

RECEIVED

Sep 10 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Civil Action No. 2023-CP-40-01759
Appellate Case No. 2024-001446

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AiW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; 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., Sparrows Offshore, LLC, Mohed Altrad, Altrad Investment Authority SAS, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the Appellant.....**APPELLANTS.**

RETURN TO MOTION TO DISMISS AND EXPEDITE

Steven J. Pugh (S.C. Bar No. 14341)
Benjamin P. Carlton (S.C. Bar No. 101142)
Carmen V. Ganjehsani (S.C. Bar No. 73515)
Ashwin R. Sanzgiri (S.C. Bar No. 105198)
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street
Columbia, South Carolina 29201
(803) 771-4400

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

INTRODUCTION¹

In another attempt to insulate numerous errors occurring in the circuit court in this case, the Receiver has once again filed a Motion to Dismiss and Expedite (“Motion”) rather than respond on the merits to a valid, appealable issue of substantial constitutional importance. Of course, because calling this appeal “improper and frivolous” clearly has no support in the law, the Receiver’s filing attempts to conflate this appeal with prior (valid) appeals that remain pending before South Carolina appellate courts,² appeals of valid issues in other cases that have nothing to do with this one,³ and a removal effectuated by a party unrelated to the Sparrows (and other) Appellants.⁴

At every turn, the Receiver has sought to mischaracterize the Sparrows Appellants’ actions, casting them as obstructionist when in reality, the Sparrows Appellants merely seek protection from illegal action occurring below. Plaintiffs’ counsel for the Tibbs sought a receivership over the wrong entity in a different and an already “fully resolved” case. That pre-judgment receivership—contrary to the express, limiting terms of the circuit court’s receivership appointment order—was then brought into the *Tibbs* case some nine months later to avoid any review of its clearly fatal defects, both substantive and procedural, and the many constitutional violations involved. When these defects and violations were challenged at the first opportunity,

¹ 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.

² Mot. at 3.

³ Mot. at 5 n.2.

⁴ Mot. at 6–7 & n.3.

the Receiver then asked the circuit court to transmute the receivership to cover an entirely different legal entity and then began the oft-repeated strategy of seeking to dismiss appeals that are otherwise valid under South Carolina law. Since that moment in time, the Receiver has taken every possible step to mask the constitutional and procedural flaws in the proceedings to avoid appellate review. And, from the beginning, the Receiver maintained the secrecy of an until-recently undisclosed “tolling agreement” that renders his claims against the Sparrows Appellants illusory from the moment those claims were pled.

In addition to this underlying context, basic indisputable facts compel this Court to hear the merits of this case. *First*, the Sparrows Appellants⁵ filed their Notice of Appeal at the earliest possible moment in which their rights were violated under South Carolina law.⁶ *Second*, any issues as to “issue preservation” go to the merits of the appeal, despite the Receiver’s desire to

⁵ The Sparrows Appellants are ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC. They were formed, in Delaware, in the twenty-first century: Sparrows Offshore in 2003; ArranCo in 2008; and Hawk Bidco in 2012. The Sparrows Appellants do not now, nor have they ever, maintained their registered office or principal place of business in South Carolina. Instead, from its Texas principal place of business, Sparrows Offshore is in the crane business, while ArranCo and Hawk Bidco are Delaware holding companies. *None of them* have ever had any affiliation with or contacts to South Carolina or to the asbestos industry. *Each of them* only became distantly related to Appellant Altrad Investment Authority SAS—and even more so to the Cape PLC or Cape Intermediate Holdings Limited entities over which the Receiver purports to act—beginning in mid-2022.

⁶ Any contention this appeal was not timely is incorrect. The circuit court order was entered on June 20, 2024. A Notice of Removal was filed by an unrelated party on June 28, 2024, divesting South Carolina state courts of all jurisdiction over the case. *Limehouse v. Hulsey*, 404 S.C. 93, 105, 744 S.E.2d 566, 573 (2013) (“Removal proceedings impact the jurisdiction of the state court in that removal of a state case to federal court “divests” the state court of jurisdiction.”). At that time, eight of the thirty days in which a party has to file a notice of appeal had run. See Rule 203(b)(1), SCACR. Thereafter, the federal court entered its certified remand order on August 13, 2024. From August 13, 2024, the remaining 22 days to file a Notice of Appeal began running. See *Limehouse*, 404 S.C. at 117, 744 S.E.2d at 579 (“Additionally, we find the time for filing responsive pleadings was tolled during the removal proceedings as no subsequent pleadings could be filed in state court until jurisdiction resumed.”). Thus, when the Notice of Appeal in this matter was filed on August 30, 2024, it was within the tolled 30-day window afforded by Rule 203.

shortchange the appellate process to avoid scrutiny of the improper action occurring in the circuit court. As much as the Receiver seeks to catch the Sparrows Appellants, and others, in a self-serving “gotcha game” with soundbites from various hearings, the December 9, 2024 bench trial of this case was not scheduled until June 20, 2024—*no earlier*. *Third*, there would be no delay if the Receiver simply consented to a trial by jury which was specifically requested by the Sparrows Appellants and others; the delay is one of his own creation as a result of insistence on a bench trial before former Chief Justice Toal on styled “equitable,” “derivative” claims that (as outlined in the brief factual background that follows) *only recently* have been made known to the Sparrows Appellants to be derivative to nothing.

The Sparrows Appellants strenuously object to the Receiver’s characterization of valid and justifiable appeals as “improper and frivolous,” part of a “pursuit of successive improper appeals,” “another attempt in a long line of recent attempts” to “abuse South Carolina rules of procedure to subvert justice and delay circuit court rulings on important matters of South Carolina law,” repeating a “failed strategy,” or filing appeals that are “solely interposed for the purpose of delaying the trial.” While the Receiver states “this type of continued behavior should not be tolerated,” the use of hyperbolic language casting aspersions on parties endeavoring to protect and preserve their constitutional rights and exercising rights afforded to them under South Carolina law—in the face of illusory claims designed to disguise the billions of dollars of legal damages being sought under the cloak of equitable headers—is decidedly *not* a basis to grant an expedited dismissal of a valid appeal.

RELEVANT FACTUAL BACKGROUND

On January 2, 2024, the Sparrows Appellants demanded a jury trial “on all issues so triable” as part of their protective Answer timely filed with the circuit court. *See* Answer, at p.1 (Caption) & p.63 (“Prayer for Relief”) [**App. 001, 063**].

On April 8, 2024, counsel for the *Tibbs* Plaintiffs emailed the circuit court and a listserv of counsel indicating that only two defendants remained in the first-party asbestos action brought by John and Margaret Tibbs—(i) Asbestos Corporation Limited (“ACL”) and (ii) Atlas Turner. *See* Email from Counsel for *Tibbs* Plaintiffs (Apr. 8, 2024) [**App. 064–66**]. At the hearing held by the circuit court two days later, the same counsel for the *Tibbs* Plaintiffs put on the record that Cape PLC was no longer a defendant⁷ and, when asked “what happened to Cape,” the same counsel referenced an undisclosed “tolling agreement”—the first public mention of any “agreement” between the Receiver and the *Tibbs* Plaintiffs. Hearing Tr., at 33:16–17; 155:8–25 (Apr. 10, 2024) [**App. 100, 222**].⁸

A few weeks later, during an April 25, 2024 hearing before the circuit court, the terms and import of the secretive “tolling agreement” remained undisclosed to both the Appellants and the circuit court:

MR. CARROLL: Because Rule 14 only allows a third party to try to transmit the first-party liability to the third-party defendants. If there is no first-party liability, then there’s nothing to transmit the third-party defendants. We’ve not seen the tolling agreement. I assume you are going

⁷ Cape Intermediate Holdings Limited (“CIHL”) was never a named defendant in *Tibbs*.

⁸ Even though the “tolling agreement” was immediately requested, it was not produced to Third-Party Defendant Anglo American PLC (“Anglo American”) until June 18, 2024 following the circuit court’s June 6, 2024 entry of a “Confidentiality Order.” *See* Anglo American’s Notice of Removal, at ¶ 8 filed June 28, 2024 [ECF 1] (accepted for filing by Richland County Clerk of Court on July 2, 2024) [hereinafter, “Anglo American Removal Notice”] [**App. 256**]. To date, the Receiver has not produced it to the Sparrows Appellants.

to ask Mr. Lay about the status of that case. The first-party Tibbs versus Cape case. I don't know any details beyond what I just told you.

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

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

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

MR. CARROLL: I don't know.

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

Hearing Tr., 42:14–44:17 (emphasis added) [App. 425–26].

As part of Anglo American's June 28, 2024 removal to federal court, *some* clarity as to the “tolling agreement” was *finally* obtained. As described by Anglo American, this “tolling agreement” is in reality a non-confidential agreement of dismissal (the “Dismissal Agreement”), as, on June 12, 2023 (*before* the Receiver's pleading against the Sparrows Appellants was filed), the Receiver “agreed to toll the statute of limitations on the *Tibbs* [P]laintiffs' claims against Cape [PLC] in exchange for the *Tibbs* [P]laintiffs' agreement to **dismiss their claims against Cape [PLC]**.” Anglo American Removal Notice, at ¶ 8 (emphasis in original) [App. 259]. In the district court's August 13, 2024 Remand Order (filed with the circuit court on August 14, 2024), the Dismissal Agreement was similarly described:

The tolling agreement provides that the Receiver and certain counsel *consent to the dismissal of specific claims filed by counsel's clients against Cape plc* without prejudice in exchange for Cape plc's assent to tolling the applicable limitations period. The purpose of the agreement is to allow the parties *evaluate the dismissed claims* outside of litigation. The agreement provides for *refiling of the dismissed claims* in the event settlement is not effectuated.

(Emphasis added).

Thereafter, at a status conference held by the circuit on July 16, 2024, counsel for the *Tibbs* Plaintiffs once again confirmed the status as to Cape PLC by noting that “we still have a case against ACL” (i.e., not Cape PLC). Hearing Tr., at 3:8–14 (July 16, 2024) [**App. 342**].

Within this same timeframe and mere days before Anglo American’s June 28, 2024 removal, the circuit court—*for the first time*—ordered that a *bench trial* of the Receiver’s claims begin starting December 9, 2024, untied to any trial of the underlying *Tibbs* first-party tort action. See June 20, 2024 “Order Scheduling Trial Date” [the “Order”]. That Order is the subject of this proper, timely appeal.

ARGUMENT

After dispensing with the fog of the Receiver’s incendiary rhetoric, he posits essentially three arguments in furthering his request that this appeal should be dismissed; *all* are fundamentally incorrect. First, he argues that the Sparrows Appellants possess no right to jury trial. See Mot. at 4. Second, he somehow tries to argue the subject Order is not appealable. See Mot. at 10. Third, and finally, he asserts Appellants “waived” their constitutional rights to jury trial. See Mot. at 10.

The Sparrows Appellants demanded a trial by jury, and the circuit court has now set the case for a bench trial. As a matter of black-letter South Carolina law, the circuit court’s action is a quintessential deprivation of a substantial right and entitled mode of trial pursuant to section 14-3-330 of the South Carolina Code and South Carolina jurisprudence interpreting and enforcing that appealability statute.

While this Return responds in-kind to each of the Receiver’s arguments, the Sparrows Appellants strenuously object to this unfounded attempt to litigate the merits of this appeal via expedited motion to dismiss. Such attempted circumvention of full merits argument—by actually

arguing the merits in a now-perfunctory dismissal motion—warrants denial of the Receiver’s motion on that basis alone.

Thus, and for the reasons set forth herein, this Court should deny the Receiver’s Motion and order the briefing to continue in this case for resolution on the merits.

I. The Claims in the “Third-Party”⁹ Complaint Require Trials by Jury and the Sparrows Appellants Have Demanded and Are Entitled to that Substantial Right and Mode of Trial.

a. Applicable Law

Just as the Receiver has sought to keep this case before the circuit court, he seeks to have the circuit court itself be the finder of fact by masking claims for money damages as causes of action that are “equitable in nature.”¹⁰ “Generally, the relevant question in determining the right

⁹ The “Third-Party” Complaint below is patently improper, and preventing review of this fact appears to be the underlying basis for the Receiver’s serial motions to dismiss, without ever engaging on the merits, of otherwise valid appeals. Under Rule 14(a) of the South Carolina Rules of Civil Procedure, a defendant is permitted to implead and pursue claims against a third party only if it “is or may be liable to [defendant] for all or part of the plaintiff’s claim”; it “does not allow the defendant to assert a separate and independent claim.” Rule 14(a), SCRCP; *see also Uptagrafft v. United States*, 315 F.2d 200, 202 (4th Cir. 1963) (“The right to bring in such third party exists only when the third party ‘is or may be liable to him for all or part of plaintiff’s claim against him.’”). Before the “third-party” pleading was filed, the Receiver agreed with counsel for the Tibbs Plaintiffs to indefinitely toll the statute of limitations as to the Tibbs’ claims against Cape PLC. Thus, the case below is entirely improper, and has been from its inception—a fact that has only been recently discovered by the Appellants. This fact is important, because as set forth below, not only are the Sparrows Appellants entitled to a jury trial of any third-party claims, but, as a mandatory condition precedent, there must first be a jury trial between the original *Tibbs* Plaintiffs and Cape PLC.

¹⁰ The Receiver somehow tries to fault the Sparrows Appellants by stating: “Even in their late-filed Notices of Appeal, Appellants did not identify any specific factual issues or causes of action in this case that are triable by a jury,” and then citing jurisprudence related to issue preservation, a completely separate issue. Of course, a Notice of Appeal under the South Carolina Appellate Court Rules need not identify the specific issues being appealed—that is the purpose of briefing. *Compare* Rule 203(e), SCACR (setting forth form and content requirements for a notice of appeal and *not including* identification of appellate issues) *with* Rule 208, SCACR (noting that initial briefs should include statements of issues and argument).

to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions.” *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). Characterization of an “action as equitable or legal depends on the [plaintiff’s] *main purpose in bringing the action*.” *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978) (citations omitted) (emphasis added).

“The main purpose of the action should generally be ascertained from the body of the complaint”; “[h]owever, if necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action.” *Id.* (citations omitted). “The character of an action is determined by the complaint in its main purpose and broad outlines and not merely by allegations that are merely incidental. *Alford v. Martin*, 176 S.C. 207, 180 S.E. 13, 15 (1935). As the Supreme Court stated:

Generally, however, it may be said that the essential character of the cause of action, and the remedy or relief it seeks, as shown by the allegations of the complaint, determine whether a particular action is at law or in equity, unaffected by the conclusions of the pleader or by what the pleader calls it, or the prayer for relief, or the nature of the defense interposed, or new matter stated in the reply, or whether the action is statutory or otherwise. Notwithstanding this, however, it is said that the nature of the issues as raised by the pleadings or the pleadings and proof, and character of relief sought under them, determines the character of an action as legal or equitable.

Bell v. Mackey, 191 S.C. 105, 3 S.E.2d 816, 822 (1939).

As with the United States Constitution, the South Carolina Constitution “preserve[s] inviolate” the fundamental right to a jury trial. S.C. Const. art. I, § 14; *see also* U.S. Const. amend. VII (“[T]he right of trial by jury shall be preserved”); *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 600, 681 S.E.2d 879, 884 (2009) (“The right to trial by jury is a fundamental right.”). The South Carolina Rules of Civil Procedure reiterates this constitutional mandate, both in Rule 38(a)

concerning the right to trial by jury and in Rule 42(b) governing bifurcation. *See, e.g.*, Rule 38(a), SCRCP (“The right of trial by jury as declared by the Constitution . . . shall be preserved to the parties inviolate.”); Rule 42(b), SCRCP (“The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim . . . or third-party claim[] or of any separate issue . . . always preserving inviolate the right of trial by jury as declared by the Constitution”); *see also* Rule 38(a), SCRCP (“Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.”); Rule 38(b), SCRCP (“Any party may demand a trial by jury of any issue triable of right by a jury”); Rule 38(c), SCRCP (“In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable.”).¹¹

b. Analysis

The Sparrows Appellants made a jury demand. The Receiver never objected to that demand or moved to strike it.¹² Accordingly, the action was required to have been designated jury trial unless (1) a party consented to bench trial or (2) the circuit court “found the right to a jury trial did not exist.” *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 95, 800 S.E.2d 488, 491 (Ct. App. 2017), *abrogated on other grounds by Deutsche Bank Nat’l Tr. Co. as Tr. for NovaStar Mortg. Funding Tr., Series 2007-1 NovaStar Equity Loan Asset Backed Certificates, Series 2007-1 v. Est. of Houck*, 440 S.C. 409, 892 S.E.2d 280 (2023) (“It is undisputed that Salon made a valid

¹¹ The provisions of Rule 38, SCRCP, specifically address and negate the Receiver’s half-hearted objection that the Appellants have not “identif[ied] what issues or causes of action are triable by jury.” Simply, by Rule, the Sparrows Appellants are not required to do so.

¹² Similarly, Cape PLC’s general denial Answer filed in the underlying, first-party tort case did not object to the *Tibbs* Plaintiffs’ request for a jury trial. Answer of Cape PLC; [App. 269].

jury demand in its answer. *See* Rule 38(b), SCRCP (stating a party may serve a jury demand “not later than 10 days after the service of the last pleading” or the demand “may be endorsed upon a pleading of [a] party”). Because of Salon’s valid jury demand, Rule 39 provides the action should have been designated as a jury action in the clerk’s filebook unless the parties consented otherwise or the court found the right to a jury trial did not exist.”).

There are two matters in which the Sparrows Appellants are entitled to trial by jury. *First*, the nature of this purported “third-party” action entitles the Sparrows Appellants to the jury trial demanded by the *Tibbs* Plaintiffs in the underlying, first-party asbestos tort proceedings by virtue of operation of Rule 14, SCRCP, and the right to “stand in the shoes” of Cape PLC as part of the defense of claims for which “derivative liability” is necessarily alleged to have been based and capable of being passed through to the Third-Party Defendants. *See* Rule 14, SCRCP; *see also generally*, *Lindner v. Meadow Gold Dairies, Inc.*, 515 F. Supp. 2d 1141, 1149 (D. Haw. 2007) (acknowledging the third-party defendant’s right “to stand in [the defendant/third-party plaintiff’s] shoes for the purposes of defending against the [plaintiff’s] claims”); Moore’s Federal Practice § 14.25 (Matthew Bender 3d ed.) (“[T]he impleader rule recognizes the derivative nature of the third-party defendant’s potential liability and permits it essentially to stand in the defendant’s shoes and assert its defenses.”).

There is no doubt the issues in the *Tibbs* first-party complaint are triable by jury, as is a regular occurrence in the circuit court on asbestos cases and has been demanded by the *Tibbs* Plaintiffs themselves. *See Tibbs* Plfs.’ First Am. Compl. at 97 (“A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.”) [**App. 570**]; Hearing Tr., at 27:11–13 (July 16, 2024) (“And the *Tibbs* family itself, . . . [t]hey deserve their day in court”) [**App. 366**].

*Second, and only if Cape PLC is found liable in the first-party tort action,*¹³ the Sparrows Appellants are also entitled to the jury trial they have demanded¹⁴ on the “third-party” claims, insofar as they still exist at the time of trial. As evident from the “Introductory Statement”¹⁵ in the Third-Party Complaint, the Receiver’s own concession in his briefing submitted to the circuit court,¹⁶ and other facts and circumstances relevant to these proceedings, the “main purpose in bringing the action” is the recovery of “billions of dollars of past, present, and calculable future damages” as part of a self-proclaimed “reckoning” (i.e., not restitution, an accounting, or other

¹³ Cape PLC cannot be found liable in the first-party tort action because Cape PLC had been dismissed from the *Tibbs* action by virtue of the Dismissal Agreement, a reality that has now been confirmed by (1) the terms of the June 12, 2023 Dismissal Agreement that have been disclosed [**App. 256**] and (2) by repeated representations to this circuit court, including: (i) in an April 8, 2024 email [**App. 064–66**]; (ii) during the April 10, 2024 hearing [**App. 154–55**]; and (iii) during the July 16, 2024 status conference [**App. 341–81**]. This is precisely why the Receiver’s action is, and has been, illusory from the date of filing and should not be permitted to proceed, especially in violation of Appellants’ constitutional rights.

¹⁴ See Sparrows Appellants’ Answer, at p.1 (Caption) & p.63 (“Prayer for Relief”) [**App. 001, 063**].

¹⁵ This “Introductory Statement” states [**App. 282**]:

This lawsuit seeks to *finally hold accountable* three groups of Third-Party Defendants (including their predecessors in interest) who are responsible for the sale and use of asbestos or asbestos-containing products throughout the United States, including in South Carolina, and which caused or materially contributed to thousands of deaths from mesothelioma or other asbestos-related disease, and *billions of dollars of past, present, and calculable future damages*. . . . In sum, these three groups of Third-Party Defendants have wreaked havoc in the United States, padded their already massive coffers with blood money on top of blood money, and amused themselves with the supposed ingenuity of their scheme to avoid any responsibility. *This lawsuit begins their reckoning*.

(Emphasis added).

¹⁶ See Receiver’s Mot. to Preadmit Exhibits as a Discovery Sanction, at 2 (April 3, 2024) (conceding that his claims “sound[] in equity *and law*.” (emphasis added)).

equitable relief). *See Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978) (citations omitted); *see also* Rule 38(a), SCRPC (“Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.”).

Of course, the causes of action relative to the *Tibbs* Plaintiffs’ Complaint require trial by jury. And, there appears to be no dispute about that fact. Barring consent to dismiss the Sparrows Appellants because of the improper third-party nature of the case, it would appear all parties agree that if this case is properly derivative, then a jury trial in the first instance is required between the *Tibbs* Plaintiffs, Cape PLC, and any other remaining defendants. Thereafter, only if Cape PLC is found liable, the Receiver’s third-party action must proceed before a jury, as the “main purpose” and only real relief being sought by the Receiver is “billions of dollars . . . [in] damages”

II. The June 20, 2024 Order Is Appealable.

a. Applicable Law

There is no doubt an order denying a right to a trial by jury is immediately appealable. While that is black-letter South Carolina law, the Receiver continues to attempt to insulate his “reckoning” quest for “billions of dollars” from any review, even when constitutional rights are implicated and discarded.

The Supreme Court has held that orders affecting the mode of trial affect substantial rights under subsection 14-3-330(3) and *must be* immediately appealed. *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997); *see also Cobb v. S.C. Dep’t of Transp.*, 365 S.C. 360, 363, 618 S.E.2d 299, 300 (2005) (“If an order deprives a party of a mode of trial to which that party is entitled as a matter of right, the order is immediately appealable and failure to do so forever bars appellate review.”); *Satcher v. Satcher*, 351 S.C. 477, 490, 570 S.E.2d 535, 542 (Ct. App. 2002)

(“Orders affecting the mode of trial affect substantial rights protected by statute and must, therefore, be immediately appealed.”).

A denial or deprivation of a party’s right to a jury trial on any issue so triable is immediately appealable as an order affecting a substantial right. S.C. Code Ann. § 14-3-330(2) (“The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: . . . (2) 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. . . .”); *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000) (“Pursuant to § 14-3-330(2), this Court as held on numerous occasions that when a trial court’s order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable.”); *see also Hagood v. Sommerville*, 362 S.C. 191, 196–97, 607 S.E.2d 707, 709 (2005) (mode of trial is a “well-established exception to the general rule” that nonfinal orders are non-appealable); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 78, 533 S.E.2d 575, 577 (2000) (“The majority of cases requiring immediate appeal involve review of denials of trial by jury and are based on the public policy consideration of advancing the constitutional mandate to preserve the right to trial by jury inviolate.”); *N.C. Fed. Sav. & Loan Ass’n v. DAV Corp.*, 298 S.C. 514, 517, 381 S.E.2d 903, 904 (1989) (reversing in part an order dismissing, as not immediately appealable, an appeal from a trial court order denying a jury trial on legal claims).

The failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue. *Id.* If an order which affects the mode of trial is not immediately appealed, the party has no remedy in the future. *Creed v. Stokes*, 285 S.C. 542, 542–43, 331 S.E.2d 351, 352

(1985) (holding where appellant failed to timely appeal an order referring dispute to master-in-equity, appellant could not later complain that he had been entitled to a trial by jury); *see also Edwards v. Timmons*, 297 S.C. 314, 316, 377 S.E.2d 97, 97 (1988) (per curiam) (concluding appellant’s failure to immediately appeal order referring matter to the master-in-equity was the law of the case).

b. Analysis

Under this clear body of South Carolina law, this Order setting a bench trial is appealable. There is no question that the Sparrows Appellants demanded a jury trial. There is no question deprivation of that jury trial right and demand is appealable. And, there is no question that deprivation was appealed from the first Order setting the case for bench trial. Accordingly, this appeal is proper and must continue.

The Receiver also confuses issue preservation with appealability. While there is no doubt this mode of trial issue is properly before this Court, the Receiver has filed a merits brief on waiver under the guise of a motion to dismiss rather than allow the proper appellate process to play out. The Supreme Court—addressing merits briefs, not conclusory motions to dismiss—has stated repeatedly “that issue preservation rules should not be applied in a technical manner as if this is some sort of game of “gotcha” elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.” *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023). That statement was made after full briefing. Here, the Receiver attempts to shortchange that process and have this Court dismiss a case on an unfounded “gotcha” basis without full briefing and on a reduced briefing schedule. And, citations to case law regarding evidentiary objections in trial are unavailing when the actual issue was presented via jury demand—which is both self-explanatory and self-executing, *S.C. Cmty. Bank*, 420 S.C. at 95, 800 S.E.2d at 491—and rejected

via the circuit court’s entry of the Order setting the case for bench trial.¹⁷ Dismissal of this case on the basis of arguments regarding issue preservation would be highly improper and thus, this Court should reject those arguments.

III. No Waiver Could Exist, Even Under the Receiver’s Timeline.

In a similar vein, the Receiver seeks to have this case dismissed based on “waiver.” No such waiver occurred.

“Issues regarding mode of trial must be raised in the trial court at the first opportunity, and the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue.” Jean H. Toal, et al., *Appellate Practice in South Carolina* 156 (3d ed. 2016); see also *id.* at 145 (“Orders denying a party’s right to a mode of trial must be appealed immediately, and a party runs the risk of waiving the right to appeal if that party fails to so immediately appeal.” (emphasis added)); *id.* at 157 (reiterating that “these orders must be appealed immediately” (emphasis added)). The key word in former Chief Justice Toal’s treatise is “orders.”

The same key word, “orders,” permeates South Carolina jurisprudence in the context of appealability and waiver. See, e.g., *Foggie v. CSX Transp., Inc.*, 313 S.C. 98, 431 S.E.2d 587, 590 (1993) (“Issues regarding mode of trial must be raised in the trial court at the first opportunity, and the order of the trial judge is immediately appealable.” (emphasis added) (citation omitted)); *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 93–94, 800 S.E.2d 488, 490–91 (Ct. App. 2017)

¹⁷ The Receiver faults the parties below for not objecting to the Order. On June 10, 2024, one of the Receiver’s 50+ attorneys, G. Murrell Smith, Jr., sent a letter to the circuit court asking the case be scheduled for trial on December 9, 2024 due to his “unavailability” in his role as Speaker of the House. Due to the *unequivocal* published South Carolina law regarding Rule 205, SCACR, it was presumed the letter would serve no purpose. In apparent disagreement, and without any notice to the parties—10 days thereafter—the circuit court rejected the valid jury demands and decided this case would be tried via bench trial. *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997) (“A failure to exercise discretion amounts to an abuse of that discretion.”).

(recognizing immediate right to appeal *order* of reference for determination of issues by master-in-equity in action involving both equitable and legal claims, and reiterating that “[t]he failure to immediately appeal *an order* affecting the mode of trial effects a waiver of the right to appeal that issue” (emphasis added) (quoting *First Union Nat’l Bank of S.C. v. Soden*, 333 S.C. 554, 565, 511 S.E.2d 372, 377 (Ct. App. 1998))); *Frampton v. S.C. Dep’t of Transp.*, 406 S.C. 377, 386, 752 S.E.2d 269, 274 (Ct. App. 2013) (holding that “the failure to timely appeal *an order* affecting the mode of trial effects a waiver of the right to appeal that issue” (emphasis added) (quoting *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997))); *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004) (explaining that appellant “was required to wait for a *written order* prior to appealing”; citing Rule 203(b)(1), SCACR, for that proposition that the deadline to appeal is based on “receipt of written notice of entry of the *order or judgment*”; and noting that “the purpose of requiring an immediate appeal of the denial of the right to a jury trial is to preserve a party’s constitutional rights that would otherwise be lost” (emphasis added)).

All of the foregoing citations have one thing in common—they are appeals of *orders*. Nothing the Receiver cites or references anywhere in his Motion, prior to the June 20, 2024 *Order*, is an appealable order pertinent to Appellants’ jury trial demands and the circuit court’s deprivation thereof. The Receiver regularly contests valid appeals—as touted in the Motion—as “frivolous and improper.” The Receiver cannot now seriously contend the Sparrows Appellants could have taken an appeal of the Receiver choosing “not to demand a trial by jury in his Complaint,” a circuit court statement that a case is tentatively going to be “tried in a non-jury setting,” or other random statements by counsel that are not orders of the court that substantively determine the third-party case is set for a bench trial, untethered to the first-party tort action to which it purportedly derived by virtue of the Receiver’s secretive Dismissal Agreement—a false and illusory premise disguised

and maintained from inception. On that basis alone, the list of acts considered “waivers” is unavailing, as the definitive treatise on appellate procedure notes appeal must be taken from the *order* that constitutes the deprivation, which the Appellants have so taken. As Chief Justice Toal also wrote for the Supreme Court:

An order is not final until it is entered by the clerk of court; and until the order or judgment is entered by the clerk of the court, the judge retains control of the case. *Bowman v. Richland Mem’l Hosp.*, 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999) (citations omitted). However, “the moment . . . [the order] is filed by the clerk of court, it becomes the judgment of the court, and fixes the rights of the parties.” *Archer v. Long*, 46 S.C. 292, 295, 24 S.E. 83, 84 (1896). Stated otherwise, the effective date of an order is not when it is signed by the judge, but when it is entered by the clerk of court. *Bowman*, 335 S.C. at 93, 515 S.E.2d at 261.

Upchurch v. Upchurch, 367 S.C. 16, 22–23, 624 S.E.2d 643, 646 (2006), *disapproved on other grounds of by Miles v. Miles*, 393 S.C. 111, 711 S.E.2d 880 (2011).

Thus, the fact “[n]o Appellants objected to or otherwise disputed the Receiver’s contention in his April 4, 2024 pre-trial hearing status report that the trial would be a non-jury trial,” Mot. at 11, is not controlling. The right to appeal does not arise from the Receiver’s understanding of how a case will be tried—that is an issue for the circuit court. Likewise, the fact memoranda—*filed before the full import of the secretive Dismissal Agreement became known and the impact thereof on the Appellants’ jury trial rights became understood*—noted a bench trial of equitable claims may be in the future is merely a momentary understanding of how the case *may be* litigated, without having the benefit of the pertinent facts and circumstances intentionally withheld by the Receiver.

Other references made by the Receiver in his Motion are similarly unavailing to his waiver argument. For example, the Court’s oral statement at the April 10 hearing—where the trial of this case was continued at the request of counsel for the Receiver—is not conclusive and not

appealable. *See Ford v. State Ethics Comm'n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001) (“Until written and entered, the trial judge retains discretion to change h[er] mind and amend his oral ruling accordingly.”); *Case v. Case*, 243 S.C. 447, 451, 134 S.E.2d 394, 396 (1964) (“Even if as contended by defendant the trial Judge granted an oral divorce to plaintiff such pronouncement is not a final ruling on the merits nor is it binding on the parties until it has been reduced to writing, signed by the Judge and delivered for recordation. The Decree must be in writing and until such time the Judge may modify, amend or rescind such an oral Order.”).

Similarly, the contention that a party did not submit a scheduling order to a court divested of jurisdiction as a result of valid appeals cannot constitute waiver where any action in the circuit court is void, *ab initio*, as a matter of law. *See* Rule 205, SCACR; *Tillman v. Oakes*, 398 S.C. 245, 254–56, 728 S.E.2d 45, 50–51 (Ct. App. 2012); *see also Arnal v. Fraser*, 371 S.C. 512, 517–23, 641 S.E.2d 419, 421–24 (2007) (conducting matter-by-matter analysis of lower court rulings; voiding *ab initio*, “for lack of jurisdiction,” those rulings that were affected by the matter on appeal; and noting that, per Rule 205, “the lower court may not act or issue orders that affect an issue on appeal”).

Moreover—and possibly more importantly—all of the Receiver’s citations to actions allegedly constituting waiver relate to the trial of the “third-party” case. Nowhere does the Receiver address the fact that Appellants are entitled to the benefit of a jury trial in the “first-party” action and that the “third-party” action can be tried only after the jury trial between the *Tibbs* Plaintiffs and Cape PLC occurs and liability found against Cape PLC. At no point were either of these issues discussed by the Receiver, likely because the Dismissal Agreement renders each an impossibility and the Receiver’s “third-party” action a non-viable illusion.

Put simply, until the bench trial was fixed by Order of the circuit court, there was nothing to appeal. Had the Sparrows Appellants contended otherwise in an appeal of statements by counsel for the Receiver or the circuit court, the Receiver would have been quick to accuse the Sparrows Appellants of filing fictional appeals and other nefarious acts. Once entered, the Sparrows Appellants timely appealed the Order, which directly and fully ruled on and rejected the jury trial issue raised by the Sparrows Appellants in their Answer. Because this issue was raised and was ruled on by the circuit court, no motion for reconsideration was required. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (explaining that a party is only required to file a motion to reconsider when an issue has been raised but not ruled upon by the court).¹⁸

CONCLUSION

The first actionable written notice, via Order, came on June 20, 2024. Thereafter, the Sparrows Appellants timely perfected an appeal. There was no waiver, and there is no issue as to appealability. The June 20, 2024 Order is appealable as depriving Sparrows Appellants of their constitutional and substantial right to a trial by jury, and the Receiver's attempts to circumvent those rights and the appealability of the Order should be rejected. This Court should deny the Receiver's Motion to Dismiss and resume the briefing timeline to determine the merits of the Sparrows Appellants' appeal of the June 20, 2024 Order.¹⁹

¹⁸ The Receiver's multiple statements regarding the failure to move for reconsideration are simply wrong. *See* Mot. at 7, 10, 12. The Sparrows Appellants were not required to do so under binding South Carolina precedent.

¹⁹ Per Rule 208(b)(6) and 240(c), SCACR, the Sparrows Appellants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited, or otherwise submitted, by similarly situated Appellants Mohed Altrad, Altrad Investment Authority S.A.S., ESAB Corporation, Charter Consolidated Ltd., and Central Mining & Investment Corporation Ltd.

Respectfully submitted,

s/Steven J. Pugh

Steven J. Pugh (S.C. Bar No. 14341)

Benjamin P. Carlton (S.C. Bar No. 101142)

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

Ashwin R. Sanzgiri (S.C. Bar No. 105198)

RICHARDSON, PLOWDEN & ROBINSON, PA

1900 Barnwell Street

Columbia, South Carolina 29201

Tel.: (803) 771-4400

spugh@richardsonplowden.com

bcarlton@richardsonplowden.com

cganjehsani@richardsonplowden.com

asanzgiri@richardsonplowden.com

*Attorneys for Appellants ArranCo US,
LLC, Hawk Bidco (US) Inc., and Sparrows Offshore,
LLC*

September 10, 2024

Sep 10 2024

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 AND EXPEDITE**, 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).

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Ioannis (Ian) George Conits (iconits@gwblawfirm.com)
Amelia M. Farmer (farmer@conlaw.com)

Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)

Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Peter D. Protopapas (pdp@rplegalgroup.com)
Brian M. Barnwell (bb@rplegalgroup.com)

Counsel for the Receiver for Cape PLC

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

Counsel for Plaintiffs

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

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

John S. Nichols (john@bluesteinattorneys.com)
A. Victor Rawl, Jr. (vrawl@grsm.com)
William J. Blount (wblount@grsm.com)

*Counsel for Co-Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and
Charter Consolidated Ltd.*

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

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

/s/ Ashwin R. Sanzgiri
Ashwin R. Sanzgiri

Date: September 10, 2024

Sep 10 2024

SC Court of Appeals

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

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

Civil Action No. 2023-CP-40-01759
Appellate Case No. 2024-001446

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AiW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; 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., Sparrows Offshore, LLC, Mohed Altrad, Altrad Investment Authority SAS, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the Appellant.....**APPELLANTS.**

APPENDIX

Steven J. Pugh (S.C. Bar No. 14341)
Benjamin P. Carlton (S.C. Bar No. 101142)
Carmen V. Ganjehsani (S.C. Bar No. 73515)
Ashwin R. Sanzgiri (S.C. Bar No. 105198)
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street
Columbia, South Carolina 29201
(803) 771-4400

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

<u>Document</u>	<u>Appendix Page</u>
Answer Of ArranCo US, LLC, Hawk Bidco (US) Inc., And Sparrows Offshore, LLC to Third-Party Complaint (Filed Subject to Previously Filed Motions to Dismiss, Pending Appeal, and Position that Third-Party Defendants Have No Obligation to Participate in Post-Appeal Trial Court Proceedings and the Trial Court and Receiver Have No Authority to Act Pursuant to Rules 205 and 241, SCACR).....	001
April 8, 2024 Email to Court and All Counsel Regarding Remaining Defendants.....	064
Transcript of April 10, 2024 Hearing.....	068
Anglo American plc Notice of Removal.....	256
Answer of Cape PLC.....	269
Third-Party Complaint in Civil Action No. 2023-CP-40-01759.....	278
Transcript of July 16, 2024 Hearing.....	340
Transcript of April 25, 2024 Hearing.....	383
First Amended Summons and Complaint in Civil Action No. 2023-CP-40-01759.....	467

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
JOHN A. TIBBS and MARGARET B. TIBBS,	)	Civil Action No. 2023-CP-40-01759
	)	
Plaintiffs,	)	In Re:
	)	Asbestos Personal Injury Litigation
v.	)	Coordinated Docket
	)	
3M COMPANY, <i>et al.</i> ,	)	ANSWER OF ARRANCO US, LLC,
	)	HAWK BIDCO (US) INC., AND
Defendants.	)	SPARROWS OFFSHORE, LLC TO
	)	THIRD-PARTY COMPLAINT
*****	)	(FILED SUBJECT TO PREVIOUSLY
	)	FILED MOTIONS TO DISMISS,
CAPE PLC, individually and as successor in	)	PENDING APPEAL, AND POSITION
interest to CAPE ASBESTOS COMPANY	)	THAT THIRD-PARTY
LIMITED, by and through its duly appointed	)	DEFENDANTS HAVE NO
Receiver Peter D. Protopapas,	)	OBLIGATION TO PARTICIPATE IN
	)	POST-APPEAL TRIAL COURT
Third-Party Plaintiff,	)	PROCEEDINGS AND THE TRIAL
	)	COURT AND RECEIVER HAVE NO
v.	)	AUTHORITY TO ACT PURSUANT
	)	TO RULES 205 AND 241, SCACR)
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	
	)	JURY TRIAL DEMANDED ON ALL
Third-Party Defendants.	)	ISSUES SO TRIABLE
	)	
	)	

Third-Party Defendants ArranCo US, LLC (“ArranCo”), Hawk Bidco (US) Inc. (“Hawk Bidco”), and Sparrows Offshore, LLC (“Sparrows Offshore”) (collectively, the “Sparrows Defendants”), by and through the undersigned counsel, without waiving but instead specifically preserving their jurisdictional and other objections stated below, hereby answers the Third-Party Complaint (“Third-Party Complaint”) filed by Third-Party Plaintiff Cape PLC by and through its purported Receiver Peter Protopapas (“Third-Party Plaintiff” or “Receiver”) and any and all Cross-Claims asserted previously, or in the future, by any Co-Defendants or Third-Party Defendants, whether having appeared in the case at this time or not, and states as follows. All allegations of

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

The Sparrows Defendants have filed notices of appeal regarding the Court’s December 6, 2023 Order denying their Motions to Dissolve Receivership and Motion to Dismiss for Lack of Personal Jurisdiction (“Appeal”). Accordingly, the Sparrows Defendants submit this Answer without waiving and instead specifically preserving (1) all of their objections and challenges to personal jurisdiction in South Carolina as well as all other grounds for dismissal, as set forth in their motions to dismiss filed on August 21, 2023 and subsequent filings and oral argument in support thereof (collectively, “12(b) Motions”); (2) all of their objections and challenges to the appointment of the Receiver, as set forth in their motions to dissolve the receivership filed on August 21, 2023 and subsequent filings and oral argument in support thereof (collectively, “Motions to Dissolve”); (3) all of their objections and challenges to the Receiver’s Proposed Order on December 4, 2023, including, but not limited to, the counter proposed Orders submitted by the Sparrows Defendants; (4) all of their objections and challenges to the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction; (5) the grounds for Third-Party Defendants’ pending appeal of the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction; (6) that the Sparrows Defendants have no obligation to participate in post-Appeal trial court proceedings related to the Third-Party Complaint, including

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

no obligation to file the present Answer, and the trial court and Receiver have no authority or jurisdiction to act, pursuant to Rule 205, SCACR; (7) that this matter is or should be stayed pursuant to Rule 241, SCACR; and (8) that the Sparrows Defendants have no obligation to participate in discovery based on (6) and (7) and their pending motion for protective order and for stay of discovery filed on September 5, 2023.

