion, we filed a
7 Motion to Dismiss that appeal, too, based on some of the
8 orders that have come down. They've gotten extensions on
9 that. They requested extensions, they hadn't gotten it yet.
10 We're trying to figure out how that's going to play up. But
11 we think that's going to imminently occur.

12 Regardless, the motion on the appeal on your order
13 to compel captioned as a request for injunction has been
14 dismissed.

15 THE COURT: Okay.

16 MR. LAY: So there's one appeal still open, one
17 issue.

18 THE COURT: Okay. So how do we need to proceed
19 now? Do we need to just march through these motions? The
20 first motion is the motion by your adversaries to enforce
21 205 and to enjoin. Is that the first thing we ought to
22 hear?

23 MR. LAY: I think we can do it that way. Mr. Pugh
24 was talking about that earlier.

25 THE COURT: Why don't you then begin with number 2

1 and go forward. We'll come back to number 1, which is the
2 Motion to Enforce 205 and Motion to Enjoin.

3 MR. LAY: All right. Again, on the -- we're at --
4 this is a motion to preadmit exhibits. We've got a lot of
5 exhibits that that have come from libraries, that are public
6 documents that come from a lot of different sources. And
7 one of the things that we were attempting to do in discovery
8 through Requests to Admit, through 30(b)(6) depositions,
9 through interrogatories and Requests to Production, is to
10 try to get authentication of documents, and we have been
11 thwarted.

12 So one of the things that we're trying to do is
13 find a half step, not a burn your house down, not strike the
14 answer, not setting this for a hearing determine value of
15 the unjust enrichment, but a half step here because I think
16 we're in a situation where the behavior is not going to
17 stop.

18 The clinging to 205, clinging to the concept that
19 this case is stayed and I don't care what anybody says, that
20 is going to continue unless the defendants are held to
21 account for taking that position.

22 What is a reasonable half step to hold them to
23 account? What is a reasonable half step to hold them to
24 account that is related to the problems that have been
25 caused thus far?

1 This case has been filed for almost a year. We
2 haven't gotten a single response to discovery until just a
3 couple of weeks ago from Mr. -- from Mr. Elliott's clients,
4 the Oppenheimer defendants. So we have been thwarted for
5 months.

6 Your ability -- this is a bench trial. And your
7 ability -- and there's a great case that I have cited for
8 years. It's the Brown versus Allstate case. And it's a
9 case where you're talking about in a bench trial, the Court
10 can go ahead and let it in, authenticate, bring it in. And
11 then you, as the trial judge, have the discernment to decide
12 what you're going to rely on with your order when making a
13 decision.

14 That's precisely what we're talking here. And I
15 want to get back into the appropriate context. There's an
16 argument, but it's not even sanctioned under Rule 37,
17 discovery sanction, it's not even that. This is a
18 legitimate request to help with the efficiency of this
19 process. But there is reason to call it a Rule 37 sanction
20 because of the complete failure to participate in any way.

21 So all we're talking about, we have these lists of
22 exhibits and we want to preadmit it. We would ask the Court
23 to kindly do that. That would put us on more equal footing
24 after all of the months of delay that have occurred here.
25 It would send a message to the defendants it's time to get

1 busy. It's time to start engaging in discovery because
2 that's where we are. The receiver needs to get its work
3 done, and we need to get this case moving.

4 So we're asking for the preadmission of that list
5 of exhibits that are before you in the motion.

6 From a penalty standpoint, again, not to be overly
7 redundant, and I'm not trying to be pejorative, but I just
8 don't know what else can be done. I don't like a sanction
9 motion against defendants. But we're in a situation where
10 I -- you know, we're trying to advance the ball, we're
11 trying to live up to our obligations. Me, as counsel for
12 the receiver, the receiver trying to live up to his
13 expectations in this case of advancing the ball on an
14 important case.

15 And the Court has told them directly -- this Court
16 has told them directly to get busy. The Court of Appeals
17 has told them, I believe in no uncertain terms -- and it's
18 an obtuse view, reading of any order to suggest there's
19 something different about what the Court of Appeals has done
20 in other cases and what they would do here.

21 Rule 205 does not stop the train on this kind of
22 case. There's a reason for that. And I think we haven't
23 really talked through what's the reason for a dissolution
24 motion that's in effect. Why is that not stopping the
25 train? It's easy. There's case law on this.

1 When receivers get appointed, they get appointed
2 for lots of different reasons. They get appointed because
3 somebody is moving assets inappropriately. Assets may be
4 wasting. You've got to identify assets, those sorts of
5 things. And if a series of appeals is enough to shut down
6 the receiver, then what's the use of them? Because those
7 assets would simply get moved. They'd disappear. Whatever.

8 But that's the reason. That's the public policy
9 reasons for that. There is no stay of the case because
10 there's an attack on the dissolution. We are marshaling and
11 assimilating assets. We're not out there wasting assets.
12 We're trying to secure assets. That's what we're trying to
13 do. And hold account to make sure that the ability to
14 access assets is there. It's that simple.

15 The only way to make this stop is to do something.
16 In my humble opinion, if this Court has got -- if it wants
17 the 205 inappropriate tactic to stop, there has to be
18 something that happens that holds them accountable.
19 Authentication of documents to preadmit is a good start.

20 A second part of that would be the motion for an
21 adverse inference. And, you know, that's a discovery issue.
22 That's also a Rule 37 sanction. Where there's been
23 something inappropriate in discovery, there can be an
24 adverse inference.

25 And what we're asking for on the adverse

1 inference, in that motion, is that Altrad third-party
2 defendants with the alter ego of Cape and otherwise liable
3 as a matter of veil piercing, including with respect to
4 Cape's ongoing liability avoidance scheme, and have been
5 unjustly enriched due to Cape's liability avoidance scheme.

6 Second, each of the third-party Charter
7 defendants, relevant at all times, or including with respect
8 to the implementation of liability afforded scheme in the
9 1980s, and before the alter ego of Cape and otherwise liable
10 as a matter of veil piercing and have been unjustly enriched
11 due to Cape's liability avoidance scheme with ESAB
12 Corporation acting as the corporate successor with respect
13 to the liability of Charter Consolidated, Central Mining and
14 Investment -- and Central Mining and Investment.

15 The Sparrow defendants particularly have argued
16 that that's premature. It simply isn't.

17 This is -- adverse inference is a half step too.
18 If they choose, and they could choose this. This is a
19 choice to ignore the Court of Appeals, the Supreme Court,
20 your order is a choice. These defendants have made a
21 choice.

22 They can also choose to engage in discovery.
23 They've got an adverse inference. If they start engaging in
24 discovery, they can present evidence to you to try to
25 overcome the adverse inference on the documents that have

1 been presented to you. That is a choice they can make.

2 But they continued to completely thumb their nose.
3 These defendants are thumbing their nose at the Court.
4 Something has got to be done. And I do think this half
5 step, this reasonable step is exactly what should be done to
6 try to get the engagement, the appropriate engagement that
7 respects the Court, that defends this case on the merits.

8 I mean, I've heard from several of the defendants,
9 We shouldn't be in it. I get that that may be the case. We
10 don't think so, but that's what discovery is all about. We
11 have got affidavits from ESAB that they have no assets in
12 South Carolina. There's no personal jurisdiction in
13 South Carolina. They have no involvement. No witnesses.

14 Well, this is a problem when you have this many
15 defendants. I mean, we're finding out now that ESAB has a
16 headquarters in Florence. They have over 500 employees.
17 That wouldn't be just specific jurisdiction, that's a
18 general jurisdiction issue. They're here.

19 Now, if there's some explanation, I want to hear
20 it. But we're -- we look at the website, it talks about
21 them being subject to South Carolina law, for goodness
22 sakes. You know, that's something that should be dealt with
23 in discovery. And instead, there's a complete failure to
24 participate in any way so we can't have any engagement at
25 all.

1 All we're asking is let's get it started. Let us
2 do our job and let's incentivize these defendants to do what
3 they're supposed to do. It's not really punishment. It's
4 accountability. I'm not trying to cause pain. I'm not
5 trying to cause anybody to be upset.

6 But the defendants have got to engage. That's
7 what the system is all about. If you have a series of
8 defendants that can just thumb their nose at the orders of
9 the Court, where are we? We've got to hold them to account.
10 So that's the reason the Motion for Sanctions included all
11 of those arguments.

12 Let me make sure there's no other ask in that.

13 Oh, and we are asking for attorneys' fees on this
14 motion from these defendants for having to bring these
15 motions which I have never done.

16 THE COURT: All right. Now, where do we go from
17 here? To Mr. Pugh?

18 MR. PUGH: Yes, Your Honor. May it please the
19 Court?

20 Steve Pugh on behalf of -- and I gave the court
21 reporter my card earlier.

22 I represent Sparrows Offshore, LLC, which was
23 incorporated in 2003. I represent Arranco U.S., LLC, which
24 was incorporated in 2008. And I represent Hawk Bidco U.S.,
25 Inc., which was incorporated in 2012.

1 The last time we were together, Your Honor, we had
2 a discussion about this 205 issue. I have sat through with
3 Your Honor here today over, I don't know, three hours or so
4 of that discussion. I don't intend to plow the same ground
5 with you.

6 What I did and attempted to do in the response in
7 opposition to their motion for sanctions, in that motion I
8 attempted to differentiate and outline for Your Honor how in
9 the world do you think that those orders don't apply to you?
10 And that's on pages 8 through 16 of our response that was
11 delivered to Your Honor last Friday.

12 I think I can synthesize it down to this,
13 Your Honor. The receivership over Cape PLC was created by
14 Your Honor in the Park case. And in the Park case, Cape PLC
15 and another entity, CIHL, were both named as defendants.

16 The receivership -- two separate defendants. No
17 question about that. The receivership was created over Cape
18 PLC in Park.

19 Then we fast forward into the Tibbs case, and
20 we've got the third-party complaint filed by the receiver
21 for Cape PLC, as to my clients, and you've heard three other
22 groups of third-party Defendants who filed various motions.

23 And as a result of those motions, in Your Honor's
24 December 6th, 2023, order denying those motions, the
25 receivership -- we take the position that a new receivership

1 was granted over CIHL, which had been a defendant in Park
2 but was not put into a receivership in Park.

3 And so we take the position that pursuant to
4 14-3-330-4 we were specifically permitted to take an appeal
5 with regard to the granting continuing modifying of
6 receivership. And we have so -- we have done so. And that
7 appeal is still with the Court of Appeals.

8 Mr. Lay is correct. Our reply or response to
9 their motion to dismiss is coming up, but that appeal is
10 still pending.

11 So without going line by line through the other
12 orders, which I have done or attempted to do in my response
13 in opposition, that's kind of the global view of how we
14 differentiate those orders to the specifics of this case.
15 Because as Your Honor knows, that appealability standard has
16 to be viewed as to the case and on a case-by-case basis.
17 That's -- Your Honor knows that far better than I do.

18 As to specific motions that have been filed by the
19 receiver, I'll kind of take those globally unless you want
20 me to address them individually. I'm happy to do them
21 either way, Your Honor.

22 The first one was with regard to admission or
23 preadmission of exhibits. The proposed trial exhibit list
24 from the receiver contains 2,538 exhibits. I'm not sure how
25 many pages that is, but I think it's maybe more than a

1 hundred thousand. I'm not sure.

2 There are a sum total of 14 exhibits that apply to
3 my clients, 14 out of 2,538. And those exhibits reference
4 exactly how I began this morning, which is my clients were
5 born in 2003, 2008, and 2012. Yet in this case, my clients
6 are being called upon to answer for conduct, to be the alter
7 ego of, to have somehow siphoned off assets and funds for
8 actions that occurred pursuant to the third-party complaint
9 between 1953 and 1978, 40 to 50 years before my clients ever
10 existed.