INTRODUCTORY STATEMENT²

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

PARTIES

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

2. The allegations of Paragraph 2 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient

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

information to admit or deny the allegations contained in Paragraph 2 of the Third-Party Complaint and, therefore, deny the same.

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

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

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

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

7. The allegations of Paragraph 7 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 7 of the Third-Party Complaint and, therefore, deny the same.

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

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

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

11. The allegations of Paragraph 11 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient

information to admit or deny the allegations contained in Paragraph 11 of the Third-Party Complaint and, therefore, deny the same.

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

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

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

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

16. The allegations of Paragraph 16 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 16 of the Third-Party Complaint and, therefore, deny the same.

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

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

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

20. The allegations of Paragraph 20 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient

information to admit or deny the allegations contained in Paragraph 20 of the Third-Party Complaint and, therefore, deny the same.

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

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

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

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

25. The allegations of Paragraph 25 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 25 of the Third-Party Complaint and, therefore, deny the same.

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

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

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

29. The allegations of Paragraph 29 are not directed at the Sparrows Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Sparrows Defendants are without sufficient

information to admit or deny the allegations contained in Paragraph 29 of the Third-Party Complaint and, therefore, deny the same.

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

31. The Sparrows Defendants admit the allegations contained in Paragraph 31 of the Third-Party Complaint.

32. As to Paragraph 32 of the Third-Party Complaint, the Sparrows Defendants admit that ArranCo US, LLC is a limited liability company organized under the laws of the State of Delaware, but deny the allegation that its principal place of business is in New Castle County, Delaware.

33. The Sparrows Defendants admit the allegations contained in Paragraph 33 of the Third-Party Complaint.

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

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

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

JURISDICTION

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

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

VENUE

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

FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

112. As to Paragraph 112 of the Third-Party Complaint, the Sparrows Defendants deny that they are successors in interest or beneficiaries of Cape's alleged liability-avoidance scheme, and further deny that they are co-responsible for Cape's alleged tortious conduct. The Sparrows

Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 112 of the Third-Party Complaint, and therefore deny the same.

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

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

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

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

116. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 116 of the Third-Party Complaint, and therefore deny the same.

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

118. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 118 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

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

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

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

122. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 122 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Sparrows Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Sparrows Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an

accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Sparrows Defendants reserve all objections to the admissibility and/or relevance of these documents.

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

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

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

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

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

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

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

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

130. The Sparrows Defendants deny the allegation in Paragraph 130 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient

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

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

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

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

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

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

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

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

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

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

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

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

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

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

141. The Sparrows Defendants deny the allegation in Paragraph 141 of the Third-Party Complaint that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient

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

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

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

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

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

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

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

PRAYER FOR RELIEF

The Sparrows Defendants deny that the Third-Party Plaintiff is entitled to any relief set forth in the Prayer for Relief on page 65 of the Third-Party Complaint (inclusive of all sub-parts)

that are directed to the Sparrows Defendants. The Sparrows Defendants lack sufficient knowledge or information to form a belief as to whether the Third-Party Plaintiff is entitled to any relief set forth in the Prayer for Relief on page 65 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

RESERVATION OF RIGHTS AND GENERAL DENIAL

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

DEFENSES

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

- a. The Court has no general personal jurisdiction over the Sparrows Defendants.
- b. The Court has no specific personal jurisdiction over the Sparrows Defendants.
- c. The minimal and conclusory allegations pleaded in the Third-Party Complaint that are specific to the Sparrows Defendants are insufficient to establish personal jurisdiction under any legal theory.
- d. The Third-Party Complaint does not establish personal jurisdiction over the Sparrows Defendants through specific allegations that would support

a veil-piercing, alter ego, single business enterprise, “guiding spirit,” or any related theory of personal jurisdiction.

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

- a. Cape PLC, a Jersey company with registration number 108031, was not lawfully served in the separate *Park* lawsuit.
- b. Cape PLC, a Jersey company, was not lawfully served with either the summons and complaint or with the Motion to Appoint Receiver (in violation of South Carolina Code § 15-65-20).
- c. Park’s counsel attached no proof of service to his Motion to Appoint Receiver showing lawful service on Cape PLC. In fact, despite the motion representing to the Court that the proof of service was attached as Exhibit A, in fact it was not.
- d. On August 21, 2023, other Third-Party Defendants filed a Motion to Dissolve the Receivership. Their arguments included the lack of proof of service of either the *Park* Complaint or the Motion to Appoint Receiver upon Cape PLC.
- e. On August 28, 2023—more than fifteen months after this Court was told the *Park* matter was “fully resolved”—counsel for Mr. Park filed a “Notice of Filing of Ommitted (sic) Exhibit,” attaching an Affirmation of Andrew Morgan regarding his claimed service of the First Amended Summons—not the First Amended Complaint, just the First Amended Summons—on “Cape PLC”, an entity “that carries Companies House Reference Number

00040203.” However, as stated by Rule 4, SCRCPP, “[t]he summons and complaint must be served together.” Because Mr. Morgan avers that he only served the First Amended Summons, and because Mr. Morgan attaches no exhibit showing that he served both the summons and complaint, the purported service described in Mr. Morgan’s Affirmation was ineffective.

- f. The Motion to Appoint Receiver represents that Cape “fail[ed] to respond to the **Second** Amended Summons in this action, properly served pursuant to Article 10 of the Hague Convention on March 8, 2022, *See* Exhibit A.” (emphasis added); Exhibit 2 at 5. The document filed by Mr. Park on August 28, 2023 does not aver to service of a **Second** Amended Summons on March 8, 2022; on the contrary, it avers to service of a **First** Amended Summons on December 14, 2021. At best it indicates service of the **First** Amended Summons on the UK entity with Companies House Reference Number 00040203. *Id.* Moreover, it does not allege that this occurred in March 2022, it alleges that the mailing occurred “[o]n 14 December 2021” and that under “CPR Part 6.26, proceedings sent by First Class Royal Mail post to an address within the jurisdiction are deemed to have been served on “*the second day after it was posted, left with, delivered to or collected by the relevant service provider ...*” Exhibit 1 at 3-4 (emphasis in original). This would make service of that **First** Amended Summons on December 16, 2021.
- g. Thus, the *Park* Motion to Appoint Receiver incorrectly told this Court that

a U.K. company named Cape PLC was served with the Second Amended Summons on March 8, 2022, when in fact (1) there is no U.K. company named Cape PLC that is currently in existence, (2) the purported service was of the First Amended Summons, and (3) the purported service of the First Amended Summons allegedly occurred on December 16, 2021.

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

not lawfully create a receivership over Cape PLC, the Jersey company, or Cape Intermediate Holdings Limited, the U.K. company.

- j. The Court did not perform any of the steps legally necessary to appoint a receiver over Cape PLC for purposes of the *Park* lawsuit, including by confirming lawful service of process in the *Park* lawsuit, entering default against Cape PLC, granting a default judgment against Cape PLC, and entering judgment against Cape PLC purporting to reflect a liquidated sum of damages due to the *Park* plaintiffs based on a sufficient factual showing.
- k. Nor could there ever be an entry of default as to Cape PLC or CIHL because the First Amended Complaint was superseded by the Second Amended Complaint before the deadline to file a responsive pleading expired, and there is no proof of service that either entity was ever served with the Second Amended Complaint, which would have restarted the responsive pleading clock as to that operative pleading. In other words, with respect to Cape PLC and CIHL, there was no default as to the First Amended Complaint because it was superseded before the responsive pleading deadline expired, and there was no default as to the Second Amended Complaint because there is no filed proof of service showing that the Second Amended Complaint was ever served on either entity.
- l. The Order Appointing Receiver in the *Park* Lawsuit was based on additional incorrect representations to this Court, including that: (a) Cape PLC is “dissolved,” (b) Cape PLC has “forfeited its charter,” (c) Cape PLC was lawfully served with the Second Amended Summons in the *Park* lawsuit, (d)

Cape PLC is a U.K. company, and (e) Cape PLC is the successor-in-interest to the Cape Asbestos Company Limited. None of these contentions, which were alleged in the Motion to Appoint Receiver, and which were reflected in the Order Appointing Receiver, were true, as any reasonably diligent review of the public record would have revealed.

- m. The Jersey company presently known as Cape PLC is **not** the successor-in-interest to the U.K. company Cape Asbestos Company Limited, as any reasonably diligent review of the public record would have revealed. There was no U.K. company known as Cape PLC at the time of the *Park* Motion to Appoint Receiver, and there is no U.K. company known as Cape PLC today. Indeed, Paragraph 4 of the Affirmation of Mr. Morgan admits that U.K. entity number 00040203—the entity originally incorporated in the U.K. as Cape Asbestos Company Limited—now bears the name Cape Intermediate Holdings Limited, not Cape PLC. Yet neither the *Park* Motion to Appoint Receiver, nor the *Park* Order Appointing Receiver, purported to seek or create a receivership over Cape Intermediate Holdings Limited.
- n. The Order Appointing Receiver in the *Park* action is unconstitutional and unlawful because the Court does not have, and made no finding that it has, personal jurisdiction over the purported target of the receivership—Cape PLC.
- o. The Order Appointing Receiver in the *Park* action is unlawful for the additional and independent reason that, as stated by the South Carolina Supreme Court, “an adjudication of a receivership is a harsh and drastic remedy, one to be granted only with great caution.” *Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88,

91, 172 S.E. 787, 788 (1934). Principles of equity did not and do not support the appointment of a receiver over a foreign company incorporated in Jersey (a) that is not dissolved and is a going concern, (b) with no assets in South Carolina, (c) based on a single purported default, (d) in a lawsuit in which it was not served with process, and (e) without any adjudication or allocation of liability, or entry of default judgment, in the *Park* Litigation where the receivership was created.

- p. There is no justiciable controversy, and the Court has no jurisdiction to issue the advisory opinion sought by the Receiver, because the *Park* lawsuit was “completely resolved” prior to the filing of the Motion to Appoint Receiver, without any finding of liability as to Cape PLC or CIHL. Thus, Mr. Park lacked standing to even seek the appointment of a receiver, as he was not and is not a judgment creditor of Cape PLC.
- q. There is no justiciable controversy, and the Court has no jurisdiction to issue the advisory opinion sought by the Receiver, because the Motion to Appoint Receiver seeks to advance the plaintiffs’ position in unrelated asbestos cases rather than advance the interests of the clients in the *Park* lawsuit.
- r. There is no justiciable controversy, and the Court has no jurisdiction to issue the advisory opinion sought by the Receiver, because the Receiver appointed in the *Park* Lawsuit does not and cannot purport to seek relief on behalf of the Park plaintiffs.
- s. The Receiver, who allegedly stands in the shoes of Cape PLC as its court-appointed representative and must impartially *defend* its interests, does not have

standing to pursue claims that *maximize* liability for Cape PLC in an effort to pass along those manufactured liabilities to third parties via derivative alter ego / veil piercing claims.

- t. The Order Appointing Receiver, based on its plain language and pursuant to South Carolina law, is limited to the *Park* lawsuit and does not lawfully authorize the Receiver to take actions in any other lawsuit, including the present *Tibbs* lawsuit.
- u. The Order Appointing Receiver, based on its plain language and pursuant to South Carolina law, does not authorize the Receiver to file lawsuits on behalf of a foreign company against other foreign and out-of-state companies, whether in the *Park* action or the present *Tibbs* lawsuit.
- v. The Order Appointing Receiver is unlawful because it purports to give the Receiver “the power and authority fully [sic] administer all assets of Cape,” when S.C. Code § 15-65-10(4) limits a South Carolina receivership “in like cases, of the property within this State of foreign corporations.” The reference to “like cases” regarding foreign corporations is a clear limitation on a receiver’s power only where a South Carolina court has *in rem* jurisdiction. On its face, the statute only allows a South Carolina court to appoint a receiver over the assets of a foreign corporation that are found “within this State.”
- w. The Order Appointing Receiver is unlawful to the extent based on S.C. Code § 15-65-10(4), because public records show that Cape PLC is not dissolved, not insolvent, and not in imminent danger of insolvency. It has not forfeited its corporate rights in its jurisdiction of incorporation, Jersey, and it never had

corporate rights to forfeit in South Carolina, including because South Carolina has no personal jurisdiction over Cape PLC. The same is true as to CIHL, which is not dissolved or insolvent and which is an active company in the U.K.

- x. The Order Appointing Receiver is unlawful to the extent based on S.C. Code § 15-65-10(4), because that statute does not allow a South Carolina court to create a receivership over a foreign corporation that does not have any property in the state and has not had any judgment entered against it.
- y. The Order Appointing Receiver is unlawful to the extent based on S.C. Code § 15-65-10(5), because the appointment of a South Carolina receiver over an active Jersey company that was first incorporated in 2011—decades after the alleged events identified as the “fraud warranting appointment of a receiver”—is not consistent with “existing practice” in South Carolina.
- z. The Order Appointing Receiver does not and cannot apply outside the *Park* lawsuit and does not and cannot authorize the Receiver to assert claims in other lawsuits, including the present *Tibbs* lawsuit.
- aa. The Receiver does not have authority to pursue claims through the vehicle of a third-party complaint under Rule 14, SCRCPP, in the *Tibbs* lawsuit because that procedural vehicle only allows for derivative liability for claims adjudicated in the primary action, *i.e.* the Tibbs’ underlying asbestos exposure claims against the primary defendants. Only a receiver appointed under S.C. Code §§ 15-65-10(2) or 15-65-10(3) “[a]fter judgment” has authority to pursue such derivative claims. The Receiver in the *Park* lawsuit was appointed under §§ 15-65-10(4) and 15-65-10(5), so he is ineligible to pursue derivative claims through a third-

party complaint filed in a different lawsuit.

- bb. The Order Appointing Receiver was not entered in the *Tibbs* lawsuit, which violated the due process rights of all third-party defendants in the *Tibbs* lawsuit who were stripped of the ability to oppose or appeal that order in a separate lawsuit to which they were not parties.
- cc. Cape PLC, a Jersey company, was not lawfully served in the *Tibbs* lawsuit. Cape PLC was not lawfully served with the summons and complaint in the *Tibbs* lawsuit, nor was it lawfully served with any Motion to Appoint Receiver in the *Tibbs* lawsuit, in violation of S.C. Code § 15-65-20. Footnote 13 of the *Park* Motion to Appoint Receiver claims that “Plaintiffs have placed into the hands of DHL, an international carrier, a copy of this motion and its exhibits, for delivery to the same address at which service was perfected.” However, there is no proof of service in the record to substantiate the alleged service of the Motion to Appoint Receiver on Cape PLC. Further, even assuming the accuracy of Footnote 13, the alleged “address at which service was perfected” was not in Jersey, as reflected in the Affirmation of Mr. Morgan.
- dd. There is no proof of service in the record that CIHL was ever served with any Motion to Appoint Receiver, in the *Park* lawsuit, in the *Tibbs* lawsuit, or in any other lawsuit filed in South Carolina, in violation of S.C. Code § 15-65-20. Nor is there even a representation to the Court in the *Park* Motion to Appoint Receiver that CIHL was served with the motion. On the contrary, the motion only claims that “Plaintiffs, concurrently herewith, have provided copies of this motion to Cape PLC.” Since Mr. Park’s own filing admits that CIHL was not

served with the Motion to Appoint Receiver, and since the Motion and the Order contain no reference CIHL, no receivership was lawfully created as to that entity.

- ee. The Order Appointing Receiver must be dissolved for purposes of the *Tibbs* lawsuit because CIHL — the company originally known as Cape Asbestos Company Limited — is not named as a primary defendant by the *Tibbs* plaintiffs. Thus, even if this Court had appointed a Receiver over CIHL, that Receiver could not assert Third-Party claims in the *Tibbs* lawsuit because CIHL is not a primary defendant in the *Tibbs* lawsuit. A party who is not a primary defendant has no primary liability to pass along to third-party defendants. CIHL in fact has no legal standing to assert any claims in the *Tibbs* lawsuit.
- ff. The Order Appointing Receiver violates the South Carolina receivership statute, which does not authorize receiverships over foreign companies over which the South Carolina courts have no jurisdiction, does not authorize receiverships over foreign companies with no property in South Carolina, and does not authorize receivers to file lawsuits on behalf of foreign corporations.
- gg. The Order Appointing Receiver is unlawful and violates principles of international comity because it purports to interfere with the pre-existing exclusive jurisdiction of the U.K. courts, which previously exercised jurisdiction over the assets of the entity previously known as Cape Asbestos Company Limited in 2006, as described in the Scheme of Arrangement summarized in Note 32 of Cape PLC's Annual Report 2022, which is available to the public for download from the Jersey companies website.

- hh. The Order Appointing Receiver is unlawful and violates principles of international comity because it purports to interfere with the pre-existing exclusive jurisdiction of the Jersey courts to exercise oversight and management over the internal affairs of a Jersey company. Similarly, as to CIHL, the U.K. courts have pre-existing exclusive jurisdiction regarding the oversight and management of the internal affairs of a U.K. company.
- ii. The Receiver is acting *ultra vires* in the *Tibbs* lawsuit, has incurable conflicts of interest, and has violated the express terms of the Order Appointing Receiver because he has not taken “any and all steps necessary to protect the interests of Cape whatever they may be,” but instead is acting to expand the liabilities of Cape.
- jj. The Receiver is acting *ultra vires* in the *Tibbs* lawsuit, has incurable conflicts of interest, and is incapable of acting as a receiver, because Mr. Protopapas is not “entirely impartial,” but instead is acting as “one of the agents of the plaintiff, actively pressing its claims against the defendant.” *Va.-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 224, 66 S.E. 177, 180 (1909) (setting aside receivership order). As stated by the South Carolina Supreme Court, “[n]o special fitness or peculiar circumstances are shown which might justify the appointment of one so closely connected with one of the parties in interest.” *Id.* The Supreme Court has warned more than once that appointing “an agent of a creditor of the debtor, who had been placed in receivership,” is improper. *Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 92, 172 S.E. 787, 789 (1934). The Third-Party Complaint amply demonstrates that Mr. Protopapas seeks to

impair Cape PLC's rights for the benefit of unspecified nonparty asbestos claimants in this and other lawsuits *against* Cape PLC, and whose claims the Receiver has no right to assert.

kk. The Order Appointing Receiver violates *inter alia* the Dormant Commerce Clause, the Foreign Commerce Clause, the Taking Clause, the Due Process Clause, the Excessive Fines Clause, the Equal Protection Clause, and the Supremacy Clause of the U.S. Constitution.

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

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

scope of third-party practice in South Carolina.

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

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

- a. The Receiver fails to allege any facts specific to the Sparrows Defendants that would support the elements of any of the claims alleged.
- b. The Receiver alleges in Paragraph 117 of the Third-Party Complaint that “Altrad Group” acquired “Sparrows Offshore Group Ltd. in 2022,” which is decades after the alleged wrongdoing occurred.
- c. The Sparrows Defendants did not exist during the time period when the alleged tortious conduct occurred.

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

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

7. The Receiver’s claims are barred by lack of standing.

8. The Receiver’s claims are barred by lack of capacity.

9. The Receiver’s claims fail because he asserts equitable claims that belong exclusively to the Plaintiffs in the primary action.

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

action.

25. To the extent not already included above, the Sparrows Defendants incorporate by reference as if fully recited herein all defenses and arguments presented in any motion filed by the Sparrows Defendants or any other Third-Party Defendant.

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

PRAYER FOR RELIEF

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

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

Respectfully submitted this 2nd day of January, 2024.

RICHARDSON, PLOWDEN & ROBINSON, PA

s/ Steven J. Pugh

Steven J. Pugh (S.C. Bar No. 14341)
Benjamin P. Carlton (S.C. Bar No. 101142)
1900 Barnwell Street
Columbia, South Carolina 29201
Tel.: (803) 771-4400
spugh@richardsonplowden.com
bcarlton@richardsonplowden.com

*Attorneys for Third-Party Defendants ArranCo US,
LLC, Hawk Bidco (US) Inc., and Sparrows Offshore,
LLC*

From: Theile McVey
To: Toal, Jean; Diaz, Eva; JMTechman@ewhlaw.com; Brown, Stephen L.; Peter Protopapas; "Lindsay Valek"
Cc: Angela.Strickland@bowmanandbrooke.com; Brianna.Bowling@bowmanandbrooke.com;
 Patrick.Cleary@bowmanandbrooke.com; franklin.greene@bowmanandbrooke.com;
 morgan.drapeau@bowmanandbrooke.com; Jacquese.gray@bowmanandbrooke.com;
 Glee.henderson@bowmanandbrooke.com; wac@roecassidy.com; SingewaldC@WhiteandWilliams.com;
 JMTechman@EWHLaw.com; ASRogers@EWHLaw.com; plsisk@ewhlaw.com; PAMcGrath@ewhlaw.com;
 louis@milliganlawfirm.com; robert.meriwether@cs-law.com; jase.glenn@cs-law.com; Rebecca.sanford@cs-law.com;
 Sc-asbestos@cs-law.com; Matt.Patterson@nelsonmullins.com; James.Burns@nelsonmullins.com;
 mitch.brown@nelsonmullins.com; matt.patterson@nelsonmullins.com; matt.bogan@nelsonmullins.com;
 nick.charles@nelsonmullins.com; deirdre.mccool@nelsonmullins.com; kelli.martin@nelsonmullins.com;
 jo.lyons@nelsonmullins.com; mark.phillips@nelsonmullins.com; Ashley.peoples@nelsonmullins.com;
 Kelli.martin@nelsonmullins.com; Linda.wilson@nelsonmullins.com; Eileen.hindman@nelsonmullins.com;
 Susan.collings@nelsonmullins.com; ymcleod@maronmarvel.com; grouse@maronmarvel.com;
 bj@maronmarvel.com; FOcel@maronmarvel.com; cla@maronmarvel.com; kln@maronmarvel.com;
 JRenner@maronmarvel.com; CGourdine@maronmarvel.com; awilkinson@grsm.com; squerriere@grsm.com;
 ehawkins@grsm.com; jrvn@grsm.com; vrawl@grsm.com; wkleindienst@grsm.com; jldelon@grsm.com;
 Bahnson-GRSM@grsm.com; leslie.packer@elliswinters.com; ashley.brathwaite@elliswinters.com;
 curtis.shipley@elliswinters.com; joe.hammond@elliswinters.com; CovilParalegal@elliswinters.com;
 Asbestos@elliswinters.com; derrick.foard@elliswinters.com; Scottie.Lee@elliswinters.com;
 AGeddes@nexsenpruet.com; AWaring@nexsenpruet.com; aaustin@nexsenpruet.com; kjones@nexsenpruet.com;
 bjowers@nexsenpruet.com; rcavalchire@nexsenpruet.com; spugh@richardsonplowden.com;
 mwwhite@richardsonplowden.com; cmcqueen@richardsonplowden.com; wharte@richardsonplowden.com;
 jelliott@richardsonplowden.com; HElliott@RichardsonPlowden.com; cberthelsen@richardsonplowden.com;
 mdalton@richardsonplowden.com; mjones@richardsonplowden.com; sgflynn@FoxRothschild.com;
 ncherry@FoxRothschild.com; atwilley@FoxRothschild.com; lrussell@foxrothschild.com; kkolb@foxrothschild.com;
 TPeck@foxrothschild.com; carlpierce@piercesloan.com; pattwilliams@piercesloan.com;
 bensmoot@piercesloan.com; carsonparker@piercesloan.com; Jameskennedy@piercesloan.com;
 elizabeth.taylor@piercesloan.com; daniellynch@piercesloan.com; treypierce@piercesloan.com;
 willearly@piercesloan.com; hollyparker@piercesloan.com; robinspitz@piercesloan.com;
 kristinhoward@piercesloan.com; caseyhewett@piercesloan.com; Kimberly.Sullivan@wbd-us.com;
 Elizabeth.ONeill@wbd-us.com; WBD.SCAAsbestos@wbd-us.com; sarah.wells@wbd-us.com; rosa.rubenstein@wbd-us.com;
 Michael.Bogle@wbd-us.com; Deborah.Lehman.Wooten@wbd-us.com; Debbie.Brockman@wbd-us.com;
 Philip.reid@vonbriesen.com; Maria.piraino@vonbriesen.com; Laurie.mcleroy@vonbriesen.com;
 dconner@hsblawfirm.com; sfrick@hsblawfirm.com; cphillips@hsblawfirm.com; tfreedle@hsblawfirm.com;
 sturner@hsblawfirm.com; Chris.Collier@lewisbrisbois.com; Rondell.Warren@lewisbrisbois.com;
 aries@smithlaw.com; ckiger@smithlaw.com; cparker@smithlaw.com; aserrat@smithlaw.com;
 cbona@smithlaw.com; dargabright@mcguirewoods.com; manzelmo@mcguirewoods.com;
 jrichardson@mcguirewoods.com; dargabright@mcguirewoods.com; EDimond@mcguirewoods.com;
 mmontgomery@robinsongray.com; rhutchens@robinsongray.com; dwhite@gwblawfirm.com;
 rtate@gwblawfirm.com; drheney@gwblawfirm.com; wmaurides@gwblawfirm.com; ctowers@gwblawfirm.com;
 jlaflitte@gwblawfirm.com; pholland@gwblawfirm.com; jennamcgee@parkerpoe.com;
 connorhoy@parkerpoe.com; nicknybo@parkerpoe.com; jonathanhall@parkerpoe.com;
 mattlahiff@parkerpoe.com; kellygouin@parkerpoe.com; celestemallett@parkerpoe.com;
 Mark.Wall@WallTempleton.com; jcarroll@carrollweiss.com; mweiss@carrollweiss.com; scole@carrollweiss.com;
 tara.sullivan@klgates.com; jdunlap@vwlawfirm.com; swilliamson@vwlawfirm.com; tedge@vwlawfirm.com;
 fpatterson@vwlawfirm.com; BPrice@dmclaw.com; kmiller@DMCLaw.com; mpritt@dmclaw.com;
 bwagner@barnwell-whaley.com; olevine-sass@barnwell-whaley.com; fgordon@mgsattorneys.com;
 aspradin@mgsattorneys.com; bmagram@mgsattorneys.com; oelhamzaoui@mgsattorneys.com;
 robert.meriwether@cs-law.com; manzelmo@mcguirewoods.com; jrichardson@mcguirewoods.com;
 fgordon@mgsattorneys.com; rskahen@mgsattorneys.com; oelhamzaoui@mgsattorneys.com;
 asrogers@ewhlaw.com; jmtchman@ewhlaw.com; BPrice@dmclaw.com; kmiller@dmclaw.com;
 mpritt@dmclaw.com; carlpierce@piercesloan.com; robinspitz@piercesloan.com; bensmoot@piercesloan.com;
 willearly@piercesloan.com; jameskennedy@piercesloan.com; pattwilliams@piercesloan.com;
 carsonparker@piercesloan.com; daniellynch@piercesloan.com; treypierce@piercesloan.com;
 robinspitz@piercesloan.com; kristinhoward@piercesloan.com; billysweeny@piercesloan.com;
 caseyhewett@piercesloan.com; mmcdonald@hsblawfirm.com; dconner@hsblawfirm.com;
 sfrick@hsblawfirm.com; tfreedle@hsblawfirm.com; sturner@hsblawfirm.com; robert.meriwether@cs-law.com;
 jase.glenn@cs-law.com; Rebecca.sanford@cs-law.com; mark.phillips@nelsonmullins.com;
 David.traylor@nelsonmullins.com; Deirdre.mccool@nelsonmullins.com; Susan.collings@nelsonmullins.com;
 Kelli.eargle@nelsonmullins.com; Trish.koester@nelsonmullins.com; Carolyn.blackwell@nelsonmullins.com;
 Linda.wilson@nelsonmullins.com; Jo.lyons@nelsonmullins.com; mitch.brown@nelsonmullins.com;
 matt.bogan@nelsonmullins.com; jenny.jordan@nelsonmullins.com; erika.fedelin@nelsonmullins.com;
 jack.slosson@nelsonmullins.com; James.Burns@nelsonmullins.com; matt.patterson@nelsonmullins.com;
 kelli.martin@nelsonmullins.com; kelly.taylor@nelsonmullins.com; ashley.peoples@nelsonmullins.com;
 yasmeen.klein@nelsonmullins.com; tyler.walker@nelsonmullins.com; matt.patterson@nelsonmullins.com;
 kelli.martin@nelsonmullins.com; kelly.taylor@nelsonmullins.com; ashley.peoples@nelsonmullins.com;
 Yasmeen.Ebbini@nelsonmullins.com; tyler.walker@nelsonmullins.com; jelliott@richardsonplowden.com;
 cberthelsen@richardsonplowden.com; spugh@richardsonplowden.com; wharte@richardsonplowden.com;
 mwwhite@richardsonplowden.com; cmcqueen@richardsonplowden.com; helliott@richardsonplowden.com;
 mmayden@richardsonplowden.com; MMayden@RichardsonPlowden.com; mdalton@richardsonplowden.com;
 jcataline@richardsonplowden.com; mjones@richardsonplowden.com; louis@milliganlawfirm.com;
 jackie@milliganlawfirm.com; sgflynn@FoxRothschild.com; ncherry@FoxRothschild.com;
 atwilley@FoxRothschild.com; TPeck@foxrothschild.com; sgflynn@foxrothschild.com; Ncherry@foxrothschild.com;

Dcarnes@foxrothschild.com; kkolb@foxrothschild.com; atwilley@foxrothschild.com; l Russell@foxrothschild.com; vrawl@grsm.com; wkleindienst@grsm.com; kcraig@grsm.com; bbihun@grsm.com; sasmith@grsm.com; Bahnsen-GRSM@grsm.com; squerriere@grsm.com; awilkinson@grsm.com; VISTRA-GRSMTeam@grsm.com; alegaty@grsm.com; AGeddes@maynardnexsen.com; CKeibler@maynardnexsen.com; AWaring@maynardnexsen.com; cshoun@maynardnexsen.com; aaustin@maynardnexsen.com; mtrevino@maynardnexsen.com; bjowers@maynardnexsen.com; RCavalchire@maynardnexsen.com; ismith@maynardnexsen.com; psantos@maynardnexsen.com; Elizabeth.ONeill@wbd-us.com; WBD.SCASBESTOS@wbd-us.com; Kimberly.sullivan@wbd-us.com; todd.carroll@wbd-us.com; sarah.wells@wbd-us.com; Ted.Roberts@wbd-us.com; Brian.Zemil@wbd-us.com; Geoff.Pashke@wbd-us.com; Matt.Robusto@wbd-us.com; Scott.Richmond@wbd-us.com; Michael.Bogle@wbd-us.com; chuck.baker@wbd-us.com; Julie.wallace@wbd-us.com; Deborah.lehman-wooten@wbd-us.com; Rosa.Rubenstein@wbd-us.com; Philip.Reid@vonbriesen.com; Rhyan.lindley@vonbriesen.com; Maria.Piraino@vonbriesen.com; PREid@vonbriesen.com; RLindley@vonbriesen.com; Laurie.McLeRoy@vonbriesen.com; leslie.packer@elliswinters.com; ashley.brathwaite@elliswinters.com; curtis.shipley@elliswinters.com; derrick.foard@elliswinters.com; CovilParalegal@elliswinters.com; Asbestos@elliswinters.com; Scottie.Lee@elliswinters.com; skozick@kernodelaw.com; jdunlap@vwlawfirm.com; swilliamson@vwlawfirm.com; tedge@vwlawfirm.com; fpatterson@vwlawfirm.com; mmontgomery@robinsongray.com; rhutchens@robinsongray.com; ltraywick@robinsongray.com; BLaffitte@robinsongray.com; smcconnell@robinsongray.com; kwerner@smithlaw.com; ckiger@smithlaw.com; aries@smithlaw.com; Chona@smithlaw.com; JMTechman@ewhlaw.com; ASRogers@ewhlaw.com; plsisk@ewhlaw.com; PAMcGrath@ewhlaw.com; KEBaird@ewhlaw.com; Chris.Collier@lewisbrisbois.com; Taylor.stewart@lewisbrisbois.com; dwhite@gwblawfirm.com; rtate@gwblawfirm.com; wmaurides@gwblawfirm.com; ctowers@gwblawfirm.com; jlaffitte@gwblawfirm.com; pholland@gwblawfirm.com; mkalwaitys@dougallfirm.com; wcollins@brblegal.com; jdavis@ycrlaw.com; tgandy@ycrlaw.com; mriddle@ycrlaw.com; pbell@ycrlaw.com; Mary.Abdalla@formanwatkins.com; Chelsea.Lewis@formanwatkins.com; Steve.Collum@formanwatkins.com; ruth.maron@formanwatkins.com; Catherine.pettis@formanwatkins.com; Mark.Wall@WallTempleton.com; Tommy.boger@walltempleton.com; sarah.schrodetzki@walltempleton.com; ymcleod@maronmarvel.com; grouse@maronmarvel.com; BI@maronmarvel.com; JRenner@maronmarvel.com; kln@maronmarvel.com; cla@maronmarvel.com; FOcel@maronmarvel.com; cqourdine@maronmarvel.com; pdp@rplegalgroup.com; jsplitz@rplegalgroup.com; Lindsay@rplegalgroup.com; bb@rplegalgroup.com; blarrabee@rplegalgroup.com; jchandler@rplegalgroup.com; murrell@smithrobinsonlaw.com; shanonp@smithrobinsonlaw.com; jon@smithrobinsonlaw.com; Dot@smithrobinsonlaw.com; kjessee@barnwell-whaley.com; jchilders@barnwell-whaley.com; James.Burns@nelsonmullins.com; robert.meriweather@cs-law.com; Bobbyjr.hood@hoodlaw.com; Maryrose.williamson@hoodlaw.com; Melinda.accardo@hoodlaw.com; eshofner@hpylaw.com; jay.thompson@murphygrantland.com; Nancy.patterson@morganlewis.com; Peter.moir@morganlewis.com; cparker@smithlaw.com; Nancy.patterson@morganlewis.com; swainger@kaleolegal.com; morgan.drapeau@bowmanandbrooke.com; angela.strickland@bowmanandbrooke.com; patrick.cleary@bowmanandbrooke.com; deshawn.mitchell@bowmanandbrooke.com; morgan.drapeau@bowmanandbrooke.com; Jacquese.gray@bowmanandbrooke.com; Glee.henderson@bowmanandbrooke.com; Ashley.lord@bowmanandbrooke.com; Brianna.Bowling@bowmanandbrooke.com; wac@roecassidy.com; SingewaldC@WhiteandWilliams.com; DBurkoff@HunterMaclean.com; nlaybourn@huntermaclean.com; psmith@huntermaclean.com; dwhite@gwblawfirm.com; rtate@gwblawfirm.com; drheney@gwblawfirm.com; wmaurides@gwblawfirm.com; ctowers@gwblawfirm.com; jlaffitte@gwblawfirm.com; pholland@gwblawfirm.com; TPeck@foxrothschild.com; sgflynn@foxrothschild.com; Ncherry@foxrothschild.com; l Russell@foxrothschild.com; kkolb@foxrothschild.com; atwilley@foxrothschild.com; JMTechman@EWHLaw.com; ASRogers@EWHLaw.com; plsisk@ewhlaw.com; PAMcGrath@ewhlaw.com; louis@milliganlawfirm.com; jackie@milliganlawfirm.com; mark.phillips@nelsonmullins.com; robert.meriweather@cs-law.com; jase.glenn@cs-law.com; sc-asbestos@cs-law.com; Matt.Patterson@nelsonmullins.com; mitch.brown@nelsonmullins.com; matt.patterson@nelsonmullins.com; matt.bogan@nelsonmullins.com; linda.wilson@nelsonmullins.com; deirdre.mccool@nelsonmullins.com; kelli.martin@nelsonmullins.com; James.burns@nelsonmullins.com; Carolyn.blackwell@nelsonmullins.com; Ashley.Peoples@nelsonmullins.com; awilkinson@grsm.com; squerriere@grsm.com; ehawkins@grsm.com; jrvn@grsm.com; vrawl@grsm.com; wkleindienst@grsm.com; jldelon@grsm.com; Bahnsen-GRSM@grsm.com; sasmith@grsm.com; leslie.packer@elliswinters.com; ashley.brathwaite@elliswinters.com; curtis.shipley@elliswinters.com; joe.hammond@elliswinters.com; CovilParalegal@elliswinters.com; Asbestos@elliswinters.com; derrick.foard@elliswinters.com; Scottie.Lee@elliswinters.com; AGeddes@nexsenpruet.com; AWaring@nexsenpruet.com; aaustin@nexsenpruet.com; kjones@nexsenpruet.com; bjowers@nexsenpruet.com; rcavalchire@nexsenpruet.com; spugh@richardsonplowden.com; mwhite@richardsonplowden.com; wharte@richardsonplowden.com; mjones@richardsonplowden.com; cmqueen@richardsonplowden.com; jelliott@richardsonplowden.com; helliott@richardsonplowden.com; cberthelsen@richardsonplowden.com; mdalton@richardsonplowden.com; carlpierce@piercesloan.com; pattiwilliams@piercesloan.com; bensmoot@piercesloan.com; carsonparker@piercesloan.com; Jameskennedy@piercesloan.com; elizabethtaylor@piercesloan.com; daniellynch@piercesloan.com; trepierce@piercesloan.com; willleary@piercesloan.com; robinsplitz@piercesloan.com; kristinhoward@piercesloan.com; caseyhewett@piercesloan.com; jessicamiller@piercesloan.com; hollyparker@piercesloan.com; Elizabeth.ONeill@wbd-us.com; WBD.SCASBESTOS@wbd-us.com; sarah.wells@wbd-us.com; Michael.Bogle@wbd-us.com; Kimberly.Sullivan@wbd-us.com; Rosa.Rubenstein@wbd-us.com; Deborah.Lehman-Wooten@wbd-us.com; Philip.Reid@vonbriesen.com; Laurie.McLeRoy@vonbriesen.com; Maria.Piraino@vonbriesen.com; skozick@kernodelaw.com; dconner@hsblawfirm.com; sfrick@hsblawfirm.com; cphillips@hsblawfirm.com; tfreedle@hsblawfirm.com; sturner@hsblawfirm.com; Chris.Collier@lewisbrisbois.com; Rondell.Warren@lewisbrisbois.com; aries@smithlaw.com; ckiger@smithlaw.com; cparker@smithlaw.com; aserratt@smithlaw.com; cbona@smithlaw.com; mmontgomery@robinsongray.com; rhutchens@robinsongray.com; WCollins@brblegal.com; MKalwaitys@brblegal.com;

Mark.Wall@WallTempleton.com; tara.sullivan@klgates.com; fgordon@mgsattorneys.com; pborden@mgsattorneys.com; aspradlin@mgsattorneys.com; bmagram@mgsattorneys.com; BPrice@dmclaw.com; kmiller@DMCLaw.com; mpritt@dmclaw.com; Joe.kilpatrick@huschblackwell.com; jameskennedy@piercesloan.com; spugh@richardsonplowden.com; wharte@richardsonplowden.com; mmcdonald@hsblawfirm.com; dconner@hsblawfirm.com; sfrick@hsblawfirm.com; AGeddes@maynardnexsen.com; jdunlap@vwlawfirm.com; jay.thompson@murphygrantland.com; wsawyer@murphygrantland.com; junumb@murphygrantland.com; kbickford@murphygrantland.com; ichappell@murphygrantland.com; bb@rplegalgroup.com; blarrabee@rplegalgroup.com; jchandler@rplegalgroup.com; sbrown@ycrlaw.com; tgandy@ycrlaw.com; amelling@burr.com; ashuler@burr.com; landrews@burr.com; rwillis@williamsmullen.com; rlevy@williamsmullen.com; styer@williamsmullen.com; kmartin-rothrock@williamsmullen.com; pkconway@conwaylawcorp.com; jase.glenn@cs-law.com; rskahen@mgsattorneys.com; oelhamzaoui@mgsattorneys.com; Eshofner@hpylaw.com; Nturner@hpylaw.com; robert.meriwether@cs-law.com

Subject: April Block remaining Defendants and proposed agenda
Date: Monday, April 8, 2024 12:48:19 PM
Attachments: [Proposed Agenda april 10.docx](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Chief Justice Toal:

I write to give you an update on the April block of cases. Below are the remaining defendants in each case.

Flynn

Atlas Turner

Goodwin

Atlas Turner

Mitchell

Atlas Turner

Tibbs

ACL (ACL's answer was struck and it is currently in the Court of Appeals)

Atlas Turner

Donaghy/Potter

Atlas Turner (currently in default)

Spirax Sarco

Link

Atlas Turner (currently in default)

Mr. Protopapas wrote to you and I understand that you will have a status conference on ACL and Atlas Turner Wednesday morning. I am attaching a proposed agenda to this

email but I am happy to make any changes. We have also delivered notebooks to both you and Ms. Diaz. By copy of this email, I am notifying defense counsel of my communication with the Court. Thanks, Theile

Theile McVey
Kassel McVey
Post Office Box 1476
1330 Laurel Street
Columbia, South Carolina 29202
803.256.4242
tmcvey@kassellaw.com
www.kasselmvey.com

HEARING

In Re: Flynn v. Atlas Turner (2023-CP-40-000633)
Goodwin v. 3M (2020-CP-40-004613)
Mitchell v. Atlas Turner (2022-CP-40-02979)
Tibbs v. Atlas Turner (2023-CP-40-01759)
Donaghy/Potter v. Atlas Turner (2023-CP-40-03108)
Link v. Atlas Turner (2022-CP-40-05543)

In Re: Childers
Civil Action No. 2021-CP-40-03484

Receiver vs. AIG, et al,
Civil Action No. 2021-CP-40-05768

Receiver vs. Baker Patterson, et al.,
Civil Action No. 2023-CP-40-05203

In Re: State of Covil v. Pennsylvania National
(2023)-CP-40-000633)

Covil v. Penn National (2020-CP-4002098)

BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Wednesday, April 10, 2024

TIME START: 9:27 a.m.

TIME END: 12:27 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: Cindy A. Hayden, RMR-CRR
EveryWord, Inc.

1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFFS:

3 KASSEL MCVEY
4 BY: THEILE B. MCVEY, ESQUIRE
5 1330 Laurel Street
6 Columbia, South Carolina 29201
803.256.4242
tmcvey@kassellaw.com

7 ATTORNEYS FOR THE RECEIVER:

8 RIKARD + PROTOPAPAS
9 BY: PETER D. PROTOPAPAS, ESQUIRE
2110 N. Beltline Boulevard
Columbia, South Carolina 29204
803.978.6111
pdp@rplegalgroup.com

12 ATTORNEYS FOR THE RECEIVER PAYNE & KELLER:

13 SMITH ROBINSON
14 BY: JONATHAN M. ROBINSON, ESQUIRE
2530 Devine Street
Columbia, South Carolina 29205
803.254.5445
jon@smithrobinsonlaw.com

17 ATTORNEYS FOR THE RECEIVER FOR COVIL CORPORATION:

18 MORGAN, LEWIS & BOCKIUS LLP
19 BY: W. BRAD NES, ESQUIRE
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004-2541
202.739.5779
bnes@morganlewis.com

22 (Appearances continued on next page.)
23
24
25

1 APPEARANCES CONTINUED:

2 ATTORNEYS FOR THE RECEIVER FOR CAPE:

3 GALLIVAN WHITE BOYD
4 BY: LINDSAY A. JOYNER, ESQUIRE
1201 Main Street, Suite 1200
5 Columbia, South Carolina 29201
803.724.1800
6 ljoyner@gwblawfirm.com

7
8 ATTORNEYS FOR THIRD-PARTY DEFENDANTS MR. ALTRAD
AND ALTRAD INVESTMENT AUTHORITY:

9 WOMBLE BOND DICKINSON
10 BY: M. TODD CARROLL, ESQUIRE
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
11 803.454.7730
todd.carroll@wbd-us.com

12 ~ And ~

13 WOMBLE BOND DICKINSON (US) LLP
14 BY: M. ELIZABETH O'NEILL, ESQUIRE
One Wells Fargo Center
15 Suite 3500, 301 South College Street
Charlotte, North Carolina 28202-6037
16 704.331.4900
elizabeth.oneill@wbd-us.com

17
18 ATTORNEYS FOR THIRD-PARTY DEFENDANTS ANGLO
AMERICAN PLC; DE BEERS PLC; DE BEERS CENTENARY AG;
19 DE BEERS UK LIMITED; AND DE BEERS MINING:

20 HERBERT SMITH FREEHILLS NEW YORK LLP
21 BY: SCOTT S. BALBER, ESQUIRE
MAXWELL D. HERMAN, ESQUIRE
450 Lexington Avenue 14th Floor
22 New York, New York 10017
917.542.7600
23 scott.balber@hsf.com
maxwell.herman@hsf.com

24
25 (Appearances continued on next page.)

1 APPEARANCES CONTINUED:

2 ~ And ~

3 ATTORNEYS FOR THIRD-PARTY DEFENDANTS ANGLO
4 AMERICAN PLC; DE BEERS PLC; DE BEERS CENTENARY AG;
DE BEERS UK LIMITED; AND DE BEERS MINING:

5 RICHARDSON PLOWDEN
6 BY: CAMERON D. BERTHELSEN, ESQUIRE
235 MaGrath Darby Boulevard, Suite 100
7 Mt. Pleasant, South Carolina 29464
843.714.2625
8 cberthelsen@richardsonplowden.com

9 ATTORNEYS FOR THIRD-PARTY DEFENDANTS CHARTER
10 CONSOLIDATED LTD.; ESAB CORPORATION AND CENTRAL
MINING & INVESTMENT CORPORATION, LTD.:

11 GORDON REES SCULLY MANSUKHANI, LLP
12 BY: A. VICTOR RAWL, JR., ESQUIRE
40 Calhoun Street, Suite 350
13 Charleston, South Carolina 29401
843.714.2501
14 vrawl@grsm.com

15 ATTORNEYS FOR THIRD-PARTY DEFENDANTS SPARROWS
16 OFFSHORE, LLC; HAWK BIDCO US, INC.; AND ARRANCO
US, LLC:

17 RICHARDSON PLOWDEN
18 BY: STEVEN J. PUGH, ESQUIRE
19 1900 Barnwell Street
Columbia, South Carolina 29201
803.576.3721
20 spugh@richardsonplowden.com

21 ATTORNEYS FOR PENNSYLVANIA NATIONAL MUTUAL
22 CASUALTY INSURANCE COMPANY:

23 ADAMS AND REESE LLP
BY: KIRBY D. SHEALY III, ESQUIRE
1221 Main Street, Suite 1200
24 Columbia, South Carolina 29201
803.212.4966
25 kirby.shealy@arlaw.com

APPEARANCES CONTINUED:

ATTORNEYS FOR AIG PROPERTY & CASUALTY, BERKSHIRE
HATHAWAY SPECIALTY, LEXINGTON INSURANCE COMPANY,
CONTINENTAL INSURANCE COMPANY, NATIONAL UNION
INSURANCE COMPANY, UNNAMED UNDERWRITERS AT LLOYD'S
AND UNNAMED LONDON MARKET COMPANIES:

MURPHY & GRANTLAND, P.A.
BY: WESLEY B. SAWYER, ESQUIRE
4406-B Forest Drive
Columbia, South Carolina 29206
803.782.4100
wsawyer@murphygrantland.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

* * *

THE COURT: Please be seated.

All right. Before I call the hearing officially, let me indicate this: I received late last night or yesterday afternoon -- where is it? Yeah -- filings in the Tibbs matter from the Sparrow defendants. Where is Mr. Pugh?

MR. PUGH: That's me, Your Honor.

THE COURT: Mr. Pugh -- these -- we will discuss these matters in connection with Number 7, which is the pretrial for Tibbs.

MR. PUGH: Yes, ma'am.

THE COURT: All right.

All right. This is a pretrial hearing this morning on many matters that all revolve around the asbestos docket. We are going to begin by having the receiver, Mr. Protopapas, or whoever would represent the receiver in ACL, give a status report on ACL and Atlas Turner and on Payne & Keller. So I will proceed in that order with Number 1, status of ACL.

1 MR. PROTOPAPAS: Thank you,
2 Your Honor. Peter Protopapas, the receiver
3 for Asbestos Corporation Limited.

4 Your Honor is very familiar with the
5 heartbeat of receivership litigation, and
6 today on the Court's agenda will be some
7 familiar moments in that -- that -- that
8 timeline of receiverships.

9 The receiverships, normally,
10 Your Honor, arise out of a recalcitrant
11 defendant or nonperforming defendant in
12 this Court's asbestos docket, a defendant
13 that has been sued, fails to respond, fails
14 to participate, and a receiver gets
15 appointed.

16 And when I get appointed as receiver,
17 I begin the work of identifying assets and
18 following this Court's instruction as to
19 how it wants -- or what it expects of
20 defendants in its asbestos docket.

21 And it normally begins with some
22 measure of litigation, either based on
23 insurance coverage and legacy liability
24 policies, which are still responsive to
25 torts today; sometimes it delves into alter

1 ego allegations where assets or
2 responsibilities flow to other entities who
3 have been hiding from the jurisdiction of
4 this Court.

5 Usually, that litigation gets
6 contentious. And we occupy this Court's
7 resources, this Court's time and
8 this Court's effort, and we tax our court
9 system. And not just in South Carolina,
10 but the Middle District of North Carolina
11 where receiverships have won, in the Fourth
12 Circuit Court of Appeals where the
13 receiverships have won, in Texas where the
14 receiverships have won, in the South
15 Carolina Court of Appeals and in the South
16 Carolina Supreme Court where the
17 receiverships and the positions that
18 this Court has set forth and the orders it
19 has set forth have been affirmed time and
20 time again.

21 And that contentious litigation goes
22 for a period of time. And it either goes
23 to trial such as the Penn National case, or
24 we get to come before you and say some
25 measure of peace has broken out.

1 And this Court is intimately familiar
2 with receiverships such as Pipe & Boiler,
3 Covil, Southern, companies that were
4 recalcitrant defendants or defendants who
5 were nonperforming that are now normal
6 performing functionaries. And I am proud
7 to say that those receiverships are not
8 before this Court on motions to compel and
9 nonparticipation. We participate, we
10 fight, and we -- we settle cases that have
11 merit.

12 And that heartbeat has taxed this
13 court, I know. And today, you will see
14 receiverships are in various stages of this
15 heartbeat with ACL, Atlas Turner, Payne &
16 Keller, Covil and, of course, Cape.

17 With ACL, Your Honor, we're at that
18 stage where I get to say good news. Some
19 measure of peace has broken out. This
20 Court is aware that it held hearings on
21 February 7th, hearings on February 9th,
22 hearings on March 13th. And time and time
23 again, we're brought into the ACL
24 litigation to help bring clarity and to
25 help direct the parties.

1 And the good news, Your Honor, is over
2 the last several weeks, stemming from
3 this Court's involvement in the March 13th
4 hearing, we have brought a measure of
5 normalcy. We're not all the way there yet.
6 But the good news, Your Honor, is that
7 through a lot of hard work and my
8 colleagues on the other side, Mr. Manos and
9 Ms. Richardson and their national counsel,
10 we have been able to put together a
11 settlement of five of the six cases.

12 As the Court remembers, it started
13 with Link and Donaghy where I came to
14 the Court and asked the Court for more
15 time. Reluctantly, the Court gave me more
16 time. We then had more hearings before
17 the Court. But Link and Donaghy have
18 settled.

19 The paperwork is not complete. But we
20 are completing the paperwork. The funds
21 haven't been transferred. However, the
22 carrier group has agreed to those payments.

23 THE COURT: Which means that Link and
24 Donaghy would not be tried, correct?

25 MR. PROTOPAPAS: Correct, Your Honor,

1 as to ACL. Asbestos Corporation Limited
2 has --

3 THE COURT: Well, it's still on my
4 docket for other defendants, is it not,
5 Ms. McVey?

6 MS. McVEY: Your Honor, in Potter,
7 there is Atlas Turner, and there is Spirax
8 Sarco. And in Link, there is just Atlas
9 Turner.

10 MR. PROTOPAPAS: The Atlas Turner,
11 Your Honor, is on a different part of the
12 timeline of receiver fight, appeal, trial.
13 ACL is the -- is the good story right now.
14 It's the -- it's the receivership where --
15 where cooperation has broken out
16 sufficiently where we were able to resolve
17 the Link and Potter cases as well as Flynn,
18 Mitchell and Goodwin.

19 And so Your Honor's efforts and the
20 taxing of this Court's time has produced a
21 measure of cooperation between Resolute,
22 Lloyd's, a certain underwriter of Lloyd's
23 and the receivership.

24 We are not all the way there yet,
25 Your Honor. But momentum in settling those

1 five cases, I think, is relevant and does
2 fit within that timeline of how do we make
3 an entity and receivership responsive
4 within litigation. And we have made a
5 major -- I think a major step in the right
6 direction.

7 THE COURT: Okay. Let me be sure I
8 understand. Now, this is ACL. And ACL has
9 not finalized but has sufficient confidence
10 in the settlement negotiations that it
11 represents through its receiver, you, that
12 Link and Donaghy, Flynn, Mitchell,
13 Goodwin -- and Potter?

14 MR. PROTOPAPAS: And Potter.

15 THE COURT: -- from the standpoint of
16 ACL are in the process of completing
17 settlement agreements, correct?

18 MR. PROTOPAPAS: Correct, Your Honor.

19 THE COURT: All right. I'm going to
20 turn to Ms. McVey when all of these status
21 reports are over, of course, to go over
22 what the status of those cases is from the
23 plaintiff's standpoint. But from the
24 standpoint of this receivership, those
25 cases are resolved, okay?

1 MR. PROTOPAPAS: That's correct,
2 Your Honor. And within that process, we
3 have identified -- as the Court is aware,
4 there was questions regarding legacy
5 liability policies. We have answered those
6 questions for ACL. They have sufficient
7 legacy liability policies to participate in
8 this court, as noted by those five
9 settlements.

10 Your Honor --

11 THE COURT: And will that simply be a
12 participation by the insurers on a
13 going-forward basis by tendering to them
14 and having them participate in the
15 development in this case -- these five
16 cases of settlements? Is that -- it's not
17 a qualified settlement fund?

18 MR. PROTOPAPAS: Correct, Your Honor,
19 not a qualified settlement fund but a
20 traditional carrier paid --

21 THE COURT: Traditional carrier
22 insurer vis-a-vis corporation now in
23 receivership, receiver-type negotiations --

24 MR. PROTOPAPAS: Correct, Your Honor.

25 THE COURT: -- which will then, of

1 course, involve the plaintiff in terms of
2 how the matters are ultimately resolved.
3 But in terms of the tendering of
4 insurance -- tendering of claims and the
5 acceptance of responsibility of insurance,
6 that's been done now?

7 MR. PROTOPAPAS: In those five cases,
8 it has been done, Your Honor. And on the
9 going-forward basis --

10 THE COURT: And that's primarily
11 Resolute/Lloyd's/CMLI?

12 MR. PROTOPAPAS: Correct, Your Honor.

13 THE COURT: All right.

14 MR. PROTOPAPAS: And on a
15 going-forward basis, Your Honor, there are
16 other matters that will be before you in
17 August and in the fall. I apologize. I
18 don't have that trial calendar in front of
19 me.

20 But we are in negotiations to -- to
21 push our differences aside so that we are
22 not where we were with this Court in
23 January, February and March. Those have
24 not concluded into a final agreement of any
25 kind that we could bring to the Court.

1 However, Ms. Richardson, Mr. Manos, the
2 national counsel, and I were on calls
3 earlier this week, and we are committed to
4 seeing where we can come to more agreement
5 for future cases so we are not taxing
6 the Court as we have.

7 Historically, Your Honor, these
8 moments tend to result in a peace amongst
9 the carriers and the receivership
10 sufficient to stop taxing this Court's
11 time.

12 THE COURT: All right. Now, let me
13 understand this. Is Ms. Richardson
14 present? Yes, she is. I see her.

15 MS. RICHARDSON: Yes, Your Honor.

16 THE COURT: And, Ms. Richardson, you
17 obviously are in a representation position
18 with at least some of the insurers or the
19 insurers on some of their cases, correct?

20 MS. RICHARDSON: Yes.

21 THE COURT: All right. And your
22 representation is through Lloyd's/CMLI?

23 MS. RICHARDSON: We represent the
24 lending market carriers who are not
25 controlled by Resolute. They are

1 independent insurance carriers of various
2 types.

3 THE COURT: I'm very familiar.

4 MS. RICHARDSON: Yeah.

5 THE COURT: Now, just so I'm sure
6 who's on first, Mr. Sawyer, are you here in
7 the courtroom?

8 MR. SAWYER: I am, Your Honor.

9 THE COURT: All right. Where are you
10 with regard to these matters?

11 MR. SAWYER: I'm nowhere involved in
12 Atlas or ACL. The only matter that I'm
13 here for today that I have any
14 representation is Payne & Keller,
15 Your Honor.

16 THE COURT: Okay. Very good.

17 MR. SAWYER: Yeah.

18 THE COURT: Understood. All right.
19 Thank you so much.

20 MR. SAWYER: Thank you, Your Honor.

21 MR. PROTOPAPAS: And, Your Honor, we
22 have Mr. Manos here, who is from the
23 Resolute-controlled London insurers and who
24 have been working with a -- with the
25 receive -- with me as receiver on these

1 five matters and on a go-forward solution.

2 THE COURT: All right. Thank you,
3 Mr. Manos, and thanks for moving this thing
4 forward in the way that Mr. Protopapas has
5 described.

6 MR. MANOS: Yes, Your Honor.

7 MR. PROTOPAPAS: And so, Your Honor,
8 there -- there is one -- it may be
9 worthwhile to turn to the Atlas Turner.
10 But that is the status of ACL for five of
11 the six cases.

12 The Tibbs case, Your Honor, is the
13 case I was appointed in, in which an answer
14 was struck. I will say, Your Honor, I
15 believe we have filed 11 motions to dismiss
16 appeal, or something along those lines, in
17 the last two weeks based on a Supreme Court
18 order in Payne & Keller, which is a
19 receivership that is still in the war --
20 the -- the "sharp words back and forth"
21 portion of the heartbeat of litigation.

22 THE COURT: Well, I must say that when
23 you turn to Atlas Keller and Payne &
24 Keller -- I mean, Atlas Turner and Payne &
25 Keller, I was shocked to get briefing as

1 late as yesterday, afternoon late about the
2 sanctity of Rule 205 with no mention made
3 of the Court of Appeals' two orders, the
4 Supreme Court's latest order, the Supreme
5 Court's previous order in Covil, the Fourth
6 Circuit's order, the Texas Secretary of
7 State's order and so many other things that
8 have been -- that have occurred that bear
9 on -- directly on arguments that are made
10 in those briefs, which continued to be
11 stated that this is some sort of rogue
12 activity going on here unrecognized by the
13 courts and that this -- none of this
14 activity here is permitted because they
15 have appealed a nonappealable order. So
16 I -- that -- I don't understand why that's
17 still occurring.

18 MR. PROTOPAPAS: Your Honor, I -- I
19 agree with the Court, and hopefully our
20 motions to dismiss the appeals in their
21 entirety will be looked on favorably.
22 They're in the briefing stage, and I'm --
23 I'm hopeful that there will be more clarity
24 from our Courts of Appeals.

25 But -- but that's, of course, the

1 heartbeat of these cases, Your Honor.
2 They -- they go -- they go through this
3 intense fighting at times, as ACL did.
4 And -- and we -- we either end up at a
5 trial moment with the Court, which we did
6 in Penn National, or we end up in a -- I
7 get to say we've managed to do something
8 positive as a group and negotiate hard with
9 the plaintiffs, who were, at times,
10 difficult to negotiate with, respectfully,
11 if they're advocating for their clients.
12 But we were able to come to that common
13 ground in the last seven -- seven days.

14 And so I think -- I think we can see
15 with Payne & Keller, which is an insurance
16 coverage, or Cape, which is the alter ego
17 issues, those are still in those earlier
18 stages of sharp words.

19 THE COURT: Well, I have received -- I
20 want to get back to Atlas Turner because
21 that's the one I've got the most heartburn
22 about right now because it impacts the
23 Tibbs case.

24 But since you mentioned Payne &
25 Keller, I received a list of pending

1 motions from -- from Ms. Valek yesterday.
2 And what I want to know is, if this isn't
3 the right time to hear them, when would be
4 the right time to hear those?

5 MR. PROTOPAPAS: Your Honor, I believe
6 anytime the Court has the time to -- to
7 hear those motions, we are -- the receiver
8 is ready for them. We can do them at the
9 Court's will today. We could do them in
10 the next period of time in April. I
11 believe we need --

12 THE COURT: Well, it depends on
13 whether the Tibbs case settles.

14 MR. PROTOPAPAS: That's true,
15 Your Honor. May I turn my attention to
16 Atlas Turner for a moment?

17 THE COURT: Yes, sir.

18 MR. PROTOPAPAS: So in receivership,
19 Your Honor, when we talk about the
20 heartbeat of the receivership, sometimes,
21 like in ACL, I identify that program within
22 four to six months, the fighting begins,
23 and we are able to bring clarity and
24 cooperation. Atlas Turner is a little bit
25 different of a matter. Atlas Turner is a

1 related entity to ACL.

2 THE COURT: Right. And they are
3 asserting the same business about lack of
4 personal jurisdiction. There's no question
5 but what for those entities, which are
6 the -- are either the predecessors or
7 successors of Asbestos Corporation, the
8 kind of mother ship in this thing.
9 Personal jurisdiction is alleged on the
10 basis that they are successors in
11 responsibility to Asbestos Corporation, who
12 put into the stream of commerce in South
13 Carolina by allegation, which is all that
14 is needed to deal with the personal
15 jurisdiction issue, asbestos material which
16 injured South Carolina workers in South
17 Carolina.

18 What has -- what has -- I'm going to
19 ask the Atlas Turner people to come up here
20 and talk to me about this. But what is,
21 basically, the status of Atlas Turner's
22 position on these matters?

23 I know they want to dismiss for lack
24 of personal jurisdiction. Haven't I
25 already ruled on that once?

1 MR. PROTOPAPAS: Yes, Your Honor. And
2 the -- the Court's recitation, there is
3 evidence of Atlas Turner products -- in
4 particular, something called Atlasite --
5 that has made its way to South Carolina.
6 It's a chrysotile product that likely comes
7 from the mines of Canada that ACL was
8 involved in.

9 And so there is more evidence coming
10 every day as to these contacts and the
11 products' placement in South Carolina. And
12 there are entities, insulation contractors
13 and others, who have purchase orders and so
14 forth indicating some measure of
15 transaction, business with Atlas and ACL.

16 THE COURT: And is that connection --
17 that allegation of connection the same with
18 respect to Flynn, Goodwin, Mitchell, Tibbs,
19 Donaghy, Potter and Link?

20 MR. PROTOPAPAS: Yes, Your Honor. I
21 believe those are the -- the allegations.

22 THE COURT: Right. And all we're
23 dealing with is allegations. And in these
24 personal jurisdiction motions, considering
25 things in the light most favorable to the

1 nonmoving party, a scintilla of evidence is
2 enough.

3 And what is alleged in the responses,
4 at least as I recall them initially when we
5 fought these very same battles, is what
6 you've recited, that there are products
7 that -- chrysotile products that came into
8 the stream of commerce here.

9 In fact, the only thing that's changed
10 about that dynamic is the announcement two
11 weeks ago by the EPA that chrysotile is now
12 banned. So that's -- you know, there's the
13 good asbestos, and the bad asbestos has
14 always been the argument about chrysotile
15 asbestos. But another pretty heavy
16 regulatory ruling has been made about
17 chrysotile.

18 But that's the path that is alleged to
19 create the injury to workers here; am I
20 right?

21 MR. PROTOPAPAS: You are correct.

22 THE COURT: All right.

23 MR. PROTOPAPAS: And, Your Honor, in
24 my job as the Atlas receiver, we have sent
25 out 60 to 70 subpoenas. We have 20 or so

1 FOIAs. We are doing those things that are
2 traditionally done to identify responsive
3 assets.

4 Atlas Turner did have an insurance
5 program, and that insurance program -- I've
6 been provided three agreements, one by
7 order of this Court at the March 13th
8 hearing, reduced to writing where Lloyd's
9 provided me an agreement under seal for my
10 view, your view and the plaintiffs' view.

11 And then there are Canadian --
12 Aviva Canadian General Insurance has
13 provided me an agreement, as has -- I
14 believe it's Zurich. And I apologize,
15 Your Honor.

16 THE COURT: Well, the contention is
17 made by Atlas Turner that none of those
18 insurance programs apply to these matters.
19 Is that basically the contention?

20 MR. PROTOPAPAS: Yes, Your Honor.
21 They look -- the agreements look very
22 similar to our qualified settlement fund
23 agreements where a buyout is done of the
24 program. A trust is formed in Canada. The
25 trust sits at the Royal Bank of Canada,

1 from my latest -- the latest information
2 I've been provided. There is a trust fund
3 to pay claims located in Canada that I
4 don't have for Atlas Turner.

5 THE COURT: It's a trust -- it's a
6 trust fund only for claims in Canada?

7 MR. PROTOPAPAS: I don't know,
8 Your Honor. The operative trust documents
9 have evaded me.

10 However, there is -- when it comes to
11 Atlas Turner, every insurance policy I have
12 so far identified has been sold back to
13 Atlas Turner for a sum of money for the
14 settlement fund in Canada.

15 THE COURT: Have any of those sales
16 taken place since my order directing that
17 they -- no further transfers be made?

18 MR. PROTOPAPAS: Your Honor, they all
19 predate the order by several years.

20 THE COURT: All right.

21 MR. PROTOPAPAS: What -- what I --
22 what I think, though, Your Honor, is there
23 is -- in Atlas Turner, as the receiver, I
24 have brought several pieces of litigation.
25 One is against a law firm that is the

1 national law firm for Atlas Turner that we
2 would ask the Court set for hearing at its
3 appropriate time. And that is one of the
4 loose ends out there as I tried to figure
5 out what are the responsive assets.

6 Sitting here today, I cannot honestly
7 say to the plaintiff that there is any
8 recoverable asset in the United States of
9 America.

10 What I can tell the plaintiff, and I
11 would like to report to this Court, is that
12 the buyout agreements that I have read have
13 created questions.

14 As recently as Monday afternoon, I met
15 with the Aviva attorneys, very helpful, who
16 provided me extensive information about
17 their transfer of money for the tearing up
18 of their policies in 1988 and their
19 relationship and documents that evidence
20 what happened to that money over the
21 ensuing years.

22 Similar, Your Honor, from Lloyd's, who
23 recently provided us their documents, there
24 are more documents we need from Lloyd's.
25 Last time we were here, Mr. Psichos, on

1 behalf of Mr. Rawl, and Mr. Rawl on behalf
2 of his client, Lloyd's, agreed that an
3 order of the Court would get us access to
4 the confidential document.

5 But we -- I believe that the
6 additional information -- for example,
7 reporting by the trust, if they have the
8 trust instrument, the bank accounts where
9 the trust money is held, those sorts of
10 documents, Your Honor, will better inform
11 me as to whether or not Atlas Turner can be
12 a responsive defendant in discovery,
13 ultimately settlement, ultimately paying
14 claims and judgments.

15 As I sit here today, Your Honor, I
16 am -- I have not gotten as far in Atlas
17 Turner as I have in ACL. And so for Atlas
18 Turner, we need a little more -- as we go
19 through the heartbeat of receivership
20 litigation, we are going to tax -- I'm
21 asking to tax the Court's resources more --

22 THE COURT: So are you asking that
23 the -- that the case be continued as to
24 Atlas Turner?

25 MR. PROTOPAPAS: I am, Your Honor.

1 And I make the request knowing this Court's
2 reluctance.

3 THE COURT: I am very, very reluctant
4 and particularly since we've been dealing
5 with this thing for a long time. This is
6 not like they just suddenly knew about
7 this.

8 MR. PROTOPAPAS: And so the Atlas
9 Turner -- I think the -- the path towards
10 understanding what Atlas Turner has to
11 respond to claims in South Carolina is --
12 is uncertain. I think it does land on law
13 firms that have represented Atlas Turner
14 and have represented its related company,
15 Asbestos Corporation Limited. And I
16 believe it rests, perhaps, in the
17 additional documents that the Court ordered
18 Lloyd's provide to us in its March --

19 THE COURT: It sounds like the March
20 order hasn't been completely complied with
21 if you don't have a copy of the trust that
22 indicates whether or not the trust was set
23 up just for Canadian claims or for other
24 claims. This Canadian-produced asbestos
25 was sold all over the world, was it not?

1 MR. PROTOPAPAS: It was indeed. It
2 was indeed. And so I think an initial
3 production pursuant to the order has
4 occurred, which was the actual transaction
5 documents evidencing the sale of the
6 insurance policies and the creation of a
7 trust. But the reports -- the claims that
8 have been paid --

9 Your Honor, I -- I believe that
10 South Carolina is being treated differently
11 than other states in the United States of
12 America. I believe ACL settles claims in
13 other states in the United States of
14 America. I believe Atlas Turner does.

15 But for whatever reason, the state of
16 South Carolina gets treated somewhat
17 differently. And I can't say for certain
18 with Atlas Turner what that looks like, but
19 I believe the additional information will
20 assist us.

21 And so I think when it comes to Atlas
22 Turner, Your Honor, I -- I worry as an
23 officer of the court that has to be
24 transparent with the plaintiff, carriers,
25 and with the Court, I have to say a

1 judgment rendered against Atlas Turner may
2 be an uncollectable moment, simply because
3 the documents as they stand transacted the
4 legacy policies in a way similar to these
5 qualified settlement funds that we have
6 done in South Carolina receiverships.

7 And so how do we get to that
8 settlement fund? And that is the path, of
9 course, that I'm outlining to the Court, of
10 law firms that have the information,
11 carriers that have the information. And
12 there's several -- several other
13 productions that I'm hoping to get from --
14 from carriers that will round up my
15 knowledge.

16 And I can report to the Court there is
17 nothing left for me to do because I can't
18 find anything or there is something more
19 for me to do in order to assist Atlas
20 Turner's participation in the asbestos
21 docket.

22 THE COURT: Okay. All right. I'm
23 going to ask in a minute to hear from
24 Mr. Rawl about this, but first I want to go
25 back for a minute to Payne & Keller. Is

1 Payne & Keller involved in any of the cases
2 that are set for trial this coming week?

3 MR. PROTOPAPAS: They are not,
4 Your Honor, but Payne & Keller is in a
5 number of cases. And in the last 60 days,
6 Your Honor, I have been served with 6, 7 --
7 probably 35 lawsuits in the past 60 days,
8 many of them from Texas where the companies
9 reconstituted them, many of them in
10 Illinois where they had a significant
11 presence, some from Louisiana where they
12 had a significant presence. The plaintiffs
13 in South Carolina have identified several
14 South Carolina sites with evidence.

15 So, Payne & Keller, as far as the
16 asbestos litigation, is going to be a
17 robust defendant for years to come in
18 South Carolina and elsewhere.

19 But I think where the -- where the --
20 where we need help from the Court is going
21 to be on ensuring the carrier's proper
22 participation in the defense of Payne &
23 Keller and the carrier's obeying the rules
24 of our appellate courts on what is and what
25 is not appealable and that those things --

1 THE COURT: Well, right now, there
2 are -- insurers are working very closely
3 with Payne & Keller, but not with its
4 receiver, to defeat the receivership by
5 making these appeals of nonappealable
6 issues; is that correct?

7 MR. PROTOPAPAS: That is correct.
8 That is correct, Your Honor.

9 And -- and I think with Cape, which is
10 the alter ego receivership, you have some
11 of the similar issues. We're in that part
12 of the litigation where cooperation is
13 somewhat limited. Not just somewhat.
14 Cooperation is zero, very limited. And
15 the -- the filings are very pointed in
16 their -- in their approach.

17 And hopefully, we have -- we -- we can
18 take steps to lessen the rhetoric, increase
19 the merits and -- and move the order of
20 this Court forward.

21 THE COURT: Okay. All right. I'm --
22 I'm going to turn next to Ms. McVey for her
23 comments on the status of these three
24 receivership defendants.

25 MS. McVEY: Thank you, Your Honor.

1 Good morning.

2 THE COURT: Good morning.

3 MS. McVEY: I like your lapel pin.

4 Does that mean something special?

5 THE COURT: Yes, it does. National
6 Championship Number 3.

7 MS. McVEY: Pretty awesome.

8 THE COURT: It was. Absolutely beyond
9 compare.

10 MS. McVEY: I'm jealous.

11 All right. Your Honor, just briefly,
12 Mr. Protopapas gave you an excellent update
13 on ACL for the cases that are in the May --
14 I'm sorry -- the April block. The one case
15 that has not settled with ACL is the Tibbs
16 case. And the Tibbs case has two
17 defendants remaining, ACL and Atlas Turner.

18 That is the case where you struck
19 their answer because they refused to comply
20 with any discovery or do anything. And
21 that case is up on appeal.

22 The fact that a receiver was appointed
23 in Tibbs for ACL I don't believe stays
24 anything. I do think, though, the striking
25 of the answer probably stays the Tibbs case

1 as it relates to ACL.

2 So from that perspective, trying a
3 case against ACL, I think, would not be
4 appropriate at this time, not because
5 there's a receiver, but because of the
6 answer that was struck in the contempt
7 finding.

8 As to Atlas Turner, Your Honor, you
9 heard many motions about Atlas Turner, and
10 there have been lots of representations
11 made in this Court, both about ACL and
12 Atlas Turner, that there was no insurance,
13 there was zero insurance, can't get to it.
14 We now know that ACL has a ton of
15 insurance, and I believe Atlas Turner has
16 or had insurance.

17 And, Your Honor, if I could, I wanted
18 to handle -- hand -- you ordered Lloyd's to
19 produce the confidential agreement where
20 Atlas Turner bought back -- or the
21 company --

22 THE COURT: Right.

23 MS. McVEY: -- bought back --

24 THE COURT: They produced that in the
25 Link case, correct?

1 MS. McVEY: Yes, ma'am. Link and
2 Donaghy. I've got it right here, if that's
3 helpful.

4 THE COURT: Yeah.

5 MS. McVEY: And I tabbed just a couple
6 of things for you. And, Your Honor, this
7 was produced pursuant to a confidentiality
8 order, so I will try not to use any
9 numbers.

10 But you can see in the first tab is an
11 addendum, a listing of known policies. And
12 there's a lot of them.

13 Your order, when you ordered that
14 document produced, also included language
15 that said: In light of the foregoing,
16 Resolute and Lloyd's are hereby ordered to
17 produce the agreement, along with all
18 schedules, attachments, addenda or any
19 other related material, within 24 hours of
20 entry of this order.

21 That was the only document that was
22 produced. And so when we had a chance to
23 review it, we wrote to counsel for Lloyd's,
24 Mr. Rawl, and said: You didn't produce all
25 the documents.

1 Annual reports, Atlas was supposed to
2 give Lloyd's annual reports. Those were
3 not included. There was a database that
4 Lloyd's was entitled to access. We asked
5 had Lloyd's done that; where is that
6 production?

7 Lloyd's has a right to audit. Those
8 audits were not produced.

9 I mentioned to you the known policies
10 identified as Attachment A. Where are the
11 documents that -- who -- that identify who
12 the known syndicate subscribers are that
13 are referenced in Attachment B?

14 They did not produce the signed copy
15 of the escrow agreement; it's unsigned.

16 Where are the -- I see the requests
17 for the reimbursement from Bell and Atlas
18 that have presumably been sent from time to
19 time, the request for indemnity and
20 certification.

21 All of those documents, I believe,
22 should have been produced pursuant to your
23 order. And Mr. Rawl, on behalf of his
24 client, said they were not going to produce
25 those. And so we would ask that those be

1 ordered to be produced.

2 You can see the numbers in there that
3 all of those known policies were bought
4 back or Lloyd's paid Atlas Turner a very
5 small amount of money, in my view, based on
6 those policies. While that is dated 2006,
7 that seems fraudulent to me, knowing that
8 there's asbestos claims out there that will
9 have to be paid. So, Your Honor, we would
10 like some time to investigate that, and if
11 not us, then the receiver.

12 So, for Atlas Turner, you know, I have
13 never, I don't think, come in front of
14 this Court and consented to a continuance.
15 I just don't like to waste the Court's
16 time. You've blocked out the schedules. I
17 like to -- to push as hard as we can.

18 There is an exception to that, though,
19 when the receiver who -- who fights hard
20 against us, by the way. And negotiating
21 with him with ACL was -- was not my most
22 pleasant experience.

23 But he has said, even if you go get a
24 verdict, I have not been able to tender
25 this to any policies. And we know that

1 Atlas Turner is hiding -- my words --
2 hiding their money in Canada that I don't
3 think we can get to at this point.

4 So I don't want to go spend these
5 clients' money and not be able to get a
6 judgment collected.

7 Now, by saying that, however, we have
8 moved because Atlas Turner refused to
9 comply with any discovery, they refused to
10 list any witnesses, they refused to produce
11 a 30(b)(6) deposition. And so we don't
12 believe that they should be entitled to put
13 up any evidence if we go try this case.

14 And we've made several motions, that
15 if you continue it, we don't need to get to
16 today. But they have abandoned their right
17 to put up any evidence, in my view. And so
18 I don't know how long a trial it would be,
19 but we would certainly have to prove our
20 case, both with liability and causation.

21 So I say that to Your Honor to say I
22 am not consenting to this continuance, but
23 I certainly defer to the receiver on
24 putting this case in the best possible
25 position, either that we know there's no

1 insurance or there is some insurance that
2 we can tender to. And so, Your Honor,
3 that's kind of our position on Atlas
4 Turner.

5 We can discuss later, if you want to,
6 the personal jurisdiction motions. But as
7 to Donaghy, Potter and Link, you have
8 already ruled for sure on those personal
9 jurisdiction motions. And those were ruled
10 on on February 7th, 2023, when you denied
11 the personal jurisdiction motions.

12 And -- and, Your Honor, as you know by
13 reading this, it's not just that we have
14 allegations. Despite their willingness to
15 comply with discovery, we have
16 independently found documents they sold to
17 our client's worksites, to Guy M. Beaty, to
18 Covil, who are co-defendants in this case.
19 We have Atlas Turner and ACL all over South
20 Carolina. It was not a small state for
21 them in terms of sales.

22 But for Donaghy, Potter, for Link, you
23 denied orally their motion to dismiss for
24 personal jurisdiction. And you didn't
25 issue a written order. We do that all the

1 time. No written order was forthcoming.
2 And they never answered the complaint, and
3 they had 15 days from the date to do that.

4 So we filed a motion, affidavit for
5 default in Donaghy, Potter and Link. We
6 believe that they're in default currently
7 in those cases. Of course, they have not
8 filed a motion to lift default. And so
9 that's sitting here before you. That only
10 affects Donaghy, Potter and Link.

11 The Flynn, Goodwin and Mitchell cases
12 are still -- I -- I thought you heard
13 personal jurisdiction, but you may not
14 have. I couldn't -- I couldn't find that.

15 So, Your Honor, that's kind of where
16 we are. I'm grateful to both
17 Ms. Richardson and Mr. Manos and -- and
18 Mr. Protopapas for working through the ACL
19 thing, and this Court's intervention in
20 that was very helpful to get the case
21 remediated. So that is progressing
22 somewhat. And Atlas Turner is at a
23 stalemate until we get some additional
24 information, I think.

25 THE COURT: All right. And with

1 respect to Atlas Turner, who are the
2 attorneys you have been dealing with?

3 MS. McVEY: For -- Mr. Brown. In
4 terms of the tort case?

5 THE COURT: Yes.

6 MS. McVEY: Yes.

7 THE COURT: All right. And how about
8 Mr. Rawl and Ms. Richardson?

9 MS. McVEY: So, in the settlement,
10 it's been Mr. Manos, their national
11 counsel, Ms. Richardson. And Mr. Rawl is
12 in Atlas Turner only.

13 THE COURT: All right. Okay. The
14 first thing I'd like to do is ask Mr. Rawl
15 to come to the podium.

16 MS. McVEY: Thank you, Your Honor.

17 MR. RAWL: Good morning, Your Honor.

18 THE COURT: Good morning, Mr. Rawl.
19 Who do you represent?

20 MR. RAWL: I represent Lloyd's
21 entities with regard to the Atlas Turner
22 matter.

23 THE COURT: Lloyd's and who?

24 MR. RAWL: It's -- it's the Lloyd's
25 group, whether this -- dealing with

1 Atlas --

2 THE COURT: CMLI?

3 MR. RAWL: Yes.

4 THE COURT: I would like to understand
5 why my order has not been complied with in
6 terms of giving them the policies and
7 specific information that they've requested
8 about the trust.

9 MR. RAWL: Yes, Your Honor. As you
10 recall, the -- the issue that brought this
11 matter to the Court's attention was with
12 regard to the ADR rules and for the
13 mediation. And -- and that mediation, I
14 believe, was in the Link and the Potter
15 cases.

16 Both ACL and London have been
17 informing both the receiver and plaintiff
18 for a very long time that there is no
19 coverage remaining for London --

20 THE COURT: We understand that that's
21 the position you take. I directly required
22 that your client provide the policies.
23 What I got was a confidential submission to
24 myself that lists a whole bunch of policies
25 but does not provide the policies

1 themselves.