11 So, Your Honor, we think that the sanctions being
12 requested -- and I appreciate Mr. Lay's view of it, that
13 this is an intended half step and perhaps not the hydrogen
14 bomb sanction contemplated by Bloom Plantation, which we
15 cite in our responsive pleadings. But it effectively holds
16 my clients in default, strikes their answer, and determines
17 the case.

18 THE COURT: Come on now, Mr. Pugh. A motion to
19 preadmit exhibits strikes your answer?

20 MR. PUGH: In an adverse inference as to the
21 liability. So I grouped them together. They've got both
22 separate motions.

23 THE COURT: They're separate motions.

24 MR. PUGH: And they have the global motions.

25 THE COURT: Yeah, I understand that.

1 MR. PUGH: The motion for sanctions. So that's
2 how I was putting that together. I understand your --

3 THE COURT: Well, you know, you don't cooperate
4 with a thing. All right. They allege that they are trying
5 to do what the receivership appointed them to do, which is
6 pursue assets of Cape. And then you come back and say, I'm
7 entitled to all this consideration about my liability being
8 presented and everything even though I'm not going to
9 cooperate one bit with any discovery, and I base that on an
10 appeal that's been sent back to the circuit court.

11 And on 205 -- which I still cannot understand this
12 argument at all. 205 says, Nothing in these rules shall
13 prohibit the lower court, commission, or tribunal from
14 proceeding with matters not affected by the appeal.

15 The Supreme Court and the Court of Appeals have
16 now a good many times sent things back to the receivership
17 court, to me, in the face of appeals, on the legitimacy of
18 the receivership, saying that the receivership should
19 continue and marshal the assets and deal with things in a
20 fiduciary way pending anything else about this.

21 I'm frustrated about this, Mr. Pugh.

22 MR. PUGH: I know you are. I know you are. You
23 were frustrated two weeks ago and I feel it again today and
24 I knew you would be, Your Honor and I'm not here to upset
25 you.

1 THE COURT: Well, all I'm going to say is I have
2 very little respect for arguments that begin by saying that
3 these are legitimate appeals. And further, that say that an
4 appeal stops everything in the circuit court when the
5 appellate authorities themselves have said now several times
6 that the receivership should continue and I should continue
7 to move that phase of it along.

8 And the reason they say that is because there's
9 another group of parties very much affected by all of this.
10 And that's the plaintiffs that are bringing suits in my
11 court that involve ACL, Cape, and its allied corporation in
12 an assertion that they have put into the stream of commerce
13 things that have damaged their plaintiffs.

14 And I'm supposed to manage that trial docket and
15 when cooperation is not forthcoming, you use the
16 receivership as a means of trying to bring something to the
17 chaos of discovery and other things. And you're telling me
18 you can completely refuse to cooperate and yet avail
19 yourself and cover yourself with the protections that ought
20 to be afforded a legitimate and cooperating litigator. I
21 don't understand that argument.

22 MR. PUGH: My argument is this, Your Honor. The
23 appeal I took -- the appeal we --

24 THE COURT: I have -- let me just say this: I
25 have made the ruling now a good many times that these

1 appeals do not stop these receiverships. So I've made that
2 ruling.

3 I don't agree one bit with the interpretations of
4 the appellate court statutes at all. I'm not going to get
5 into the arguments about the receiverships, those are up on
6 appeal and the legitimacy or illegitimacy of the
7 receiverships and the ambit of their authority will be
8 decided in some other forum.

9 But the appellate authorities who have those cases
10 that directly challenge the legitimacy of the receiverships
11 have told me go ahead and proceed as a receivership court.
12 In the face of that, an argument by some potentially liable
13 company that may or may not have been the ultimate recipient
14 of script assets from the receivership corporation or the
15 corporation in receivership, your arguments that somehow
16 appeals of their status affect your ability to participate
17 in third-party litigation, I can't -- I can't wrap my head
18 around that reasoning.

19 MR. PUGH: My argument is simple to the language
20 that you read earlier, Your Honor. And that is my appeal
21 and my belief, my appeal involves matters affected by --

22 THE COURT: Okay. Well, to the extent you make
23 that argument, let me just tell you right now, and I'll
24 solve it for everybody else around me. I deny that argument
25 and I will overrule -- I will rule against you on that

1 argument. I think you have a separate thing -- asked me to
2 rule on 205. I don't know why I should be doing that. I'm
3 the trial court.

4 The appellate courts have already made that
5 ruling.

6 And so my ruling is this: I will not hear
7 anything further about the authority of this Court to
8 proceed with the receivership matters. It is my
9 understanding that both provisions of Appellate Rule 205 and
10 the rulings of the South Carolina Supreme Court and the
11 rulings of the Court of Appeals indicate that the
12 receiverships that are under attack in certain appeals
13 pending in front of them shall continue in the face of the
14 appeal.

15 And I am going to abide by their rulings and by my
16 understanding of the Appellate Court Rule 205. So you don't
17 need to make any further arguments about that.

18 MR. PUGH: May I make one other different argument
19 very briefly?

20 THE COURT: All right, sir.

21 MR. PUGH: Your Honor, the other argument that we
22 asserted in our responses in opposition to the receiver's
23 three motions was the issue under Rule 14. And clearly, as
24 Your Honor and everyone knows, the third-party claims are
25 derivative of the first-party claims and we learned -- I

1 learned for the first time a week or so ago -- excuse me, on
2 April 10, that there was in place a tolling agreement
3 apparently between Cape PLC and the Tibbs plaintiffs.

4 And so, Your Honor, for that reason, again, we
5 believe that under Rule 14 that derivative claims should not
6 go forward or toll or in the alternative should be severed
7 from the first-party Tibbs claims.

8 THE COURT: Rule 14 of the State Court Rules of
9 Civil Procedure?

10 MR. PUGH: Yes, ma'am.

11 THE COURT: Third-party practice. Specifically
12 what is it in that rule that you say makes me unable to rule
13 on a request for preadmission and sanctions and so forth
14 against your clients?

15 MR. PUGH: Because frankly what they're attempting
16 to do at this juncture is put the cart before the horse.
17 There's been no liability in the underlying Tibbs claim.
18 There's no judgment against Cape for whom they stand in the
19 shoes of. There's nothing for them to proceed.

20 And what they're really attempting to do is I
21 suppose some type of an expansive advisory opinion regarding
22 hypothetical liabilities that may or may not occur in the
23 underlying Tibbs case.

24 THE COURT: No, sir, I don't agree with that
25 argument one bit.

1 The receiver is tasked by my orders of appointment
2 to marshal assets. And the receiver for Cape is charged
3 with marshaling the assets of Cape. And the receiver has in
4 the process of doing that discovered that your client may be
5 a successor in interest who stripped assets from Cape that
6 ultimately wound up in the possession of your client that
7 formed the asset base of your client's existence. That's
8 essentially in rough style what I think is being asserted.

9 The receiver is charged with pursuing those
10 assets, and that is what is being done in this third-party
11 litigation. I don't see anything in Rule 14 that prevents
12 discovery from being engaged in to ascertain whether or not
13 the averments in the third-party complaint that your client
14 is the holder of certain assets that should be with Cape
15 can't be explored.

16 You talk about putting the cart before the horse.
17 You want me to in effect decide on the front end that you
18 have no responsibility since you say you don't only because
19 you were -- your companies were formed in 2008 and 2006 and
20 so forth. That's not the question.

21 He is pursuing a claim against your client that is
22 based on contentions that your client now has assets that
23 should be in the possession and control of Cape of which it
24 is the receiver. And that is a straight-up piece of
25 litigation that's going to be pursued.

1 And what you said in response to that is because,
2 although I'm not participant in the receivership litigation
3 at all, and I'm going to refuse to answer anything, I can
4 nevertheless be absolved of any responsibility to
5 participate in discovery. I don't get that. It doesn't
6 make any sense to me.

7 MR. PUGH: What I was making the point of,
8 Your Honor, is that the claims they're pursuing, we all, I
9 believe, agree are derivative claims from claims that are
10 now, we learn, have been tolled. That's the point I was
11 making.

12 THE COURT: Okay. I'll ask Mr. Lay about that or
13 Mr. Smith. But if the claims are tolled, tell me -- the
14 claims against who -- okay. You say they are derivative of
15 Cape's claims against somebody else?

16 MR. PUGH: The Tibbs had a claim against Cape.

17 THE COURT: No, no, no. Tibbs had a claim against
18 Cape for a tort.

19 MR. PUGH: Correct.

20 THE COURT: And whether they -- I don't care what
21 they've done with that claim. I then appointed a receiver
22 for Cape to discover where its assets are. I don't care
23 what's happened with respect to Tibbs. The receiver has
24 been appointed. That's just a sideways argument that the
25 receivership is only valid as to Tibbs and not to anything

1 else, I guess.

2 MR. PUGH: My argument was simply that I think
3 we're all clear that the Tibbs claims against Cape have then
4 resulted in derivative claims by Cape against third-party
5 defendants. That's the point I was making.

6 Those are derivative claims. And since the
7 underlying first-party claims in Tibbs have now apparently
8 been tolled, we're now going forward on derivative claims
9 without anything happening in the first-party action?
10 That's only the point I was making, Your Honor.

11 THE COURT: Well, okay. I'll get back to Mr. Lay
12 and ask him to respond to that.

13 MR. PUGH: And I don't know -- I'm not trying to
14 get out of order here, but there were other folks who filed
15 similar responses. If you want them to go, and then he can
16 respond to them all.

17 THE COURT: I want it to be in the briefest
18 possible way. If this is going to be some more of the same
19 kind of argument, I think I've heard enough of it. But I'll
20 turn to the rest of it.

21 MR. LAY: Can I do one thing?

22 THE COURT: Yes, sir.

23 MR. LAY: I just want to make sure. I'm craving
24 reference to our motion on what we're seeking on the adverse
25 inference. I'm going to try to leave out any defendants,

1 it's all of the defendants, except for James Elliott's
2 Oppenheimer defendants. That's where we're seeking the
3 adverse inference on alter ego, crave reference to that in
4 the motion. I just don't want that lost.

5 THE COURT: Right. I understand.

6 Mr. Carroll.

7 MR. CARROLL: Yes, ma'am. Thank you, Your Honor.

8 THE COURT: On behalf of?

9 MR. CARROLL: John Carroll on behalf of the Altrad
10 Investment Authority and Mr. Altrad individually.

11 Your Honor, as you imagine, my client -- my
12 clients join what Mr. Pugh's presented this morning -- this
13 afternoon, rather. We don't think the Court has
14 jurisdiction to proceed. We don't think the receiver has
15 jurisdiction to proceed under Rule 205. I don't intend to
16 reargue that ground. Just want to say it on the record.

17 The sanctions sought are the equivalent of
18 granting judgment against my clients. Given that this is a
19 bench trial, I don't know how you can have an adverse
20 inference in a bench trial, the judge is the decider.

21 I agree with Mr. Pugh with regard to if there's no
22 liability to Ms. -- to the Tibbs family, then this whole
23 case is moot. Because Rule 14 only allows a third party to
24 try to transmit the first-party liability to the third-party
25 defendants. If there is no first-party liability, then

1 there's nothing to transmit the third-party defendants.

2 We've not seen the tolling agreement. I assume
3 you are going to ask Mr. Lay about the status of that case.
4 The first-party Tibbs versus Cape case. I don't know any
5 details beyond what I just told you.

6 THE COURT: It's a tolling agreement between who
7 and who?

8 MR. CARROLL: My understanding is it's between the
9 plaintiffs and the receiver.

10 THE COURT: And it tolled what? The statute of
11 limitations?

12 MR. CARROLL: I don't know.

13 THE COURT: That's way too doggone vague for me to
14 make any sense.

15 MR. CARROLL: Your Honor, the last time -- Your
16 Honor, the last time we were here, on April 10th or
17 whatever, there was -- Your Honor had a lot of proceedings
18 regarding the Tibbs case. And it was represented to the
19 Court at the time that there were only two defendants left
20 in Tibbs, Atlas and ACL.