2 That's Attachment A to the settlement
3 agreement and release that is denominated
4 on each page confidential, produced
5 pursuant to court order, dated March the
6 25th, 2024, in 0 -- in Case -- Case Numbers
7 2022-CP-40-05543 and 2023-CP-40-03108.
8 That's Donaghy, Potter and Link.

9 So why was not my order complied with
10 with respect to those two cases in
11 submitting the documents I directed be
12 submitted?

13 MR. RAWL: Your Honor, I do believe
14 that it was complied with and --

15 THE COURT: Are you talking about this
16 submission I'm looking at right now?

17 MR. RAWL: And -- and, Your --
18 Your Honor, my understanding --

19 THE COURT: Where -- where in this
20 submission is a copy of the policies listed
21 in Attachment A, which says "known
22 policies" and gives policy periods
23 beginning in April of 20 -- of 1963 through
24 March of 1971? This is a document that
25 says these are known policies. Where are

1 the policies?

2 MR. RAWL: Your Honor, I apologize. I
3 did not provide the policies in camera to
4 the Court. My understanding was -- is that
5 the settlement agreement was to be provided
6 confidentially to the Court and to
7 Mr. Protopapas and to the plaintiffs, and
8 the -- but the policies were sent via a
9 different link at the same time.

10 THE COURT: And who were those sent
11 to?

12 MR. RAWL: They were -- they were
13 produced in the entire -- in the litigation
14 in --

15 THE COURT: The policies themselves?

16 MR. RAWL: The policies themselves
17 were produced in the litigation in the
18 Welch case.

19 THE COURT: In the Welch case?

20 MR. RAWL: Yeah -- Your Honor --

21 THE COURT: Well, if they were
22 produced in the Welch case, why are they
23 not produced in these cases when that's
24 what we're talking about right now and the
25 same order has directed the same kind of

1 performance?

2 MR. RAWL: Your -- Your Honor, what I
3 did was I -- I sent a link to those
4 documents to the receiver and to the -- the
5 plaintiffs. And I referenced that because
6 CLMI has been sued by the receiver in the
7 Welch case, and -- and those documents were
8 requested in the request for production.

9 So I referenced those documents
10 where -- where they were produced and
11 provided the link to those -- to those
12 policies and then sent the only thing that
13 was confidential, which is the agreement
14 itself --

15 THE COURT: Right.

16 MR. RAWL: -- to the Court on their --
17 you know, by email confidentially --

18 THE COURT: Well, let's get -- they --
19 they said they didn't get the policies.
20 Let's just get that clear right now.

21 Mr. Protopapas, do you have the
22 policies?

23 MR. PROTOPAPAS: Your Honor, the
24 policies were produced in Welch. I
25 apologize. They have not gotten to

1 Ms. McVey.

2 However, the trust instrument, which
3 took the money, the reporting requirements
4 set forth in the settlement and agreement
5 have not been produced, the post-payment
6 evidentiary documents.

7 So the -- the trust has an accounting
8 much like the accountings I provided to
9 the Court, by plaintiff, by amount and the
10 money that was transmitted by Lloyd's to
11 Atlas Turner. That accounting and that
12 post-settlement information has not been
13 produced.

14 THE COURT: All right.

15 MS. McVEY: And, Your Honor, it's --
16 it's -- so everything that happened
17 post-settlement, what is the condition of
18 the trust, the audits, the reports, the
19 request for reimbursement, all of that is
20 the stuff that we emailed Mr. Rawl about
21 after we realized we didn't get it. And
22 that is when he said, "The client is not
23 going to give it to you." So --

24 THE COURT: Okay. But --

25 MS. McVEY: -- that's -- and I'm not

1 sure I've seen the policies. They may have
2 been sent to me, but I --

3 THE COURT: Well, Mr. Rawl, I come
4 right back to you. What -- what's the
5 hang-up with going on and completing the
6 disclosure by letting us know what's
7 happening with the trust?

8 That's the -- that's, apparently, the
9 source, at least as your client has created
10 it, of assets that may be available to
11 settle these lawsuits or to respond to
12 these lawsuits. Why haven't they gotten
13 that information?

14 MR. RAWL: Your -- Your Honor, my --
15 my understanding from your order was to
16 produce the settlement agreement, which was
17 the evidence that had been discussed --

18 THE COURT: Well, I can certainly
19 clarify that for you today. I'm very
20 disappointed that you take that position,
21 Mr. Rawl. Because what you've apparently
22 told them privately is a little bit of a
23 more direct thing than you're telling me
24 right now as you look me in the eye. What
25 you apparently told them is they're not

1 going to give it to you.

2 MR. RAWL: Well, I will tell you
3 exactly what I told them, Your Honor. What
4 I -- what I said -- and I -- I will read to
5 you this specific email that I sent.

6 And it says -- and I received an email
7 from Trey Branham asking for several
8 documents that would -- that may have
9 been -- I don't know if they were possible
10 documents that could be produced after the
11 settlement agreement was -- was entered
12 into.

13 THE COURT: Right.

14 MR. RAWL: And he said, you know,
15 this -- this document says that you have
16 the ability to go and do audits. I want
17 all the audit documents, you know, in the
18 future.

19 And the -- and it -- and it says
20 something along there may be reporting that
21 may have been done by ACL to London, you
22 know, after this release was entered into.
23 I want -- I want all of these documents.

24 And what I responded to, is I said
25 that this is an email that I sent. The day

1 he sent me the email, I said: Trey, I hope
2 you are having a good evening. I received
3 your email yesterday afternoon requesting
4 additional information, but I think we have
5 provided the information required by
6 Justice Toal's order. Shortly after
7 Justice Toal's order was entered yesterday
8 morning, I provided you with a copy of the
9 2006 confidential settlement agreement and
10 release. This was the agreement referenced
11 by Mr. Psichos at the March 13th, 2024,
12 hearing. The materials provided were the
13 signed agreement with seven attachments and
14 six schedules, along with the signed first
15 amendment to the confidential settlement
16 agreement and release.

17 As described in detail in Section 4 in
18 the release provisions, this agreement
19 provided a release from Lloyd's
20 underwriters with respect to insurance
21 policies that had previously covered Atlas.

22 Part of the information you requested
23 was copies of the policies listed in the
24 Attachment A. The listed policies were not
25 attached to the confidential settlement

1 agreement and the release signed by the
2 parties, but a detailed information
3 concerning those policies was provided
4 earlier this month. And -- and then I
5 provided the link --

6 THE COURT: Well, of course they
7 wouldn't be a part of the settlement
8 agreement. This is what happened in aid of
9 going forward after the settlement
10 agreement.

11 And what they are trying to do, as you
12 well know, and as your company well knows,
13 is they are trying to -- and the reason the
14 receivership was set up to begin with is to
15 identify insurance assets or other
16 indemnification-type assets that might be
17 available to respond to the -- these
18 lawsuits.

19 And -- so let's not dance around with
20 some kind of -- "You said settlement
21 agreement; and, therefore, that's all I
22 gave you."

23 This whole exercise is about trying to
24 identify materials that would be pertinent
25 to settling or responding to these cases.

1 That's why y'all are in the ADR in
2 Link to begin with, was because of your
3 posture as defendants and as people who had
4 assets in the form of insurance agreements,
5 indemnification agreements, trusts or the
6 like that might be available to respond to
7 these matters.

8 And what they are asking for that you
9 still haven't given them is current
10 information about the status of these
11 assets. Why cannot that be done?

12 MR. RAWL: Your Honor, I -- I
13 apologize. I do not represent Atlas
14 Turner. I represent CLMI, which --

15 THE COURT: That's who I'm talking
16 about.

17 MR. RAWL: Right.

18 THE COURT: Let's be very clear.

19 MR. RAWL: Yes.

20 THE COURT: I'm talking about Lloyd's.
21 I'm talking about CLMI.

22 MR. RAWL: And CLMI --

23 THE COURT: They well know -- you've
24 sat through these hearings many times
25 before --

1 MR. RAWL: Yes.

2 THE COURT: -- that the reason we are
3 interested in them is because of their
4 position as an insurer or indemnitor or
5 trust relationship with Atlas Turner or ACL
6 such that they have assets that might
7 respond to these claims. That's why they
8 need the information.

9 MR. RAWL: I do --

10 THE COURT: You said no just kind of
11 flatly. "Oh, we don't have any information
12 there." They are then allowed to explore
13 that by asking for documentary information
14 that could verify either that you're right
15 or your client hadn't told you the whole
16 truth.

17 MR. RAWL: Your Honor, respectfully, I
18 do understand the purpose of the receiver
19 and your -- your direction to the receiver
20 to find insurance assets. This request was
21 not made by a receiver. It was made by a
22 underlying plaintiff in a case where my --
23 my client is not a party. You know, my
24 client --

25 THE COURT: Well, your --

1 MR. RAWL: -- my client --

2 THE COURT: -- your client in that
3 thing, we've been through this many times
4 before in the Covil litigation and other
5 matters by the receiver. Your client was
6 in a situation of having to respond in an
7 ADR mediation where both the defendant and
8 its potential insurers, trustees or others
9 that have assets are supposed to respond
10 and be in a position to make an offer.
11 That's -- I'm not telling you something you
12 don't know.

13 MR. RAWL: No, ma'am, you're not, you
14 know. And -- and I agree with everything
15 you're saying, except for the fact that
16 what was specifically told to the receiver
17 and to the plaintiffs is that CLMI has no
18 coverage for the claim and so --

19 THE COURT: I -- I get that all the
20 time. There are seven insurance companies
21 that participated in the creation of a
22 qualified settlement fund in Covil, the
23 granddaddy of all this thing, that for
24 years told courts, including me, that they
25 had no insurance, no available insurance.

1 It was only because of the dogged
2 pursuit of those insurance assets in my
3 court and in Nancy Eagles' court in the
4 United States District Court in
5 North Carolina that those insurance assets
6 were uncovered.

7 And they had plenty of assets and
8 plenty of legacy policies to respond to a
9 \$34 million verdict that took place in
10 North Carolina and then was sought to be
11 enforced before me.

12 After a whole bunch of hullabaloo
13 about removal and everything else,
14 ultimately, every court that looked at it
15 put it back here, and we dealt with it.
16 That's the very same scenario that we're in
17 with your client.

18 MR. RAWL: Your Honor, I have no -- I
19 have no client or involved in Covil. So
20 I -- I've heard about some of that history,
21 but I am not fully aware of it.

22 THE COURT: You're a lawyer. You can
23 read the cases -- the orders that have been
24 written, and we're asking for that same
25 information here.

1 And it is not enough for Lloyd's to
2 tell you or CLMI to tell you for you to
3 represent to this Court they say they don't
4 have any assets. That's the reason that
5 this -- this litigator is now asking more
6 specifically for documents, to see whether
7 or not they're telling you the truth.

8 It turns out that the folks who
9 represented the insurers in Covil either
10 were told the truth and chose not to tell
11 the truth to the Court or weren't told the
12 truth, but it was only through looking at
13 the legacy documents themselves that
14 the Court was able to discover that there
15 was coverage.

16 MR. RAWL: I completely understand.

17 THE COURT: And then negotiation
18 ensued that created the qualified
19 settlement fund. We're in the same
20 situation with your client. And it's not
21 enough for them to say, "You go to the
22 Court and tell them we don't have any
23 coverage." That's not enough.

24 MR. RAWL: I agree, which is why,
25 Your Honor -- you know, my client did not

1 produce that agreement earlier because
2 there are confidentiality provisions in it.
3 And -- and it asked for permission from --
4 you know, pursuant to the document, in
5 order to produce --

6 THE COURT: And -- and we've honored
7 that.

8 MR. RAWL: And you took care of that,
9 Your Honor. You -- you took care of that
10 issue.

11 THE COURT: Immediately.

12 MR. RAWL: And so we produced it.
13 And -- and my client does appreciate, you
14 know, your order in regard to keeping that
15 document confidential.

16 My client is not saying that it did
17 not receive other information that was
18 referenced in that document that could, you
19 know, have been produced later. I don't
20 know what there is or is not there.

21 My client's understanding, and -- and,
22 Your Honor, as was mine, was that your
23 order was: Produce this, the policies,
24 which we did, and the settlement agreement
25 that demonstrates conclusively, Your Honor,

1 if -- if you haven't received it --
2 reviewed it, that there is no coverage.
3 There was a complete policy buyout.

4 With that -- with regard, I understand
5 Mr. Protopapas's role -- you know, I've
6 worked with him on -- in many other
7 cases -- that he is trying to learn
8 information about ACL. And -- and there
9 are -- he's -- he's made document
10 production requests and other requests with
11 regard to this information in the Welch
12 case where my client is actually a party.

13 Part of the -- the concern,
14 Your Honor, is, you know, every exhibit,
15 addenda, everything was attached to that
16 settlement agreement. The signed
17 settlement agreement was produced. The
18 policies as you ordered were produced.
19 What's being asked for now is, well, the
20 agreement references the possibility that
21 other information was -- might have been
22 produced later.

23 And -- and, Your Honor, my reading of
24 your order did not say, you know, produce
25 the confidential settlement agreement that

1 demonstrates there is no longer coverage
2 and anything else that may have occurred
3 between the parties after the date of the
4 confidential settlement agreement.

5 THE COURT: Well, Mr. -- Mr. Rawl, the
6 confidential agreement at least suggests
7 that there was ongoing activity as a result
8 of that settlement agreement that involved
9 insurance assets that had then been
10 converted into some sort of trust fund, a
11 trust which apparently still currently
12 exists in the Royal Bank of Canada.

13 MR. RAWL: And, Your Honor --

14 THE COURT: And that is what they're
15 searching for now, is whether there are
16 still assets that were either created by
17 this settlement agreement or exist
18 independently of it. And they're entitled
19 to look at that.

20 MR. RAWL: And -- and, Your Honor,
21 I -- I don't know whether -- how the trust
22 was set up. I'm -- I'm pretty sure that --
23 that CLMI didn't set up any trust. It
24 would have paid the amount of money, you
25 know, pursuant to that settlement agreement

1 to them, and it may have been paid directly
2 to an account. I do not know the answer to
3 that question off the top of my head.

4 But one of my concerns, Your Honor, is
5 the information that is requested is -- is
6 of a confidential nature to --

7 THE COURT: I -- and I've already
8 demonstrated that we can protect that.
9 Your client, if it has further information
10 about the financial accountings that are
11 suggested would be done by this settlement
12 agreement and they're now being asked for,
13 the confidentiality can be -- be protected
14 just as it is going to be absolutely
15 protected by the settlement agreement
16 that's been received.

17 But you can't stop there with them
18 saying, well, all we have to do is produce
19 this. And the -- the fact that we may have
20 knowledge and maybe even participation in
21 supplying information for accountings that
22 would take place with respect to the trusts
23 created is something they're asking about.

24 MR. RAWL: And I do -- I understand
25 what is being requested. My -- my --

1 and -- and to be clear, CLMI is not -- I
2 mean, its position is very clear that there
3 is no coverage. It wants to -- to
4 cooperate as much as possible because it
5 very much would like for me to convince
6 Mr. Protopapas that there is no coverage
7 such that he will let them out of
8 litigation.

9 THE COURT: And a way to demonstrate
10 that is to give them what they ask for in
11 terms the trust as to being administered.
12 And if -- if that information demonstrates
13 that the trust is actually being
14 independently administered, CLMI is
15 completely out of it, then that's fine and
16 dandy.

17 But they -- what they're saying is not
18 there isn't any -- we don't -- they're not
19 saying to the Court we don't have this
20 information. They are saying to the Court
21 we're not going to supply this information.

22 MR. RAWL: No, Your Honor. They
23 are -- one, they are not saying that they
24 don't have any -- any information or
25 reporting that as -- as I've said.

1 I don't know exactly what they do
2 have, but I -- I am -- I -- I am pretty --
3 I don't want to speak out of school. I'm
4 pretty confident that there would be some
5 reporting.

6 My understanding of that reporting,
7 however, Your Honor, is that that would
8 have been ACL -- I apologize. I get -- I
9 get them confused -- Atlas Turner providing
10 confidential information to the carrier.

11 THE COURT: Right. And --

12 MR. RAWL: And --

13 THE COURT: And, of course, here's
14 what the dilemma is: They can't -- your
15 client can't hide behind the
16 confidentiality of information on the
17 strength of Atlas Turner taking the
18 position "Well, we're not going to
19 cooperate with anything."

20 MR. RAWL: Please, I -- Your Honor, I
21 completely understand. My -- what -- some
22 of that information is -- my understanding,
23 shows is it delineates settlement amounts
24 that Atlas Turner has paid for settlements.

25 And -- and to the extent that

1 this Court is going to order CLMI to
2 produce that type of information, I would
3 request that it be limited to the receiver
4 because that information would be very
5 harmful to --

6 THE COURT: I -- I understand why you
7 don't want the plaintiff to have specific
8 information about settlement. Right now,
9 we're just trying to identify the asset.
10 This is a receiver-led activity. And I
11 sympathize with you and agree with you
12 about that. And I'm perfectly willing to
13 sign whatever confidentiality matters need
14 to be signed to get you to comply with the
15 receiver. That's what's in front of me
16 right now.

17 All right. The only thing that's in
18 front of me right now with respect to
19 plaintiff, besides their frustration about
20 this matter, is whether or not to postpone
21 this trial. But I get what you're saying.
22 And if that's the situation, we can work
23 something out there, Mr. Rawl.

24 MR. RAWL: Thank you, Your Honor.

25 THE COURT: And so I appreciate that

1 clarification. And what I would like to be
2 done as a result of that is for you and
3 Mr. Protopapas to sit down and see if you
4 can develop some kind of protocol that
5 would facilitate giving him access to the
6 information he needs.

7 It may show there is no coverage,
8 there is no anything, the trust doesn't
9 have anything left. And then they can
10 decide what they want to do about that.

11 MR. RAWL: Yes, Your Honor.

12 THE COURT: But I think he is at least
13 entitled to know what he's asking for with
14 respect to the document you produced.

15 MR. RAWL: I am always happy to meet
16 with Mr. Protopapas, and I will do it --

17 THE COURT: Okay. So let's start
18 there. That's not going to suit the
19 plaintiff completely, but it's a start.
20 And I can always take other requests as
21 they come along. But right now, as though,
22 apparently, those who employ you and those
23 who employ attorneys to represent them
24 directly in this litigation don't believe
25 it. These receiverships are not about some

1 punitive measure by a rogue court. These
2 are very traditional means of marshalling
3 assets of a corporation which either cannot
4 do that him -- itself or refuses to do it.

5 And that relief has been around in
6 South Carolina law since Colonial times.
7 It is a very old and ancient tradition of
8 British common law that comes right down to
9 the present time. I learned about it in
10 the '70s when my law firm, as defense
11 counsel, represented a state chartered life
12 insurance company that was just about being
13 placed into bankruptcy, and we put it into
14 a receivership so as to be able to use the
15 friendlier atmosphere of state receivership
16 to marshal its assets, and we did and
17 achieved a great result for the client and
18 for the policyholders by doing that.

19 MR. RAWL: Yes, ma'am.

20 THE COURT: So this is -- you know,
21 that's what frustrates me about some of
22 these very antagonistic and volatile kind
23 of filings that have been made in this
24 claim as if this is some kind weird,
25 offbeat thing.

1 Unfortunately, those who don't like
2 this have the burden of having someone who
3 has been around the sun 80 times and been
4 in the practice of law for 55 years, who is
5 old enough to have lived through the use of
6 some of these documents and is old enough
7 to know about when policies were
8 per-occurrence policies rather than
9 claims-made policies.

10 That's just a burden that people are
11 going to have to live with, but it doesn't
12 somehow make this Court a race horse of
13 some sort of unusual sort of approach to
14 this thing. This is about as traditional
15 an approach to marshalling insurance assets
16 as you can possibly believe or ever see.
17 And that's all that is trying to be done
18 with your clients. They're not -- we're
19 not trying to punish them for things
20 they're not responsible for. We're trying
21 to provide the receivership and -- the
22 receiver in the exercise of his fiduciary
23 responsibilities with the means of
24 examining these things.

25 But you know yourself from dealing

1 with this particular receiver, this is not
2 some kind of an antagonistic person who is
3 going to accuse you of personal wrongdoing
4 or anything. He's just trying to perform
5 the duties that he's responsible for
6 performing. If he's wrong and there aren't
7 any assets, he will be the first person to
8 admit that to you.

9 MR. RAWL: I've known Mr. Protopapas
10 for a very long time. I consider him a
11 friend. Yes, ma'am, Your Honor.

12 THE COURT: All right. Thank you very
13 much, Mr. Rawl.

14 MR. RAWL: Thank you.

15 THE COURT: Anything further,
16 Ms. McVey?

17 MS. McVEY: No, Your Honor. I -- I
18 hear what you're saying. I'll just say
19 that the order you signed was on request of
20 the plaintiffs --

21 THE COURT: Yes, it was.

22 MS. McVEY: -- to get this
23 information?

24 THE COURT: Yes, it was.

25 MS. McVEY: And it wasn't limited to

1 just the settlement agreement. It included
2 all schedules, attachments, addendums and
3 any other related materials.

4 THE COURT: Yes.

5 MS. McVEY: It's not --

6 THE COURT: It's exactly that order
7 that I'm referring to in saying that
8 further work needs to be done by Mr. Rawl.

9 He says the client is resisting
10 because of these confidentiality issues.
11 We've protected him on this first thing.
12 We may protect them a little bit more on
13 these other things. But let's let
14 Mr. Protopapas have a chance to do that, is
15 kind of my approach to it. All right.
16 And -- and I think it's yours, too, all
17 right, because you've reluctantly asked for
18 a continuance.

19 MS. McVEY: No, no, I did not ask for
20 a continuance.

21 THE COURT: Well, I understand.
22 You -- you have reluctantly conceded that
23 it might be warranted.

24 MS. McVEY: That's right.

25 THE COURT: Okay.

1 MS. McVEY: But I -- just so the
2 record is clear --

3 THE COURT: I understand.

4 MS. McVEY: -- I did not ask for a
5 continuance.

6 THE COURT: I understand.

7 MS. McVEY: Okay.

8 THE COURT: All right. Well, all
9 right. I think I now understand the status
10 of ACL, Atlas Turner and Payne & Keller.

11 Now, let me then turn to Atlas
12 Turner's motion to dismiss for lack of
13 personal jurisdiction. Haven't I already
14 ruled on that once?

15 MR. BROWN: May I --

16 THE COURT: Mr. Brown.

17 MR. BROWN: May I approach the Court,
18 Your Honor.

19 THE COURT: Yes, sir. Mr. Brown --

20 MR. BROWN: Yes, ma'am?

21 THE COURT: -- one thing that does --

22 MR. BROWN: Your Honor --

23 THE COURT: One thing that does
24 disappoint me very much about this
25 situation -- I tried to protect you. I

1 don't want you to be in an awkward position
2 any more awkward than you are in now.

3 But your client requires you,
4 apparently, to file things that's
5 completely failed to cite or recognize any
6 of the authorities in aid of supporting the
7 jurisdiction that I'm now exercising over
8 this matter, and I don't understand that.

9 MR. BROWN: Can you -- I apologize.
10 Can you give me an example, Your Honor?

11 THE COURT: I just recited it at
12 length already. The Supreme Court,
13 the Court of Appeals, the federal courts,
14 the Fourth Circuit, you name it, there's
15 not been one court that's looked at this
16 receivership issue or the way I've
17 conducted these asbestos cases that has not
18 approved of what has been and is being done
19 here, and you know that very well.

20 MR. BROWN: Yes, ma'am.

21 THE COURT: But when you brief these
22 matters or send up matters in aid of your
23 client's position, you shout to the
24 housetops that we are violating the
25 appellate court orders but don't cite so

1 much as one authority that has ruled on
2 this matter. I don't understand that.

3 MR. BROWN: I have only filed three
4 notices of appeal in this --

5 THE COURT: Yes, sir.

6 MR. BROWN: -- hullabaloo --

7 THE COURT: Yes.

8 MR. BROWN: -- from the beginning,
9 the --

10 THE COURT: Yeah, but you inquire of
11 my law clerk and everybody else in the
12 world about this thing, trying to maintain
13 a position that you're not really involved
14 because your client says that, but at the
15 same time, ignoring the rulings that have
16 been made that squarely affects your
17 client's position in this matter, including
18 the ones I've made. I don't understand
19 that.

20 MR. BROWN: Your Honor, I -- I
21 understand the rulings on the cases that
22 have come forward. I think my case is
23 slightly different, and I've said that from
24 the very beginning.

25 THE COURT: All right. So -- well --

1 MR. BROWN: Your Honor disagreed.

2 THE COURT: Yes, sir, and I have ruled
3 on that.

4 MR. BROWN: Yes, ma'am. And -- and we
5 have two appeals with the Court of Appeals
6 related to that.

7 THE COURT: Right.

8 MR. BROWN: And then the third --

9 THE COURT: And then we have orders
10 from the Court of Appeal that indicate that
11 the activities of the receiver are not
12 stayed by anything that's going on with
13 your appeals, which are appeals of
14 nonappealable issues.

15 MR. BROWN: I have not tried to stop
16 anything other than a trial in Tibbs. I
17 didn't think, much like Ms. McVey and the
18 receiver, that Tibbs was -- that's on the
19 block or on the block.

20 I called your law clerk to inquire if
21 we could bring this issue up today because
22 the appeal was still out there, and I know
23 you don't like things just brought up out
24 of the blue.

25 THE COURT: Yes, and --

1 MR. BROWN: That was --

2 THE COURT: -- and I'm --

3 MR. BROWN: That was --

4 THE COURT: -- ready to hear from you.

5 But I do not understand why there is no
6 recognition by your client of the rulings
7 that have already been made about this
8 matter and the fact that Tibbs is ready for
9 trial and is not stayed by anything that
10 your -- any activities that are being now
11 taken in the Court of Appeals. So please
12 address that.

13 MR. BROWN: I believe, Your Honor, the
14 only answer is my client is taking the
15 rights to appeal they have in that case.
16 And if the Court of Appeals --

17 THE COURT: They don't have any right
18 to appeal the unappealable orders, do they?

19 MR. BROWN: We haven't appealed any of
20 the other orders in Tibbs, just one. The
21 orders -- the other orders that are out
22 there floating --

23 THE COURT: Are you talking about the
24 one to strike your answer?

25 MR. BROWN: Yes, ma'am. And that's

1 it. And then -- so that was Tibbs and
2 Welch. Those two were the companion cases
3 that started.

4 And then the only other appeal that's
5 sort of floating out there that I think
6 would be -- as the ACL knew, that with
7 these settlements then is the Atlas Turner.
8 Mr. Protopapas and I have -- will have to
9 talk through how to deal with it.

10 But if Your Honor recalls, you went
11 to -- Mr. Protopapas moved to terminate me.
12 Your Honor said, no, I'm not going to let
13 him terminate you, but if there's any
14 indecision between you two, he gets the --
15 for lack of a better word, he gets the --

16 THE COURT: -- final say. That's
17 correct.

18 MR. BROWN: Yes, ma'am. And I -- I
19 take the position, based upon research, not
20 willy-nilly -- and I didn't do this --
21 because you brought it up, whether it was
22 appealable.

23 So I said, I will not just go file an
24 appeal, but go back, research this thing.
25 And what it says is, it's not only

1 appealable, it's mandatory that I appeal it
2 or I waive the right. Now, you might --

3 THE COURT: Now, are you talking about
4 the strike-the-pleadings thing?

5 MR. BROWN: No, ma'am. I'm talking
6 about putting Mr. Protopapas as -- as my
7 ultimate decision-maker.

8 THE COURT: Well, that is -- you and I
9 will just have to disagree about that.

10 MR. BROWN: Yes, ma'am, and I -- and I
11 understand --

12 THE COURT: And --

13 MR. BROWN: And that's all --

14 THE COURT: And the reason we disagree
15 about that is this: You may be appealing
16 his status as your -- as the receiver and
17 his control of this litigation. And I
18 don't know what the activity is going to be
19 in that regard. But what you're not citing
20 to the Court and ignoring in the argument
21 you're making to me now is the orders of
22 two members of the Court of Appeals who
23 have said the activities of the receiver
24 are not stayed by these appeals.

25 MR. BROWN: And anything that I can

1 do, I do do. But we have got, in one of
2 those appeals, the blocking statute, which
3 I understand, again, Your Honor has ruled
4 on. It's over there. They'll be what
5 they'll be. They'll --

6 But otherwise, Your Honor, we've been
7 asked to do something. We have tried to
8 participate. I don't think anyone has
9 asked me to do something that -- other than
10 it's the blocking statute or something, we
11 have tried. I have not gone and filed an
12 appeal on varieties of things. I have
13 carefully looked at what I've appealed.

14 And I think there may be some, maybe
15 in my head, confusion between -- I just
16 filed, for example, one appeal in Tibbs.
17 That was it. And I haven't filed any
18 others. And I know Your Honor has entered
19 other orders, and there are other appeals
20 floating by other parties. It's not me.
21 So, as to a ton of appeals out there, as
22 Your Honor has indicated --

23 THE COURT: Well, one of the things
24 you haven't done is filed any responsive
25 pleadings in this matter.

1 MR. BROWN: In -- and I -- I can --

2 THE COURT: And if that is dependent
3 on your position about personal
4 jurisdiction --

5 MR. BROWN: No, ma'am. No, ma'am.

6 THE COURT: -- you know --

7 MR. BROWN: It's not personal
8 jurisdiction --

9 THE COURT: Well, that's a good
10 thing --

11 MR. BROWN: No, ma'am.

12 THE COURT: -- because you would not
13 be able to avoid responsibility to
14 respond --

15 MR. BROWN: No, no. No, ma'am.

16 THE COURT: -- on that basis.

17 MR. BROWN: I'm not trying to avoid
18 that. On the --

19 THE COURT: If -- and if it's because
20 of the status of the receiver as the one in
21 control of this litigation --

22 MR. BROWN: No, ma'am.

23 THE COURT: Okay. Then what is it?
24 The striking of the pleadings?

25 MR. BROWN: No, ma'am. We never got

1 an order from that case. You've entered on
2 all the other jurisdictionals that I've
3 had. I went and looked. The Court has
4 entered an order or a Form 4 or some sort
5 of written order.

6 The last time, I believe,
7 Mr. Protopapas and I were here, we were
8 sitting, I think, at this table and
9 whispering back and forth, "Have you gotten
10 an order yet?"

11 And he said, "No."

12 I said, "I haven't either."

13 So went from there -- if Your Honor
14 will recall, you went, I think, to
15 Spartanburg. I think the motion for
16 default was filed on Friday of that week,
17 and then your Spartanburg week started. I
18 was -- went over to watch because I've
19 never watched you try a case. And when I
20 saw that that was filed, that's why I got
21 up and left Spartanburg to get back to
22 Charleston, prepared responses.

23 And I cannot tell you why, but I will
24 make my computers available to anybody
25 forensically who wants to look at that

1 time, prepared responses that said we never
2 got the written order. And I have an
3 argument based on that.

4 And I can give you a copy of the draft
5 as it was. At the time, it had
6 Mr. Protopapas's name on it. In fact, it
7 was sent to Mr. Protopapas, who said, "As
8 receiver, I'm not going to sign that. But
9 you -- you go do what you need to do. But
10 that's -- that's not me."

11 THE COURT: Well --

12 MR. BROWN: That's trying --

13 THE COURT: -- you understand that
14 the Court finds itself in this position.
15 Your client is being managed by a
16 receivership. You choose to represent a
17 so-called client that is defying the
18 authority of the receiver to act as a
19 receiver.

20 The Court of Appeals has said the
21 receiver's activities are not stayed by any
22 appeal or anything that they've got. So
23 why would -- if the receiver is not joining
24 you in asking for this order, why would I
25 accommodate you over the receiver when he's

1 been appointed to be the receiver, and the
2 appellate courts now have three times
3 approved the authority of the receiver to
4 move forward?

5 MR. BROWN: Your Honor, I think on
6 that particular one -- because that was the
7 day you were coming up with your attempt to
8 balance out I'm not -- don't want to fire,
9 but I don't accept receiver --

10 THE COURT: I know -- you know, I may
11 have accommodated you more than I should
12 have is all I can say, Mr. Brown. I've
13 tried to respect your dignity by not --

14 MR. BROWN: I appreciate that,
15 Your Honor.

16 THE COURT: -- having you fired. But
17 it doesn't take away from the fact that you
18 have no authority in this matter.
19 Mr. Protopapas is the receiver in this
20 matter.

21 So you may be hired by these people,
22 and that's their business, but I'm running
23 proceedings that have their own procedure
24 attached to them. And part of what your
25 client doesn't want to acknowledge but what

1 has been done is to appoint a receiver for
2 that client.

3 MR. BROWN: And notwithstanding the
4 appeal of that receiver, which I understand
5 the rulings of the Court, what they say the
6 receiver can do --

7 THE COURT: What they say --

8 MR. BROWN: -- we are --

9 THE COURT: -- continue with the
10 receivership.

11 MR. BROWN: May I ask Mr. Protopapas
12 one question --

13 THE COURT: All right.

14 MR. BROWN: -- privately just to make
15 sure I'm --

16 THE COURT: All right.

17 MR. BROWN: -- not going into a wrong
18 area?

19 THE COURT: All right.

20 MR. ROBINSON: Your Honor, I have the
21 answer to, I think, the question that
22 you're asking about the issue that is
23 before the Court of Appeals presently
24 involving your order as to who is
25 representing Mr. Protopapas.

1 THE COURT: All right. Well,
2 Mr. Brown is -- has the floor.

3 MR. ROBINSON: Okay.

4 THE COURT: So I think --

5 MR. BROWN: Let me take one second,
6 and then I'll --

7 THE COURT: Yeah.

8 MR. BROWN: So, as Your Honor --

9 THE COURT: Let's let Mr. Brown
10 complete his things. And then,
11 Mr. Robinson, I'll recognize you.

12 Go ahead, Mr. Brown.

13 MR. BROWN: As the ACL -- I was -- the
14 ACL cases were -- were resolving, as they
15 were, last week Mr. Protopapas and I
16 reached agreement that if the Atlas Turner
17 matters were continued, we could get
18 together this week --

19 THE COURT: Okay. I -- so --

20 MR. BROWN: -- with every case out
21 there to -- to -- some things have to
22 happen to see that cases don't fall through
23 the cracks. That's -- that's another issue
24 that -- and I -- you know --

25 THE COURT: I think that's a valid --

1 MR. BROWN: Yes, ma'am.

2 THE COURT: I think that's a valid
3 concern.

4 MR. BROWN: Who's going to answer in
5 light of that order, and then what happens
6 to that order? That becomes complicated,
7 and we want to come up with an easier way
8 to solve it than to come in here and just
9 sort of --

10 THE COURT: Well -- because my options
11 are limited. I've appointed a receiver.
12 The appellate courts that have looked at
13 this thing have told me and the world that
14 this receiver has the authority to continue
15 despite the appeals of the defendant. So
16 that's, from my standpoint, all I know how
17 to do.

18 Now, if you-all make some side
19 agreements that are propounded by the
20 receiver, then I -- I've got a platform to
21 go on. But I can't simply do it on the
22 basis of what you are arguing.

23 MR. BROWN: Yes, ma'am.

24 THE COURT: I've not responded to
25 receiver's request that you be terminated

1 in your representation. I did that as a
2 matter of your status and your dignity as a
3 lawyer, whom I know well.

4 But I can't ignore the rulings that
5 have been made and so far blessed that give
6 Mr. Protopapas the authority and the
7 control of how this litigation proceeds.
8 That's what's got me in a bind.

9 MR. BROWN: And I understand what
10 you're saying, Your Honor. I apologize.

11 THE COURT: But in a -- I -- I think
12 you're doing a very noble thing and
13 realizing that despite the confusion that
14 your client has introduced into this, we
15 can't let the situation move in such a way
16 that if -- that any responsibilities of
17 Atlas Turner or ACL fall in the cracks.

18 MR. BROWN: Yes, ma'am.

19 THE COURT: And that's what you're
20 trying to prevent --

21 MR. BROWN: Yes, Your Honor.

22 THE COURT: -- from happening.

23 MR. BROWN: That -- without --

24 THE COURT: I mean, I -- I get that.

25 MR. BROWN: Without waiving any of my

1 rights, that's what we're doing, yes,
2 ma'am.

3 THE COURT: Sure.

4 MR. BROWN: Absolutely.

5 THE COURT: I understand.

6 MR. BROWN: And -- and have been
7 committed to it. And although they're all
8 the big players in ACL and not me, if I'm
9 asked to do something, unless there is just
10 no way to do it, so something needs to be
11 written, so...

12 Mr. -- Mr. Protopapas and I are at
13 least communicating and working together to
14 try to get there. But next week, we've
15 committed on this, that we have to have a
16 process because it needs to move the
17 plaintiffs -- as you say, you have to move
18 cases, they have to move cases. The State
19 gives you very limited resources to deal
20 with these cases. And we will have
21 something in place, I can promise you, that
22 won't take away the appeal underlying that,
23 but will move these -- move the cases the
24 way they should.

25 THE COURT: Okay. All right. Now,

1 Mr. Robinson.

2 MR. ROBINSON: I think Mr. Protopapas,
3 Your Honor, is going to address it.

4 THE COURT: All right.
5 Mr. Protopapas.

6 MR. PROTOPAPAS: Thank you,
7 Your Honor.

8 And thank you.

9 When we think about the -- the various
10 stages of receivership litigation, Atlas
11 is -- is at that point where -- where
12 cooperation has -- you know, over the last
13 two months, has begun. And -- and
14 Mr. Brown and I are working to make it a
15 more responsive defendant within the
16 litigation.

17 And so when I -- when the two arms of
18 the receivership -- one is properly defend
19 cases brought by plaintiffs; two, identify
20 and be transparent on assets. On those two
21 roles of the receivership, one thing I will
22 say: In the last 30 days, admirably,
23 Mr. Brown has worked hard to become a
24 better asbestos lawyer.

25 Whether he wanted to or not, he -- he

1 attended a trial, has watched a trial.
2 There's been plenty of -- of courtroom
3 trials videotaped here as well. He and I
4 have talked about them. We have -- trying
5 to identify industrial hygienists, trying
6 to identify documents that would be
7 responsive.

8 But the docket in South Carolina moves
9 fast, and it has overtaken us in Atlas
10 Turner in two ways. One is: I have not
11 answered the asset portion.

12 I'll tell the Court that in the
13 settlement agreement that is under seal,
14 without revealing its terms with Lloyd's,
15 there's something called an "indemnified
16 claim." And if Lloyd's receives a claim on
17 its policies that is an indemnified claim,
18 there are avenues that may be available to
19 compensate plaintiffs. And there are also
20 quarterly and annual reports on the trust.

21 So there are two -- those are the two
22 asset -- two of the assets that I'm trying
23 to track down.

24 And then on the proper defense side --

25 THE COURT: Well, and I may just say,

1 with respect to that, it sounds to me like
2 Mr. Rawl is going to try to cooperate to
3 the extent his client will allow him.

4 MR. PROTOPAPAS: Correct, Your Honor.
5 And Mr. Rawl and I will get together and --
6 and saw through that second aspect of
7 the -- of the receivership.

8 And then on the first aspect, we have
9 not been the most responsive defendant in
10 the South Carolina asbestos docket. We
11 have not. Atlas Turner has not done what
12 this Court expects of defendants.

13 I am fully aware of what the Court
14 expects, and I feel that -- that we are on
15 that path. We're not there yet. But the
16 meetings we've had, communications that
17 we've had, we're better.

18 This Court has a robust docket. It
19 moves quickly. And this April docket has
20 overtaken us in Atlas Turner where I have
21 not been able to fully identify our best
22 witnesses or our best arguments.

23 And, frankly, Your Honor, there may
24 not be an opportunity to present witnesses
25 and documents. Ms. McVey raises some fine

1 points about some of the shortfalls in our
2 process.

3 But with that said, it's not that we
4 have not heard the Court's instruction. I
5 think we -- we are working towards it
6 imperfectly.

7 But that is the unique situation for
8 Atlas Turner. It's not at peace that's
9 been called out and we're able to perform
10 where we are with ACL, which is still not
11 where Covil is. And -- but we're not where
12 we are with Payne & Keller, which is still
13 bludgeoning war.

14 So the -- to me, the -- I think we're
15 on the right path. I -- I do think --

16 THE COURT: Okay. I -- I get what you
17 want. That's a way of dancing around
18 everything to tell me that y'all are still
19 working with each other. That's -- what
20 the plaintiffs are saying is, hey, these
21 cases are up on the docket now, and we want
22 some relief.

23 MS. McVEY: And it's more than that,
24 Your Honor. And I respect Mr. Protopapas
25 and Mr. Brown for this. And this is not

1 defendants who are "Oops, goodness, it got
2 away from us."