21 So when we got around to this case in that
22 hearing, I inquired so what happened to Cape? Why are they
23 not identified as a defendant any longer? We were told, oh,
24 there's been a tolling agreement entered between the
25 plaintiff and the receiver. And I hadn't seen it.

1 THE COURT: All right.

2 MR. CARROLL: That's all I know.

3 THE COURT: All right.

4 MR. CARROLL: And then I think the last point I
5 wanted to note here is the --

6 THE COURT: How about the preadmit?

7 MR. CARROLL: Yes, ma'am. On the preadmission, my
8 clients are very similarly situated to Mr. Pugh's. If you
9 search this list of 2,538 -- 2,538 exhibits, Altrad -- the
10 name Altrad shows up in maybe 40, and most of them are just
11 corporate disclosures.

12 THE COURT: What does it -- that argument escapes
13 me completely. Just because very few of them apply to you,
14 why wouldn't I preadmit all of them?

15 MR. CARROLL: Well, it's a sanction for my client
16 not admitting the authenticity of documents that it doesn't
17 know anything about.

18 I mean, there's a video in here -- if you will
19 pardon me, there's a video in their list from a YouTube
20 poster named Cradle of Anal, A-N-A-L. I'm sorry. That's on
21 their list. How is my client supposed to know anything
22 about that?

23 They have *The State* newspaper article about how
24 Frank Martin's basketball team liked the pregame dance of a
25 rugby team that my client owns. What does that have to do

1 with anything? It's a *State* newspaper article. That's
2 hearsay. That's irrelevant. I don't know if it's
3 authentic.

4 THE COURT: I take it that you haven't filed any
5 of those things specifically, you're just saying generally
6 they can't do it because the receivership is not any good.
7 It's all under appeal and so forth. But I take it that you
8 have not ticked down the specific list of these exhibits to
9 say which ones you think ought not to be admitted.

10 MR. CARROLL: Correct. We have not because we
11 don't think any of this -- I don't think we were allowed
12 under 205 to participate.

13 THE COURT: Okay. I got it.

14 MR. CARROLL: But I wanted to point some of this
15 out because Your Honor is being asked to issue a sanction
16 against us, I want to tell you what that sanction looks
17 like. It's taking this sea of materials that we wouldn't
18 know anything about anyway and saying that as a sanction for
19 us not saying we don't know it, it's authentic.

20 THE COURT: As a sanction for your not
21 participating in discovery.

22 MR. CARROLL: I understand, Your Honor.

23 THE COURT: Let's put aside all these other
24 arguments, if I decide that this matter moves forward
25 despite your arguments about the effective appeals and so

1 forth and so on, it's very likely I would do, I've done that
2 a number of times, then you're responsible to respond to
3 discovery. And you have not done it, right?

4 MR. CARROLL: Well, and I would just point out for
5 the record our -- the receiver did send us a set of requests
6 to admit for the authenticity of a very small universe of
7 these documents.

8 THE COURT: Right. And so what's the problem
9 going on and responding with that?

10 MR. CARROLL: Our deadline hasn't come yet. So I
11 don't know how we can be sanctioned for not doing something
12 when a deadline hasn't yet lapsed.

13 Your Honor, you understand our position.

14 THE COURT: But you otherwise have been completely
15 uncooperative with anything that has to do with discovery
16 requests, correct?

17 MR. CARROLL: Yes, ma'am. We have stood on our
18 arguments under Rule 205.

19 THE COURT: Right. And that's been since last
20 year when this thing was filed, right?

21 MR. CARROLL: I don't recall. Yes, ma'am.
22 Sometime in the fall.

23 THE COURT: Okay.

24 MR. CARROLL: Thank you.

25 THE COURT: All right.

1 MR. RAWL: Briefly, Your Honor. Vic Rawl. For
2 the record, I represent the Charter Entities, ESAB, and
3 Central Mining.

4 I incorporate the arguments made by Mr. Pugh and
5 Mr. Carroll. My client also stands on the 205 argument.
6 And just to be clear, there are three appeals that relate to
7 the 205. The first would be the -- this case is in the
8 Tibbs action versus the ACL appeal, which was related to the
9 striking of the answer that was appealed in September 13th,
10 2023. I don't think anybody disputes that appeal as proper
11 and now on appeal.

12 THE COURT: Now, whose answer was struck?

13 MR. RAWL: This is the Tibbs matter.

14 THE COURT: Oh, I understand what it is, but
15 you're representing ESAB and some others now, what impact
16 does the striking of ACL's answers have on you?

17 MR. RAWL: That would stay the Tibbs matter.

18 THE COURT: Okay. This is that same argument
19 about the Tibbs matter is completely stayed because of the
20 appointment of a receiver, right?

21 MR. RAWL: This is in the Tibbs matter. The
22 Notice of Appeal was filed September 13, 2023.

23 THE COURT: Yeah.

24 MR. RAWL: The next appeal, then, would be the one
25 that we're talking about where my clients appealed the order

1 where they relate to both personal jurisdiction and to
2 receivership.

3 THE COURT: I'm going to tell you something,
4 Mr. Rawl. Mr. Rawl, is it true that ESAB has a large
5 corporate presence in Florence and information on the web
6 that talks about their South Carolina presence and so forth?
7 Is that true?

8 MR. RAWL: My understanding is that ESAB is not a
9 citizen of South Carolina for general jurisdiction purposes.

10 THE COURT: No, sir. I'm not asking about general
11 jurisdiction. I'm talking about jurisdiction of any kind.
12 Do they have a large plant in Florence?

13 MR. RAWL: I think they do. I think it does. I
14 don't know the answer to the question. I don't think
15 there's any claim that ESAB doesn't do business --

16 THE COURT: It's not acceptable for you to come
17 into this court asserting lack of jurisdiction on behalf of
18 ESAB and then stand up here in front of me and tell me that
19 you don't know whether they have a plant in Florence.

20 Now, I want you think about that one more time and
21 answer that question for me.

22 MR. RAWL: I apologize, Your Honor. I can check
23 and find out very quickly.

24 THE COURT: Do that.

25 MR. RAWL: I don't think that there is any claim

1 by ESAB that it doesn't do work in South Carolina. The
2 personal jurisdiction argument was made because it was not
3 organized in South Carolina. It is not headquartered in
4 South Carolina.

5 THE COURT: And as you know, that doesn't define
6 jurisdiction in this particular matter at all.

7 MR. RAWL: It's sold nothing to do with --
8 anything to do with Cape. ESAB was not formed until a
9 couple of years ago.

10 THE COURT: I understand it's a matter of tracing
11 assets. That's what they're talking about doing. And this
12 business about not having a citizenship in South Carolina,
13 if you've got an 800-employee plant in South Carolina, you
14 better be domesticated in South Carolina. And I would
15 imagine they are.

16 MR. RAWL: I do not know, Your Honor.

17 THE COURT: Before you begin to represent that
18 client in my court on assertions about jurisdiction of this
19 court, I think you need to find that out. So before this
20 hearing is over, I want you to have an answer for me on
21 that.

22 MR. RAWL: I will do my best to find that out,
23 Your Honor.

24 THE COURT: Yes, sir.

25 MR. RAWL: Let me make a couple more points. The

1 third appeal which would relate to the 205 argument is the
2 actual appeal of the order where the discovery stems from.
3 It is the -- this Court's March 12th, 2024 --

4 THE COURT: That's an order in discovery. It is
5 not immediately appealable. The statutes are very -- I mean
6 the rules are very clear on that.

7 Do you question the notion that discovery orders
8 are not immediately appealable?

9 MR. RAWL: No, Your honor.

10 THE COURT: Well, that was a discovery order, was
11 it not?

12 MR. RAWL: It was not, Your Honor. That was an
13 appeal with regard to an injunction. My client --

14 THE COURT: You can call it an injunction or apple
15 pie, but what we're really talking about is the squabble
16 over discovery, are you not?

17 MR. RAWL: My client asked for this Court to
18 enjoin the receiver from continuing to act --

19 THE COURT: To engage in discovery. That is
20 the -- I'm going to tell you now, all right, that is as
21 disingenuous an argument as you could possibly offer here.

22 You're challenging the ability of the receiver to
23 engage in discovery with your client. And you wrap it up or
24 tie it in a bow that is called something else simply to try
25 to make it appealable. That's what's happening here.

1 MR. RAWL: Your Honor, my client very much
2 believes that it should be able to have its appeal
3 decided --

4 THE COURT: Well, it can't have its appeal decided
5 on something that's interlocutory. And squabbles over
6 discovery, whether you characterize your opposition to
7 discovery by saying that you are somehow challenging their
8 right to make a discovery request, but you are not,
9 discovery matters are not immediately appealable.

10 MR. RAWL: Your Honor, I understand that. And the
11 injunction that was requested was regard to any action, you
12 know, of the receiver either in this case or outside of this
13 case.

14 THE COURT: But the actions that were complained
15 about were discovery actions, were they not?

16 MR. RAWL: Your Honor, respectfully, we made
17 arguments about discovery, and we made arguments about, you
18 know, injunctive relief.

19 THE COURT: Well, the injunctive relief was to try
20 to enjoin them from engaging in discovery, was it not?

21 MR. RAWL: That and more. It was more than just
22 discovery. And so -- and what Your Honor said is that you
23 were not ruling on that yet, and that motion, I guess, is
24 still pending. We still have the request for the injunction
25 that's outstanding.

1 But my only point is, is with regard to the
2 sanctions that are being asked for today, they derive from
3 the March 12th, 2024, order, which has been appealed by my
4 client.

5 And, Your Honor, the appeals --

6 THE COURT: What's going to happen when that
7 appeal -- when that appeal of that particular order, the
8 discovery order we just had, what's going to happen if that
9 appeal is denied?

10 MR. RAWL: That appeal has been dismissed,
11 Your Honor.

12 THE COURT: That -- your appeal of my order of
13 March the 12th has been dismissed, right?

14 MR. RAWL: It has.

15 THE COURT: And so what is your opinion now? What
16 is your position now? Oh, I've got a motion to reconsider
17 underway?

18 MR. RAWL: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. RAWL: And what the Court, when it dismissed
21 it, it's the same as what I had said earlier, Your Honor, is
22 that the remittitur has not been sent down for -- to this
23 Court.

24 THE COURT: Have you filed a Notice of Appeal in
25 that one?

1 MR. RAWL: What, Your Honor?

2 THE COURT: Have you filed a Notice of Appeal in
3 that matter?

4 MR. RAWL: Yes, Your Honor. My clients have
5 appealed two orders. They appealed the first order that
6 was --

7 THE COURT: I'm not talking about the first order.
8 I'm talking about this order in -- the discovery order in
9 March.

10 MR. RAWL: The March 12th order, the one that we
11 are talking about today, that the receiver is claiming that
12 no party has complied with, that is the order that is on
13 appeal. That is the order that the Court of Appeals said is
14 more characterized as a discovery order.

15 THE COURT: You're darn right, and it's not
16 appealable, right?

17 MR. RAWL: That's what the Court said. And the
18 Court said that the remittitur will be sent as provided by
19 Rule 221(b) of the South Carolina Rules. The remittitur has
20 not yet been sent.

21 So from my client's standpoint, what the receiver
22 said earlier is, yes, they made a motion to dismiss the
23 primary appeal in the Cape matter. And, you know, my
24 client's response to that is coming up.

25 My client wants to have an answer to the question

1 that is asked. If that's all -- if all these appeals are
2 dismissed, and the Court says, no, these are not immediately
3 appealable, you know, the specific argument we're making
4 here -- and Cape is markedly different than any other case
5 you have. Meaning the receivership orders look the same.
6 Say go after and find insurance assets. But the receiver is
7 not going after insurance assets. The receiver is seeking
8 to self-pierce its own corporate veil in a different matter
9 and not typed in any underlying liability.

10 THE COURT: All right. I'm not going to hear
11 those arguments. So you're apparently asking someone else
12 to hear those arguments right now, so I don't need to -- I
13 certainly don't need to waste any time on those arguments.

14 MR. RAWL: From my client's standpoint, their
15 appeals are gone. They want to be able to participate. But
16 our understanding of the rule -- of Rule 205 is that until
17 the Court of Appeals sends back this remittitur, that the
18 jurisdiction is exclusively with the Court of Appeals. So
19 that is only point I want to make, Your Honor. Thank you so
20 much.

21 THE COURT: Yeah. My understanding is that,
22 again, this entire scenario that you just painted is a
23 direct attempt to defy the authority of the Appellate Court
24 rules, the Court of Appeals, the Supreme Court, and this
25 Court, where you've been told repeatedly that orders of this

1 type are not directly appealable. And you've been told it
2 in the context of receiverships, which have been
3 specifically directed to proceed.

4 So that's kind of my take on what's happening
5 here. And I'm offended by it. I am very offended by it.

6 MR. RAWL: Your Honor, I apologize. In no way
7 would I ever want to offend you. This is very similar to
8 the argument that I made to Your Honor for a very long time
9 in the ACL matter. And if I -- I'll just incorporate that
10 argument I made earlier.

11 THE COURT: All right.

12 MR. RAWL: And I won't go through it again.
13 Because I definitely don't want to offend you, but my client
14 is really just trying to defend its --

15 THE COURT: As we proceed, I want you to find out
16 about that Florence corporation.

17 MR. RAWL: I will try right this minute,
18 Your Honor. I want to make sure nothing else is argued and
19 then find out shortly. I don't want to miss any arguments.

20 THE COURT: Well, I want you to find it out before
21 you leave here today.

22 MR. RAWL: Yes, ma'am.

23 THE COURT: All right. All right. Who else? Is
24 that it?

25 All right. Mr. Lay.

1 MR. LAY: Yes, ma'am. Just a couple of things.

2 The Oppenheimer defendants, and we're dealing with
3 discovery with them, did it the way the system contemplates
4 that it be done.

5 There is an appeal. The appeal goes up. They've
6 been told they need to participate in discovery. We're
7 fussing about discovery, but there's some engagement. You
8 don't get to selectively decide that I'm going to take my
9 ball and go home and not play ball because you don't like
10 the answer that you've been given and say I'm not going to
11 participate.

12 If they had participated in discovery, for
13 example, in any way -- and this isn't just about not
14 authenticating requests to admit, which they know. It's a
15 complete failure to engage in any way in discovery.
16 Discovery has been served since July of last year. We got
17 nothing from three-fourths of these defendants. They know
18 that.

19 All they have to do is engage, and they could have
20 provided information if they think they're not supposed to
21 be involved in the case. We think they are.

22 We've got -- you know, they're making references
23 to where a document was pulled off a website that is at PBS,
24 they know this, it's a PBS documentary is what it is. It
25 just doesn't exist anywhere other than this crazy website.

1 But it's an absolutely legitimate exhibit.

2 If they had engaged in discovery, they would have
3 known that there was a tolling agreement. Well, good grief,
4 we have a receiver that's appointed, supposed to protect his
5 assets. He has no assets to defend any of these cases. If
6 he just simply throws his hands up and says, I don't have
7 any money, then there's going to be default judgments in
8 effect, how is that protecting anybody?

9 Right now he's trying to assimilate assets and
10 making sure that Cape can be defended. And this is the way
11 these cases have been handled. It does not obviate a claim.
12 It doesn't moot a claim. That's ridiculous. It preserves
13 assets potentially and makes sure that the receiver can do
14 their job and go get assets. It's that simple. That's what
15 this is all about.

16 Now, I mean, I don't want to lose sight of this.
17 I want to go back to this. There's been a complete failure
18 to respond to your March order demanding that they start
19 participating in discovery, and we're still here. And the
20 only way to get a change in tactic, the only way to get a
21 change in direction and to make sure this case proceeds the
22 way it's supposed to, it is for you to take the half step
23 we're asking.

24 It is not a striking of the answer at all. There
25 are documents where there's going to be an adverse

1 inference. If they participate, they put up their own
2 evidence. And then you, as the bench trial judge can make a
3 decision on what should happen here. That's all we're
4 asking.

5 We want to get started. We have a scheduling
6 order that we're trying to get submitted. We want this case
7 tried this year. It needs to be tried. It's been sitting
8 here since June of last year.

9 We've got a confidentiality order that we're
10 trying to get worked out and we're trying to use the one
11 that you have signed in the past. We want to get that
12 submitted to you. That's where we are. We're ready. We're
13 hungry. We want to move the case forward, the way it needs
14 to moved forward and stop all this.

15 THE COURT: All right. Anything further?

16 All right. Since I'm on this one, I'll go on and
17 tell you what I'm going to do about Cape and Tibbs, and then
18 we can go back up to the matters that were pending when we
19 interrupted for the discussion of the Cape matter.

20 I am going to grant the motion to preadmit.

21 I am going to take under advisement the motion for
22 sanctions. And I'm going to ask Cape's receiver to draft
23 for my consideration exactly what an adverse inference
24 document would look like. I'm inclined to give
25 consideration to sign an order that directs certain adverse

1 inferences to be made because of the failure to cooperate in
2 discovery.

3 But I want to see exactly what the receiver would
4 have in mind.

5 Now, we've also got the third-party defendants'
6 adoption notice joinder in the filings of other third-party
7 defendants. I've taken that into consideration in
8 connection with what I rule. So I understand that some
9 parties are adopting other parties' request for remedies.

10 We've also got what was argued after that with
11 Defendant Altrad's adoption and notice of joinder in the
12 filings of other third-party defendants. And I understand
13 that and have taken that into account in the rulings I have
14 made.

15 Mr. Lay, what I would ask you to do is to prepare
16 an order that reflects these rulings in the Tibbs Cape
17 receivership third-party matter. Send them to me within ten
18 days, which will --

19 Eva, let's give a date there so --

20 It would fall on May 6th. And then I would give
21 opposing parties until May the 13th to respond to what is
22 filed by Mr. Lay. So that gives you specific dates that I'm
23 talking about.

24 Now, then we've got these motions to enforce 205
25 and enjoin. I have already made my positions pretty clear

1 about that bunch of activity in connection with the matters
2 Mr. Robinson argued earlier today and the directions I made.

3 I would similarly, Mr. Robinson, ask you to share
4 with Mr. Lay, who is here for these arguments as well. I'm
5 going to go on and rule on these things, although it carries
6 with it the peril that we start this vicious cycle of
7 spiraling appeals. And I hope at some point if these
8 matters are ruled on as I think they will, we will address
9 the expense of all of that.

10 But in the meantime, I want you to consult with
11 Mr. Robinson on -- I'm not going to repeat them all now, but
12 I made a good many observations and rulings with respect to
13 the interplay between the rules of appellate practice and
14 the circuit court rules in connection with my basic holding
15 that these matters are not stayed because there's no valid
16 appeal of things that are being considered in the matters
17 that have come before me today.

18 And the receivership continues and therefore the
19 same applies here as it did in some of these other cases.
20 It's a slightly different situation. And those
21 receiverships, the insurance assets are being marshaled.
22 And this receivership is insurance and other assets of the
23 receivership corporation that is being marshaled, but the
24 concepts are the same.

25 Now, what we've still got is Atlas Turner,

1 Goldfein, but let's go back for a minute.

2 MR. ELLIOTT: Your Honor, before we move on --

3 THE COURT: Mr. Elliott.

4 MR. ELLIOTT: James Elliott for the De Beers Anglo
5 defendants.

6 THE COURT: We're still now back in Cape and I've
7 already made my ruling?

8 MR. ELLIOTT: No. I want to let you finish, and
9 then I wanted to say just this: None of those motions are
10 directed at my clients. One of the rulings has to do with
11 preadmitting evidence into the case.

12 THE COURT: Right.

13 MR. ELLIOTT: I just want to make it clear on the
14 record that is not a ruling that evidence is going to be
15 preadmitted against my client. And I just want to make that
16 clear. None of these motions are directed at my client.
17 None of them are for that one in particular because it's
18 maybe one trial.

19 THE COURT: Sure. Sure.

20 MR. ELLIOTT: I understand that's not going to be
21 directed at my client. We may have the same document.

22 THE COURT: I understand, Mr. Elliott. And
23 Mr. Lay and Mr. Smith are nodding in agreement with that.
24 So I think we understand that's what the situation is. And
25 you're on the record and please know that I tell you now, as

1 presiding judge over this matter, that I agree with that.

2 MR. ELLIOTT: Thank you.

3 THE COURT: And all parties do. But you are not
4 affected by these other rulings with regard the
5 noncooperating third-party defendants.

6 All right. Now, let's go back for a minute to the
7 Asbestos Corporation Limited Lewis -- where are we now? As
8 I understand it, I -- my rules -- Mr. Robinson, I'm just
9 looking at the agenda. Have I given you enough directive or
10 do I need to give further direction about these motions?
11 The motions to dismiss in Lewis?

12 MR. ROBINSON: So, Your Honor, of course in the
13 Davis matter you gave us very specific items that you wanted
14 to --

15 THE COURT: But we still haven't done anything
16 about Lewis.

17 MR. ROBINSON: Correct. When we break, you had
18 heard all the arguments in Lewis, but have not made any
19 announcement regarding your rulings in that case.

20 THE COURT: Now, do you regard the record as clear
21 enough on both the Motions to Dismiss and the Motions for
22 Protective Order?

23 The Motion for Protective Order, just as Motion to
24 Stay All Discovery, et cetera, et cetera, which is another
25 way of saying the appeal -- the appeals stay everything.

1 And I already indicated what my rulings are about that in
2 the Motion to Dismiss. The appeals don't affect the ongoing
3 ability of this Court to deal with receivership matters.

4 These Motions for Protective Orders are all
5 Motions to Stay all further discovery. I think they're all
6 by you, Mr. Rawl, are they not?

7 MR. RAWL: Your Honor, I made some and then
8 several of the other defendants made some as well. I would
9 probably say I made more than others.

10 THE COURT: Well, I'm trying to look and see
11 what -- who else I see.

12 Okay. 19 and 20 were Liberty Mutual and CLMI.
13 Ms. Mastrianni.

14 MS. MASTRIANNI: Yes, ma'am.

15 THE COURT: You're -- she's Allstate.

16 MS. MASTRIANNI: Correct. We don't have a
17 discovery motion pending.

18 THE COURT: All right. Who is Liberty Mutual?

19 MR. GOTTSCHALL: That's me, Your Honor.

20 THE COURT: Mr. Gottschall. Mr. Gottschall, your
21 motion for a protective order/injunction, this is just the
22 same old routine you've been arguing for some time. You
23 take the position that you're entitled to a protective order
24 and an injunction because these matters are on appeal,
25 right?

1 MR. GOTTSCHALL: In part, Your Honor, we're asking
2 the Court in its discretion to also consider that if the
3 ACL's appeal is successful, as to Liberty Mutual, there's no
4 loss, no harm in staying discovery at this time.

5 THE COURT: Sure. But that's all an argument in
6 aid of the Motion for Protective Order and Motion for
7 Injunctive Relief, which has the appeal -- has the effect of
8 having me say that the appeal stays everything, right?

9 MR. GOTTSCHALL: That would be one avenue if the
10 Court ruled that way.

11 THE COURT: Right. Right. Okay. And I've
12 indicated in the direction I've given Mr. Robinson that I
13 don't think that the appeal stays these things.