3 Here's where we are: You ordered them
4 to produce witnesses, you ordered them to
5 produce documents, and they have refused
6 and said, "We're not doing it now; we're
7 not doing it ever." And by "they," I mean
8 what Atlas is telling Mr. Brown to tell
9 this Court. I don't think Mr. Protopapas
10 is saying that.

11 On top of your orders, we emailed
12 Mr. Brown, probably weekly, saying: You
13 have listed no witnesses. We're going to
14 move to strike any witnesses you do. You
15 are past the scheduling order for fact
16 witnesses. You're past the scheduling
17 order for the expert witnesses. You can't
18 call anybody.

19 And on top of that, then they say, we
20 can't produce any documents because of this
21 blocking Quebec Act, records act, which is,
22 every court has looked at it but has turned
23 it away.

24 THE COURT: Decided first in 1988 in
25 the United States District Court for the

1 District of South Carolina by Judge Joe
2 Anderson, that Quebec Records Act has been
3 a dead letter in this district for years.

4 MS. McVEY: Exactly. And, Your Honor,
5 they say, we can't produce anything to you
6 because it's from Canada, and then in
7 response to personal jurisdiction motions,
8 they're in support of it.

9 They send me an affidavit from the guy
10 in Quebec, notarized in Quebec. They're
11 sending me a document from Quebec. What?
12 Isn't that a business record? I -- I'm
13 just frustrated. I want Mr. Protopapas to
14 get this defendant --

15 THE COURT: Well, let me ask you this,
16 Ms. McVey: I'm just looking at this list
17 of things now.

18 MS. McVEY: Yes, ma'am.

19 THE COURT: With regard to motions to
20 dismiss for lack of personal jurisdiction,
21 have I not already ruled on all those
22 things with respect to Flynn, Goodwin,
23 Mitchell, Tibbs, Donaghy and Link?

24 MS. McVEY: My belief is that you
25 have, Your Honor. If you -- I know you

1 have for sure in Donaghy, Potter and Link
2 because those are ruled on on February 7th,
3 2023.

4 THE COURT: And --

5 MS. McVEY: That --

6 THE COURT: And I don't need to with
7 respect to Mitchell, Goodwin and Flynn, or
8 do I?

9 MS. McVEY: I think you can rule on
10 the papers. I -- I thought you had already
11 ruled on that. But to the extent you
12 haven't -- I know you've read everything
13 that we've provided to you, but we have
14 direct sales to our client's worksites to
15 Guy M. Beaty, to Covil. We've got
16 Atlasite. We've got a coworker identifying
17 New-Therm insulation.

18 Your Honor, there is more than enough
19 evidence. We've got customer lists
20 showing --

21 THE COURT: Well, I -- I understand
22 all that. And, you know, if that's
23 something we didn't do -- what I don't want
24 to do is invite another round of appeals
25 for something that is not appealable --

1 MS. McVEY: Right.

2 THE COURT: -- because --

3 MS. McVEY: And mind you, you could
4 just deny it.

5 THE COURT: Denying a motion is not an
6 appealable --

7 MS. McVEY: That's right.

8 THE COURT: -- matter.

9 MS. McVEY: I would ask you to deny on
10 the record their personal jurisdiction
11 motions and make clear, as I think you did
12 on February 7th, that you don't need to do
13 a written order. An oral order is fine.
14 If you want me to do a written order, I
15 will.

16 But I believe in Donaghy, Link and
17 Potter -- Donaghy is Potter, and Link, that
18 they are in default. And it's interesting
19 to me that Mr. Brown comes up here and
20 says, well, I was in Spartanburg, and I got
21 this, and it was such a mystery.

22 I was in Spartanburg trying that case.
23 He didn't come up to me and say, "Hey,
24 what -- what is this? This is crazy. I
25 didn't know that you were putting us in

1 default and that you -- I was going to
2 answer the case." They didn't move to lift
3 default. I -- I don't understand that.

4 And so, you know, I never want to hold
5 another lawyer in default. You -- you know
6 my experience, that I usually call people.
7 But with Atlas Turner, I -- I have no idea
8 what they're doing.

9 THE COURT: Well, I can tell you this:
10 My law clerk and I will get together after
11 this session is over and make it very clear
12 that these motions are denied.

13 MS. McVEY: Thank you, Your Honor.

14 THE COURT: And we'll probably do it
15 in the same kind of way that the Donaghy,
16 Potter, Link, Atlas things do. And if that
17 also involves putting them in default, we
18 can do that as well.

19 MS. McVEY: Thank you, Your Honor.

20 THE COURT: I just -- I don't have the
21 paper right here in front of me to do that,
22 but we -- we're going to do all that.

23 MS. McVEY: That's great.

24 THE COURT: And -- but with respect to
25 Tibbs, that's -- well -- no, they're all on

1 the docket. The only ones that I will not
2 have to do anything further about -- well,
3 Tibbs is the only one I have to worry about
4 continuing, right?

5 MS. McVEY: No, ma'am. Atlas Turner
6 is in all of the cases that are on --

7 THE COURT: Okay. So I -- so what's
8 being asked by Protopapas is to continue
9 them all?

10 MS. McVEY: Yes, ma'am.

11 THE COURT: Oh, that gives me so much
12 heartburn, but that's what I'm going to do.

13 MS. McVEY: Okay. And, Your Honor,
14 I -- I hear you on the continuance. I want
15 to make clear that when we come back up,
16 and I expect that we will come back up for
17 trial, that Atlas Turner doesn't get to all
18 of a sudden now let's do witnesses when
19 they haven't -- they failed to comply up to
20 this point. We can revisit that, but I --

21 THE COURT: We can do that. But
22 they -- they have not complied with any of
23 the deadlines that are in the Gary Hill
24 order that have never been changed --

25 MS. McVEY: Yes, Ma'am.

1 THE COURT: -- and the Rules of Civil
2 Procedure, which they clearly understand.
3 So this doesn't mean te absolvo.

4 MS. McVEY: Okay. Thank you,
5 Your Honor.

6 THE COURT: Okay.

7 MS. McVEY: I appreciate it.

8 THE COURT: So the bottom line is, I'm
9 going to continue these cases. And I will
10 want a complete report from both sides as
11 to whether there's a stalemate or there's
12 any real progress within one month from
13 today's date. And if there's not any
14 progress, I'm going to reset them for trial
15 at the earliest time I can do it.

16 MS. McVEY: Thank you, Your Honor.

17 THE COURT: All right. Okay. Now --

18 MR. SAWYER: Your Honor, may it please
19 the Court.

20 THE COURT: Just a second, Mr. Sawyer.

21 MR. SAWYER: Yes, ma'am, Your Honor.

22 THE COURT: All right. Payne & Keller
23 I don't need to do anything else about
24 right now; am I right?

25 MR. PROTOPAPAS: You're correct,

1 Your Honor.

2 THE COURT: All right. Okay. Now,
3 Mr. Sawyer.

4 MR. SAWYER: Your Honor, that's what I
5 was going to ask. I was here for Payne &
6 Keller. I have a deposition that's
7 supposed to start in five minutes. It will
8 start a little late, but I didn't want to
9 leave without relief of the Court. I'm
10 only here for Payne & Keller --

11 THE COURT: I -- I think -- we've
12 gotten a status report on Payne & Keller.
13 I think that's all we had on the docket for
14 today.

15 MR. SAWYER: And we do need to
16 schedule some hearings for motions. But,
17 Judge, I think we should be able to do that
18 by email amongst the parties and submit
19 some dates to you. I think that makes the
20 most sense.

21 MR. PROTOPAPAS: Your Honor, we just
22 take whatever time this Court has, whatever
23 time you say --

24 THE COURT: Well, if we're not going
25 to do anything with Tibbs or anything else

1 the next two weeks trying, then I'm going
2 to set something within the next two weeks
3 to hear all these things.

4 So what I think would be helpful,
5 Mr. Protopapas, is for you-all to generate
6 something for me to tell me what all needs
7 to be heard about these things and I'll
8 hear them.

9 MR. PROTOPAPAS: Your Honor, you'll
10 have it by the end of today.

11 THE COURT: All right.

12 MS. McVEY: That's great, Your Honor.
13 Separate from Payne & Keller, I also have a
14 couple of discovery motions for cases in
15 future blocks. I'd love to --

16 THE COURT: Yeah, yeah, yeah, yeah.

17 MS. McVEY: I'd love to -- I'll email
18 you and the parties asking for those to be
19 set --

20 THE COURT: Good.

21 MS. McVEY: -- for hearing as well.

22 THE COURT: And then we will just put
23 that together for a day within the next two
24 weeks is what I'm just going to tell you.

25 MR. SAWYER: And, Your Honor, I

1 believe Mr. Carroll emailed your chambers
2 yesterday about some availabilities for
3 Mr. Lee, who is national counsel. So
4 that's why I was suggesting that we confer
5 on dates.

6 THE COURT: Well, I'll tell you what.
7 I'm -- I'm not much inclined to worry about
8 that. I've got -- that's not something
9 that's your business anyway.

10 MR. SAWYER: It's not, but I -- I feel
11 like I would be remiss --

12 THE COURT: Is Mr. Carroll here?

13 MR. SAWYER: -- not to mention it,
14 Your Honor.

15 MR. CARROLL: Yes, ma'am, I'm back
16 here.

17 MR. SAWYER: There we go.

18 THE COURT: Mr. Carroll, all right, I
19 noted, all right, that that request was
20 made.

21 MR. CARROLL: Understood, Your Honor.

22 THE COURT: I've got to look at my
23 schedule and see what I've got fore and
24 aft, too.

25 It's a collision between what I can do

1 with all the obligations I've got, then --
2 you know, I -- I don't know that I can
3 accommodate that request, but I'm -- let me
4 see.

5 MR. CARROLL: Thank you, Your Honor.
6 I understand. And we'll obviously get in
7 touch, and we can propose times. And if
8 they work with Your Honor's schedule --

9 THE COURT: Exactly.

10 MR. CARROLL: -- that's great.

11 THE COURT: Exactly. I mean, the --
12 the ideal thing to do would be for you-all
13 to get with Protopapas and propose some
14 dates for me.

15 MR. CARROLL: Of course.

16 MR. SAWYER: I think that makes the
17 most sense, Your Honor.

18 THE COURT: Okay.

19 MR. SAWYER: We'd love to do that.

20 THE COURT: Let's just do it that way.

21 MR. SAWYER: Okay. Yes, ma'am.

22 THE COURT: All right.

23 MR. SAWYER: Thank you, Your Honor.

24 MS. McVEY: Thank you, Judge.

25 MR. CARROLL: Thank you, Your Honor.

1 THE COURT: All right. Now, we've got
2 plaintiffs' motions in limine with respect
3 to Atlas Turner.

4 MS. McVEY: And, Your Honor, they have
5 not filed any responses. So I'm happy to
6 kind of push those down the road since
7 you've continued the case.

8 THE COURT: Yeah. I mean, all right,
9 default may satisfy a whole lot of things
10 in that regard.

11 MS. McVEY: That's right.

12 THE COURT: And that's kind of where
13 we are right now.

14 MS. McVEY: And, Your Honor, we have
15 filed a motion to prevent them from putting
16 any evidence in, essentially, calling
17 witnesses since they haven't produced any.
18 And so we're going to address that when it
19 comes back up. I know you've got a full
20 day today, so --

21 THE COURT: Exactly. Exactly. So we
22 just hold on to those.

23 MS. McVEY: Yes, ma'am.

24 THE COURT: All right. Now we're at
25 status of Covil versus Penn National in the

1 Flynn case. And just by means of the court
2 reporter, you've got something that shows
3 you what the Flynn case is, and they will
4 give you a number on the Covil versus Penn
5 National case.

6 Mr. Protopapas, at some point, favor
7 the court reporter with something that
8 indicates the case number for Covil versus
9 Penn National.

10 LAW CLERK: I think she has it.

11 MR. PROTOPAPAS: Yes, Your Honor.

12 LAW CLERK: She has the same thing.
13 It's that number. This is the case number.

14 THE COURT: Oh, okay. That's the --
15 that -- that is the Covil number. And the
16 Flynn -- no, that's the Flynn number.
17 That's Flynn.

18 LAW CLERK: Oh, sorry.

19 THE COURT: What I want is for her
20 record to be complete by having an
21 identification of Covil versus Penn
22 National.

23 Mr. Protopapas, I'm sure you or
24 Ms. Valek know it by heart, so just be sure
25 you get that to her. Okay?

1 All right. Now, the next thing, then,
2 is the status of Covil versus Penn
3 National. Mr. -- who is going to take
4 that? Mr. Nes?

5 MR. NES: Yes, Your Honor.

6 THE COURT: All right.

7 MR. NES: Good morning, Your Honor.
8 Brad Nes for the receiver for Covil
9 Corporation.

10 There are two issues in front of the
11 Court this morning with respect to Covil.
12 The first is a status conference related to
13 Covil versus Penn National as a third-party
14 action in the Flynn case. And the second
15 issue we'd like to address has to do with
16 the data search and the status of that in
17 their e-discovery database and some of the
18 issues that we're still seeing with that.

19 But turning to the first issue, which
20 is the status of Covil versus Penn National
21 in the Flynn case, just by way of
22 background, Penn National is now failing to
23 comply with this Court's March 1st, 2024,
24 order.

25 In that order, the Court laid out very

1 specifically its declarations for how Penn
2 National must interpret its three insurance
3 policies that cover asbestos cases filed
4 against Covil. One of those cases is the
5 Flynn case. The --

6 THE COURT: Right. This was a
7 coverage ruling that was made by the Court,
8 right?

9 MR. NES: That is correct, Your Honor.

10 And the Flynn case is the first
11 asbestos case --

12 THE COURT: And that's a bifurcated
13 piece of activity in an ongoing case that
14 affects the Flynn case as one of the
15 potential recipients of coverage because
16 Covil is a defendant in that case.

17 MR. NES: That is correct, Your Honor.

18 THE COURT: All right.

19 MR. NES: And that underlying asbestos
20 case that has been filed against Covil is
21 in the process of resolving prior to trial.
22 There are still settlement documents that
23 need to be finalized, but it is in process.

24 Penn National has taken the position
25 that it will not comply with the Court's

1 rulings as to how to interpret the
2 insurance policies that cover Flynn. They
3 do not recognize one of the years of
4 coverage that this Court made a declaration
5 exists. And they also do not, for example,
6 comply with the requirement that the
7 continuous trigger of coverage applies.

8 This is problematic, not only because
9 this Court issued an order saying that
10 that's how to interpret the policy, but
11 also because during closing argument,
12 Penn National admitted that that was the
13 law of South Carolina.

14 So we find ourselves with -- when we
15 approach Penn National as to how we would
16 proceed in Flynn, we were told conflicting
17 issues. First, they take the position
18 that, well, what happened in the Covil
19 trial, the comprehensive coverage action,
20 applies to the Flynn case. So you don't
21 get any discovery in Flynn. We'll file a
22 protective order.

23 But at the same time, they've said
24 that we're not going to comply with the
25 rulings from the Covil versus Penn National

1 trial.

2 THE COURT: All right.

3 MR. NES: And that is also
4 problematic, Your Honor, because there is
5 overlap between the two cases, but two
6 significant differences.

7 In Flynn, there is also a breach of
8 contract claim, and there is a bad faith
9 claim. So while we agree with Penn
10 National that the coverage rulings and the
11 declaratory judgment from the comprehensive
12 coverage action absolutely apply to Flynn,
13 the two remaining claims are still viable
14 claims that must be resolved.

15 First, with respect to the breach of
16 contract claim, it is now clear they are
17 going to be in breach. As soon as the
18 settlement is finalized -- they have
19 refused to comply with this Court's order
20 in terms of an all sums and a continuous
21 trigger rulings. So, as soon as that
22 happens, there actually won't be an issue
23 for a jury. They will just be in breach.

24 The second issue, though, is bad
25 faith. And we believe, and we have

1 contended in the lawsuit, that, one, by
2 failing to recognize all the policies and,
3 two, by refusing to contribute to the Flynn
4 settlement in an inconsistent manner in
5 which they've made concessions in the prior
6 action are bad faith for a jury to decide.

7 So we stand ready to try Covil versus
8 Penn National as a breach of contract and a
9 bad faith case as soon as those settlement
10 documents are finalized, and that will take
11 probably a couple of weeks. But as soon as
12 that's finalized, we're ready to try that
13 case to a jury.

14 The second issue has to do with the
15 database. And as I mentioned at the top,
16 Penn National is failing to comply with
17 this Court's orders. The second set of
18 orders that Penn National is failing to
19 comply with has to do with the orders that
20 this Court issued with respect to
21 processing their historic insurance
22 policies in a database that was searchable
23 to Covil.

24 As this Court will recall, in May of
25 2022, almost two years ago, this Court

1 issued an order that Penn National needed
2 to digitize all of their historic records.
3 And over the course of about a year and a
4 half, those records got digitized.

5 But it was clear that the process that
6 was taken to digitize those records was
7 insufficient, because simple, basic
8 searches that were put into the system
9 would not reveal all of the Covil hits or
10 they would reveal false positives.

11 So, as a result, I believe it was this
12 summer the Court issued a much stricter
13 order on Penn National that within two
14 months they had to have a new system put in
15 place. And that system was run. There
16 were still problems.

17 So the final order that this Court
18 issued was to have the receiver's expert,
19 IDS, take a stab at redoing the
20 digitization so it would be in a searchable
21 format.

22 My understanding, based on
23 conversations with IDS, the outside vendor,
24 as well as Penn National and the reports
25 they've issued to the Court, is that while

1 that process has been complete, Penn
2 National refuses to give the receiver
3 access to that new completed database.

4 So, Your Honor, we anticipate that
5 Penn National may come up here and tell you
6 that that process is finished and that they
7 have reported to you that it's finished.
8 And that may very well be true, but we have
9 been refused access to that database until
10 Penn National signs off on it. And Penn
11 National has not given us access.

12 And that's important, because as
13 this Court will recall, we were provided
14 access not only to search for Covil hits,
15 but for any other receivership in which
16 Mr. Protopapas was appointed as a receiver.

17 So, for that reason, we would ask that
18 the Court address that with Penn National's
19 counsel.

20 THE COURT: All right.

21 MR. NES: Thank you.

22 THE COURT: Who is here for
23 Penn National?

24 MR. SHEALY: I am, Your Honor.

25 THE COURT: Mr. Shealy.

1 MR. SHEALY: May it please the Court,
2 Your Honor.

3 Your Honor, I do think I'll approach
4 this in reverse order about the data
5 digitization project. IDS -- I received a
6 check from Penn National to pay IDS's last
7 invoice. I believe on Friday I sent it out
8 to IDS, and it was not going to give -- it
9 was not going to give access back to the
10 enhanced database until it had received its
11 final payment.

12 I am trying to get that data -- and I
13 was in contact yesterday with Ellis &
14 Winters to get the enhanced database back
15 to Ellis & Winters, and -- but I've got to
16 confirm that they can run it.

17 And the entire time that IDS has had
18 the data, I understand that Ellis & Winters
19 still had maintained the data itself, and
20 both sides have had access to the
21 unenhanced database.

22 But we've not -- we've not ever
23 refused the receiver any access. I'm just
24 trying to get the data back to Ellis &
25 Winters where it will be housed.

1 We have not talked about how long they
2 want to have access yet because I haven't
3 gotten it there. But literally, only in
4 the last two days have now been in a
5 position to give instruction to IDS as --
6 to -- to send it back to Ellis & Winters.
7 So that's -- that's where that stands.

8 THE COURT: Well, of course, that
9 revolves around something very simple. No
10 access, no pay. Apparently, Covil
11 wasn't -- I mean, Penn National wasn't
12 paying IDS, and IDS wanted its money before
13 it would release access to anybody is what
14 it sounds like.

15 MR. SHEALY: Well, IDS issued three
16 different invoices, which Penn National
17 paid, and it's -- we finally got the check
18 for the last -- the last one on Friday.
19 That was the smallest of the three. We
20 ended up issuing payment, I think, over
21 \$700,000 to IDS.

22 And I got an email, you know,
23 indicating they were seeking instruction
24 from us as to where to send it. They did
25 not finish the process but just --

1 THE COURT: What do you mean --

2 MR. SHEALY: -- just a few weeks ago.

3 THE COURT: Oh. Oh, okay. All right.

4 MR. SHEALY: So they were -- they
5 were -- they were working all through
6 February and through March.

7 THE COURT: I'll tell you, in
8 reflection, the worst mistake I ever made
9 in this thing was letting Ellis & Winters
10 be in charge of this. They -- it was -- we
11 thought that the company that had been
12 hired as the defendant for this case would
13 be a law firm we could deal with, but it's
14 been nothing but a series of delays. And
15 that's very frustrating.

16 What do you think is a reasonable
17 guess now of when they're going to get
18 access to this stuff?

19 MR. SHEALY: Well, the -- I heard this
20 morning from Ellis & Winters' IT person he
21 was -- said he's following up with IDS to
22 confirm that their platform, that -- that
23 IDS -- that Ellis & Winters' --

24 THE COURT: -- platform.

25 MR. SHEALY: -- platform --

1 THE COURT: -- can run the stuff.

2 MR. SHEALY: -- can run the enhanced
3 database. I have no reason to believe it
4 cannot.

5 But if there is some problem with
6 that, then we'll work that out very
7 quickly. I can't give Your Honor a -- any
8 dates because I'm -- I'm relying on other
9 people.

10 THE COURT: Sure. Mr. Shealy, I'm not
11 blaming you for this debacle. That's for
12 sure. I wish you had been in the case a
13 lot sooner.

14 MR. SHEALY: Well --

15 THE COURT: All right. Things have
16 started to move since you got in the case,
17 and I appreciate that.

18 MR. SHEALY: Well, I mean, and I stand
19 here to say to Your Honor we're -- we're --
20 Penn National is not taking the position of
21 refusing access to -- to any database.
22 We -- we want access to the enhanced
23 database ourselves. We have not had access
24 to it either.

25 THE COURT: Okay. Let me ask you

1 this: Okay. This is the data. Let's go
2 back to the other two things that they were
3 fussing about, which is the refusal to
4 comply with the all sums trigger and the
5 refusal to comply with the other parts of
6 my order that deal with coverage.

7 MR. SHEALY: Your Honor, I will say
8 that I have been in communications with the
9 receiver for the last couple of weeks about
10 trying to come up with a mutual
11 understanding of how Penn National and the
12 receiver will operate with each other on a
13 going-forward basis while the appeal of the
14 comprehensive coverage action is ongoing.

15 THE COURT: Right.

16 MR. SHEALY: We've had some
17 communications that I think have been
18 positive. We still have some ground to
19 cover, no question.

20 I had hoped that we would be able
21 to -- to get somewhere yesterday, but I --
22 the receiver gave us a document to review
23 on Monday. I have not been able yet to
24 turn it back to them with a response.

25 But we are -- I'm hopeful that we

1 might be able to reach an agreement that
2 would obviate the need for further
3 litigation in the Flynn third-party action
4 and then the other third-party actions that
5 the receiver filed against Penn National.
6 But we -- we still have some discussions to
7 be had.

8 THE COURT: Okay. All right.

9 MR. SHEALY: That's all that --
10 Your Honor, that -- in terms of their being
11 ready to try that action in Flynn in a
12 couple of weeks, I -- if that's the -- sort
13 of the window that we need to operate in to
14 see --

15 THE COURT: That's the window you need
16 to operate in --

17 MR. SHEALY: I will --

18 THE COURT: -- big time.

19 MR. SHEALY: -- relay that message,
20 Your Honor.

21 THE COURT: Okay.

22 MR. SHEALY: Okay. Thank you.

23 THE COURT: Mr. Nes.

24 MR. NES: Nothing further, Your Honor.

25 THE COURT: All right. Very good.

1 All right. What we've got left is
2 Cape. I certainly think we ought to have
3 some mercy on the court reporter, and so
4 let's take a 15-minute recess, and we'll
5 come back at 11:30 and deal with Cape.

6 * * *

7 (Whereupon, there was a recess in the
8 proceedings from 11:15 a.m. to 11:37 a.m.)

9 * * *

10 THE COURT: Please be seated.

11 All right. Just confirming from --
12 nothing to argue today on Spirax, correct,
13 Ms. --

14 MS. McVEY: Yes. Yes, ma'am.

15 THE COURT: -- McVey?

16 MS. McVEY: You had previously ruled
17 on all of Spirax's motions on the last
18 time --

19 THE COURT: Right, right, right.

20 Okay. Now we come to Cape. This is
21 the Cape pretrial hearing status report in
22 Tibbs.

23 MS. JOYNER: Good morning, Your Honor.
24 This is Lindsay Joyner. I can stay here,
25 or I can go up there, whichever is easier.

1 THE COURT: Whichever suits you best.

2 MS. JOYNER: Okay.

3 THE COURT: I can hear you great from
4 there. It's just whatever suits you best.

5 MS. JOYNER: Yes. No one has ever
6 accused me of being quiet.

7 As I mentioned, my name is Lindsay
8 Joyner. I am here on behalf of the
9 receiver for Cape plc, Mr. Protopapas. And
10 as you noted, the agenda has us presenting
11 our pretrial status report.

12 So I would like to start -- as you've
13 kind of been telegraphing during the day,
14 the late filings were in this third-party
15 action that you received. And so I would
16 like to start with kind of where we are in
17 procedural history over the last nine
18 months of this matter and how that has led
19 us to, in working with some of the
20 third-party defendants, believe that this
21 matter should probably be continued and --
22 and work toward getting a scheduling order,
23 as I emailed yesterday.

24 As you know, we filed this matter in
25 June 30th of 2023, alleging that these

1 third-party defendants are part of a Cape
2 U.S.-based asbestos sales and litigation
3 avoidance scheme.

4 And along with that were claims for
5 unjust enrichment, constructive trust,
6 alter ego and veil-piercing liability as
7 well as accounting.

8 Now, there are four kind of buckets of
9 third-party defendants. And one bucket of
10 third-party defendants are what we refer to
11 as the "Oppenheimer defendants," and those
12 are Anglo American plc, De Beers plc,
13 De Beers Centenary AG, De Beers UK Ltd.,
14 and De Beers Consolidated Mines
15 (Proprietary) Ltd.

16 The next bucket are the Charter
17 third-party defendants. And those include
18 Charter Consolidated, Central Mining, and
19 ESAB. E-S-A-B.

20 And then you have the Altrad owner's
21 third-party defendants. And those include
22 Mr. Mohed Altrad and Altrad Investment
23 Authority.

24 And then you have Altrad Sparrows
25 third-party defendants. And those are

1 Arranco, Hawk Bidco, and Sparrows Offshore.

2 After serving these various
3 third-party defendants in the summer of
4 2023, beginning in July of 2023, we served
5 interrogatories and requests for
6 production, just this, you know, standard
7 sets to get this case moving.

8 And then between August 15th of 2023
9 and October 6th, there were somewhere in
10 the range of 48 motions filed for motions
11 to dismiss. And there are a variety of
12 combinations, some to dissolve the
13 receivership, some on 12(b)(6), some on
14 personal jurisdiction, some on
15 subject-matter jurisdiction.

16 We had also -- by that time, before
17 October 6th, had also noticed 30(b)(6)
18 depositions. And those led to a long
19 hearing before Your Honor on October 25th.
20 And -- and prior to that, we had said,
21 okay, because these various third-party
22 defendants had added, some of them had
23 actual protective order motions, some had
24 requested it within other motions, we would
25 kind of suspend discovery until the

1 resolution of the motions occurred.

2 So we have the hearing on
3 October 25th. You send us with our
4 marching orders to go write these different
5 proposed orders, and we were supposed to
6 share them. And then the process, after at
7 least one extension by third-party
8 defendants, led to them being submitted to
9 you and you making a ruling on December 6th
10 of 2023.

11 On December 8th, so just two days
12 later, the receiver, I believe John T. Lay
13 in our office, sent it -- kind of sent an
14 email to you clarifying what motions were
15 still yet to be resolved and -- and
16 indicating that based on the ruling in the
17 October 25th -- October 25th hearing that
18 we were going to hold on to discovery until
19 the motions had been resolved, that we
20 could continue discovery. At that point,
21 none of the third-party defendants objected
22 to that or said anything.

23 And so on December 15th, the Court
24 issued a Form 4 as to some of the
25 additional 12(b)(6) motions. And then on

1 that same day, we went ahead and started
2 renoticing the 30(b)(6) depositions for
3 January, just to kind of get everyone on
4 the same page.

5 And then beginning on December 18th,
6 the third-party defendants filed notices of
7 appeal related to the motion to dissolve
8 the receivership. And those -- those
9 appeals are still active currently.

10 The Oppenheimer defendants on
11 December 21st filed additional motions to
12 dismiss. And at that time -- we kind of
13 got through Christmas.

14 And then January 5th rolls around.
15 And that was the deadline that the receiver
16 had given after the December 6th order, to
17 say, okay, you guys, like, give us your
18 discovery responses; these have been
19 outstanding for a while, but let's get
20 moving with it.

21 And we were informed at that time that
22 the third-party defendants were not going
23 to be participating in discovery because of
24 their appeals.

25 On January 8th, we attempted to

1 consult with them regarding the deficient
2 responses that we received, which they just
3 objected and said because of the appeals
4 and -- and on the 30(b)(6) depositions. So
5 then we moved to compel those.

6 We had another hearing with Your Honor
7 on February 2nd regarding the Oppenheimer
8 defendants, the third-party defendants,
9 additional motions to dismiss.

10 And on March 12th, Your Honor granted
11 our January 12th motions to compel related
12 to discovery and related to the 30(b)(6)
13 depositions.

14 Now, I think you'll recall that in
15 some of the oppositions to the motions to
16 compel, there was like a cross-motion added
17 on to enjoin the Court. And in your order,
18 you specifically said you're not ruling on
19 that. However, some of the third-party
20 defendants, not the Oppenheimer third-party
21 defendants, appealed that March 12th order
22 as well.

23 And you had moved to dismiss those
24 appeals. And then they requested an
25 extension last night and this morning on

1 responding to our motion to dismiss. So
2 that's where that is with the appellate
3 court.

4 On March 25th, we then -- the receiver
5 then served requests for authenticity of
6 records in our statutory request for
7 authenticity of records in preparation for
8 this April block.

9 And we also on that day produced over
10 2,000 documents that are in chronological
11 order, and -- there's a lot of pages,
12 though. It is over 140,000 pages. We --
13 we also served a trial exhibit list that
14 day as well.

15 And so on March 26th, the Oppenheimer
16 defendants provided supplemental responses
17 to their discovery. And certainly, you
18 know, we still had some back-and-forth to
19 go through with those discovery responses,
20 but they provided some responses, and they
21 had provided some documents.

22 And then on March 29th, each of the
23 third-party defendants responded to our
24 request to admit the authenticity of
25 records and objected to those.

1 So then on April 1st, we moved forward
2 with noticing 30(b)(6) depositions of the
3 Oppenheimer defendants, thinking, again,
4 you know, toward April 15th. And so we
5 have been in conversations with the
6 Oppenheimer defendants since then.

7 The last real communication we've had
8 with the Charter defendants or the Altrad
9 owner's defendants or the Altrad Sparrows
10 defendants were that they were not going to
11 dismiss their appeals after the Supreme
12 Court's March 27th order in the Childers
13 matter.

14 And so then we kept moving forward
15 trying to get to, you know, next week with
16 you. And so on October 2nd, we learned --
17 I'm sorry -- April 2nd, we learned that
18 some of our experts were not going to be
19 available this week of April 15th. So we
20 noticed their de bene esse depositions.

21 After that, the Oppenheimer
22 third-party defendants filed a motion for
23 continuance and sought to have a scheduling
24 order. Again, we've had more conversations
25 about that scheduling order. We don't

1 currently agree on the dates, but we're
2 trying to work through that right now.

3 Also, on -- then on April 3rd of --
4 the receiver moved to preadmit our exhibits
5 given everyone's objection on the
6 authenticity.

7 And then on April 4th, we filed the
8 status report that listed our witnesses
9 and -- and kind of gave a background
10 history there, too.

11 And then on April 5th, we filed a
12 motion for adverse inference against the
13 Charter defendants, the Altrad owner
14 third-party defendants, and the Altrad
15 Sparrows third-party defendants, not the
16 Oppenheimer third-party defendants because
17 they were in communications with us, and we
18 didn't feel that that would -- an adverse
19 inference would be proper against them.

20 Then on Monday, April 8th, the
21 Oppenheimer third-party defendants filed
22 motions in limine and motions for
23 protective order. I guess, actually, they
24 filed motions for protective order on
25 Friday evening. But -- so they filed all

1 of those motions.

2 On Tuesday morning, I was able to have
3 great communication with Mr. Elliott,
4 and -- and that's what led to my email to
5 you around noon yesterday; though we
6 believe that, you know, a continuance --
7 that this matter needs to be postponed
8 because we've had to deal with some of the
9 discovery, and I think that will streamline
10 trial for Your Honor as we move forward as
11 well.

12 So that's where we end until yesterday
13 after the agenda comes out, and then at
14 4:00, the Altrad Sparrows defendants file
15 an additional motion or motions. And then
16 the other third-party defendants kind of
17 all joined on those motions.

18 And so, you know, I'm happy to take
19 any questions from Your Honor. But
20 certainly, we don't think that motions
21 filed 17 1/2 hours before this hearing
22 started, you know, should be heard at this
23 time and that -- but I'm certainly ready to
24 go forward if Your Honor disagrees with
25 that.

1 THE COURT: Well, what's the bottom
2 line? What is it you want me to hear
3 today? Nothing?

4 MS. JOYNER: I believe that the
5 motions that were filed by the Oppenheimer
6 third-party defendants are either moot,
7 such as the motions in limine, because if
8 this case is continued, those issues will
9 work themselves out in -- in discovery; or
10 they will -- they can remain pending, and
11 we can deal with them at that later date.

12 I don't think -- if -- if the -- if
13 you're going to continue the trial, we
14 don't need to hear any of the motions today
15 because all of them are related to trial.

16 THE COURT: And you're talking about
17 the Tibbs case?

18 MS. JOYNER: Yes, ma'am. Yes. So
19 it's a non -- so ours is the nonjury Tibbs
20 because it's the third-party action.

21 THE COURT: Right. Well, so what is
22 it you're saying? You're saying continue
23 it all or continue Oppenheimer and go
24 forward with everything else?

25 MS. JOYNER: I think that we would

1 think -- we believe it's necessary to
2 continue it all at this time because we're
3 going to have to deal with the discovery
4 issues. And hopefully, Your Honor can help
5 us. You know, hopefully, the appeals will
6 be dismissed --

7 THE COURT: Well, I rule on all of
8 these things --

9 MS. JOYNER: -- and we can move
10 forward with those.

11 THE COURT: Well, I rule on all of
12 these things, and they're clearly trial
13 rulings, and then they get appealed.

14 And then I get these filings like I
15 got from Sparrow, Mr. Pugh. I think the
16 world of Mr. Pugh. But to file something
17 like was filed yesterday afternoon with me
18 that acts as if none of what the Supreme
19 Court or the Court of Appeals or the Fourth
20 Circuit or anybody else has ever done makes
21 any difference or the other rulings I have
22 made countless numbers of times that -- I
23 mean, it's just a further defiance of the
24 authority of the Court by saying, hey, we
25 don't have to answer anything, we don't

1 have to do anything because we've appealed
2 nonappealable things. I -- as I said in
3 the Link order, I'm weary of that.

4 All right. And it's just not fair to
5 me or to the process to ignore what has
6 been the uniform opinion of anybody that's
7 looked at this thing, which is: The
8 receiverships are legitimate. They go
9 forward. You've got legitimate things that
10 have to do with personal jurisdiction and
11 the matter of that kind that can be brought
12 forward.

13 So far, I have denied motions to
14 dismiss on that basis. That's not
15 appealable. Apparently, it doesn't make
16 any difference to anybody.

17 So I -- I don't know, Mr. Pugh. I --
18 I don't know what to do about this. It's a
19 complete waste of my time to get these
20 things teed up all the way to trial and
21 then have these filings made that just
22 ignore everything that's been done.

23 MR. PUGH: I don't want to get in the
24 middle of their time. If you want me to
25 address that now or I'll wait until they're

1 done.

2 THE COURT: Well, let me at least find
3 out what -- they're wanting me to just
4 continue things. I'll be honest with you,
5 I'm tired of doing that.

6 MS. JOYNER: And -- and I --

7 THE COURT: Because I -- I listen to
8 all this stuff here, all this stuff -- have
9 you bring all this stuff to my front door,
10 read it all, hundreds of pages of material,
11 and then y'all come up here and say, "Well,
12 we're working on it, so hold off a little
13 bit."

14 MS. JOYNER: And I understand that
15 completely, Your Honor. I just feel like
16 that we're being stymied by the discovery
17 process, and it is not fair to the
18 receiver. It's not fair to the Oppenheimer
19 third-party defendants and -- you know. So
20 that -- that's why we're here asking it.

21 I would say that Mr. Robinson wanted
22 to give you a more full -- a more complete
23 update as to the appellate process related
24 to this third-party action.

25 MR. ROBINSON: Your Honor --

1 THE COURT: Well, let me just say
2 this. I'll be glad to hear that. But, you
3 know, here's what we've got: In the face
4 of all of this and countless hearings that
5 I've held on the nitty-gritty of discovery
6 and everything else, come up at the first
7 of this year, and now they want to continue
8 the trial; they want a protective order for
9 30(b)(6) and de bene esse, which is -- in
10 essence, we don't have to do that; don't
11 want the plaintiff to preadmit exhibits;
12 exclude so-called late-discovered fact
13 witnesses, or they've cooperated not one
14 bit with any discovery; exclude expert
15 testimony, late-disclosed documents,
16 de bene esse from a -- from a group of
17 defendants -- Anglo American, De Beers,
18 De Beers UK, De Beers Consolidated Mine,
19 De Beers Centenary -- that have not
20 cooperated with anything. So I'm -- I
21 don't know what to do.

22 Mr. Robinson.

23 MR. ROBINSON: So, Your Honor,
24 everything that you've just pointed out,
25 while frustrating, it does put the receiver

1 in a very difficult position to try a case
2 with a defendant who does not participate
3 in discovery or recognize -- which
4 basically, it'd become the situation --
5 recognize trial and appellate court orders.

6 I would like to give the Court just in
7 this case -- first of all, they're -- as
8 you might know, and I think you've been
9 copied on most of these, the defendants in
10 this case have appealed your discovery
11 orders. They have renamed them as
12 injunctive orders despite the fact that
13 your orders said that it was not an
14 injunctive order.

15 There have been, just across the
16 receiverships that we are here today, 19
17 appeals in the last four months in the
18 receiverships that we've talked about
19 today.

20 Presently, there is the receiver
21 Cape's motion to dismiss the interlocutory
22 discovery appeals, the -- the -- and that
23 was filed at the Court of Appeals, a motion
24 to dismiss those interlocutory appeals.

25 I will let you know that the receiver

1 has also reached out to defend that,
2 notified them of the Supreme Court order
3 that in a -- in a 5-0 decision stated your
4 order denying the motion to dismiss or
5 dissolve the receivership was not
6 immediately appealable.

7 We wrote the defendants in that case,
8 asked them to withdraw their appeals. They
9 all responded and said that they did not
10 believe that the Supreme Court had
11 adequately explained themselves, basically.
12 And I filed those -- we had filed those
13 today, those orders, with the appropriate
14 letters with the appellate courts.

15 I'm not sure that the Supreme Court is
16 required to explain why they issue orders.
17 But that is the position.

18 They also are still taking the
19 position that Rule 205, despite the
20 multiple orders addressing that, do not
21 require them to participate.

22 All that to say, we have 19 appeals.
23 In this case, I think there are -- I kind
24 of lose count. We have a motion to dismiss
25 the interlocutory discovery appeals in this

1 case with Cape. There is still the appeal
2 of your order denying a motion to dismiss
3 or dissolve. We will have to file a motion
4 to dismiss that, which we have not yet done
5 because the defendants have refused to
6 withdraw that appeal. So we'll have to
7 file a motion to dismiss that, and it will
8 be pursuant to the Supreme Court's order
9 saying it's not an immediately appealable
10 order.

11 So all that to say, you know, we would
12 love to come today and say we're ready for
13 trial next week. But, unfortunately, we
14 have a slew of appeals. We don't believe
15 they're going to go very far. They have
16 not gone far thus -- thus far. They've all
17 been rejected by all of the courts.

18 And we are hopeful at some point that
19 there will be some finality -- well, we
20 already believe there's finality. We're
21 hopeful at some point there will be some
22 type of action that will prevent the
23 continuous improper appeals. Because
24 without that, they will continue. And
25 we've seen that. I mean, 19 of the last

1 four months is -- is quite extraordinary.

2 And -- and as we saw -- as I said,
3 within the last few weeks, just the
4 unilateral renaming of your orders --
5 discovery orders as injunction orders, the
6 same orders that specifically say they were
7 not addressing the injunction, you know,
8 that -- that type of activity and behavior,
9 you know, we can't explain it. It has put
10 us in a bad position as far as being ready
11 for trial.