14 So, Mr. Robinson, that's going to apply to these
15 various motions for protective orders.

16 Now, who has CLMI?

17 MR. MANOS: I do, Your Honor.

18 THE COURT: Yeah, Mr. Manos. The rationale I've
19 already given in the Motion to Dismiss part of this thing
20 would apply to these Motions for Injunction and for a
21 protective order. I regard them as proxies for a contention
22 that everything is stayed by appeal in these receiverships.

23 And I've also indicated a good many other opinions
24 I have about the interplay between the Appellate Court rules
25 and the rulings of both the Court of Appeals and the Supreme

1 Court and we've outlined that in detail.

2 But basically, Mr. Robinson, collaborate with
3 Mr. Lay on being sure that we cover all these motions and
4 generally use the same rationale that I've used in saying
5 that I don't think the appeal stays anything here.

6 Now, that would take us through everything with
7 Cape and leave us with Atlas Turner Payne and Keller --
8 well, this Tibbs' thing. What else have I got. Oh, this is
9 who -- who is on the other side of the receiver's Motion to
10 Compel, Gordon Rees, this is all Vic Rawl, I think.

11 MS. MASTRIANNI: Your Honor, if I may. I
12 apologize. Carmela Mastrianni. Allstate did have a
13 separate 12(b)(7) motion.

14 THE COURT: Yeah, and I'll deny it.

15 MS. MASTRIANNI: Okay. Thank you.

16 THE COURT: Okay.

17 MR. CARROLL: Your Honor, Todd Carroll on behalf
18 of Gordan Rees and Hawkins Parnell on the --

19 THE COURT: Okay. You've got -- all right.
20 Rawl's not going to represent himself, you're going to
21 represent his firm.

22 MR. RAWL: And, Your Honor, the firm is represent
23 by Aberdeen --

24 THE COURT: Okay. All right.

25 MR. PROTOPAPAS: Your Honor, for planning

1 purposes, Peter Protopapas for the receiver. For planning
2 purposes, the two motions to compel the law firms in Tibbs.

3 THE COURT: Yes.

4 MR. PROTOPAPAS: The Goldfein Motion to Dismiss
5 and the Payne and Keller Motion for Summary Judgment.

6 THE COURT: Yes.

7 MR. PROTOPAPAS: The Payne and Keller motion will
8 take the longest time, unfortunately. The others are
9 shorter. But the motion for summary judgment is likely the
10 most in depth.

11 THE COURT: Okay. Well, let me go back to
12 something. Let's go back to what we still got on the deck
13 then is the motion to compel Gordan Rees and Hawkins Parnell
14 and Young. And then Atlas Turner and Payne and Keller.

15 MR. PROTOPAPAS: Yes, Your Honor.

16 THE COURT: So why don't we just start with the
17 Motion to Compel Gordan Rees.

18 MR. PROTOPAPAS: Certainly, Your Honor. Mr.
19 Robert Bonds from my office will be the Motion to Compel
20 Gordan Rees and Hawkins Parnell. Who are defense attorneys
21 for Asbestos Corporation Limited in cases pending in the
22 united states.

23 THE COURT: Okay. All right.

24 Okay. We're in the Motion to Compel Gordan Rees
25 and Hawkins Parnell.

1 All right. For the receiver.

2 MR. BONDS: Yes, Your Honor, my name is Robert
3 Bonds. I'm the attorney for Mr. Peter Protopapas acting as
4 a receiver for Asbestos Corporation Limited. We are here on
5 two motions to compel subpoena responses from ACL's defense
6 counsel, Gordon Rees and Hawkins Parnell and Young. Both
7 Gordon Rees and Hawkins Parnell have failed to produce any
8 documents and have asserted boiler plate defenses or
9 objections in response to our subpoenas.

10 By way of background, this Court appointed
11 Mr. Protopapas as receiver back in September of 2023. The
12 order appointing receiver state that the receiver has the
13 power to control the defense of ACL in asbestos litigation
14 in the United States.

15 After being appointed receiver, we became aware
16 that Gordon Rees and Hawkins Parnell and Young have been
17 defending ACL in asbestos litigation across the United
18 States. Gordon Rees representation looks like it goes back
19 a little longer than a decade. And Hawkins Parnell and
20 Young started representing ACL it looks like in either in
21 late 2022, early 2023.

22 We sent Gordon Rees and Hawkins Parnell and Young
23 subpoenas back in November in essence asking for a complete
24 copy of all of ACL's files and any correspondence pertaining
25 to ACL and the asbestos litigation.

1 Again, like I said neither Gordon Rees nor Hawkins
2 Parnell and Young have produced a single document. Again,
3 all they provided were boiler plate objections and defenses.
4 And it wasn't until a few nights ago that we received
5 affidavits from representatives of Gordon Rees and Hawkins
6 Parnell basically stating that they don't have anything or
7 that attorney-client privilege really protects all of that
8 information.

9 We really requested a copy of their file for three
10 main reasons in order to determine the official depletion of
11 insurance assets, build a defense, and to better understand
12 the pattern and practice of the defense of ACL in asbestos
13 litigation across the U.S.

14 As for the depletion of insurance assets, whether
15 or not Hawkins Parnell and Young or Gordon Rees are aware of
16 this fact, but ACL's insurance policies have been paying for
17 defense costs associated with asbestos litigation in the
18 U.S.

19 I have, if you will allow, I'm going to hand you
20 these documents.

21 May I approach?

22 THE COURT: Yes.

23 MR. BONDS: This is a letter sent from ACL to
24 Resolute Management and Mindas and Mott (ph) on February
25 7th, 2023. This is a confidential document so we're

1 providing it to the Court for their in-camera review. But
2 if you turn to the first page what this shows is this is a
3 bill that has been sent to Resolute Management, from Mindas
4 and Mott (ph) from ACL.

5 If you look at the first page there are two kinds
6 of exhibits they talk about, it's services rendered and
7 indemnities paid. If you turn to the fifth page, you'll see
8 kind of a list of firms that have generated bills for ACL
9 and defense, on number 7 you will see Gordon Rees.

10 So what appears to be happening is that Gordon
11 Rees and Hawkins Parnell and Young are submitting bills to
12 ACL. And then ACL is then in turn sending invoices to
13 Resolute Management for reimbursement. And then so, in
14 effect, ACL is acting as this kind of pass through. And
15 even though Hawkins and Parnell and Gordon Rees may not be
16 aware of it, but insurance assets as it appears are being
17 depleted to pay for indemnification and the defense calls
18 for these claims.

19 As far as the second point, in order to build a
20 better defense, Gordon Rees and Hawkins Parnell and Young
21 have, in total, between the two either are currently still
22 or have in the past defended 240 cases approximately
23 spanning over a decade. In defending these cases they
24 presumably have information pertaining to ACL that would be
25 of great benefit to the receiver and defending claims here

1 in South Carolina.

2 And, last but not least, we believe that the
3 documents and communications that are in Hawkins Parnell and
4 Young and Gordon Rees's files will allow us to develop a
5 better understanding of how the asbestos litigation and the
6 defense of ACL has been taken place over the last decade.

7 In affidavits given by representatives at Gordon
8 Rees and Hawkins Parnell indicate that they generally never
9 produce any information in any of these claims. And so we
10 would really like the correspondence between these firms and
11 ACL to understand what exactly Gordon Rees and Hawkins and
12 Parnell have been doing over the last decade. And also
13 really what has ACL been them telling them to do.

14 And at the end of the day we also believe that we
15 are legally entitled to this information from Gordon Rees
16 and Hawkins Parnell because the receiver is in fact the
17 client for these firms.

18 This Court has made this clear on multiple
19 occasions that the attorney-client privilege belongs to the
20 receiver. Both Hawkins Parnell and Gordon Rees are
21 attempting to assert that the receiver's privilege against
22 him. This Court, on February 23, 2024, in Link and Potter
23 issued an order stating in part that the receiver for ACL
24 and Atlas shall be viewed as the client for both ACL and
25 Atlas and the defense of asbestos litigation matters.

1 This Court also back in 2019 on March 4th, in
2 Taylor v. Air Liquid System, issued an order clarifying the
3 receiver's appointment in Covil. And in part it also said
4 that the receiver was vested with all rights of Covil as the
5 client and any client-attorney relationship.

6 So at the end of the day the receiver as the
7 client is entitled to a copy of his file. We ask the Court
8 to grant -- we ask this Court to order Gordon Rees and
9 Hawkins Parnell and Young to completely respond to the
10 subpoena issued back in November. The receiver needs a
11 complete copy of this file with all correspondence to
12 determine the potential completion of insurance assets
13 billed to defense and have a better understanding of what's
14 been going on in the defense of ACL over the last decade.

15 THE COURT: Let me get straight exactly what's
16 happening here. ACL submits -- ACL pays these firms and
17 then submits to Resolute for reimbursement?

18 MR. BONDS: So based on this document it looks
19 like these firms submit invoices or billing statements to
20 ACL.

21 THE COURT: To ACL?

22 MR. BONDS: And then ACL in turn sends this
23 billing statement, quarterly billing statements to Resolute
24 Management and Mindas and Mott (ph).

25 THE COURT: And does Resolute pay ACL or does it

1 pay these law firms or do we know?

2 MR. BONDS: I don't believe we really know. In
3 the affidavit from Gordon Rees and Hawkins Parnell and Young
4 they say they are not paid directly by an insurance company.

5 THE COURT: And Resolute, just so we are straight
6 about that, Resolute is a firm that manages insurance claims
7 for insurance -- for insurers, correct?

8 MR. BONDS: Correct.

9 THE COURT: So ACL has some insurers and we don't
10 know who they are, but whoever they are Resolute is managing
11 claims for them and paying lawyers that represent ACL in
12 connection with asbestos litigation, right?

13 MR. BONDS: Correct.

14 THE COURT: I mean, they know who they are, we
15 just don't know who they are, right?

16 MR. BONDS: We do know who they are.

17 THE COURT: You now know which insurers Resolute
18 is using to pay these specific claims?

19 MR. BONDS: We believe we do.

20 THE COURT: All right. And so what are you
21 seeking from the law firms in that regard?

22 MR. BONDS: We are seeking just all the
23 information that they've gotten over the last decade as it
24 pertains to the defense of ACL. We are looking for their
25 communications between the law firms and ACL to help us

1 build a defense and figure out what's been going on for the
2 past ten-odd some year.

3 THE COURT: Because your -- the corporation of
4 which you are the receiver is not cooperating with you?

5 MR. BONDS: Correct.

6 THE COURT: So you're trying to go through the
7 lawyers that have been employed by either their insurers or
8 the manager of their insurers, Resolute, to defend them in
9 claims around the country, right?

10 MR. BONDS: Correct.

11 THE COURT: I just want the record to be clear
12 about that before we see what Mr. Carroll has to say about
13 that.

14 All right. Mr. Carroll?

15 MR. CARROLL: Yes, ma'am. Thank you, Your Honor.

16 THE COURT: And you represent?

17 MR. CARROLL: Both of the law firms, Gordon Rees
18 and Hawkins Parnell.

19 Your Honor, may I approach with a --

20 THE COURT: Of course.

21 MR. CARROLL: -- I've got a hard copy of our
22 response memo and affidavits of counsel for both firms.

23 May it please the Court, Your Honor?

24 THE COURT: All right.

25 MR. CARROLL: Todd Carroll on behalf of Gordon

1 Rees and Hawkins Parnell Law Firms.

2 Your Honor, a couple of things I wanted to clarify
3 before I begin my opposition arguments, their affidavit --
4 I've just handed up affidavits that we filed and that we
5 previously served on the receiver's counsel. To make clear
6 that neither of these law firms has any contact with any
7 insurance carrier.

8 This notion that they were hired by Resolute, the
9 kind of vague suggestion, well, maybe they were hired by
10 Resolute, it's not true. But both of these.