12 We are hopeful that these appellate
13 issues -- we believe they're resolved. But
14 we're hopeful they will eventually be
15 followed by the defendants and that the
16 defendants will comply with the orders.
17 And once that happens, we believe these
18 cases will move forward and will go to
19 trial.

20 You know, you have been -- you and I,
21 we have both -- as other people in this
22 courtroom, have been here since two
23 thousand -- late '18, early '19, and we
24 have seen the impact that the appeals have
25 on extending trial dates.

1 And, you know, I do think that the
2 doors are closing. They have not all
3 closed yet. But I do think that these
4 attempts to delay these trials and prevent
5 the receiver from doing his duties, it --
6 it appears that the -- the courts are
7 acting more swiftly and -- and addressing
8 these issues and -- and understand that --
9 the urgency and the widespread impact it
10 has had on your docket.

11 So with that, you know, we believe
12 that a trial date this summer would still
13 be something that we can shoot for. But
14 we -- we also believe that moving forward
15 next week, at really no fault of the
16 receiver, would put him in a very -- let's
17 say a limited capacity and ability to try
18 the case.

19 So with that, that's why we've talked
20 with the one participating defendant about
21 the scheduling order. You know, if that's
22 all we can get to participate with us in
23 doing that, then that's what we're asking
24 the Court to allow us to do.

25 THE COURT: Well, all right. I'm

1 certainly going to hear from the other
2 side. But, you know, it puts me in a very
3 difficult position, because I schedule
4 these things a year in advance, and I
5 schedule my other obliga --

6 I'm not a full-time judge. I'm
7 supposed to be a part-time, fill-in
8 Circuit Court judge and to schedule my
9 other obligations and family considerations
10 and so forth around these things.

11 And then to have this kind of defiance
12 for the Court and then to say "But let's
13 make it up on the back end by you taking
14 your summer to hear these cases" is -- I'm
15 not guaranteeing that I will do that. But
16 there's got to be a day of reckoning for
17 this kind of defiance of the normal rules
18 of the Court, and I guess that's what's got
19 me frustrated.

20 So I turn to those representing the
21 third parties in this nonjury piece of
22 Tibbs for your commentary.

23 Yes, sir?

24 MR. BALBER: May I be heard,
25 Your Honor. I'm Scott Balber on behalf of

1 Anglo American and the De Beers entities.
2 And thank you for allowing me to be heard.

3 I just want to address the comments
4 made by counsel about the appellate issues
5 and referring to the defendants, and I just
6 want to be clear where we are in that mix.
7 Because we did not join the motion for
8 injunctive relief before this Court. We
9 didn't join the interlocutory appeal of
10 your discovery order. And we did not join
11 the motions filed last night. So I just
12 want to be clear that we're acting
13 differently.

14 What we have done, Your Honor, is we
15 have responded to the receiver's discovery
16 request. We've produced an initial tranche
17 of documents. We intend to produce all
18 responsive documents. We've had
19 constructive discussions with the
20 receiver's counsel about a sensible
21 schedule for that. And to proceed to trial
22 in the ordinary course, we have served
23 discovery demands on the receiver, which we
24 look forward to the response.

25 But we -- we'll completely respect

1 Your Honor's schedule, Your Honor's
2 dedication to these cases. And we do not
3 view ourselves as recalcitrant defendants.
4 We're here to defend the case on the
5 merits. And I appreciate being heard.

6 THE COURT: All right, sir.

7 All right. That's Anglo American.
8 How about De Beers?

9 MR. BALBER: That's us as well,
10 Your Honor.

11 THE COURT: That would include
12 De Beers -- the various De Beers, right?

13 MR. BALBER: Yes, Your Honor. Anglo
14 American and the four De Beers entities.

15 THE COURT: Right. Okay. Very good.

16 MR. BALBER: As Your Honor knows, we
17 have asserted personal jurisdiction
18 defenses. Your Honor has ruled against us.
19 We understand that ruling. We're here
20 notwithstanding that, and we will continue
21 to participate in discovery.

22 THE COURT: Okay. All right. Now,
23 how about these late filers? Mr. Pugh.

24 MR. PUGH: Yes, Your Honor.

25 THE COURT: Now, you're with -- for

1 the Sparrow, right?

2 MR. PUGH: To be clear for the record,
3 my clients are Arranco US, LLC; Hawk Bidco
4 US, Inc.; and Sparrows Offshore, LLC.

5 THE COURT: Okay.

6 MR. PUGH: They've been --

7 THE COURT: I gotcha.

8 MR. PUGH: They've been grouped
9 together different ways, "Sparrows
10 defendants." And subsequently, some folks
11 have been calling them "Altrad Sparrows."
12 I'll be brief unless Your Honor has
13 specific questions of me.

14 I heard you earlier this morning, and
15 I heard you moments ago loud and clear.
16 But I will say this: What I believe we
17 have here, whether I'm right or wrong --
18 and if I'm wrong, I'll be the first one to
19 admit it -- that we have a reasoned -- I
20 didn't say "reasonable" -- reasoned
21 disagreement about the status of Court of
22 Appeals orders or Supreme Court orders in
23 different receiverships, none of which --
24 no one has put before Your Honor where
25 someone at the Court of Appeals or the

1 Supreme Court has said, "205, you're
2 wrong." No one has told us that. No one.

3 And what we're talking about is a
4 difference of authority or jurisdiction
5 versus staying. That's not what we've been
6 talking about in here.

7 And I understand -- I truly do -- your
8 schedule. I understand how you try to run
9 your docket. And I respect that. And I
10 have not and would not come in here and
11 disrespect you. And I don't believe I've
12 done that. And if you do, I apologize. I
13 have not attempted to do that.

14 What I have attempted to do is bring
15 forth claims that I believe, my client
16 believes, are reasoned claims under the
17 law. That's what we've attempted to do.
18 And --

19 THE COURT: And so what is your
20 position about 205 and your reasoned claim
21 based on that?

22 MR. PUGH: My position is: Under
23 Stokes-Craven and Tillman, that this Court
24 is without authority to go forward because
25 the matters on appeal are all matters that

1 are related to the trial and are affected
2 by the appeal.

3 If you will recall, what happened in
4 this case, we had a receivership created in
5 Park, then brought over into Tibbs, and
6 then a new receivership created inside of
7 this case for a different entity that had
8 been in the Park case but wasn't part of
9 the Park order. That's a new receivership.
10 And we filed a motion to dissolve that.
11 And the Court denied that. And we took an
12 appeal of that.

13 THE COURT: And how is that an
14 appealable order?

15 MR. PUGH: Because under your
16 December 6th order was creation,
17 modification or continuation of a
18 receivership over CIHL, which was not in
19 the Park order. The Park order is as to
20 Cape. So it's a different receivership.

21 THE COURT: Well, I -- there hasn't
22 been a separate receivership filed, and
23 you're just calling it a different
24 receivership out of thin air. What -- what
25 is your basis for saying it's a separate

1 receivership?

2 MR. PUGH: What I just outlined for
3 Your Honor. I mean, this is a different
4 entity. And -- and what -- we take the
5 position that that issue is an appealable
6 issue, and once that appeal is made -- and
7 that appeal has been pending before
8 the Court of Appeals, and it's
9 still there --

10 THE COURT: Well, what do you do --

11 MR. PUGH: -- that all the matters
12 here are affected by that appeal.

13 THE COURT: But, Mr. Pugh, the Court
14 of Appeals has now said twice that
15 receiverships continue despite appeals
16 about the legitimacy of receiverships.

17 MR. PUGH: With regard to actions
18 being taken by the receiver in the
19 underlying issue. That's different.
20 That's under a different rule. That's not
21 under 205. That's under a different --

22 THE COURT: Well, what does 205 say
23 that is so different?

24 MR. PUGH: Well, we can read Rule 205,
25 and we can certainly look to the Tillman

1 case and the Stokes versus Craven case that
2 says --

3 THE COURT: I -- I am well aware of
4 Stokes-Craven. I wrote it.

5 MR. PUGH: I know you are, and that's
6 why I feel like arguing to you about what
7 these cases say or don't say is a little
8 interesting. But I will say, I read them
9 to say, apparently, something different
10 than you do. And I don't do that lightly,
11 Your Honor. I hope you know that.

12 And what those cases say and the
13 distinction drawn between them is, as I've
14 said, that you have a difference between
15 jurisdiction versus staying conduct. We're
16 talking about jurisdiction of this Court.

17 And so when Mr. Robinson brings up --
18 they even took a second appeal of your
19 order. Before that order leading to the
20 second appeal was entered --

21 THE COURT: And you say the Court of
22 Appeals' rulings that the -- that the
23 receivership continues, which are rulings
24 based on 205 and on the provision of 205
25 that says: Nothing in these rules shall

1 prohibit the lower court, commission or
2 tribunal from proceeding with matters not
3 affected by the appeal.

4 That is exactly what the -- what
5 the Court of Appeals did, was to construe
6 that language. And their construction was
7 that the receivership should continue. And
8 your defiance is to say, "We don't care
9 what they said in those cases. 205 stays
10 everything."

11 MR. PUGH: That's not what I'm saying,
12 and that's not my --

13 THE COURT: Well, I don't understand
14 what you're saying.

15 MR. PUGH: And that's not my defiance.
16 There's not an order from the Court of
17 Appeals and this 5-0 order that came out
18 from the Supreme Court does not say
19 205 here. It doesn't say it. It doesn't
20 say it.

21 THE COURT: So what? It says in
22 language the receivership is not continued.
23 It says in language the Court of Appeals --
24 the Supreme Court stated it even stronger
25 than that. They said -- well, let me get

1 it. I won't try to quote the Supreme
2 Court.

3 They -- this certification was just
4 another way of trying to delay action in
5 this particular case by, quote/unquote,
6 "certifying," even though there hadn't been
7 a final ruling of the Court of Appeals.

8 But they wanted to certify -- these
9 insurance companies did this question to
10 the Supreme Court even before the Court of
11 Appeals ruling.

12 And they -- the Supreme Court said, we
13 grant the motion for certification and the
14 motion for joinder. Dispense with further
15 briefing. Therefore, they got the whole
16 thing in their hand. Vacate the Court of
17 Appeals' denial of sanctions. Dismiss the
18 appeal. Because the underlying Circuit
19 Court order at issue is not immediately
20 appealable.

21 I don't see how you can get any
22 clearer than what the Supreme Court said in
23 the words I just read.

24 MR. PUGH: Well, I assume you're
25 referring to the Payne & Keller --

1 THE COURT: Yes, I am.

2 MR. PUGH: And that was based upon --
3 my understanding -- I'm not in that case,
4 as you know. My understanding is -- and
5 there are others who are here that can
6 speak to that in more detail than I can.
7 But my understanding was that was based on
8 a motion that was made with regard to
9 Payne & Keller and the extension or
10 perhaps --

11 THE COURT: This is -- this dealt with
12 appealability of rulings I made --

13 MR. PUGH: With regard --

14 THE COURT: -- in the Circuit Court.

15 MR. PUGH: With regard to the receiver
16 inside of that case. What I'm talking
17 about, what we're talking about --

18 THE COURT: No. I've made regular
19 rulings about a whole lot of things that
20 weren't appealable, motions to dismiss, all
21 kinds of things, normal things that
22 everybody has understood are the normal
23 rules of appellate procedures for years in
24 South Carolina are not appealable. South
25 Carolina is a very strict state about

1 appealability.

2 The feds have a system that allows for
3 interlocutory appeals. We have virtually
4 no interlocutory appeals in our appellate
5 practice at the South Carolina appellate
6 level.

7 MR. PUGH: I understand that.

8 THE COURT: And that is what they were
9 referring to.

10 MR. PUGH: Well, that's where we have
11 a disagreement --

12 THE COURT: Well --

13 MR. PUGH: -- about what they were
14 referring to, because we're talking about a
15 difference of 205 and the language of that,
16 which has no exceptions, and 241 --

17 THE COURT: Well --

18 MR. PUGH: -- which has exceptions.

19 THE COURT: I invite you to pay
20 attention to what was filed by the
21 insurance companies in the case's language
22 I just read that had 205 and all the other
23 things that fit right in there, and the
24 Supreme Court did not buy that argument.
25 Did not buy it.

1 MR. PUGH: Well, as I said, I was not
2 in that case, and if others --

3 THE COURT: I think you could read
4 language in the filings that they made,
5 Mr. Pugh, and then read the plain English
6 that the Supreme Court used the ruling on,
7 and that will give you the answer. And
8 that means we no longer have a reasoned
9 disagreement in light of what the Supreme
10 Court has said.

11 MR. PUGH: I hear your position,
12 Your Honor.

13 THE COURT: All right.

14 MR. PUGH: I understand.

15 THE COURT: That, again, is why it
16 just rankles to have to, in effect, give
17 the parties who drag their feet and defy
18 the jurisdiction of the Court another
19 victory by continuing this thing. That's
20 what's got me very frustrated. It's not
21 fair to the system. And it's exemplified
22 by the arguments I just heard.

23 All right. That's Sparrow. Anybody
24 else?

25 MR. CARROLL: Your Honor --

1 THE COURT: Mr. Carroll.

2 MR. CARROLL: Yes, ma'am. For the
3 Altrad defendants, we -- we're in the same
4 position as Mr. Pugh's clients. I -- I
5 agree with his reading of the -- of the
6 case law. I'm in the Payne & Keller case.
7 You know that.

8 THE COURT: Yes, sir.

9 MR. CARROLL: And --

10 THE COURT: You use these same
11 arguments in the Payne & Keller case.

12 MR. CARROLL: Yes, ma'am.

13 THE COURT: No question about it,
14 including this very 205 business that we've
15 been talking about is a reasoned
16 disagreement.

17 MR. CARROLL: Yes, ma'am.

18 THE COURT: Y'all raised those things.

19 MR. CARROLL: We -- we sure did.

20 THE COURT: The Supreme Court saw fit
21 to completely disagree with you on that.

22 MR. CARROLL: The Supreme Court didn't
23 say anything about 205, Your Honor --

24 THE COURT: They don't need to. They
25 ruled on the issue that was presented to

1 them in the case. They took the
2 certification and dismissed the whole
3 doggone thing because it was not
4 appealable. And --

5 MR. CARROLL: Yes, ma'am.

6 THE COURT: -- that's the issue you're
7 trying to raise, 205, that Mr. Pugh is as
8 well --

9 MR. CARROLL: Yes, ma'am.

10 THE COURT: -- is that somehow or
11 another 205 operates to change the
12 interlocutory appeal rules in some --

13 MR. CARROLL: Oh, heavens, no. We're
14 not making that argument at all.

15 THE COURT: Well --

16 MR. CARROLL: What -- what we're
17 saying is that the appeal in this case is
18 fundamentally different than the appeal
19 that was in Payne & Keller.

20 THE COURT: Well, I know, but
21 ironically you made the same arguments in
22 Payne & Keller.

23 MR. CARROLL: The -- the order on
24 appeal in this case is different than the
25 order that was on appeal in Payne & Keller.

1 They are -- they are not the same.

2 THE COURT: Well, that goes back,
3 though, to the worst piece of this whole
4 thing. You can only get there by
5 construing the receivership as somehow
6 another receivership within the
7 receivership. That's the platform this
8 whole nonsense is being projected. I mean,
9 you know --

10 MR. CARROLL: Well, Your Honor, in the
11 Park case, Mr. or Ms. Park named Cape plc
12 as a defendant. And Mr. or Ms. Park named
13 Cape Intermediate Holdings Limited as a
14 totally separate defendant. It's in the
15 summons. It's in the caption of the
16 complaint. It's listed in the body of the
17 complaint.

18 At no point does -- does Mr. Park or
19 Ms. Park -- I apologize; I can't remember
20 the plaintiff's gender. At no point did
21 they suggest, oh, this is really the same.

22 They make it clear: They're not the
23 same. They are two separate entities. But
24 Mr. or Ms. Park filed a motion to appoint a
25 receiver over only one of those, Cape plc.

1 THE COURT: That is the most
2 casuistical argument I've ever -- I'll tell
3 you, Samuel Johnson was right when he
4 defined the law as "Cages for gnats, and
5 chains to yoke a flea, Dry'd butterflies,
6 and tomes of casuistry." That is the most
7 casuistical argument I've ever heard.

8 I can read the plain English language
9 that the South Carolina Supreme Court put
10 on this whole thing, the very same attempt
11 that you-all are making here that was made
12 in Payne & Keller.

13 And they said it's all going back and
14 going to be dismissed because it's not
15 immediately appealable.

16 MR. CARROLL: And, Your Honor --

17 THE COURT: That's what the Court
18 said. They don't have to frame that in
19 your terms. They don't have to frame that
20 with your references.

21 MR. CARROLL: Yes, ma'am.

22 THE COURT: They framed what they felt
23 the bottom-line issue was. And the
24 bottom-line issue is: Are these things
25 appealable and, therefore, stay the

1 proceedings below? They said no was the
2 answer to that. They're not immediately
3 appealable. So it doesn't really matter
4 what direction or avenue they took to get
5 there, Mr. --

6 MR. CARROLL: -- Carroll.

7 THE COURT: -- Carroll.

8 MR. CARROLL: Yes, ma'am.

9 THE COURT: I don't know. I --

10 MR. CARROLL: Your Honor --

11 THE COURT: If you've got some more to
12 say, say it.

13 MR. CARROLL: You and I have sparred
14 about this every time we've seen each
15 other --

16 THE COURT: Yes. And so far, the
17 courts that have looked over my shoulder
18 have agreed with me about it.

19 MR. CARROLL: I understand that,
20 Your Honor. I think that this is a
21 separate -- a different issue. And I've
22 practiced law in the state long enough to
23 know that a waiver at some point is
24 perilous. And so my client, Mr. Pugh's
25 clients, these gentlemen, we all have an

1 obligation to preserve our issues and not
2 accidentally step on a trip wire of waiver.
3 So I understand --

4 THE COURT: But you also have the
5 obligation to follow direct orders of the
6 South Carolina Supreme Court, and that's
7 what's not being done here, in my humble
8 opinion.

9 MR. CARROLL: Your Honor, and I -- I,
10 as forcefully as I can, disagree for the
11 reasons I've said. I understand you and I
12 disagree, but I -- I don't want the record
13 to -- to leave a hanging chad here about
14 whether I'm defying an order of the State
15 Supreme Court. I -- I most certainly --

16 THE COURT: I -- I believe that you
17 are.

18 MR. CARROLL: And I believe that I'm
19 not, Your Honor. I understand. I
20 understand we disagree about that.

21 THE COURT: Well, at least in
22 this Court, I get the final word on that.

23 MR. CARROLL: Yes, ma'am. You're --
24 you're wearing the robe and not me. And I
25 understand that, and I respect that,

1 Your Honor. I just -- I don't want my
2 client --

3 THE COURT: I think your position is
4 very well stated.

5 MR. CARROLL: Very good. Thank you,
6 Your Honor.

7 THE COURT: All right.

8 MR. CARROLL: Your Honor, may I -- may
9 I inquire -- this is unrelated to the 205
10 issue. This morning, Ms. -- Ms. McVey
11 mentioned that there are only two
12 defendants left in Tibbs: Atlas and ACL.
13 My understanding of -- of third-party
14 practices is the cases are supposed to be
15 tethered together. But -- but I don't --

16 THE COURT: I'm not going to answer
17 that right now. I'm not in that right now.
18 I --

19 MR. CARROLL: I'm just wondering what
20 happened to Cape.

21 MS. McVEY: Cape is still in, the
22 tolling agreement.

23 THE COURT: Cape is still very much in
24 it.

25 MR. CARROLL: The tolling agreement.

1 Okay. So they are?

2 MS. McVEY: You can just ask me,
3 though, Todd, if you ever want to.

4 MR. CARROLL: Well, there was a
5 question posed to the -- in the email.

6 THE COURT: Hey, wait a minute now.
7 We're certainly not going to have this kind
8 of thing. If y'all got something you want
9 to ask about, ask each other some later
10 time. Don't be --

11 MR. CARROLL: Very good, Your Honor.

12 THE COURT: All right.

13 MR. CARROLL: Thank you.

14 THE COURT: All right. Well, I -- I
15 don't have any choice, I don't suppose,
16 except to continue these matters, and I'm
17 going to do that.

18 But I can tell you this: We are going
19 to very, very quickly and we're going to
20 utilize the time that I had allocated to
21 devote to trying these cases next week and
22 the week afterwards for me to set some
23 hearings to get these things back on track
24 and get some scheduling orders out on all
25 those things.

1 So I -- I want the parties to be fully
2 aware of that. And I want the moving
3 parties, for plaintiffs in particular, to
4 develop at the earliest possible time after
5 the consultations that are being had with
6 defendants on a possible resolution of
7 these matters, which would be a good thing
8 to develop, if they can't be resolved, some
9 schedule for trial.

10 And in the meantime, I'm looking over
11 my book of business to see that there are
12 not some orders that I should have signed
13 that I haven't signed.

14 I ruled on these things on the record.
15 And even I checked back on that. This
16 uncertainty about what I did with respect
17 to those cases is not justified.

18 I don't have to even file a Form 4 on
19 these things. And I certainly don't have
20 to go further than that, particularly on
21 nonappealable matters like the denial of
22 motions to do various things.

23 But I ruled on those things. You're
24 just going to file something today making
25 sure that's so. And, you know, I don't

1 suppose I can prevent people from trying to
2 construe them as something that they're
3 not, like this crazy injunction thing that
4 suddenly reared its head. The only reason
5 why the thing was defined that way, of
6 course, was to make it an appealable matter
7 when it otherwise was not. I'm just not
8 going to keep fighting those battles.

9 But there's going to be some
10 permanency to what I do. And it means that
11 when I make a ruling in court, that's the
12 end of it. And dates will flow in the
13 future from those rulings, not from me
14 trying to accommodate people by putting
15 them in writing and filing various things.
16 That obviously is not something that helps
17 move the matter along. So I'm not going to
18 do that anymore.

19 Okay. All right. Anything else?

20 Ms. Joyner?

21 MS. JOYNER: No, ma'am.

22 THE COURT: All right. Ms. --

23 MS. JOYNER: Not from us.

24 THE COURT: Ms. McVey?

25 MS. McVEY: No, ma'am. Thank you.

1 We'll get with you about what we'd like to
2 get scheduled in the next two weeks.

3 THE COURT: All right. All right.

4 MS. McVEY: I'll send an email. Thank
5 you, Your Honor.

6 THE COURT: Any defendants?

7 MR. EARLY: Hey, Judge. Just, the
8 next trial group is June 10th. That's the
9 Motley Rice trial group. There is a motion
10 to continue that's been filed by Mr. Swett
11 in that. I don't know if Chris is in here.
12 I haven't seen him. But I don't know if
13 the Court at an opportunity to take up our
14 motion about that or address it.

15 LAW CLERK: It's -- I believe it's the
16 one we just got regarding Lewis.

17 MR. EARLY: Lewis. Terry Lewis. I
18 just --

19 THE COURT: Yeah. I mean, you know,
20 today is 4/10, and I've been in court since
21 9:00. At 9:09, I -- this morning, I get in
22 Lewis against A.W. Chesterton. I have not
23 been able to get in touch with the client
24 in months. Can't locate the defendant. Do
25 you want to grant a continuance? I'm just

1 going to have to decide what to do about
2 that, don't I?

3 MR. EARLY: I'm just bringing it to
4 the Court's attention, that it's coming
5 up --

6 THE COURT: Yeah.

7 MR. EARLY: -- in the next turnover,
8 and --

9 THE COURT: I --

10 MR. EARLY: -- that's imminent.

11 THE COURT: Well, it -- it's obvious
12 that they're not ready to try it next --

13 MR. EARLY: And I don't want to speak
14 because Chris is not here, Judge, I
15 don't -- I don't think.

16 THE COURT: Yeah. I mean, the whole
17 thing with taking it off the docket with
18 leave to restore is probably --

19 MR. EARLY: Well, Judge --

20 THE COURT: -- what I really ought to
21 do, and that's probably what I will do.
22 But that leaves that space open. All
23 right. And I'll have to decide what to do
24 about that. I --

25 MR. EARLY: There's another case in

1 that term that they are pushing for, the --
2 the Sawyer case.

3 THE COURT: Yeah. Well, I don't know.
4 I've got kind of conflicting notes from
5 them. But the June, as you know, is an
6 Orangeburg term.

7 Okay. Well, thanks for letting me
8 know that. Well, all I can say is I'm
9 going to try to get with Mr. Swett and see
10 exactly what's going on.

11 MR. EARLY: Okay.

12 THE COURT: Now, are you in that one?

13 MR. EARLY: He's -- he is local
14 counsel for both the Sawyer and the Lewis
15 cases.

16 THE COURT: I got it.

17 MR. EARLY: And they are both in
18 Orangeburg, Your Honor.

19 THE COURT: Okay.

20 MR. EARLY: Yeah.

21 THE COURT: All right. Well, let me
22 do some filtering around to see what I can
23 find out what the scoop is on those.

24 MR. EARLY: Thank you, Judge.

25 THE COURT: Okay. All right.

1 Anything else for the good of the order?

2 MS. JOYNER: No, ma'am.

3 THE COURT: All right. Court is
4 adjourned.

5 - - -

6 (Proceedings adjourned at 12:27 p.m.)

7 - - -

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, Cindy A. Hayden, Registered Merit
Reporter and Notary Public for the State of South
Carolina at Large, do hereby certify:

That the foregoing deposition was taken
before me on the date and at the time and location
stated on Page 1 of this transcript; that the
deponent was duly sworn to testify to the truth,
the whole truth and nothing but the truth; that
the testimony of the deponent and all objections
made at the time of the examination were recorded
stenographically by me and were thereafter
transcribed; that the foregoing deposition as
typed is a true, accurate and complete record of
the testimony of the deponent and of all
objections made at the time of the examination to
the best of my ability.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.
Witness my hand, this 12th of April, 2024.

Cindy A. Hayden,
Registered Merit Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
July 27, 2030

WORD INDEX

< \$ >	1st 102:23 123:1	25th 43:6 118:19 119:3, 17 122:4	6 31:6
\$34 54:9	< 2 >	26th 122:15	60 23:25 31:5, 7
\$700,000 110:21	2,000 122:10	27 163:19	6th 118:9, 17 119:9 120:16 141:16
< 0 >	20 23:25 43:23	27th 123:12	< 7 >
0 43:6	20004-2541 2:19	28202-6037 3:15	7 6:13 31:6
< 1 >	2006 37:6 49:9	29201 2:4 3:5, 10 4:18, 24	70 23:25
1 6:25 163:5	202.739.5779 2:20	29204 2:9	704.331.4900 3:16
1/2 125:21	2020-CP-40-004613 1:3	29205 2:14	70s 64:10
10 1:18	2020-CP-4002098 1:11	29206 5:7	7th 9:21 39:10 91:2 92:12
100 4:6	2021-CP-40-03484 1:7	29401 4:12	< 8 >
10017 3:22	2021-CP-40-05768 1:8	29464 4:6	80 65:3
10th 159:8	2022 106:25	29th 122:22	803.212.4966 4:24
11 17:15	2022-CP-40-02979 1:4	2nd 121:7 123:16, 17	803.254.5445 2:15
11:15 115:8	2022-CP-40-05543 1:5 43:7	< 3 >	803.256.4242 2:5
11:30 115:5	2023 39:10 91:3	3 33:6	803.454.7730 3:11
11:37 115:8	2023) -CP-40-000633 1:11	30 85:22	803.576.3721 4:19
1111 2:19	2023-CP-40-000633 1:3	30(b)(6) 38:11 118:17 120:2 121:4, 12 123:2 130:9	803.724.1800 3:5
12(b)(6) 118:13 119:25	2023-CP-40-01759 1:4	301 3:15	803.782.4100 5:7
12:27 1:20 162:6	2023-CP-40-03108 1:5 43:7	30th 116:25	803.978.6111 2:10
1200 3:4 4:23	2023-CP-40-05203 1:10	35 31:7	843.714.2501 4:13
1201 3:4	2024 1:18 43:6 49:11 102:23 163:13	350 4:12	843.714.2625 4:7
1221 3:10 4:23	2030 163:19	3500 3:15	8th 119:11 120:25 124:20
12th 121:10, 11, 21 163:13	205 18:2 132:19 140:1, 20 142:21, 22, 24 143:24 144:9, 19 147:15, 22 149:14, 23 150:7, 11 155:9	3M 1:3	< 9 >
1330 2:4	2110 2:9	3rd 124:3	9:00 159:21
13th 9:22 10:3 24:7 49:11	21st 120:11	< 4 >	9:09 159:21
140,000 122:12	235 4:6	4 49:17 77:4 119:24 157:18	9:27 1:19
14th 3:21	24 35:19	4/10 159:20	917.542.7600 3:22
15 40:3	241 147:16	4:00 125:14	9th 9:21
15-minute 115:4	2530 2:14	40 4:12	< A >
15th 118:8 119:23 123:4, 19		4406-B 5:6	a.m 1:19 115:8
1600 3:10		450 3:21	A.W 159:22
17 125:21		48 118:10	abandoned 38:16
1701 1:21		4th 124:7	ability 48:16 135:17 163:10
18 134:23		< 5 >	able 10:10 11:16 19:12 20:23 37:24 38:5 55:14 64:14 76:13 87:21 88:9 96:17 113:20, 23 114:1 125:2 159:23
18th 120:5		5-0 132:3 144:17	Absolutely 33:8
19 131:16 132:22 133:25 134:23		55 65:4	
1900 4:18		5th 120:14 124:11	
1963 43:23		< 6 >	
1971 43:24			
1988 26:18 89:24			

59:14 84:4 105:12 absolve 95:3 accept 79:9 acceptance 14:5 access 27:3 36:4 63:5 108:3, 9, 11, 14 109:9, 20, 23 110:2, 10, 13 111:18 112:21, 22, 23 accidentally 154:2 accommodate 78:25 99:3 158:14 accommodated 79:11 account 59:2 accounting 46:7, 11 117:7 accountings 46:8 59:10, 21 accounts 27:8 accurate 163:9 accuse 66:3 accused 116:6 achieved 64:17 acknowledge 79:25 ACL 6:22, 23, 25 9:15, 17, 23 11:1, 13 12:8, 16 13:6 16:12 17:10 19:3 20:21 21:1 22:7, 15 27:17 29:12 33:13, 15, 17, 23 34:1, 3, 11, 14 37:21 39:19 40:18 42:16 48:21 52:5 57:8 61:8 68:10 73:6 81:13, 14 83:17 84:8 88:10 155:12 act 78:18 89:21 90:2 acting 135:7 137:12 Action 1:7, 8, 10 102:14 104:19 105:12 106:6 113:14 114:3, 11 116:15 126:20	129:24 133:22 145:4 actions 114:4 142:17 active 120:9 activities 71:11 72:10 74:23 78:21 activity 18:12, 14 58:7 62:10 74:18 103:13 134:8 acts 127:18 actual 29:4 118:23 ADAMS 4:21 added 118:22 121:16 addenda 35:18 57:15 addendum 35:11 addendums 67:2 additional 27:6 28:17 29:19 40:23 49:4 119:25 120:11 121:9 125:15 address 72:12 85:3 100:18 102:15 108:18 128:25 137:3 159:14 addressing 132:20 134:7 135:7 adequately 132:11 adjourned 162:4, 6 administered 60:11, 14 admirably 85:22 admit 66:8 122:24 139:19 admitted 104:12 ADR 42:12 51:1 53:7 advance 136:4 adverse 124:12, 18 advocating 19:11 affidavit 40:4 90:9 affirmed 8:19 aft 98:24 afternoon 6:7 18:1 26:14 49:3 127:17 AG 3:18 4:3 117:13	agenda 7:6 116:10 125:13 ago 23:11 106:25 111:2 139:15 agree 18:19 53:14 55:24 62:11 105:9 124:1 149:5 agreed 10:22 27:2 153:18 agreement 14:24 15:4 24:9, 13 34:19 35:17 36:15 43:3 44:5 45:13 46:4 47:16 48:11 49:9, 10, 13, 16, 18 50:1, 8, 10, 21 56:1, 24 57:16, 17, 20, 25 58:4, 6, 8, 17, 25 59:12, 15 67:1 81:16 86:13 114:1 155:22, 25 agreements 12:17 24:6, 21, 23 26:12 51:4, 5 82:19 ahead 81:12 120:1 aid 50:8 69:6, 22 AIG 1:8 5:1 air 141:24 al 1:8 allegation 21:13 22:17 allegations 8:1 22:21, 23 39:14 alleged 21:9 23:3, 18 alleging 116:25 allocated 156:20 allow 87:3 135:24 allowed 52:12 allowing 137:2 allows 147:2 alter 7:25 19:16 32:10 117:6 ALTRAD 3:6, 8 117:20, 22, 24 123:8, 9 124:13, 14 125:14 139:11 149:3 amendment 49:15	America 26:9 29:12, 14 AMERICAN 3:18 4:3 117:12 130:17 137:1 138:7, 14 amount 37:5 46:9 58:24 amounts 61:23 ancient 64:7 Anderson 90:2 ANGLO 3:18 4:3 117:12 130:17 137:1 138:7, 13 announcement 23:10 Annual 36:1, 2 86:20 answer 17:13 33:19, 25 34:6 59:2 72:14, 24 80:21 82:4 93:2 127:25 148:7 153:2 155:16 answered 13:5 40:2 86:11 antagonistic 64:22 66:2 anticipate 108:4 anybody 77:24 89:18 110:13 127:20 128:6, 16 148:23 anymore 158:18 anytime 20:6 anyway 98:9 apologize 14:17 24:14 44:2 45:25 51:13 61:8 69:9 83:10 140:12 151:19 apparently 47:8, 21, 25 58:11 63:22 69:4 110:10 128:15 143:9 appeal 11:12 17:16 33:21 70:4 71:10, 22 72:15, 18 73:4, 24 74:1 75:12, 16 78:22 80:4 84:22 113:13 120:7

133:1, 6 137:9
 140:25 141:2, 12
 142:6, 7, 12 143:18,
 20 144:3 145:18
 150:12, 17, 18, 24, 25
appealability
 146:12 147:1
appealable 31:25
 73:22 74:1 91:25
 92:6 128:15 132:6
 133:9 141:14
 142:5 145:20
 146:20, 24 150:4
 152:15, 25 153:3
 158:6
appealed 18:15
 72:19 75:13
 121:21 127:13
 128:1 131:10
appealing 74:15
Appeals 8:12, 15
 18:3, 20, 24 32:5
 69:13 71:5, 13
 72:11, 16 74:22, 24
 75:2, 19, 21 78:20
 80:23 82:15 91:24
 120:9, 24 121:3, 24
 123:11 127:5, 19
 131:17, 22, 23, 24
 132:8, 22, 25
 133:14, 23 134:24
 139:22, 25 142:8,
 14, 15 143:22
 144:5, 17, 23 145:7,
 11, 17 147:3, 4
APPEARANCES
 2:1, 20 3:1, 25 4:1
 5:1
appears 135:6
appellate 31:24
 69:25 79:2 82:12
 122:2 129:23
 131:5 132:14
 134:12 137:4
 146:23 147:4, 5
applies 104:7, 20
apply 24:18 105:12
appoint 80:1
 151:24

appointed 7:15, 16
 17:13 33:22 79:1
 82:11 108:16
appreciate 56:13
 62:25 79:14 95:7
 112:17 138:5
approach 32:16
 65:13, 15 67:15
 68:17 104:15 109:3
appropriate 26:3
 34:4 132:13
approved 69:18
 79:3
April 1:18 20:10
 33:14 43:23 87:19
 122:8 123:1, 4, 17,
 19 124:3, 7, 11, 20
 163:13
area 80:18
argue 115:12
arguing 82:22
 143:6
argument 23:14
 74:20 78:3 104:11
 147:24 150:14
 152:2, 7
arguments 18:9
 87:22 148:22
 149:11 150:21
arms 85:17
ARRANCO 4:15
 118:1 139:3
asbestos 6:19 7:3,
 12, 20 11:1 21:7,
 11, 15 23:13, 15
 28:15, 24 30:20
 31:16 37:8 69:17
 85:24 87:10 103:3,
 11, 19 117:2
aside 14:21
asked 10:14 36:4
 56:3 57:19 59:12
 67:17 75:7, 9 84:9
 94:8 132:8
asking 27:21, 22
 48:7 51:8 52:13
 54:24 55:5 59:23
 63:13 78:24 80:22
 97:18 129:20

135:23
aspect 87:6, 8
asserted 138:17
asserting 21:3
asset 26:8 62:9
 86:11, 22
assets 7:17 8:1
 24:3 26:5 47:10
 50:15, 16 51:4, 11
 52:6, 20 53:9 54:2,
 5, 7 55:4 58:9, 16
 64:3, 16 65:15
 66:7 85:20 86:22
assist 29:20 30:19
assume 145:24
Atlas 1:3, 4, 5 6:23
 9:15 11:7, 8, 10
 16:12 17:9, 23, 24
 19:20 20:16, 24, 25
 21:19, 21 22:3, 15
 23:24 24:4, 17
 25:4, 11, 13, 23
 26:1 27:11, 16, 17,
 24 28:8, 10, 13
 29:14, 18, 21 30:1,
 19 33:17 34:8, 9,
 12, 15, 20 36:1, 17
 37:4, 12 38:1, 8
 39:3, 19 40:22
 41:1, 12, 21 42:1
 46:11 49:21 51:13
 52:5 61:9, 17, 24
 68:10, 11 73:7
 81:16 83:17 85:10
 86:9 87:11, 20
 88:8 89:8 93:7, 16
 94:5, 17 100:3
 155:12
Atlasite 22:4 91:16
atmosphere 64:15
attached 49:25
 57:15 79:24
Attachment 36:10,
 13 43:2, 21 49:24
attachments 35:18
 49:13 67:2
attempt 79:7
 152:10
attempted 120:25

140:13, 14, 17
attempts 135:4
attended 86:1
attention 20:15
 42:11 147:20 160:4
ATTORNEYS 2:2,
 7, 12, 17 3:1, 6, 18
 4:3, 9, 15, 21 5:1
 26:15 41:2 63:23
audit 36:7 48:17
audits 36:8 46:18
 48:16
August 14:17 118:8
authenticity 122:5,
 7, 24 124:6
authorities 69:6
AUTHORITY 3:8
 70:1 78:18 79:3,
 18 82:14 83:6
 117:23 127:24
 140:4, 24
availabilities 98:2
available 47:10
 50:17 51:6 53:25
 77:24 86:18 123:19
Avenue 2:19 3:21
 153:4
avenues 86:18
Aviva 24:12 26:15
avoid 76:13, 17
avoidance 117:3
aware 9:20 13:3
 54:21 87:13 143:3
 157:2
awesome 33:7
awkward 69:1, 2

< B >
back 17:20 19:20
 25:12 30:25 34:20,
 23 37:4 47:4
 54:15 73:24 77:9,
 21 94:15, 16 98:15
 100:19 109:9, 14,
 24 110:6 113:2, 24
 115:5 136:13
 151:2 152:13
 156:23 157:15
back-and-forth
 122:18

background 102:22 124:9	105:25 107:11 109:7 112:3 116:20 119:12 125:6 126:4 127:1 132:10 133:14, 20 134:13, 17 135:11, 14 139:16 140:11, 15 154:16, 18 159:15	bought 34:20, 23 37:3	buyout 24:23 26:12 57:3
bad 23:13 105:8, 24 106:6, 9 134:10	believes 140:16	Boulevard 2:9 4:6	< C >
Baker 1:8	Bell 36:17	BOYD 3:1	Cages 152:4
balance 79:8	Beltline 2:9	BRAD 2:18 102:8	calendar 14:18
BALBER 3:20 136:24, 25 138:9, 13, 16	bene 123:20 130:9, 16	Branham 48:7	Calhoun 4:12
Bank 24:25 27:8 58:12	BERKSHIRE 5:1	breach 105:7, 15, 17, 23 106:8	call 6:4 89:18 93:6
bankruptcy 64:13	BERTHELSEN 4:5	brief 69:21 139:12	called 22:4 71:20 86:15 88:9
banned 23:12	best 38:24 87:21, 22 116:1, 4 163:10	briefing 17:25 18:22 145:15	calling 100:16 139:11 141:23
Barnwell 4:18	better 27:10 73:15 85:24 87:17	briefly 33:11	calls 15:2
based 7:22 17:17 37:5 73:19 78:3 107:22 119:16 140:21 143:24 146:2, 7	beyond 33:8	briefs 18:10	camera 44:3
basic 107:7	BIDCO 4:15 118:1 139:3	bring 9:24 14:25 20:23 71:21 129:9 140:14	CAMERON 4:5
basically 21:21 24:19 131:4 132:11	bifurcated 103:12	bringing 160:3	Canada 22:7 24:24, 25 25:3, 6, 14 38:2 58:12 90:6
basis 13:13 14:9, 15 21:10 76:16 82:22 113:13 128:14 141:25	big 84:8 114:18	brings 143:17	Canadian 24:11, 12 28:23
battles 23:5 158:8	bind 83:8	British 64:8	Canadian-produced 28:24
bear 18:8	bit 20:24 47:22 67:12 129:13 130:14	broken 8:25 9:19 11:15	capacity 135:17
Beaty 39:17 91:15	blaming 112:11	brought 9:23 10:4 25:24 42:10 71:23 73:21 85:19 128:11 141:5	CAPE 3:1 9:16 19:16 32:9 115:2, 5, 20, 21 116:9 117:1 133:1 141:20 151:11, 13, 25 155:20, 21, 23
BEERS 3:18, 19 4:3, 4 117:12, 13, 14 130:17, 18, 19 137:1 138:8, 12, 14	blessed 83:5	Brown 41:3 68:15, 16, 17, 19, 20, 22 69:9, 20 70:3, 6, 8, 20 71:1, 4, 8, 15 72:1, 3, 13, 19, 25 73:18 74:5, 10, 13, 25 76:1, 5, 7, 11, 15, 17, 22, 25 78:12 79:5, 12, 14 80:3, 8, 11, 14, 17 81:2, 5, 8, 9, 12, 13, 20 82:1, 4, 23 83:9, 18, 21, 23, 25 84:4, 6 85:14, 23 88:25 89:8, 12 92:19	Cape's 131:21
beginning 43:23 70:8, 24 118:4 120:5	block 33:14 71:19 122:8	bucket 117:9, 16	caption 151:15
begins 7:21 20:22	blocked 37:16	buckets 117:8	care 56:8, 9 144:8
begun 85:13	blocking 75:2, 10 89:21	bunch 42:24 54:12	carefully 75:13
behalf 27:1 36:23 116:8 136:25	blocks 97:15	burden 65:2, 10	Carolina 1:22 2:4, 9, 14 3:5, 10, 15 4:6, 12, 18, 24 5:7 8:9, 10, 15, 16 21:13, 16, 17 22:5, 11 28:11 29:10, 16 30:6 31:13, 14, 18 39:20 54:5, 10 64:6 86:8 87:10 90:1 104:13 146:24, 25 147:5 152:9 154:6 163:3, 18
behavior 134:8	bludgeoning 88:13	business 21:3 22:15 79:22 90:12 98:9 149:14 157:11	carrier 10:22 13:20, 21 61:10
belief 90:24	blue 71:24	butterflies 152:5	
believe 17:15 20:5, 11 22:21 24:14 27:5 28:16 29:9, 12, 14, 19 33:23 34:15 36:21 38:12 40:6 42:14 43:13 63:24 65:16 72:13 77:6 92:16 98:1	bnes@morganlewis.c om 2:20	buy 147:24, 25	
	BOCKIUS 2:18		
	body 151:16		
	Boiler 9:2		
	BOND 3:9, 11		
	book 157:11		
	bottom 95:8 126:1		
	bottom-line 152:23, 24		

carriers 15:9, 24 16:1 29:24 30:11, 14 carrier's 31:21, 23 CARROLL 3:9 98:1, 12, 15, 18, 21 99:5, 10, 15, 25 148:25 149:1, 2, 9, 12, 17, 19, 22 150:5, 9, 13, 16, 23 151:10 152:16, 21 153:6, 7, 8, 10, 13, 19 154:9, 18, 23 155:5, 8, 19, 25 156:4, 11, 13 case 8:23 13:15 17:12, 13 19:23 20:13 27:23 33:14, 16, 18, 21, 25 34:3, 25 38:13, 20, 24 39:18 40:20 41:4 43:6 44:18, 19, 22 45:7 52:22 57:12 70:22 72:15 77:1, 19 81:20 92:22 93:2 100:7 101:1, 3, 5, 8, 13 102:14, 21 103:5, 10, 11, 13, 14, 16, 20 104:20 106:9, 13 111:12 112:12, 16 118:7 126:8, 17 131:1, 7, 10 132:7, 23 133:1 135:18 138:4 141:4, 7, 8 143:1 145:5 146:3, 16 148:2 149:6, 11 150:1, 17, 24 151:11 160:25 161:2 cases 9:10 10:11 11:17 12:1, 22, 25 13:16 14:7 15:5, 19 17:11 19:1 31:1, 5 33:13 40:7, 11 42:15 43:10 44:23 50:25 54:23 57:7 69:17 70:21 73:2 81:14, 22 84:18, 20, 23 85:19 88:21 94:6 95:9	97:14 103:3, 4 105:5 134:18 136:14 138:2 143:7, 12 144:9 155:14 156:21 157:17 161:15 case's 147:21 CASUALTY 4:21 5:1 casuistical 152:2, 7 casuistry 152:6 causation 38:20 cause 163:12 cberthelsen@richard sonplowden.com 4:7 CENTENARY 3:18 4:3 117:13 130:19 Center 1:21 3:14 CENTRAL 4:9 117:18 certain 11:22 29:17 certainly 38:19, 23 47:18 115:2 122:17 125:20, 23 136:1 142:25 154:15 156:7 157:19 CERTIFICATE 163:1 certification 36:20 145:3, 13 150:2 certify 145:8 163:3, 10 certifying 145:6 chad 154:13 chains 152:5 chambers 98:1 Championship 33:6 chance 35:22 67:14 change 150:11 changed 23:9 94:24 charge 111:10 Charleston 4:12 77:22 Charlotte 3:15 CHARTER 4:9 117:16, 18 123:8 124:13 chartered 64:11	check 109:6 110:17 checked 157:15 Chesterton 159:22 CHIEF 1:15 Childers 1:5 123:12 choice 156:15 choose 78:16 chose 55:10 Chris 159:11 160:14 Christmas 120:13 chronological 122:10 chrysotile 22:6 23:7, 11, 14, 17 CIHL 141:18 Cindy 1:23 163:1, 17 Circuit 8:12 69:14 127:20 136:8 145:18 146:14 Circuit's 18:6 cite 69:5, 25 citing 74:19 Civil 1:7, 8, 10 95:1 claim 53:18 64:24 86:16, 17 105:8, 9, 16 140:20 claims 14:4 25:3, 6 27:14 28:11, 23, 24 29:7, 12 37:8 52:7 105:13, 14 117:4 140:15, 16 claims-made 65:9 clarification 63:1 clarify 47:19 clarifying 119:14 clarity 9:24 18:23 20:23 clear 45:20 51:18 60:1, 2 68:2 92:11 93:11 94:15 105:16 107:5 137:6, 12 139:2, 15 151:22 clearer 145:22 clearly 95:2 127:12	clerk 70:11 71:20 93:10 101:10, 12, 18 159:15 client 27:2 36:24 42:22 46:22 47:9 52:15, 23, 24 53:1, 2, 5 54:17, 19 55:20, 25 56:13, 16 57:12 59:9 61:15 64:17 67:9 69:3 70:14 72:6, 14 78:15, 17 79:25 80:2 83:14 87:3 140:15 153:24 155:2 159:23 clients 19:11 38:5 65:18 139:3 149:4 153:25 client's 39:17 56:21 69:23 70:17 91:14 CLMI 45:6 51:14, 21, 22 53:17 55:2 58:23 60:1, 14 62:1 closed 135:3 closely 32:2 closing 104:11 135:2 CMLI 42:2 co-defendants 39:18 colleagues 10:8 collected 38:6 College 3:15 collision 98:25 Colonial 64:6 Columbia 1:22 2:4, 9, 14 3:5, 10 4:18, 24 5:7 combinations 118:12 come 8:24 15:4 19:12 21:19 31:17 37:13 41:15 47:3 63:21 70:22 82:7, 8 92:23 94:15, 16 108:5 113:10 115:5, 20 129:11 130:6 133:12 140:10

comes 22:6 25:10 29:21 64:8 92:19 100:19 125:13 coming 22:9 31:2 79:7 160:4 commentary 136:22 comments 32:23 137:3 commerce 21:12 23:8 commission 144:1 163:19 committed 15:3 84:7, 15 common 19:12 64:8 communicating 84:13 communication 123:7 125:3 communications 87:16 113:8, 17 124:17 COMPANIES 5:4 9:3 31:8 53:20 145:9 147:21 companion 73:2 COMPANY 4:21 5:3, 4 28:14 34:21 50:12 64:12 111:11 compare 33:9 compel 9:8 121:5, 11, 16 compensate 86:19 complaint 40:2 151:16, 17 complete 10:19 57:3 81:10 95:10 101:20 108:1 128:19 129:22 163:9 completed 108:3 completely 28:20 55:16 60:15 61:21 63:19 69:5 129:15 137:25 149:21 completing 10:20 12:16 47:5 complicated 82:6	complied 28:20 42:5 43:9, 14 94:22 comply 33:19 38:9 39:15 62:14 94:19 102:23 103:25 104:6, 24 105:19 106:16, 19 113:4, 5 134:16 comprehensive 104:19 105:11 113:14 computers 77:24 conceded 67:22 concern 57:13 82:3 concerning 50:3 concerns 59:4 concessions 106:5 concluded 14:24 conclusively 56:25 condition 46:17 conduct 143:15 conducted 69:17 confer 98:4 conference 102:12 confidence 12:9 confident 61:4 confidential 27:4 34:19 42:23 43:4 45:13 49:9, 15, 25 56:15 57:25 58:4, 6 59:6 61:10 confidentiality 35:7 56:2 59:13 61:16 62:13 67:10 confidentially 44:6 45:17 confirm 109:16 111:22 confirming 115:11 conflicting 104:16 161:4 confused 61:9 confusion 75:15 83:13 connection 6:12 22:16, 17 consented 37:14 consenting 38:22 consider 66:10	considerations 136:9 considering 22:24 CONSOLIDATED 4:9 117:14, 18 130:18 construction 144:6 constructive 117:5 137:19 construe 144:5 158:2 construing 151:5 consult 121:1 consultations 157:5 contact 109:13 contacts 22:10 contempt 34:6 contended 106:1 contention 24:16, 19 contentious 8:6, 21 CONTINENTAL 5:3 continuance 37:14 38:22 67:18, 20 68:5 94:14 123:23 125:6 159:25 continuation 141:17 continue 38:15 80:9 82:14 94:8 95:9 119:20 126:13, 22, 23 127:2 129:4 130:7 133:24 138:20 142:15 144:7 156:16 159:10 continued 2:20 3:1, 25 4:1 5:1 18:10 27:23 81:17 100:7 116:21 126:8 144:22 continues 143:23 continuing 94:4 148:19 continuous 104:7 105:20 133:23 contract 105:8, 16 106:8 contractors 22:12 contribute 106:3	control 74:17 76:21 83:7 controlled 15:25 conversations 107:23 123:5, 24 converted 58:10 convince 60:5 cooperate 60:4 61:19 87:2 cooperated 130:13, 20 cooperation 11:15, 21 20:24 32:12, 14 85:12 copied 131:9 copies 49:23 copy 28:21 36:14 43:20 49:8 78:4 CORPORATION 2:17 4:9, 10 7:3 11:1 13:22 21:7, 11 28:15 64:3 102:9 correct 10:24, 25 12:17, 18 13:1, 18, 24 14:12 15:19 23:21 32:6, 7, 8 34:25 73:17 87:4 95:25 103:9, 17 115:12 counsel 10:9 15:2 35:23 41:11 64:11 98:3 108:19 137:4, 20 161:14 163:12 count 132:24 countless 127:22 130:4 County 1:21 couple 35:5 97:14 106:11 113:9 114:12 course 9:16 12:21 14:1 18:25 30:9 40:7 50:6 61:13 99:15 107:3 110:8 137:22 158:6 COURT 6:3, 11, 16 8:4, 8, 12, 15, 16, 18 9:1, 8, 13, 20 10:12, 14, 15, 17, 23 11:3

12:7, 15, 19 13:3, 8,
11, 21, 25 14:10, 13,
22, 25 15:6, 12, 16,
21 16:3, 5, 9, 16, 18
17:2, 17, 22 18:3,
19 19:5, 19 20:6,
12, 17 21:2 22:16,
22 23:22 24:7, 16
25:5, 15, 20 26:2,
11 27:3, 22 28:3,
17, 19 29:23, 25
30:9, 16, 22 31:20
32:1, 20, 21 33:2, 5,
8 34:11, 22, 24
35:4 37:14 40:25
41:5, 7, 13, 18, 23
42:2, 4, 20 43:5, 15,
19 44:4, 6, 10, 15,
19, 21 45:15, 16, 18
46:9, 14, 24 47:3,
18 48:13 50:6
51:15, 18, 20, 23
52:2, 10, 25 53:2,
19 54:3, 4, 14, 22
55:3, 11, 14, 17, 22
56:6, 11 58:5, 14
59:7 60:9, 19, 20
61:11, 13 62:1, 6,
25 63:12, 17 64:1,
20 65:12 66:12, 15,
21, 24 67:4, 6, 21,
25 68:3, 6, 8, 16, 17,
19, 21, 23 69:11, 12,
13, 15, 21, 25 70:5,
7, 10, 25 71:2, 5, 7,
9, 10, 25 72:2, 4, 11,
16, 17, 23 73:16
74:3, 8, 12, 14, 20,
22 75:23 76:2, 6, 9,
12, 16, 19, 23 77:3
78:11, 13, 14, 20
79:10, 16 80:5, 7, 9,
13, 16, 19, 23 81:1,
4, 7, 9, 19, 25 82:2,
10, 24 83:11, 19, 22,
24 84:3, 5, 25 85:4
86:12, 25 87:12, 13,
18 88:16 89:9, 22,
24, 25 90:15, 19
91:4, 6, 21 92:2, 5,

8 93:9, 14, 20, 24
94:7, 11, 21 95:1, 6,
8, 17, 19, 20, 22
96:2, 9, 11, 22, 24
97:11, 16, 20, 22
98:6, 12, 18, 22
99:9, 11, 18, 20, 22
100:1, 8, 12, 21, 24
101:1, 7, 14, 19
102:6, 11, 25 103:6,
7, 12, 18 104:4, 9
105:2 106:20, 24,
25 107:12, 17, 25
108:13, 18, 20, 22,
25 109:1 110:8
111:1, 3, 7, 24
112:1, 10, 15, 25
113:15 114:8, 15,
18, 21, 23, 25 115:3,
10, 15, 19 116:1, 3
119:23 121:17
122:3 126:1, 16, 21
127:7, 11, 19, 24
129:2, 7 130:1
131:5, 6, 23 132:2,
10, 15 135:24, 25
136:8, 12, 18 137:8
138:6, 11, 15, 22, 25
139:5, 7, 21, 22, 25
140:1, 19, 23
141:11, 13, 21
142:8, 10, 13, 22
143:3, 16, 21 144:1,
5, 13, 16, 18, 21, 23,
24 145:2, 7, 10, 12,
16, 19, 22 146:1, 11,
14, 18 147:8, 12, 17,
19, 24 148:3, 6, 10,
13, 15, 18 149:1, 8,
10, 13, 18, 20, 22, 24
150:6, 10, 15, 20
151:2 152:1, 9, 17,
22 153:7, 9, 11, 16
154:4, 6, 15, 16, 21,
22 155:3, 7, 16, 23
156:6, 12, 14
158:11, 22, 24
159:3, 6, 13, 19, 20
160:6, 9, 11, 16, 20

161:3, 12, 16, 19, 21,
25 162:3
courtroom 16:7
86:2 134:22
courts 18:13, 24
31:24 53:24 69:13
79:2 82:12 132:14
133:17 135:6
153:17
Court's 7:6, 12, 18
8:6, 7, 8 10:3
11:20 15:10 18:4,
5 20:9 22:2 27:21
28:1 37:15 40:19
42:11 88:4 102:23
103:25 105:19
106:17 123:12
133:8 160:4
cover 103:3 104:2
113:19
coverage 7:23
19:16 42:19 53:18
55:15, 23 57:2
58:1 60:3, 6 63:7
103:7, 15 104:4, 7,
19 105:10, 12
113:6, 14
covered 49:21
Covil 1:11 2:17
9:3, 16 18:5 39:18
53:4, 22 54:19
55:9 88:11 91:15
100:25 101:4, 8, 15,
21 102:2, 8, 11, 13,
20 103:4, 16, 20
104:18, 25 106:7,
23 107:9 108:14
110:10
coworker 91:16
cracks 81:23 83:17
Craven 143:1
crazy 92:24 158:3
create 23:19
created 26:13 47:9
55:18 58:16 59:23
141:4, 6
creation 29:6
53:21 141:16
cross-motion 121:16
current 51:9

currently 40:6
58:11 120:9 124:1
customer 91:19

< D >
D.C 2:19
dance 50:19
dancing 88:17
dandy 60:16
Darby 4:6
data 102:16 109:4,
12, 18, 19, 24 113:1
database 36:3
102:17 106:15, 22
108:3, 9 109:10, 14,
21 112:3, 21, 23
DATE 1:18 40:3
58:3 95:13 126:11
135:12 163:5
dated 37:6 43:5
dates 96:19 98:5
99:14 112:8 124:1
134:25 158:12
day 22:10 48:25
79:7 97:23 100:20
116:13 120:1
122:9, 14 136:16
days 19:13 31:5, 7
40:3 85:22 110:4
119:11
DE 3:18, 19 4:3, 4
117:12, 13, 14
123:20 130:9, 16,
17, 18, 19 137:1
138:8, 12, 14
dead 90:3
deadline 120:15
deadlines 94:23
deal 21:14 73:9
84:19 111:13
113:6 115:5 125:8
126:11 127:3
dealing 22:23 28:4
41:2, 25 65:25
dealt 54:15 146:11
debacle 112:11
December 119:9, 11,
23 120:5, 11, 16
141:16

decide 63:10 106:6 160:1, 23 Decided 89:24 decision 132:3 decision-maker 74:7 declaration 104:4 declarations 103:1 declaratory 105:11 dedication 138:2 default 40:5, 6, 8 77:16 92:18 93:1, 3, 5, 17 100:9 defeat 32:4 defend 85:18 132:1 138:4 defendant 7:11, 12 27:12 31:17 53:7 82:15 85:15 87:9 90:14 103:16 111:12 131:2 135:20 151:12, 14 159:24 DEFENDANTS 3:6, 18 4:3, 9, 15 6:9 7:20 9:4 11:4 32:24 33:17 51:3 87:12 89:1 116:20 117:1, 9, 10, 11, 17, 21, 25 118:3, 22 119:8, 21 120:6, 10, 22 121:8, 20, 21 122:16, 23 123:3, 6, 8, 9, 10, 22 124:13, 14, 15, 16, 21 125:14, 16 126:6 129:19 130:17 131:9 132:7 133:5 134:15, 16 137:5 138:3 139:10 149:3 155:12 157:6 159:6 defense 31:22 64:10 86:24 defenses 138:18 defer 38:23 defiance 127:23 136:11, 17 144:8, 15 deficient 121:1 defined 152:4	158:5 defy 148:17 defying 78:17 154:14 delay 135:4 145:4 delays 111:14 delineates 61:23 delves 7:25 demands 137:23 demonstrate 60:9 demonstrated 59:8 demonstrates 56:25 58:1 60:12 denial 145:17 157:21 denied 39:10, 23 93:12 128:13 141:11 denominated 43:3 deny 92:4, 9 Denying 92:5 132:4 133:2 dependent 76:2 depends 20:12 deponent 163:6, 7, 9 deposition 38:11 96:6 163:3, 8 depositions 118:18 120:2 121:4, 13 123:2, 20 described 17:5 49:17 Despite 39:14 82:15 83:13 131:12 132:19 142:15 detail 49:17 146:6 detailed 50:2 develop 63:4 157:4, 8 development 13:15 Devine 2:14 devote 156:21 DICKINSON 3:9, 11 difference 127:21 128:16 140:4 143:14 147:15 differences 14:21 105:6	different 11:11 20:25 44:9 70:23 110:16 119:4 139:9, 23 141:7, 20, 23 142:3, 19, 20, 21, 23 143:9 150:18, 24 153:21 differently 29:10, 17 137:13 difficult 19:10 131:1 136:3 digitization 107:20 109:5 digitize 107:2, 6 digitized 107:4 dignity 79:13 83:2 dilemma 61:14 direct 9:25 47:23 91:14 154:5 directed 43:11 44:25 directing 25:16 direction 12:6 52:19 153:4 directly 18:9 42:21 59:1 63:24 disagree 74:9, 14 149:21 154:10, 12, 20 disagreed 71:1 disagreement 139:21 147:11 148:9 149:16 disagrees 125:24 disappoint 68:24 disappointed 47:20 disclosure 47:6 discover 55:14 discovery 27:12 33:20 38:9 39:15 97:14 104:21 118:25 119:18, 20 120:18, 23 121:12 122:17, 19 125:9 126:9 127:3 129:16 130:5, 14 131:3, 10, 22 132:25 134:5 137:10, 15, 23	138:21 discuss 6:12 39:5 discussed 47:17 discussions 114:6 137:19 dismiss 17:15 18:20 21:23 39:23 68:12 90:20 118:11 120:12 121:9, 23 122:1 123:11 128:14 131:21, 24 132:4, 24 133:2, 4, 7 145:17 146:20 dismissed 127:6 150:2 152:14 Dispense 145:14 disrespect 140:11 dissolve 118:12 120:7 132:5 133:3 141:10 distinction 143:13 District 8:10 54:4 89:25 90:1, 3 docket 6:19 7:12, 20 11:4 30:21 86:8 87:10, 18, 19 88:21 94:1 96:13 135:10 140:9 160:17 document 27:4 35:14, 21 43:24 48:15 56:4, 15, 18 57:9 63:14 90:11 113:22 documentary 52:13 documents 25:8 26:19, 23, 24 27:10 28:17 29:5 30:3 35:25 36:11, 21 39:16 43:11 45:4, 7, 9 46:6 48:8, 10, 17, 23 55:6, 13 65:6 86:6 87:25 89:5, 20 103:22 106:10 122:10, 21 130:15 137:17, 18 dogged 54:1 doggone 150:3

doing 24:1 64:18
83:12 84:1 89:6, 7
93:8 129:5 135:5,
23
Donaghy 10:13, 17,
24 12:12 22:19
35:2 39:7, 22 40:5,
10 43:8 90:23
91:1 92:16, 17
93:15
Donaghy/Potter 1:5
door 129:9
doors 135:2
draft 78:4
drag 148:17
drawn 143:13
Drive 5:6
Dry'd 152:5
duly 163:6
duties 66:5 135:5
dynamic 23:10

< E >

Eagles 54:3
earlier 15:3 19:17
50:4 56:1 139:14
earliest 95:15 157:4
early 134:23 159:7,
17 160:3, 7, 10, 13,
19, 25 161:11, 13,
17, 20, 24
easier 82:7 115:25
e-discovery 102:17
effect 148:16
effort 8:8
efforts 11:19
ego 8:1 19:16
32:10 117:6
either 7:22 8:22
19:4 21:6 38:25
52:14 55:9 58:16
64:3 77:12 112:24
126:6
ELIZABETH 3:14
elizabeth.oneill@wb
d-us.com 3:16
Elliott 125:3
Ellis 109:13, 15, 18,
24 110:6 111:9, 20,
23

email 45:17 48:5, 6,
25 49:1, 3 96:18
97:17 110:22
119:14 125:4
156:5 159:4
emailed 46:20
89:11 98:1 116:23
employ 63:22, 23
ended 110:20
ends 26:4
enforced 54:11
English 148:5
152:8
enhanced 109:10,
14 112:2, 22
enjoin 121:17
enrichment 117:5
ensued 55:18
ensuing 26:21
ensuring 31:21
entered 48:11, 22
49:7 75:18 77:1, 4
143:20
entire 44:13 109:17
entirety 18:21
entities 8:2 21:5
22:12 41:21 137:1
138:14 151:23
entitled 36:4 38:12
58:18 63:13
entity 12:3 21:1
141:7 142:4
entry 35:20
EPA 23:11
ESAB 4:9 117:19
E-S-A-B 117:19
escrow 36:15
ESQUIRE 2:3, 8,
13, 18 3:4, 9, 14, 20,
21 4:5, 11, 17, 23
5:6
esse 123:20 130:9,
16
essence 130:10
essentially 100:16
et 1:8
evaded 25:9
evening 49:2
124:25

events 163:12
eventually 134:14
everybody 70:11
146:22
everyone's 124:5
EveryWord 1:23
evidence 22:3, 9
23:1 26:19 31:14
38:13, 17 47:17
91:19 100:16
evidencing 29:5
evidentiary 46:6
exactly 48:3 61:1
67:6 90:4 99:9, 11
100:21 144:4
161:10
examination 163:7,
10
examining 65:24
example 27:6
69:10 75:16 104:5
excellent 33:12
exception 37:18
exceptions 147:16,
18
exclude 130:12, 14
exemplified 148:21
exercise 50:23
65:22
exercising 69:7
exhibit 57:14
122:13
exhibits 124:4
130:11
exist 58:17
exists 58:12 104:5
expect 94:16
expects 7:19 87:12,
14
experience 37:22
93:6
expert 89:17
107:18 130:14
experts 123:18
expires 163:19
explain 132:16
134:9
explained 132:11
explore 52:12
extending 134:25

extension 119:7
121:25 146:9
extensive 26:16
extent 61:25 87:3
91:11
extraordinary 134:1
eye 47:24

< F >

face 130:3
facilitate 63:5
fact 23:9 33:22
53:15 59:19 72:8
78:6 79:17 89:15
130:12 131:12
failed 69:5 94:19
failing 102:22
106:2, 16, 18
fails 7:13
fair 128:4 129:17,
18 148:21
faith 105:8, 25
106:6, 9
fall 14:17 81:22
83:17
false 107:10
familiar 7:4, 7 9:1
16:3
family 136:9
far 25:12 27:16
31:15 83:5 128:13
133:15, 16 134:10
153:16
Fargo 3:14
fast 86:9
fault 135:15
favor 101:6
favorable 22:25
favorably 18:21
February 9:21
14:23 39:10 91:2
92:12 111:6 121:7
federal 69:13
feds 147:2
feel 87:14 98:10
124:18 129:15
143:6
feet 148:17
felt 152:22

fiduciary 65:22	firm 25:25 26:1	79:4 123:1, 14	future 15:5 48:18
fight 9:10 11:12	64:10 111:13	125:10, 24 126:24	97:15 158:13
fighting 19:3 20:22	firms 28:13 30:10	127:10 128:9, 12	< G >
158:8	first 16:6 30:24	134:18 135:14	GALLIVAN 3:1
fight s 37:19	35:10 41:14 49:14	137:24 140:24	Gary 94:23
figure 26:4	66:7 67:11 87:8	fought 23:5	gender 151:20
file 69:4 73:23	89:24 102:12, 19	found 39:16	General 24:12
104:21 125:14	103:10 104:17	four 20:22 117:8	generate 97:5
127:16 133:3, 7	105:15 130:6	131:17 134:1	gentlemen 153:25
157:18, 24	131:7 139:18	138:14	getting 116:22
filed 17:15 40:4, 8	fit 12:2 147:23	Fourth 8:11 18:5	give 6:22 36:2
70:3 75:11, 16, 17,	149:20	69:14 127:19	46:23 48:1 60:10
24 77:16, 20 100:5,	five 10:11 12:1	frame 152:18, 19	69:10 78:4 83:5
15 103:3, 20 114:5	13:8, 15 14:7 17:1,	framed 152:22	101:4 108:2 109:8,
116:24 118:10	10 96:7	frankly 87:23	9 110:5 112:7
120:6, 11 123:22	flatly 52:11	fraudulent 37:7	120:17 129:22
124:7, 11, 21, 24, 25	flea 152:5	FREEHILLS 3:20	131:6 148:7, 16
125:21 126:5	floating 72:22 73:5	Friday 77:16	given 51:9 108:11
127:17 131:23	75:20	109:7 110:18	120:16 124:5
132:12 137:11	Floor 3:21 81:2	124:25	gives 43:22 84:19
141:10, 22 147:20	flow 8:2 158:12	friend 66:11	94:11
151:24 159:10	Flynn 1:3 11:17	friendlier 64:15	giving 42:6 63:5
filers 138:23	12:12 22:18 40:11	front 14:18 37:13	glad 130:2
filing 158:15	90:22 91:7 101:1,	62:15, 18 93:21	gnats 152:4
filings 6:7 32:15	3, 16, 17 102:14, 21	102:10 129:9	go 12:21 19:2
64:23 116:14	103:5, 10, 14 104:2,	frustrated 90:13	27:18 30:24 37:23
127:14 128:21	16, 20, 21 105:7, 12	136:19 148:20	38:4, 13 48:16
148:4	106:3 114:3, 11	frustrates 64:21	55:21 73:23, 24
fill-in 136:7	FOIAs 24:1	frustrating 111:15	78:9 81:12 82:21
filtering 161:22	folks 55:8 139:10	130:25	98:17 113:1
final 14:24 73:16	follow 154:5	frustration 62:19	115:25 119:4
107:17 109:11	followed 134:15	full 100:19 129:22	122:19 125:24
145:7 154:22	following 7:18	full-time 136:6	126:23 128:8
finality 133:19, 20	111:21	fully 54:21 87:13,	133:15 134:18
finalized 12:9	forcefully 154:10	21 157:1	140:24 157:20
103:23 105:18	fore 98:23	functionaries 9:6	goes 8:21, 22 151:2
106:10, 12	foregoing 35:15	fund 13:17, 19	go-forward 17:1
finally 110:17	163:3, 8	24:22 25:2, 6, 14	going 6:20 12:19
financial 59:10	forensically 77:25	30:8 53:22 55:19	18:12 21:18 27:20
find 30:18 40:14	Forest 5:6	58:10	30:23 31:16, 20
52:20 104:14	form 51:4 77:4	fundamentally	32:22 36:24 46:23
129:2 161:23	119:24 157:18	150:18	47:5 48:1 50:9
finding 34:7	format 107:21	funds 10:20 30:5	59:14 60:21 61:18
finds 78:14	formed 24:24	further 25:17 59:9	62:1 63:18 65:11
fine 60:15 87:25	forth 8:18, 19	66:15 67:8 94:2	66:3 71:12 73:12
92:13	17:20 22:14 46:4	114:2, 24 127:23	74:18 78:8 80:17
finish 110:25	77:9 136:10 140:15	145:14 157:20	82:4 85:3 87:2
finished 108:6, 7	forthcoming 40:1	163:10	89:13 93:1, 22
fire 79:8	forward 17:4	fussing 113:3	94:12 95:9, 14
fired 79:16	32:20 50:9 70:22		

96:5, 24 97:1, 24
 100:18 102:3
 104:24 105:17
 109:8, 9 111:17
 119:18 120:22
 123:10, 18 126:13
 127:3 133:15
 136:1 152:13, 14
 155:16 156:7, 17,
 18, 19 157:24
 158:8, 9, 17 160:1
 161:9, 10
going-forward
 13:13 14:9, 15
 113:13
good 9:18 10:1, 6
 11:13 16:16 23:13
 33:1, 2 41:17, 18
 49:2 76:9 97:20
 102:7 114:25
 115:23 138:15
 155:5 156:11
 157:7 162:1
goodness 89:1
Goodwin 1:3
 11:18 12:13 22:18
 40:11 90:22 91:7
GORDON 4:11
gotcha 139:7
gotten 27:16 45:25
 47:12 77:9 96:12
 110:3
granddaddy 53:23
grant 145:13
 159:25
granted 121:10
GRANTLAND 5:4
grateful 40:16
great 64:17 93:23
 97:12 99:10 116:3
 125:3
ground 19:13
 113:18
group 10:22 19:8
 41:25 130:16
 159:8, 9
grouped 139:8
guaranteeing 136:15
guess 111:17
 124:23 136:18

Guy 39:17 90:9
 91:15
guys 120:17
< H >
half 107:4
hand 34:18 145:16
 163:13
handle 34:18
hanging 154:13
hang-up 47:5
happen 81:22
happened 26:20
 46:16 50:8 104:18
 141:3 155:20
happening 47:7
 83:22
happens 82:5
 105:22 134:17
happy 63:15 100:5
 125:18
hard 10:7 19:8
 37:17, 19 85:23
harmful 62:5
HATHAWAY 5:3
HAWK 4:15 118:1
 139:3
Hayden 1:23 163:1,
 17
head 59:3 75:15
 158:4
hear 20:3, 4, 7
 30:23 66:18 72:4
 94:14 97:3, 8
 116:3 126:2, 14
 130:2 136:1, 14
 148:11
heard 34:9 40:12
 54:20 88:4 97:7
 111:19 125:22
 136:24 137:2
 138:5 139:14, 15
 148:22 152:7
HEARING 1:1 6:4,
 17 10:4 24:8 26:2
 49:12 97:21
 115:21 118:19
 119:2, 17 121:6
 125:21

hearings 9:20, 21,
 22 10:16 51:24
 96:16 130:4 156:23
heart 101:24
heartbeat 7:5 9:12,
 15 17:21 19:1
 20:20 27:19
heartburn 19:21
 94:12
heavens 150:13
heavy 23:15
held 9:20 27:9
 130:5
help 9:24, 25 31:20
 127:4
helpful 26:15 35:3
 40:20 97:4
helps 158:16
HERBERT 3:20
HERMAN 3:21
hey 88:20 92:23
 127:24 156:6 159:7
hide 61:15
hiding 8:3 38:1, 2
Hill 94:23
hired 79:21 111:12
historic 106:21
 107:2
Historically 15:7
history 54:20
 116:17 124:10
hits 107:9 108:14
hold 93:4 100:22
 119:18 129:12
Holdings 151:13
honest 129:4
honestly 26:6
Honor 6:10 7:2, 4,
 10 9:17 10:1, 6, 25
 11:6, 11, 25 12:18
 13:2, 10, 18, 24
 14:8, 12, 15 15:7,
 15 16:8, 15, 20, 21
 17:6, 7, 12, 14
 18:18 19:1 20:5,
 15, 19 22:1, 20
 23:23 24:15, 20
 25:8, 18, 22 26:22
 27:10, 15, 25 29:9,
 22 31:4, 6 32:8, 25

33:11 34:8, 17
 35:6 37:9 38:21
 39:2, 12 40:15
 41:16, 17 42:9
 43:13, 18 44:2, 20
 45:2, 23 46:15
 47:14 48:3 51:12
 52:17 54:18 55:25
 56:9, 22, 25 57:14,
 23 58:13, 20 59:4
 60:22 61:7, 20
 62:24 63:11 66:11,
 17 68:18, 22 69:10
 70:20 71:1 72:13
 73:10, 12 75:3, 6,
 18, 22 77:13 79:5,
 15 80:20 81:8
 83:10, 21 85:3, 7
 87:4, 23 88:24
 90:4, 25 91:18
 93:13, 19 94:13
 95:5, 16, 18, 21
 96:1, 4, 21 97:9, 12,
 25 98:14, 21 99:5,
 17, 23, 25 100:4, 14
 101:11 102:5, 7
 103:9, 17 105:4
 108:4, 24 109:2, 3
 112:7, 19 113:7
 114:10, 20, 24
 115:23 118:19
 121:6, 10 125:10,
 19, 24 127:4
 129:15, 25 130:23
 136:25 137:14
 138:10, 13, 16, 18,
 24 139:12, 24
 142:3 143:11
 148:12, 25 149:23
 151:10 152:16
 153:10, 20 154:9,
 19 155:1, 6, 8
 156:11 159:5
 161:18
HONORABLE 1:15
honored 56:6
Honor's 11:19
 99:8 138:1
hope 49:1 143:11
hoped 113:20

hopeful 18:23 113:25 133:18, 21 134:12, 14 hopefully 18:19 32:17 127:4, 5 hoping 30:13 horse 65:12 hours 35:19 125:21 housed 109:25 housetops 69:24 hullabaloo 54:12 70:6 humble 154:7 hundreds 129:10 hygienists 86:5 < I > idea 93:7 ideal 99:12 identification 101:21 identified 13:3 25:12 31:13 36:10 identify 20:21 24:2 36:11 50:15, 24 62:9 85:19 86:5, 6 87:21 identifying 7:17 91:16 IDS 107:19, 23 109:5, 8, 17 110:5, 12, 15, 21 111:21, 23 IDS's 109:6 ignore 83:4 128:5, 22 ignoring 70:15 74:20 III 4:23 Illinois 31:10 Immediately 56:11 132:6 133:9 145:19 152:15 153:2 imminent 160:10 impact 134:24 135:9 impacts 19:22 imperfectly 88:6 important 108:12	improper 133:23 inclined 98:7 include 117:17, 21 138:11 included 35:14 36:3 67:1 including 53:24 70:17 149:14 inconsistent 106:4 increase 32:18 indecision 73:14 indemnification 51:5 indemnification-type 50:16 indemnified 86:15, 17 indemnitor 52:4 indemnity 36:19 independent 16:1 independently 39:16 58:18 60:14 indicate 6:5 71:10 indicated 75:22 indicates 28:22 101:8 indicating 22:14 110:23 119:16 industrial 86:5 inference 124:12, 19 inform 27:10 information 25:1 26:16 27:6 29:19 30:10, 11 40:24 42:7 46:12 47:13 49:4, 5, 22 50:2 51:10 52:8, 11, 13 54:25 56:17 57:8, 11, 21 59:5, 9, 21 60:12, 20, 21, 24 61:10, 16, 22 62:2, 4, 8 63:6 66:23 informed 120:21 informing 42:17 initial 29:2 137:16 initially 23:4 injunction 134:5, 7 158:3 injunctive 131:12,	14 137:8 injured 21:16 injury 23:19 inquire 70:10 71:20 155:9 inside 141:6 146:16 instruction 7:18 88:4 110:5, 23 instrument 27:8 46:2 insufficient 107:7 insulation 22:12 91:17 INSURANCE 4:21 5:3, 4 7:23 14:4, 5 16:1 19:15 24:4, 5, 12, 18 25:11 29:6 34:12, 13, 15, 16 39:1 49:20 50:15 51:4 52:20 53:20, 25 54:2, 5 58:9 64:12 65:15 103:2 104:2 106:21 145:9 147:21 insurer 13:22 52:4 insurers 13:12 15:18, 19 16:23 32:2 53:8 55:9 intend 137:17 intense 19:3 interested 52:3 163:12 interesting 92:18 143:8 interlocutory 131:21, 24 132:25 137:9 147:3, 4 150:12 Intermediate 151:13 interpret 103:2 104:1, 10 interrogatories 118:5 intervention 40:19 intimately 9:1 introduced 83:14 investigate 37:10 INVESTMENT 3:8 4:10 117:22	invite 91:24 147:19 invoice 109:7 invoices 110:16 involve 14:1 involved 16:11 22:8 31:1 54:19 58:8 70:13 involvement 10:3 involves 93:17 involving 80:24 ironically 150:21 issue 21:15 39:25 42:10 56:10 69:16 71:21 80:22 81:23 102:15, 19 105:22, 24 106:14 132:16 142:5, 6, 19 145:19 149:25 150:6 152:23, 24 153:21 155:10 issued 104:9 106:20 107:1, 12, 18, 25 110:15 119:24 issues 19:17 32:6, 11 67:10 71:14 102:10, 18 104:17 126:8 127:4 134:13 135:8 137:4 154:1 issuing 110:20 it'd 131:4 its 7:20 12:11 22:5 26:2 28:14, 18 32:3 53:8 60:2 64:16 86:14, 17 103:1, 2 109:10 110:12 158:4 < J > January 14:23 120:3, 14, 25 121:11 jealous 33:10 JEAN 1:15 job 23:24 Joe 90:1 John 119:12 Johnson 152:3 join 137:7, 9, 10

joinder 145:14	145:25 146:9	157:25 159:11, 12,	leave 96:9 154:13
joined 125:17	149:6, 11 150:19,	19 161:3, 5, 8	160:18
joining 78:23	22, 25 152:12	knowing 28:1 37:7	leaves 160:22
jon@smithrobinsonl	kept 123:14	knowledge 30:15	led 116:18 118:18
aw.com 2:15	kind 14:25 21:8	59:20	119:8 125:4
JONATHAN 2:13	39:3 40:15 44:25	known 35:11 36:9,	Lee 98:3
JOYNER 3:4	50:20 52:10 63:4	12 37:3 43:21, 25	left 30:17 63:9
115:23, 24 116:2, 5,	64:22, 24 66:2	66:9	77:21 115:1 155:12
8 126:4, 18, 25	67:15 93:15 100:6,	knows 50:12	legacy 7:23 13:4, 7
127:9 129:6, 14	12 116:13, 16	138:16	30:4 54:8 55:13
158:20, 21, 23 162:2	117:8 118:25		legitimacy 142:16
JR 4:11	119:13 120:3, 12	< L >	legitimate 128:8, 9
Judge 90:1 96:17	124:9 125:16	lack 21:3, 23 68:12	lending 15:24
99:24 136:6, 8	128:11 132:23	73:15 90:20	length 69:12
159:7 160:14, 19	136:11, 17 156:7	laid 102:25	lessen 32:18
161:24	161:4	land 28:12	letter 90:3
judgment 30:1	kinds 146:21	language 35:14	letters 132:14
38:6 105:11	KIRBY 4:23	144:6, 22, 23	letting 47:6 111:9
judgments 27:14	kirby.shealy@arlaw.	147:15, 21 148:4	161:7
Judicial 1:21	com 4:25	152:8	level 147:6
July 118:4 163:19	knew 28:6 73:6	lapel 33:3	LEWIS 2:18
June 116:25 159:8	know 9:13 20:2	Large 163:3, 18	159:16, 17, 22
161:5	21:23 23:12 25:7	late 6:6 18:1 96:8	161:14
jurisdiction 8:3	34:14 37:12, 25	116:14 134:23	Lexington 3:21 5:3
21:4, 9, 15, 24	38:18, 25 39:12	138:23	liability 7:23 13:5,
22:24 39:6, 9, 11,	45:17 47:6 48:9,	late-disclosed	7 38:20 117:6
24 40:13 68:13	14, 17, 22 50:12	130:15	life 64:11
69:7 76:4, 8 90:7,	51:23 52:23 53:12,	late-discovered	lift 40:8 93:2
20 92:10 118:14,	14 55:25 56:4, 14,	130:12	light 22:25 35:15
15 128:10 138:17	19, 20 57:5, 14, 24	latest 18:4 25:1	82:5 148:9
140:4 143:15, 16	58:21, 25 59:2	Laurel 2:4	lightly 143:10
148:18	61:1 63:13 64:20	law 25:25 26:1	limine 100:2
jurisdictionals 77:2	65:7, 25 69:19	28:12 30:10 64:6,	124:22 126:7
jury 105:23 106:6,	71:22 74:18 75:18	8, 10 65:4 70:11	LIMITED 3:19
13	76:6 79:10 81:24	71:20 93:10	4:4 7:3 11:1
JUSTICE 1:15	82:16 83:3 85:12	101:10, 12, 18	28:15 32:13, 14
49:6, 7	90:25 91:12, 22	104:13 111:13	62:3 66:25 82:11
justified 157:17	92:25 93:4, 5 99:2	140:17 149:6	84:19 135:17
	100:19 101:24	152:4 153:22	151:13
< K >	110:22 116:24	159:15	LINDSAY 3:4
KASSEL 2:3	118:6 122:18	lawsuit 106:1	115:24 116:7
keep 158:8	123:4, 15 125:6, 18,	lawsuits 31:7	line 95:8 126:2
keeping 56:14	22 127:5 128:17,	47:11, 12 50:18	lines 17:16
KELLER 2:12	18 129:19 130:3,	lawyer 54:22 83:3	Link 1:5 10:13, 17,
6:24 9:16 16:14	21 131:8, 25	85:24 93:5	23 11:8, 17 12:12
17:18, 23, 24, 25	133:11 134:7, 9, 20	Lay 119:12	22:19 34:25 35:1
19:15, 25 30:25	135:1, 11, 21 136:2	leading 143:19	39:7, 22 40:5, 10
31:1, 4, 15, 23 32:3	143:5, 11 146:4	learn 57:7	42:14 43:8 44:9
68:10 88:12 95:22	149:7 150:20	learned 64:9	45:3, 11 50:5 51:2
96:6, 10, 12 97:13	151:9 153:9, 23	123:16, 17	