11 THE COURT: Who hired them?

12 MR. CARROLL: ACL hired them. It says so in both
13 of the affidavits or in all -- there are three affidavits.

14 THE COURT: All right. And -- all right. Who
15 pays the when settlements are made or when verdicts are
16 rendered against them, who pays them?

17 MR. CARROLL: ACL pays these law firms, it says so
18 in the affidavits.

19 THE COURT: All right. No insurance?

20 MR. CARROLL: No, ma'am. They haven't -- this is
21 the -- the suggestion that both firms just give boiler plate
22 objections is incorrect. They did give objections in
23 response to these subpoenas, and I'll get to that, but they
24 also said, We have no insurance information. We understand
25 that your charge as the receiver is to marshal these

1 insurance assets. We have -- we have no information. We
2 have policies --

3 THE COURT: All right. ACL says it has no
4 insurance?

5 MR. CARROLL: No. No. The two law firms. Gordon
6 Rees and Hawkins Parnell.

7 THE COURT: The law firms say that they have never
8 been paid by -- that -- I get that they got this rinky dink
9 where they have -- that governs how they're paid, but who
10 pays the law firms?

11 MR. CARROLL: ACL. They've put this in their
12 affidavits, Your Honor.

13 THE COURT: All right. What about this?

14 MR. CARROLL: Well, today was the first time I was
15 handed this, but this looks like are you talking about the
16 document from mr. bonds passed up?

17 THE COURT: Yeah. Yeah. It's just from Resolute.

18 MR. CARROLL: Yes, ma'am.

19 THE COURT: Asbestos Corporation Limited.

20 MR. CARROLL: Yes, ma'am.

21 THE COURT: It's dated February the 7th of last
22 year. And it lists...

23 MR. CARROLL: I see where it lists the law firms.

24 THE COURT: And it lists the law firms.

25 MR. CARROLL: Yes, ma'am.

1 THE COURT: And submits bills for the law firms.

2 MR. CARROLL: No, it doesn't submit bills for the
3 law firms, it lists law firms.

4 THE COURT: Well, it lists and it says, Total due
5 to the law firms, right?

6 MR. CARROLL: That's what this document says.

7 THE COURT: Right.

8 MR. CARROLL: But I don't know anything about it.
9 My clients don't know anything about it. They send their
10 bills to ACL and ACL retains them, pays them, and they send
11 their bills to ACL.

12 THE COURT: All right.

13 MR. CARROLL: And, Your Honor, this line of
14 questions kind of goes to one of my -- the bigger points
15 that I want to get to here. My clients are not parties to
16 this case. We are this is a Rule 45 issue. This is not a
17 Rule 26 through 37 issue.

18 If there's information that the receiver wants
19 regarding ACL, he should ask ACL. If he if there's
20 information he wants regarding ACL's insurance, he should
21 ask the insurance carriers. And I know he is, I know he is
22 because -- well, I was here for three hours this morning
23 about that. And I've been in your court several times when
24 ACL has been dealt with. And I have Traveler's, I represent
25 them regard with ACL and we're working well together with

1 respect to Traveler's.

2 So Rule 45 is a totally different animal than all
3 the other discovery issues that, Your Honor, has heard this
4 morning. Rule 45 protects nonparties from stuff like this.
5 In particular in the memo I handed up we cited a Fourth
6 Circuit case, with the Federal Rule and the State Rule 45
7 that were modeled after it. The State Rule is modeled after
8 the Federal Rule 45.

9 In the Fourth Circuit it said, Look, you can't go
10 ask a nonparty for information that you can get from a party
11 unless you come with a showing of why you couldn't get it
12 from the party in the first instance. And there's nothing
13 like that here.

14 And, in fact, Your Honor, I would suggest that
15 this document that was handed up shows that they can get
16 what they think they need from the parties. They don't need
17 to be bothering these nonparty law firms.

18 Now, Your Honor, with --

19 THE COURT: This isn't a discovery request. Rule
20 45 is the subpoena rule.

21 MR. CARROLL: Yes, ma'am.

22 THE COURT: And they have subpoenaed, like you can
23 in litigation, you can subpoena all kinds of people that
24 aren't parties.

25 MR. CARROLL: Oh, I understand.

1 THE COURT: The fact that they're not a party is
2 immaterial. If they've got some information that is
3 pertinent to your lawsuit, you can subpoena them.

4 MR. CARROLL: Of course. But there's a lot of
5 balancing that goes into Rule 45.

6 And, Your Honor --

7 THE COURT: This is not some burdensome terribly
8 --

9 MR. CARROLL: Your Honor, let me --

10 THE COURT: -- type thing, this is a real simple
11 thing, which is to...

12 MR. CARROLL: Well, Your Honor, let me -- I want
13 to break down what we've told them.

14 THE COURT: Okay.

15 MR. CARROLL: I don't think that --

16 THE COURT: And you just said, I'm not going to
17 answer your subpoena because it's on appeal and all these
18 other things you --

19 MR. CARROLL: No, ma'am. No, ma'am.

20 THE COURT: All right. Well, what have you said
21 to them.

22 MR. CARROLL: And to Mr. Bonds credit I will
23 confess that I had these conversations with colleagues of
24 his and not his. So I do not want to have any misimpression
25 that he said this and I'm saying something new, it's not

1 that, but these conversations have been going on.

2 What I've told them is both of these law firms
3 have represented ACL in asbestos litigation in other states,
4 other time zones, in fact: Louisiana, California, Oregon,
5 and Washington State.

6 As Your Honor well knows asbestos litigation
7 typically has dozens and dozens of defendants. There will
8 be scores of documents regarding plaintiffs medical
9 histories. Their files for each of these matters are
10 enormous. But as it pertains to ACL itself the files are
11 very, very thin.

12 And what both of these law firms have said is,
13 Look, the face of your subpoena asks for a gazillion
14 documents that are going to be irrelevant, you don't care
15 about some random plaintiff's medical history in Oregon.
16 But here's what we propose, we propose in giving you
17 exemplars in responsive pleadings that we filed on behalf of
18 ACL, because it's the same thing every time. We propose
19 giving you exemplars of our witness disclosures and written
20 discovery responses, because it's the same thing every time.
21 And we have a set of -- Gordon Rees has about two dozen and
22 Hawkins Parnell has two deposition transcripts of witnesses
23 who have appeared on behalf of ACL historically. And both
24 law firms have said we'll give you exemplars of pleadings,
25 we'll give you exemplars of witness disclosures, and we will

1 give you the deposition transcripts that we have. They've
2 already been produced to plaintiffs including the Dean Omar
3 Firm in other cases, these are not state secrets.

4 But that's the sum total of what we have for
5 litigation regarding ACL. Where they -- and they've -- I
6 mean, I was on the phone on Saturday morning making this
7 offer, and we put -- we've memorialized that in these
8 affidavits as well.

9 These law firms are not saying, No way, leave us
10 alone. What they're saying is, Look, what you're asking
11 for, you're asking for insurance information and we've told
12 you, we have none. And now we've told you that under oath,
13 we have none. Now you're telling us you want to know how
14 ACL is defending.

15 Well, you don't need the totality of each one of
16 these hundreds of files. If you really care about having to
17 defend ACL we'll show what these files answers, we'll show
18 you what we'll file as witness disclosures, and we'll even
19 give you all the deposition transcripts of ACL witnesses
20 through the years that we've got.

21 And that offer -- honestly, Your Honor, that offer
22 still stands. That's where I think this should land. Where
23 we differ is they said, Okay, that's great and what they
24 told -- what Mr. Bonds argued in support of his motion was,
25 We also need to know everything that ACL has been telling

1 them. And that's where these law firms -- their hands are
2 tied, Your Honor.

3 Privileged information that a law firm is not
4 allowed to -- obviously, Your Honor, knows this -- a law
5 firm cannot just turn over attorney-client privileged
6 material unless the client has waived the privilege. As far
7 as my clients know, and we've that in these affidavits, as
8 far as my clients know, ACL has not waived privilege.

9 I heard Mr. Bonds, Well, we've got the Link and
10 Potter order that said that Mr. Protopapas should be treated
11 like a client for purposes of those cases. Your Honor,
12 those two cases, that order was limited to those cases, and
13 those are South Carolina cases. And I heard when you were
14 introducing Mr. Manos earlier, you indicated that the
15 receiver was appointed to manage asbestos claims in this
16 state.

17 Gordon Rees and Hawkins Parnell have nothing in
18 this state regarding ACL. What they're asking -- I think
19 the only place where we truly disagree is on this notion of
20 should these two law firms produce untold numbers of
21 attorney-client privileged information to the receiver
22 without their client's permission. I would suggest that
23 they are not in any supposed to do that. Rule 45 has a
24 specific rule that says you quash a subpoena that seeks
25 privileged information. It's in the --

1 THE COURT: What do you say about the argument,
2 They ought to claim?

3 MR. CARROLL: I say that that is incorrect. I say
4 that in South Carolina the receiver is a receiver and he is
5 not -- he does become the client. Your Honor, the --

6 THE COURT: Well, tell me about in South Carolina,
7 how do you come to that conclusion?

8 MR. CARROLL: So here -- here's how I come to that
9 conclusion. This notion of who controls the privilege when
10 somebody has been appointed to do something to a company,
11 has been litigated nationally.

12 And what I have -- this is what the research
13 indicates to me, there's a Supreme Court -- U.S. Supreme
14 Court case called CFTC versus Weintraub, CFTC, the Commodity
15 Futures Trading Commission. The cite is 471 U.S. 343, it's
16 a 1985 decision, and there they were dealing with a
17 bankruptcy trustee, the question was who controls the
18 privilege when there's been a bankruptcy trustee appointed.
19 And what the U.S. Supreme Court distilled the analysis down
20 to is, who is the actor, quote, Whose duties most closely
21 resemble those of management? The Supreme Court is working
22 as management.

23 So then I go to the South Carolina code to see
24 what is this -- what is a receiver? Is he managing the
25 business affairs of the company? And the Court of Appeals

1 in the Shapemaster case has answered that question, they
2 say, No there's a difference between a receiver and a
3 custodian. A receiver is designed to marshal assets for
4 purposes of de solving a company. A custodian, by contrast,
5 is designed to manage, the same word, manage the affairs of
6 the company.

7 And in South Carolina our General Assembly has
8 authorized the court to only appoint a receiver, not a
9 custodia, the receiver over foreign entities that have
10 property in our state.

11 So, Your Honor, I think that the analysis is -- I
12 think it's straightforward. I can't imagine -- Your Honor,
13 this is my editorializing, it's not a legal argument, this
14 is my editorializing, I think it's unfair to put a law firm
15 in the position where they're being asked to turn over
16 privileged documents or otherwise face this Court's fury. I
17 think Rule 45 specifically says that you quash a subpoena
18 when it asks for privileged information.

19 My clients are willing to -- they have no
20 insurance information and they have been very clear that
21 they will give exemplars of the material that the receiver
22 says he needs to defend ACL and that they're willing to give
23 him all the testimony, all the evidence that they have. And
24 I should also note this is in these affidavits. I know Your
25 Honor has -- you've managed this asbestos court for several

1 years now, you know that most serial asbestos defendants
2 have tranche of documents that they just hand over in every
3 case, you know, here's my 800 historic pages of materials,
4 whatever.

5 Neither of these law firms have any of that for
6 ACL. And I want to tell you why because I had to discuss
7 this with the receiver a few times because they thought that
8 was a unbelievable assertion. But -- and I know that Your
9 Honor has told Mr. Brown that you do not buy this Quebec
10 Records Act, Quebec Business Records Act defense.

11 THE COURT: Nor does Bill Anderson of the United
12 States District Court for the District of South Carolina.

13 MR. CARROLL: I understand and I'm not debating
14 that with you, Your Honor. But what I'm telling you is ACL
15 believes it. So ACL has not given those, whatever --
16 if they have any documents, they've never given them to
17 either of these law firms. So these law firms do not have
18 any documents like that. Like, you know, company documents,
19 they have none of those.

20 THE COURT: Well, how are these cases resolved?
21 Do they just not pay any -- do they pay claims?

22 MR. CARROLL: Your Honor --

23 THE COURT: I think I'm entitled to at least know
24 that.

25 MR. CARROLL: I'm not sure that I should say on

1 the record without it being confidential. I don't know what
2 the plaintiff's bar in those states does with these cases.
3 I know that these cases are either dismissed or resolved.
4 But I don't think that I can -- I don't have personal
5 knowledge of how they're resolved, I just know that they
6 are.

7 THE COURT: Well, see that's one thing they're
8 trying to get at is who should we be dealing with as the
9 receiver particularly for these cases in South Carolina that
10 may involve for ACL a little bit different way of skinning
11 the cat that they try to use so that they avoid having to
12 disclose what they don't want to disclose in this country.
13 But they've obviously got some way of tapping into their
14 insurance resources to pay these claims. If they've been at
15 it for 20 years defending claims. I mean, the old days when
16 you could just say, Hey, I'm defunct or I don't have
17 anything in that, that's what we used to face all the
18 time -- Covil -- were into that.

19 MR. CARROLL: Yes, ma'am. I don't think they say
20 that.

21 THE COURT: All right.

22 MR. CARROLL: But these two law firms have no
23 visibility into what you're trying to get -- I understand
24 what you're trying to get at, I understand what they're
25 trying to get at.

1 THE COURT: What they're trying to get at is
2 who -- I mean, is it Resolute or is it insurance companies?
3 Who is it that they go to, to talk about what it's going to
4 take to resolve cases that they have to defend here.

5 MR. CARROLL: Who does the receiver need to go to?

6 THE COURT: Yes. And that's --

7 MR. CARROLL: I think they need to go --

8 THE COURT: -- that's one reason why they want to
9 get this law firm's thing, ACL is not cooperating with them
10 in any way, shape, or form. And yet they, as the receivers,
11 have to defend cases here and therefore they want some
12 information about who they should go to be it an insurance
13 company, be it somebody like Resolute, which is the manager.

14 I've got to believe with this document I've seen
15 today that since it's addressed to Kelly Skinner, Sr.
16 Account Manager of Resolute Management. And the subject is
17 Asbestos Corporation Limited, your file, and it's copied to
18 a lawyer with Mindas and Mott, my bet is that Resolute has
19 entered in some sort of contract with ACL to manage their
20 insurance portfolio. But, meanwhile, not have anything that
21 has ACL directly involved in settling any cases that are
22 brought against it in this country so they can assert these
23 crazy things about the Quebec Business Records Act and all
24 that kind of thing.

25 They obviously don't want to directly participate

1 in anything and that's why we had to set up a receivership
2 in South Carolina. But they're obviously participating and
3 they are participating through Resolute, which is a
4 well-known management of insurance claims company.

5 MR. CARROLL: Yes, ma'am.

6 THE COURT: So that would prompt a person to say,
7 If we can't get it from ACL, the lawyers who represented
8 Resolute would be another way of subpoenaing records that
9 deal with how these claims are managed and paid. And that's
10 what they're trying to find out.

11 MR. CARROLL: Yes, ma'am. I understand. And as
12 we put in these affidavits from these law firms that's not
13 the case. Their interface is with ACL, they have no
14 interface with any insurance carriers. They have no
15 interface --

16 THE COURT: They can have probably deniability,
17 but let me tell you something, their knowledge base has to
18 change as of today because I have in my hand something that
19 lists the law firm and it's from Resolute and the assumption
20 that I make as I look at this thing is that Resolute is
21 managing the repayment to ACL of monies ACL fronted to pay
22 to these law firms because they've got insurance. That's
23 what I concluded --

24 MR. CARROLL: Your Honor.

25 THE COURT: -- from a lot of experience and I

1 think that's what any lawyer would conclude, including you.

2 MR. CARROLL: And I don't want to mix my metaphors
3 here, that might be what's happening. But this is a Rule 45
4 subpoena issue.

5 THE COURT: Yes.

6 MR. CARROLL: And my clients don't have -- they
7 don't have this document, they don't have any records
8 regarding insurance. They said so in response to the
9 subpoenas, then they said so in affidavits in opposition to
10 this motion. I understand.

11 THE COURT: Have they seen this?

12 MR. CARROLL: I don't think so. They've said --
13 my understanding is they have no contact with --

14 THE COURT: This is a variance with them saying
15 they know nothing.

16 MR. CARROLL: No, it's not. Your Honor, this is
17 not addressed to either of these law firms.

18 THE COURT: Well, I understand that.

19 MR. CARROLL: It -- it -- it -- I don't see how a
20 document that is not addressed to either Gordon Rees or
21 Hawkins Parnell somehow undermines their position that they
22 don't have any contact with the insurance carrier. This
23 didn't go to them. And that's --

24 THE COURT: Well, they have been issued a subpoena
25 and I don't mind narrowing the ambit of that subpoena along

1 some of the lines you're talking about here.

2 MR. CARROLL: Yes, ma'am.

3 THE COURT: But that subpoena, even if I narrow
4 it, is going to conclude specific information from them
5 about what is in their files in connections with who
6 ultimately pays them because this would suggest that it's
7 not ACL. That ACL is getting reimbursed through a
8 management firm that is a well-known United States
9 Corporation that manages insurance proceeds. And insurance
10 proceeds are the heart and soul of litigation in this state.
11 Insurers and law firms, whether they are directly involved
12 or not, are subject to -- particularly insurers -- are
13 subject to mediation rules and other rules of that govern
14 what needs to be put forward --

15 MR. CARROLL: Yes, ma'am.

16 THE COURT: -- and in the hands of the parties
17 that are -- the lawyers who are managing litigation of these
18 claims. And if there is insurance out here, we're going to
19 find out about it.

20 MR. CARROLL: Your Honor, I understand. I
21 understand the ultimate goal here. But, again, I want to
22 bring back the narrowness of what this whole motion is, it's
23 a Rule 45 motion --

24 THE COURT: It's a motion -- it's a perfectly
25 legitimate Rule 45 subpoena of records from two law firms.

1 MR. CARROLL: Yes, ma'am.

2 THE COURT: Who have represented them for a long
3 time and would have records. And it wouldn't matter whether
4 this was a receiver for ACL or the plaintiff's lawyers.
5 They would be entitled to some information if the private
6 predicate is shown in this court about the need for
7 insurance information they would be entitled to that.

8 MR. CARROLL: Yes, ma'am.

9 THE COURT: And this material that I have received
10 suggests to me that a specific inquiry should be made to
11 these law firms in connection of a subpoena, a legitimate
12 subpoena of their records under Rule 45.

13 MR. CARROLL: Yes, ma'am. So I will --

14 THE COURT: So that would be -- I can narrow it
15 somewhat but I can tell you they're going to have to respond
16 specifically to what they know about how their bills are
17 being paid.

18 MR. CARROLL: So -- so --

19 THE COURT: And I guarantee you they know more
20 than just, Hey, I get paid by ACL but I don't know about
21 insurance. Anybody would defend somebody that is a
22 defendant in asbestos claim is going to know more than just,
23 I'm going to be paid by the corporation. Any lawyer is
24 going to have to know more about what insurance is available
25 because paying the law firms just starts, the real question

1 is what assets are available to pay claims that are made
2 against ACL. And any law firm that participates in that
3 kind of activity in South Carolina, Louisiana, Oregon, or
4 anyplace else, is going to have to in connection with its
5 defense of a claim, know what asset is available by means of
6 insurance to cover it. And this suggests there are assets
7 available, that's what they're trying to find out.

8 MR. CARROLL: Your Honor, I understand all of
9 that. There's direct testimony in each --

10 THE COURT: And Rule 45, put to aside for a moment
11 whether status as a receiver entitles them as a client to
12 discover these matters, their status as a litigant entitles
13 them to have information about insurance.

14 MR. CARROLL: I understand that. Your Honor, I'm
15 not -- I'm not arguing with you about that point. What I'm
16 telling you is that these two law firms have none.

17 THE COURT: I don't believe that based on what has
18 been shown me --

19 MR. CARROLL: A letter to somebody else?

20 THE COURT: Yes, sir. I don't believe that based
21 on what I see in these materials. Or at least I am hesitant
22 enough about that that I will be willing to do what is
23 necessary to have these subpoenas enforced with respect to
24 information about who pays.

25 MR. CARROLL: Well, Your Honor, these affidavits

1 say --

2 THE COURT: The affidavits doesn't --

3 MR. CARROLL: -- they say directly to those, they
4 say, I am paid by ACL not an insurance carrier.

5 THE COURT: Uh-huh. I want to know what they know
6 about what insurance assets are available to pay claims that
7 are made against ACL for asbestos litigation.

8 MR. CARROLL: Okay. Well, we've answered that
9 question. But I will redouble my efforts with both of these
10 clients to further inquire.

11 Your Honor, I feel like I've got to land this
12 plane somewhere. Where --

13 THE COURT: Well, we're going to land the plane in
14 a minute. I was trying to get more information from you,
15 but I think you told me that you're simply going to stand on
16 what they said in their affidavits --

17 MR. CARROLL: Well, Your Honor --

18 THE COURT: -- despite this two --

19 MR. CARROLL: -- if they have nothing, then they
20 don't have anything.

21 THE COURT: Well, this -- this -- this document
22 suggests to somebody who is pretty experienced in insurance
23 litigation that there's more to the story than I'm hearing
24 right now and I want the rest of the story --

25 MR. CARROLL: Okay. And this --

1 THE COURT: -- and that's where the plane's going
2 to land.

3 MR. CARROLL: Yes, ma'am. And, again, I think my
4 client's have said their position with regard to the absence
5 of this information in their files.

6 THE COURT: They have I'm not talking about
7 whether they purged their files or anything else or what --

8 MR. CARROLL: They didn't purge their files, Your
9 Honor.

10 THE COURT: -- is absent in their files, I'm
11 talking about what they have that indicates the source of
12 insurance payments in the cases where they represented ACL.

13 MR. CARROLL: I will -- I will redouble my efforts
14 to inquire on that, Your Honor.

15 THE COURT: All right.

16 MR. CARROLL: But with regard to other stuff in
17 the files, I would hope that our proposal of, here's
18 exemplars of pleadings, here's exemplars of disclosures,
19 here's the deposition transcripts. I would hope that that
20 would be satisfactory instead of saying give us all --

21 THE COURT: I understand.

22 MR. CARROLL: Okay.

23 THE COURT: I'm prepared to do something along
24 those lines --

25 MR. CARROLL: Yes, ma'am.

1 THE COURT: -- but my patience is sorely tested by
2 telling me that I'm supposed to look at this thing in a
3 vacuum. I've been in insurance litigation too long to
4 believe for one minute that if Resolute is writing letters
5 to ACL and listing all these law firms that there isn't
6 something more that the law firms has by way of information
7 about the insurance assets.

8 MR. CARROLL: I understand.

9 THE COURT: The way you defend lawsuits itself
10 would dictate that. And it would be a violation of any kind
11 of honesty between client and lawyer if the client would try
12 to shield from the lawyer information about insurance assets
13 in the defense of litigation of this type. And it would not
14 be legitimate in my view for a law firm to aid in that
15 deception, if that's what's being done here by ACL.

16 MR. CARROLL: Well, I will certainly reject any
17 suggestions or any deception.

18 THE COURT: I hope they're not. I hope they're
19 not.

20 MR. CARROLL: I don't know enough about ACL's
21 insurance program to know -- to comment on any of it beyond
22 -- I know what these lawyers have told me is in their file,
23 and they've checked, there's nothing. That's what they've
24 told the receiver since they got subpoenas as well.

25 THE COURT: Right. I mean, to me it's fundamental

1 if you do defense insurance work at this level as a lawyer
2 it's fundamental that you know something about the insurance
3 assets that are available to settle the claim. You've got
4 to know that when you go in mediation. And you've got to
5 know that if you've got a judgment and the Court asks as
6 Nancy Eagle, for example, did in the Covil case after that
7 big verdict was rendered against Covil when they had
8 represented something to her and it turned out to be light
9 years from the truth, that's how these receiverships it
10 started.

11 MR. CARROLL: I understand.

12 THE COURT: And I'm not going to let any law firm
13 try to shield from the Court's view and from litigant's view
14 information about insurance if they have it. And I got to
15 believe that any defense insurance, any defense law firm
16 worth its salt would know about something that's fundamental
17 and basic to the defense of a lawsuit as what insurance
18 assets are available.

19 MR. CARROLL: I understand, Your Honor. Thank
20 you.

21 THE COURT: Mr. Protopapas.

22 MR. PROTOPAPAS: May I have a brief reply, Your
23 Honor?

24 THE COURT: Yes, sir.

25 MR. PROTOPAPAS: As the Court recalls as the

1 Receiver for ACL, Peter Protopapas. And as the Court
2 recalls we settled five, if I'm not mistaken, of seven cases
3 on behalf of ACL less than a month ago.

4 THE COURT: Yes, sir.

5 MR. PROTOPAPAS: And over the past three or
6 four weeks, I have gotten a better understanding of the
7 insurance program, one I did not have when I originally
8 issued the subpoenas.

9 THE COURT: All right.

10 MR. PROTOPAPAS: As the Court recalls, Asbestos
11 Corporation Limited and its affiliated company Atlas, are
12 Canadian companies that mine chrysotile and ship it to the
13 United States in various forms. They engaged in this Court
14 and I suspect in 170 cases involving Hawkins Parnell and
15 Gordon Rees, an obstruction of asset information across the
16 country. I do believe that's likely what occurred, I don't
17 know for sure. It did happen in this courtroom where people
18 were told in this courtroom there were no insurance assets.
19 And we have since of course uncovered well over one billion
20 dollars of assets.

21 I understand that Hawkins and Parnell and Gordon
22 Rees are reputable law firms. And I understand that earlier
23 today when Vic Rawl took this podium to argue on behalf of
24 seven insurers for Asbestos Corporation Limited he was
25 arguing with knowledge of that insurance separate from the

1 representation of ACL in 167 cases or more across the
2 country. I understand. I understand that they don't know
3 the other half of the equation for which they're being used.

4 What the February 7th, 2023, letter evidence is
5 one half of the fraud that was continued in this courtroom.
6 That fraud being ACL has no money. We won't tell the
7 lawyers what's going on, and the lawyers figured out, we
8 don't want those lawyers saying anything about it anywhere.

9 The billing guidelines that these two law firms
10 have, I'm assuming they all have the same billing guidelines
11 I've seen for Atlas that's attached to my affidavit in the
12 separate Goldfein matter, which is what we'll hear in a
13 moment. In the Atlas billing guidelines it says, Don't tell
14 anyone if you figure it out.

15 I'm assuming the billing guidelines that they have
16 for ACL will have a similar paragraph, maybe it doesn't, I
17 don't know, but I'd like to see it. I'd also like to know
18 how have they defended hundreds of cases and in one quarter
19 of 2022 paid 377 thousand dollars of indemnity, 96 percent
20 of it came from insurance companies, that is one page 1 of
21 the February 7th, 2023 email at the bottom, it says, Exhibit
22 2, There's 395 thousand in total indemnity of which the
23 carrier is at 96 percent basis.

24 THE COURT: Both of them with one of their
25 policies?

1 MR. PROTOPAPAS: That's correct, Your Honor. I
2 did not know the extent of course of the London involvement
3 until this Court sanctioning and compelling and we went
4 through all of that in January, February, and March, which
5 led to the resolution of cases in this courtroom that this
6 court is privy to and it's not 377 thousand dollars.

7 And so the question, Your Honor, that I have for
8 my friends who have been defending ACL is, One, what
9 evidence are you using because I would like to use that same
10 evidence in this courtroom if it is valid, because we must
11 mount a defense.

12 Two, what is ACL telling you about where they
13 were, what they shipped, when they shipped it, that factual
14 information, perhaps is covered by the attorney-client
15 privilege, I don't know, maybe they're telling -- presumably
16 they're saying to their lawyers for this interrogatory from
17 the Court me made 10 shipments of fiber to such a facility
18 in California, or not, I don't know. I would then subpoena
19 those facilities. I would try to find out where was the ACL
20 fiber in South Carolina so I can mount an appropriate
21 defense here.

22 What I don't think is appropriate, is I don't
23 think it's appropriate to turn a blind eye to my request and
24 a blind eye to their responsibility to provide me with
25 information relevant to the defense, payment of attorney's

1 fees, and indemnification of claims. Those are the
2 categories we want. It will be in the correspondence from
3 ACL to the law firms, it will. I'm more than happy to enter
4 the confidentiality order. I'm more than happy to keep it
5 attorneys eyes only. I more than happy to do anything that
6 -- I would -- I think one is it a fraud? Perhaps, unwitting
7 participants, perhaps.

8 But the more relevant to me is it's time to stop
9 this nonsense that ACL is bankrupt and has not money as far
10 as a paying defendant. We need to stop that, Your Honor.
11 And it is not right for folks to turn -- to know that it
12 exists, to know those assets exist.

13 Mr. Rawl represents -- I think it's 250 million
14 dollars of insurance for ACL this morning, I haven't added
15 it up, but it's a lot. And for them to say we don't know
16 anything about insurance or defending the carriers here,
17 representing ACL there, you're sending information to
18 plaintiffs here, you're sending information to a receiver
19 there. Transparency, sunshine and light. Let's cleanse
20 this problem that's going on with ACL.

21 Respectfully, Your Honor, we're more than happy to
22 go to San Francisco where the files are located, I've got a
23 legal pad, I know how to go through documents. I'm more
24 than happy to go and index them myself. I did it before and
25 there was a 107 papers, I'll do that again here. But I do

1 want to see the billing guidelines. I do want to see the
2 billing records. I do want to see the correspondence of ACL
3 that is those law firms files, respectfully, if the Court
4 will allow.

5 Thank you.

6 THE COURT: What I'm inclined to do is to direct
7 that some very specific things be provided and keep this
8 matter open in terms of whether I should further compel
9 after the law firms produce what I'm going to outline here.

10 I certainly think by normal material that is
11 received in defense law firms that Mr. Carroll so accurately
12 outlined, that tranche of documents that you always get,
13 needs to be provided. He describes it as exemplars of
14 pleadings, witness disclosures, deposition transcripts, and
15 things of that nature, and certainly those things need to be
16 produced immediately.

17 Those things need to include information about
18 insurance. And, for Mr. Protopapas, to indicate that he has
19 settled very recently, and I know that's so because I've
20 signed some of the settlement agreements or signed orders
21 approving the settlement agreements, for Mr. Protopapas to
22 indicate that that kind of activity is taking place in
23 connection with these -- with cases filed here is a strong
24 indication to me that these law firms have some information
25 about insurance.

1 It can't be simultaneously argued that ACL is
2 bankrupt and doesn't have anything and at the same time have
3 ACL settling cases, substantial cases, and Mr. Protopapas
4 uncovering enormous amounts of potential coverage, as he has
5 indicated. Those two things are not compatible.

6 So I will require that the law firms supply that
7 normal tranche of documents, if we could be colloquial about
8 it. And, in addition, I will require that they immediately,
9 or within the next two weeks, supply any information that
10 they have about insurance coverage for ACL in these asbestos
11 cases.

12 And we're just about to hear Goldfein, before that
13 thing, boy that thing has got some things in it carrier,
14 I'll ask some big time. It cannot possible be that these
15 law firms who've defended ACL in a multitude of cases have
16 no information about insurance in light of some of the
17 material that is in that file.

18 So I will require that they supply specific
19 information about that. Mr. Protopapas has made an eloquent
20 argument about some of the things in terms of billing
21 guidelines and billing records that are applicable to the
22 ACL cases that these firms have defended that also needs to
23 be produced and I will require that that kind of information
24 be produced.

25 I will direct Mr. Robinson to prepare an order and

1 get it to me by -- today is the 25th, by the 2nd. And
2 Mr. Carroll to respond by the 9th as to an order that will
3 reflect what I have ordered today. And I will hold this
4 matter open with respect to any other requests of sanctions
5 or further compelling until we see what is produced.

6 I'm trying to honor Mr. Carroll's request you not
7 open the flood gates and I am sympathetic to that and I
8 quite frankly think all those arguments are fierce on the
9 other side, that Mr. Protopapas is somewhat sympathetic to
10 that. I think my past dealings with issues involving
11 records of other law firms indicates to me that he is
12 sensitive to matters of attorney-client privilege,
13 particularly as it affects the lawyers, because you've got a
14 contentious client. And your clients, Mr. Carroll, I don't
15 want to be caught in the middle.

16 MR. CARROLL: Me neither, Your Honor.

17 THE COURT: But at the same time, as I've said to
18 another lawyer that will be arguing here shortly, sometimes
19 you have to tell the client no. So that's what I'm going to
20 do with that.

21 MR. BONDS: Thank you, Your Honor, may I retrieve
22 that confidential document.

23 THE COURT: Yes, sir. all right. Now a little
24 break.

25 All right. Let's take a break for 15 minutes and

1 we'll come back at 20 minutes of 4:00.

2 Court will be in recess.

3 (WHEREUPON, there was a break in proceedings from
4 3:30 p.m. until 5:09 p.m. and then back for 5:09
5 p.m. until 5:10 p.m.)

6 THE COURT: Anything else to come before this
7 court?

8 MR. ROBINSON: Your Honor, one last question that
9 you've asked that has not been answered, and that's of
10 Mr. Rawl about ESAB being in Florence.

11 THE COURT: That's correct.

12 MR. ROBINSON: One of my colleagues pointed out
13 that question is still pending out there.

14 THE COURT: Mr. Rawl, what have you got for me?

15 MR. RAWL: I stayed through that last hearing just
16 so I can answer the question. My client has no assets in
17 South Carolina.

18 THE COURT: Do you hear that, Mr. Robinson?

19 MR. ROBINSON: I did hear it, and it's on the
20 record, Your Honor.

21 THE COURT: Very good. Thank you so much.

22 (WHEREUPON, the hearing concluded at 5:15 p.m.)
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)

County of Richland)

I, Cynthia D. Weaver, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the Court of Common Pleas for Richland County, South Carolina, on the 25th of April, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 3, 2024

Cynthia D Weaver

Cynthia D. Weaver
Official Court Reporter
State of South Carolina

s/Steven J. Pugh

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September 5, 2024

Sep 05 2024

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellants ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC, do hereby certify that I have this date served the foregoing **Appendix**, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated April 24, 2024, on all counsel of record using the primary email addresses listed in the Attorney Information System (if applicable).

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Date: September 5, 2024

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SC Court of Appeals

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellants ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC, do hereby certify that I have this date served the foregoing **Return to Motion to Dismiss**, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated April 24, 2024, on all counsel of record using the primary email addresses listed in the Attorney Information System (if applicable).

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Date: September 5, 2024

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Subject: John A. Tibbs v. Asbestos Corporation Limited (10) (Appellate Case No 2024-001064)
Date: Thursday, September 5, 2024 4:34:46 PM
Attachments: [Return to Motion to Dismiss \(Contempt Appeal\) - Sparrows Appellants 09-05-24.pdf](#)
[Appendix - Sparrows Appellants.pdf](#)

Good afternoon,

Please find served upon you on behalf of ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC, the Return to the Motion to Dismiss and accompanying Appendix. This are being served in the above-referenced case and will be filed with the Court of Appeals of South Carolina later today.

Thanks!

Ashwin

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