90:23 91:1 92:16,
17 93:16 128:3
list 19:25 38:10
90:16 122:13
listed 43:20 49:23,
24 89:13 124:8
151:16
listen 129:7
listing 35:11
lists 42:24 91:19
literally 110:3
litigation 7:5, 22
8:5, 21 9:24 12:4
17:21 25:24 27:20
31:16 32:12 44:13,
17 53:4 60:8
63:24 74:17 76:21
83:7 85:10, 16
114:3 117:2
litigator 55:5
little 20:24 27:18
47:22 67:12 96:8
129:12 143:7
live 65:11
lived 65:5
ljoyner@gwblawfirm
.com 3:6
LLC 4:15, 16
139:3, 4
LLOYD'S 5:4
11:22 24:8 26:22,
24 27:2 28:18
34:18 35:16, 23
36:2, 4, 5, 7 37:4
41:20, 23, 24 46:10
49:19 51:20 55:1
86:14, 16
Lloyd's/CMLI
15:22
LLP 2:18 3:11, 20
4:11, 21
local 161:13
locate 159:24
located 25:3
LOCATION 1:21
163:5
LONDON 5:4
16:23 42:16, 19
48:21

long 28:5 38:18
42:18 66:10 110:1
118:18 153:22
longer 58:1 148:8
look 24:21 47:24
58:19 77:25 98:22
137:24 142:25
looked 18:21 54:14
69:15 75:13 77:3
82:12 89:22 128:7
153:17
looking 43:16
55:12 90:16 157:10
looks 29:18
loose 26:4
lose 132:24
lot 10:7 35:12
100:9 112:13
122:11 146:19
lots 34:10
loud 139:15
Louisiana 31:11
love 97:15, 17
99:19 133:12
lower 144:1

< M >
ma'am 6:15 35:1
53:13 64:19 66:11
68:20 69:20 71:4
72:25 73:18 74:5,
10 76:5, 11, 15, 22,
25 82:1, 23 83:18
84:2 90:18 94:5,
10, 25 95:21 98:15
99:21 100:23
115:14 126:18
149:2, 12, 17 150:5,
9 152:21 153:8
154:23 158:21, 25
162:2
MaGrath 4:6
Main 1:21 3:4, 10
4:23
maintain 70:12
maintained 109:19
major 12:5
making 32:5 74:21
119:9 150:14
152:11 157:24

managed 19:7
78:15
mandatory 74:1
manner 106:4
Manos 10:8 15:1
16:22 17:3, 6
40:17 41:10
MANSUKHANI
4:11
March 9:22 10:3
14:23 24:7 28:18,
19 43:5, 24 49:11
102:23 111:6
121:10, 21 122:4,
15, 22 123:12
marching 119:4
MARKET 5:4
15:24
marshal 64:16
marshalling 64:2
65:15
material 21:15
35:19 129:10
materials 49:12
50:24 67:3
matter 6:8 16:12
20:25 41:22 42:11
62:20 69:8 70:2,
17 72:8 75:25
79:18, 20 83:2
92:8 116:18, 21, 24
123:13 125:7
128:11 153:3
158:6, 17
matters 6:12, 18
14:2, 16 16:10
17:1 21:22 24:18
51:7 53:5 62:13
69:22 81:17
140:25 142:11
144:2 156:16
157:7, 21
MAXWELL 3:21
maxwell.herman@hs
f.com 3:23
MCVEY 2:3 11:5,
6 12:20 32:22, 25
33:3, 7, 10 34:23
35:1, 5 41:3, 6, 9,
16 46:1, 15, 25

66:16, 17, 22, 25
67:5, 19, 24 68:1, 4,
7 71:17 87:25
88:23 90:4, 16, 18,
24 91:5, 9 92:1, 3,
7, 9 93:13, 19, 23
94:5, 10, 13, 25
95:4, 7, 16 97:12,
17, 21 99:24 100:4,
11, 14, 23 115:14,
15, 16 155:10, 21
156:2 158:24, 25
159:4
mean 17:24 33:4
60:2 83:24 89:7
95:3 99:11 100:8
110:11 111:1
112:18 127:23
133:25 142:3
151:8 159:19
160:16
means 10:23 64:2
65:23 101:1 148:8
158:10
measure 7:22 8:25
9:19 10:4 11:21
22:14 64:1
mediation 42:13
53:7
meet 63:15
meetings 87:16
members 74:22
mention 18:2 98:13
mentioned 19:24
36:9 106:15 116:7
155:11
mercy 115:3
merit 9:11 163:1,
17
merits 32:19 138:5
message 114:19
met 26:14
Middle 8:10 128:24
million 54:9
mind 92:3
mine 56:22 130:18
mines 22:7 117:14
MINING 3:19 4:4,
10 117:18

minute 30:23, 25 156:6	97:14 100:2 115:17 118:10, 23, 24 119:1, 14, 19, 25 120:11 121:9, 11, 15 124:22, 24 125:1, 15, 17, 20 126:5, 7, 14 128:13 137:11 146:20 157:22	nature 59:6 necessary 127:1 need 20:11 26:24 27:18 31:20 38:15 52:8 62:13 78:9 91:6 92:12 95:23 96:15 103:23 114:2, 13, 15 126:14 149:24 needed 21:14 107:1 needs 63:6 67:8 84:10, 16 97:6 125:7 negotiate 19:8, 10 negotiating 37:20 negotiation 55:17 negotiations 12:10 13:23 14:20 neither 163:10 NES 2:18 102:4, 5, 7, 8 103:9, 17, 19 105:3 108:21 114:23, 24 never 37:13 40:2 76:25 77:19 78:1 93:4 94:24 NEW 3:20, 22 107:14 108:3 141:6, 9 news 9:18 10:1, 6 New-Therm 91:17 night 6:6 121:25 137:11 nine 116:17 nitty-gritty 130:5 noble 83:12 non 126:19 nonappealable 18:15 32:5 71:14 128:2 157:21 nonjury 126:19 136:21 nonmoving 23:1 nonparticipation 9:9 nonperforming 7:11 9:5 nonsense 151:8 noon 125:5	normal 9:5 136:17 146:21, 22 normalcy 10:5 normally 7:9, 21 North 3:15 8:10 54:5, 10 notarized 90:10 Notary 163:3, 18 noted 13:8 98:19 116:10 notes 161:4 noticed 118:17 123:20 notices 70:4 120:6 noticing 123:2 notified 132:2 notwithstanding 80:3 138:20 Number 6:13, 25 31:5 33:6 101:4, 8, 13, 15, 16 numbers 35:9 37:2 43:6 127:22 NW 2:19 < O > obeying 31:23 objected 119:21 121:3 122:25 objection 124:5 objections 163:7, 10 oblige 136:5 obligation 154:1, 5 obligations 99:1 136:9 obviate 114:2 obvious 160:11 obviously 15:17 99:6 158:16 occupy 8:6 occurred 18:8 29:4 58:2 119:1 occurring 18:17 October 118:9, 17, 19 119:3, 17 123:16 offbeat 64:25 offer 53:10 office 119:13 officer 29:23 officially 6:5

OFFSHORE 4:15
118:1 139:4
Oh 52:11 94:11
101:14, 18 111:3
150:13 151:21
old 64:7 65:5, 6
once 21:25 68:14
134:17 142:6
O'NEILL 3:14
ones 70:18 94:1
ongoing 58:7
103:13 113:14
Oops 89:1
open 160:22
operate 113:12
114:13, 16
operates 150:11
operative 25:8
opinion 128:6
154:8
Oppenheimer
117:11 120:10
121:7, 20 122:15
123:3, 6, 21 124:16,
21 126:5, 23 129:18
opportunity 87:24
159:13
oppositions 121:15
options 82:10
oral 92:13
orally 39:23
Orangeburg 161:6,
18
order 6:24 17:18
18:4, 5, 6, 7, 15
24:7 25:16, 19
27:3 28:20 29:3
30:19 32:19 35:8,
13, 20 36:23 39:25
40:1 42:5 43:5, 9
44:25 47:15 49:6,
7 56:5, 14, 23
57:24 62:1 66:19
67:6 77:1, 4, 5, 10
78:2, 24 80:24
82:5, 6 89:15, 17
92:13, 14 94:24
102:24, 25 104:9,
22 105:19 107:1,
13, 17 109:4 113:6

116:22 118:23
120:16 121:17, 21
122:11 123:12, 24,
25 124:23, 24
128:3 130:8
131:14 132:2, 4
133:2, 8, 10 135:21
137:10 141:9, 14,
16, 19 143:19
144:16, 17 145:19
150:23, 25 154:14
162:1
ordered 28:17
34:18 35:13, 16
37:1 57:18 89:3, 4
orders 8:18 18:3
22:13 54:23 69:25
71:9 72:18, 20, 21
74:21 75:19 89:11
106:17, 18, 19
119:4, 5 131:5, 11,
12, 13 132:13, 16,
20 134:4, 5, 6, 16
139:22 154:5
156:24 157:12
ordinary 137:22
ought 115:2 160:20
outlined 142:2
outlining 30:9
outside 107:23
outstanding 120:19
overlap 105:5
overtaken 86:9
87:20
owner 124:13
owner's 117:20
123:9
< P >
P.A 5:4
p.m 1:20 162:6
page 2:20 3:25
43:4 120:4 163:5
pages 122:11, 12
129:10
paid 13:20 29:8
37:4, 9 58:24 59:1
61:24 110:17
paper 93:21
papers 91:10

paperwork 10:19,
20
Park 141:5, 8, 9, 19
151:11, 12, 18, 19, 24
part 11:11 32:11
49:22 50:7 57:13
79:24 117:1 141:8
participate 7:14
9:9 13:7, 14 75:8
131:2 132:21
135:22 138:21
participated 53:21
participating
120:23 135:20
participation 13:12
30:20 31:22 59:20
particular 22:4
66:1 79:6 145:5
157:3
particularly 28:4
157:20
parties 9:25 50:2
58:3 75:20 96:18
97:18 136:21
148:17 157:1, 3
parts 113:5
part-time 136:7
party 23:1 52:23
57:12 163:12
path 23:18 28:9
30:8 87:15 88:15
Patterson 1:8
pay 25:3 109:6
110:10 147:19
paying 27:13
110:12
payment 109:11
110:20
payments 10:22
PAYNE 2:12 6:23
9:15 16:14 17:18,
23, 24 19:15, 24
30:25 31:1, 4, 15,
22 32:3 68:10
88:12 95:22 96:5,
10, 12 97:13
145:25 146:9
149:6, 11 150:19,
22, 25 152:12

**pdp@rplegalgroup.c
om** 2:10
peace 8:25 9:19
15:8 88:8
pending 19:25
126:10 142:7
163:12
Penn 1:11 8:23
19:6 100:25 101:4,
9, 21 102:2, 13, 20,
22 103:1, 24
104:12, 15, 25
105:9 106:8, 16, 18
107:1, 13, 24 108:1,
5, 10, 18, 23 109:6
110:11, 16 112:20
113:11 114:5
Pennsylvania 1:11
2:19 4:21
people 21:19 51:3
65:10 79:21 93:6
112:9 134:21
158:1, 14
perfectly 62:12
perform 66:4 88:9
performance 45:1
performing 9:6
66:6
perilous 153:24
period 8:22 20:10
periods 43:22
permanency 158:10
permission 56:3
permitted 18:14
per-occurrence 65:8
person 66:2, 7
111:20
personal 21:4, 9, 14,
24 22:24 39:6, 8,
11, 24 40:13 66:3
68:13 76:3, 7 90:7,
20 92:10 118:14
128:10 138:17
perspective 34:2
pertinent 50:24
PETER 2:8 7:2
piece 103:13
136:21 151:3
pieces 25:24

pin 33:3	65:7, 8, 9 86:17	prepared 77:22	produce 34:19
Pipe 9:2	103:3 104:2 106:2,	78:1	35:17, 24 36:14, 24
place 25:16 54:9	22	presence 31:11, 12	38:10 47:16 56:1,
59:22 84:21 107:15	policy 25:11 43:22	present 15:14 64:9	5, 23 57:24 59:18
placed 64:13	57:3 104:10	87:24	62:2 89:4, 5, 20
placement 22:11	policyholders 64:18	presented 149:25	90:5 137:17
plain 148:5 152:8	portion 17:21	presenting 116:10	produced 11:20
plaintiff 14:1 26:7,	86:11	presently 80:23	34:24 35:7, 14, 22
10 29:24 42:17	posed 156:5	131:20	36:8, 22 37:1 43:4
46:9 52:22 62:7,	position 15:17	preserve 154:1	44:13, 17, 22, 23
19 63:19 130:11	21:22 38:25 39:3	presumably 36:18	45:10, 24 46:5, 13
PLAINTIFFS 2:2	42:21 47:20 52:4	pretrial 6:13, 17	48:10 56:12, 19
19:9 24:10 31:12	53:10 60:2 61:18	115:21 116:11	57:17, 18, 22 63:14
44:7 45:5 53:17	69:1, 23 70:13, 17	pretty 23:15 33:7	100:17 122:9
66:20 84:17 85:19	73:19 76:3 78:14	58:22 61:2, 4	137:16
86:19 88:20 100:2	103:24 104:17	prevent 83:20	product 22:6
157:3	110:5 112:20	100:15 133:22	production 29:3
plaintiff's 12:23	131:1 132:17, 19	135:4 158:1	36:6 45:8 57:10
151:20	134:10 136:3	previous 18:5	118:6
platform 82:20	140:20, 22 142:5	previously 49:21	productions 30:13
111:22, 24, 25 151:7	148:11 149:4 155:3	115:16	products 22:3, 11
players 84:8	positions 8:17	primarily 14:10	23:6, 7
PLC 3:18 4:3	positive 19:8	prior 103:21 106:5	program 20:21
116:9 117:12	113:18	118:20	24:5, 24
151:11, 25	positives 107:10	privately 47:22	programs 24:18
pleadings 75:25	possibility 57:20	80:14	progress 95:12, 14
76:24	possible 38:24	probably 31:7	progressing 40:21
Pleasant 4:6 37:22	48:9 60:4 157:4, 6	33:25 89:12 93:14	prohibit 144:1
Please 6:3 61:20	possibly 65:16	106:11 116:21	project 109:5
72:11 95:18 109:1	post-payment 46:5	160:18, 21	projected 151:8
115:10	postpone 62:20	problem 112:5	promise 84:21
plenty 54:7, 8 86:2	postponed 125:7	problematic 104:8	proper 31:21
PLOWDEN 4:5, 17	post-settlement	105:4	86:24 124:19
podium 41:15	46:12, 17	problems 107:16	properly 85:18
point 38:3 85:11	posture 51:3	procedural 116:17	PROPERTY 5:1
94:20 101:6	potential 53:8	procedure 79:23	propose 99:7, 13
119:20 133:18, 21	103:15	95:2	proposed 119:5
151:18, 20 153:23	Potter 11:6, 17	procedures 146:23	propounded 82:19
pointed 32:15	12:13, 14 22:19	proceed 6:24	Proprietary 117:15
130:24	39:7, 22 40:5, 10	104:16 137:21	protect 59:8 67:12
points 88:1	42:14 43:8 91:1	proceeding 144:2	68:25
policies 7:24 13:5,	92:17 93:16	proceedings 79:23	protected 59:13, 15
7 26:18 29:6 30:4	practice 65:4 147:5	115:8 153:1 162:6	67:11
35:11 36:9 37:3, 6,	practiced 153:22	proceeds 83:7	protective 104:22
25 42:6, 22, 24, 25	practices 155:14	process 12:16 13:2	118:23 124:23, 24
43:20, 22, 25 44:1,	preadmit 124:4	84:16 88:2 103:21,	130:8
3, 8, 15, 16 45:12,	130:11	23 107:5 108:1, 6	protocol 63:4
19, 22, 24 47:1	predate 25:19	110:25 119:6	PROTOPAPAS 2:8
49:21, 23, 24 50:3	predecessors 21:6	128:5 129:17, 23	6:21 7:1, 2 10:25
54:8 56:23 57:18	preparation 122:7	processing 106:21	11:10 12:14, 18

13:1, 18, 24 14:7,
12, 14 16:21 17:4,
7 18:18 20:5, 14,
18 22:1, 20 23:21,
23 24:20 25:7, 18,
21 27:25 28:8
29:1 31:3 32:7
33:12 40:18 44:7
45:21, 23 60:6
63:3, 16 66:9
67:14 73:8, 11
74:6 77:7 78:7
79:19 80:11, 25
81:15 83:6 84:12
85:2, 5, 6 87:4
88:24 89:9 90:13
94:8 95:25 96:21
97:5, 9 99:13
101:6, 11, 23
108:16 116:9
Protopapas's 57:5
78:6
proud 9:6
prove 38:19
provide 28:18
42:22, 25 44:3
65:21
provided 24:6, 9, 13
25:2 26:16, 23
44:5 45:11 46:8
49:5, 8, 12, 19 50:3,
5 91:13 108:13
122:16, 20, 21
providing 61:9
provision 143:24
provisions 49:18
56:2
Psychos 26:25
49:11
Public 163:3, 18
PUGH 4:17 6:9,
10, 11, 15 127:15,
16 128:17, 23
138:23, 24 139:2, 6,
8 140:22 141:15
142:2, 11, 13, 17, 24
143:5 144:11, 15
145:24 146:2, 13,
15 147:7, 10, 13, 18

148:1, 5, 11, 14
150:7
Pugh's 149:4
153:24
punish 65:19
punitive 64:1
purchase 22:13
purpose 52:18
pursuant 29:3
35:7 36:22 43:5
56:4 58:25 133:8
pursuit 54:2
push 14:21 37:17
100:6
pushing 161:1
put 10:10 21:12
38:12, 17 54:15
64:13 97:22 107:8,
14 130:25 134:9
135:16 139:24
152:9
puts 136:2
putting 38:24 74:6
92:25 93:17
100:15 158:14

< Q >
qualified 13:17, 19
24:22 30:5 53:22
55:18
quarterly 86:20
Quebec 89:21 90:2,
10, 11
question 21:4 59:3
80:12, 21 113:19
145:9 149:13 156:5
questions 13:4, 6
26:13 125:19
139:13
quickly 87:19
112:7 156:19
quiet 116:6
quite 134:1
quote 145:1
quote/unquote
145:5

< R >
race 65:12

raise 150:7
raised 149:18
raises 87:25
range 118:10
rankles 148:16
RAWL 4:11 27:1
30:24 35:24 36:23
41:8, 11, 14, 17, 18,
20, 24 42:3, 9
43:13, 17 44:2, 12,
16, 20 45:2, 16
46:20 47:3, 14, 21
48:2, 14 51:12, 17,
19, 22 52:1, 9, 17
53:1, 13 54:18
55:16, 24 56:8, 12
58:5, 13, 20 59:24
60:22 61:12, 20
62:23, 24 63:11, 15
64:19 66:9, 13, 14
67:8 87:2, 5
reach 114:1
reached 81:16
132:1
read 26:12 48:4
54:23 91:12
129:10 142:24
143:8 145:23
147:22 148:3, 5
152:8
reading 39:13
57:23 149:5
ready 20:8 72:4, 8
106:7, 12 114:11
125:23 133:12
134:10 160:12
real 95:12 123:7
realized 46:21
realizing 83:13
really 70:13
135:15 151:21
153:3 160:20
reared 158:4
reason 29:15 50:13
52:2 55:4 74:14
108:17 112:3 158:4
reasonable 111:16
139:20

reasoned 139:19, 20
140:16, 20 148:8
149:15
reasons 154:11
recalcitrant 7:10
9:4 138:3
recall 23:4 42:10
77:14 106:24
108:13 121:14
141:3
recalls 73:10
receive 16:25 56:17
received 6:6 19:19,
25 48:6 49:2 57:1
59:16 109:5, 10
116:15 121:2
Receiver 1:8 2:7,
12, 17 3:1 6:20, 22
7:2, 14, 16 11:12
12:11 16:25 20:7
23:24 25:23 32:4
33:22 34:5 37:11,
19 38:23 42:17
45:4, 6 52:18, 19,
21 53:5, 16 62:3,
15 65:22 66:1
71:11, 18 74:16, 23
76:20 78:8, 18, 19,
23, 25 79:1, 3, 9, 19
80:1, 4, 6 82:11, 14,
20 102:8 108:2, 16
109:23 113:9, 12,
22 114:5 116:9
119:12 120:15
122:4 124:4
129:18 130:25
131:20, 25 135:5,
16 137:23 142:18
146:15 151:25
receiver-led 62:10
receiver's 78:21
82:25 107:18
137:15, 20
receivership 7:5
11:14, 23 12:3, 24
13:23 15:9 17:19
20:18, 20 27:19
32:4, 10, 24 50:14
64:14, 15 65:21
69:16 78:16 80:10

85:10, 18, 21 87:7
 108:15 118:13
 120:8 132:5 141:4,
 6, 9, 18, 20, 22, 24
 142:1 143:23
 144:7, 22 151:5, 6, 7
receiverships 7:8, 9
 8:11, 13, 14, 17 9:2,
 7, 14 30:6 63:25
 128:8 131:16, 18
 139:23 142:15, 16
receiver-type 13:23
receives 86:16
recess 115:4, 7
recipients 103:15
recitation 22:2
recited 23:6 69:11
reckoning 136:16
recognition 72:6
recognize 69:5
 81:11 104:3 106:2
 131:3, 5
reconstituted 31:9
record 68:2 90:12
 92:10 101:20
 139:2 154:12
 157:14 163:9
recorded 163:7
records 89:21 90:2
 107:2, 4, 6 122:6, 7,
 25
recoverable 26:8
redoing 107:19
reduced 24:8
REES 4:11
REESE 4:21
refer 117:10
referenced 36:13
 45:5, 9 49:10 56:18
references 57:20
 152:20
referring 67:7
 137:5 145:25
 147:9, 14
reflection 111:8
refusal 113:3, 5
refused 33:19 38:8,
 9, 10 89:5 105:19
 108:9 109:23 133:5
refuses 64:4 108:2

refusing 106:3
 112:21
regard 16:10
 41:21 42:12 56:14
 57:4, 11 74:19
 90:19 100:10
 142:17 146:8, 13, 15
regarding 13:4
 121:1, 7 159:16
Registered 163:1, 17
regular 146:18
regulatory 23:16
reimbursement
 36:17 46:19
rejected 133:17
related 21:1 28:14
 35:19 67:3 71:6
 102:12 120:7
 121:11, 12 126:15
 129:23 141:1
 163:12
relates 34:1
relationship 26:19
 52:5
relay 114:19
release 43:3 48:22
 49:10, 16, 18, 19
 50:1 110:13
relevant 12:1
relief 64:5 88:22
 96:9 137:8
reluctance 28:2
reluctant 28:3
Reluctantly 10:15
 67:17, 22
relying 112:8
remain 126:10
remaining 33:17
 42:19 105:13
remediated 40:21
remember 151:19
remembers 10:12
remiss 98:11
removal 54:13
renamed 131:11
renaming 134:4
rendered 30:1
renoticing 120:2
report 6:22 26:11
 30:16 95:10 96:12

115:21 116:11
 124:8
REPORTED 1:23
 108:7
reporter 101:2, 7
 115:3 163:1, 3, 17
reporting 27:7
 46:3 48:20 60:25
 61:5, 6
reports 12:21 29:7
 36:1, 2 46:18
 86:20 107:24
represent 6:21
 15:23 41:19, 20
 51:13, 14 55:3
 63:23 78:16
representation
 15:17, 22 16:14
 83:1
representations
 34:10
represented 28:13,
 14 55:9 64:11
representing 80:25
 136:20
represents 12:11
request 28:1 36:19
 45:8 46:19 52:20
 62:3 66:19 82:25
 98:19 99:3 122:6,
 24 137:16
requested 42:7
 45:8 49:22 59:5,
 25 118:24 121:24
requesting 49:3
requests 36:16
 57:10 63:20 118:5
 122:5
require 132:21
required 42:21
 49:5 132:16
requirement 104:6
requirements 46:3
requires 69:3
research 73:19, 24
reset 95:14
resisting 67:9
Resolute 11:21
 15:25 35:16

Resolute/Lloyd's/CM
LI 14:11
Resolute-controlled
 16:23
resolution 119:1
 157:6
resolve 11:16
resolved 12:25
 14:2 105:14
 119:15, 19 134:13
 157:8
resolving 81:14
 103:21
resources 8:7
 27:21 84:19
respect 22:18 41:1
 43:10 49:20 59:22
 62:18 63:14 79:13
 87:1 88:24 90:22
 91:7 93:24 100:2
 102:11 105:15
 106:20 137:25
 140:9 154:25
 157:16
respectfully 19:10
 52:17
respond 7:13
 28:11 47:11 50:17
 51:6 52:7 53:6, 9
 54:8 76:14
responded 48:24
 82:24 122:23
 132:9 137:15
responding 50:25
 122:1
response 90:7
 113:24 137:24
responses 23:3
 77:22 78:1 100:5
 120:18 121:2
 122:16, 19, 20
responsibilities 8:2
 65:23 83:16
responsibility 14:5
 21:11 76:13
responsible 65:20
 66:5
responsive 7:24
 12:3 24:2 26:5

27:12 75:24 85:15 86:7 87:9 137:18 restore 160:18 rests 28:16 result 15:8 58:7 63:2 64:17 107:11 RET 1:15 reveal 107:9, 10 revealing 86:14 reverse 109:4 review 35:23 113:22 reviewed 57:2 revisit 94:20 revolve 6:19 revolves 110:9 rhetoric 32:18 Rice 159:9 RICHARDSON 4:5, 17 10:9 15:1, 13, 15, 16, 20, 23 16:4 40:17 41:8, 11 Richland 1:21 right 6:4, 16, 17 11:13 12:5, 19 14:13 15:12, 21 16:9, 18 17:2 19:22 20:3, 4 21:2 22:22 23:20, 22 25:20 30:22 32:1, 21 33:11 34:22 35:2 36:7 38:16 40:25 41:7, 13 43:16 44:24 45:15, 20 46:14 47:4, 24 48:13 51:17 52:14 61:11 62:8, 16, 17, 18 63:21 64:8 66:12 67:15, 17, 24 68:8, 9 70:25 71:7 72:17 74:2 80:13, 16, 19 81:1 84:25 85:4 88:15 92:1, 7 93:21 94:4 95:17, 22, 24 96:2 97:11 98:18, 19 99:22 100:1, 8, 11, 13, 24 102:1, 6 103:6, 8, 18 105:2 108:20 111:3 112:15	113:15 114:8, 25 115:1, 11, 19 124:2 126:21 128:4 135:25 138:6, 7, 12, 15, 22 139:1, 17 147:23 148:13, 23 152:3 155:7, 17 156:12, 14 158:19, 22 159:3 160:23 161:21, 25 162:3 rights 72:15 84:1 RIKARD 2:8 RMR-CRR 1:23 road 100:6 robe 154:24 ROBINSON 2:13 80:20 81:3, 11 85:1, 2 129:21, 25 130:22, 23 143:17 robust 31:17 87:18 rogue 18:11 64:1 role 57:5 roles 85:21 rolls 120:14 round 30:14 91:24 Royal 24:25 58:12 Rule 18:2 91:9 127:7, 11 132:19 142:20, 24 ruled 21:25 39:8, 9 68:14 70:1 71:2 75:3 90:21 91:2, 11 115:16 138:18 149:25 157:14, 23 rules 31:23 42:12 95:1 136:17 143:25 146:23 150:12 ruling 23:16 103:7 119:9, 16 121:18 138:19 145:7, 11 148:6 158:11 rulings 70:15, 21 72:6 80:5 83:4 104:1, 25 105:10, 21 127:13, 21 143:22, 23 146:12, 19 158:13 run 107:15 109:16	112:1, 2 140:8 running 79:22 < S > sale 29:5 sales 25:15 39:21 91:14 117:2 Samuel 152:3 sanctions 145:17 sanctity 18:2 Sarco 11:8 sat 51:24 satisfy 100:9 saw 77:20 87:6 134:2 149:20 SAWYER 5:6 16:6, 8, 11, 17, 20 95:18, 20, 21 96:3, 4, 15 97:25 98:10, 13, 17 99:16, 19, 21, 23 161:2, 14 saying 38:7 53:15 56:16 59:18 60:17, 19, 20, 23 62:21 66:18 67:7 83:10 88:20 89:10, 12 104:9 126:22 127:24 133:9 141:25 144:11, 14 150:17 says 43:21, 25 48:6, 15, 19 67:9 70:14 73:25 92:20 143:2, 25 144:21, 23 scenario 54:16 schedule 96:16 98:23 99:8 136:3, 5, 8 137:21 138:1 140:8 157:9 scheduled 159:2 schedules 35:18 37:16 49:14 67:2 scheduling 89:15, 16 116:22 123:23, 25 135:21 156:24 scheme 117:3 school 61:3 scintilla 23:1 scoop 161:23	SCOTT 3:20 136:25 scott.balber@hsf.co m 3:23 SCULLY 4:11 seal 24:9 86:13 search 102:16 108:14 searchable 106:22 107:20 searches 107:8 searching 58:15 seated 6:3 115:10 second 81:5 87:6 95:20 102:14 105:24 106:14, 17 143:18, 20 Secretary 18:6 Section 49:17 see 9:13 15:14 19:14 35:10 36:16 37:2 55:6 63:3 65:16 81:22 98:23 99:4 114:14 145:21 157:11 161:9, 22 seeing 15:4 102:18 seeking 110:23 seen 47:1 133:25 134:24 153:14 159:12 send 69:22 90:9 110:6, 24 119:3 159:4 sending 90:11 sense 96:20 99:17 sensible 137:20 sent 23:24 36:18 44:8, 10 45:3, 12 47:2 48:5, 25 49:1 78:7 109:7 119:13 Separate 97:13 141:22, 25 151:14, 23 153:21 series 111:14 served 31:6 118:4 122:5, 13 137:22 serving 118:2 session 93:11

set 8:18, 19 26:2
 28:22 31:2 46:4
 50:14 58:22, 23
 97:2, 19 106:17
 156:22
sets 118:7
settle 9:10 47:11
settled 10:18 33:15
settlement 10:11
 12:10, 17 13:17, 19
 24:22 25:14 27:13
 30:5, 8 41:9 43:2
 44:5 46:4 47:16
 48:11 49:9, 15, 25
 50:7, 9, 20 53:22
 55:19 56:24 57:16,
 17, 25 58:4, 8, 17,
 25 59:11, 15 61:23
 62:8 67:1 86:13
 103:22 105:18
 106:4, 9
settlements 13:9, 16
 61:24 73:7
settles 20:13 29:12
settling 11:25
 50:25
seven 19:13 49:13
 53:20
share 119:6
sharp 17:20 19:18
SHEALY 4:23
 108:24, 25 109:1
 110:15 111:2, 4, 19,
 25 112:2, 10, 14, 18
 113:7, 16 114:9, 17,
 19, 22
ship 21:8
shocked 17:25
shoot 135:13
shortfalls 88:1
Shortly 49:6
shoulder 153:17
shout 69:23
show 63:7
showing 91:20
shows 61:23 101:2
side 10:8 82:18
 86:24 136:2
sides 95:10 109:20
sign 62:13 78:8

signed 36:14 49:13,
 14 50:1 57:16
 62:14 66:19
 157:12, 13
significant 31:10,
 12 105:6
signs 108:10
similar 24:22
 26:22 30:4 32:11
simple 107:7 110:9
simply 13:11 30:2
 82:21
sir 20:17 68:19
 70:5 71:2 136:23
 138:6 149:8
sit 27:15 63:3
sites 31:14
sits 24:25
Sitting 26:6 40:9
 77:8
situation 53:6
 55:20 62:22 68:25
 83:15 88:7 131:4
six 10:11 17:11
 20:22 49:14
slew 133:14
slightly 70:23
small 37:5 39:20
smallest 110:19
SMITH 2:13 3:20
so-called 78:17
 130:12
sold 25:12 28:25
 39:16
solution 17:1
solve 82:8
somewhat 29:16
 32:13 40:22
soon 105:17, 21
 106:9, 11
sooner 112:13
sorry 33:14 101:18
 123:17
sort 18:11 58:10
 65:13 73:5 77:4
 82:9 114:12
sorts 27:9
sought 54:10
 123:23

sounds 28:19 87:1
 110:14
source 47:9
South 1:22 2:4, 9,
 14 3:5, 10, 15 4:6,
 12, 18, 24 5:7 8:9,
 14, 15 21:12, 16
 22:5, 11 28:11
 29:10, 16 30:6
 31:13, 14, 18 39:19
 64:6 86:8 87:10
 90:1 104:13
 146:24 147:5
 152:9 154:6 163:3,
 18
Southern 9:3
space 160:22
sparred 153:13
Sparrow 6:8
 127:15 139:1
 148:23
SPARROWS 4:15
 117:24 118:1
 123:9 124:15
 125:14 139:4, 9, 11
Spartanburg 77:15,
 17, 21 92:20, 22
speak 61:3 146:6
 160:13
special 33:4
SPECIALTY 5:3
specific 42:7 48:5
 62:7 139:13
specifically 53:16
 55:6 103:1 121:18
 134:6
spend 38:4
Spirax 11:7 115:12
Spirax's 115:17
spugh@richardsonpl
owden.com 4:19
squarely 70:16
stab 107:19
stage 9:18 18:22
stages 9:14 19:18
 85:10
stalemate 40:23
 95:11
stand 30:3 106:7

112:18
standard 118:6
standpoint 12:15,
 23, 24 82:16
stands 110:7
START 1:19 63:17,
 19 96:7, 8 116:12,
 16
started 10:12 73:3
 77:17 112:16
 120:1 125:22
State 1:11 29:15
 39:20 64:11, 15
 84:18 146:25
 153:22 154:14
 163:3, 18
stated 18:11 132:3
 144:24 155:4 163:5
States 26:8 29:11,
 13 54:4 89:25
State's 18:7
status 6:22, 25
 12:20, 22 17:10
 21:21 32:23 51:10
 68:9 74:16 76:20
 83:2 96:12 100:25
 102:2, 12, 16, 20
 115:21 116:11
 124:8 139:21
statute 75:2, 10
statutory 122:6
stay 115:24 152:25
stayed 71:12 72:9
 74:24 78:21
staying 140:5
 143:15
stays 33:23, 25
 144:9
stemming 10:2
stenographically
 163:8
step 12:5 154:2
steps 32:18
STEVEN 4:17
Stokes 143:1
Stokes-Craven
 140:23 143:4
stop 15:10 59:17
 71:15

story 11:13	summer 107:12	107:19 115:4	Texas 8:13 18:6
stream 21:12 23:8	118:3 135:12	125:18 142:4	31:8
streamline 125:9	136:14	159:13	Thank 7:1 16:19,
Street 1:21 2:4, 14	summons 151:15	TAKEN 1:18	20 17:2 32:25
3:4, 10, 15 4:12, 18,	sums 105:20 113:4	25:16 72:11	41:16 62:24 66:12,
23	sun 65:3	103:24 107:6	14 85:6, 8 93:13,
strength 61:17	supplemental	142:18 163:3	19 95:4, 16 99:5,
strict 146:25	122:16	talk 20:19 21:20	23, 24, 25 108:21
stricter 107:12	supply 60:21	73:9	114:22 137:2
strike 72:24 89:14	supplying 59:21	talked 86:4 110:1	155:5 156:13
strike-the-pleadings	support 90:8	131:18 135:19	158:25 159:4
74:4	supporting 69:6	talking 43:15	161:24
striking 33:24	suppose 156:15	44:24 51:15, 20, 21	thanks 17:3 161:7
76:24	158:1	72:23 74:3, 5	THEILE 2:3
stronger 144:24	supposed 36:1	126:16 140:3, 6	thereof 163:12
struck 17:14 33:18	53:9 96:7 119:5	143:16 146:16, 17	thin 141:24
34:6	136:7 155:14	147:14 149:15	thing 17:3 21:8
stuff 46:20 111:18	Supreme 8:16	tax 8:8 27:20, 21	23:9 28:5 40:19
112:1 129:8, 9	17:17 18:4 69:12	taxed 9:12	41:14 45:12 47:23
stymied 129:16	123:11 127:18	taxing 11:20 15:5,	53:3, 23 62:17
subject-matter	132:2, 10, 15 133:8	10	64:25 65:14 67:11
118:15	139:22 140:1	te 95:3	68:21, 23 70:12
submission 42:23	144:18, 24 145:1,	tearing 26:17	73:24 74:4 76:10
43:16, 20	10, 12, 22 147:24	teed 128:20	82:13 83:12 85:21
submit 96:18	148:6, 9 149:20, 22	telegraphing 116:13	99:12 101:12
submitted 43:12	152:9 154:6, 15	tell 26:10 48:2	102:1 111:9 128:7
119:8	sure 12:7 16:5	55:2, 10, 22 77:23	145:16 148:19
submitting 43:11	39:8 47:1 58:22	86:12 88:18 89:8	150:3 151:4
subpoenas 23:25	80:15 84:3 91:1	93:9 97:6, 24 98:6	152:10 156:8
subscribers 36:12	101:23, 24 112:10,	108:5 111:7 152:2	157:7 158:3, 5
subsequently 139:10	12 132:15 149:19	156:18	160:17
successors 21:7, 10	157:25	telling 47:23 53:11	things 18:7 22:25
sudden 94:18	suspend 118:25	55:7 89:8	24:1 31:25 35:6
suddenly 28:6	Swett 159:10 161:9	tend 15:8	65:19, 24 67:13
158:4	swiftly 135:7	tender 37:24 39:2	69:4 71:23 75:12,
sued 7:13 45:6	sworn 163:6	tendering 13:13	23 81:10, 21 90:17,
sufficient 12:9	sympathize 62:11	14:3, 4	22 93:16 97:3, 7
13:6 15:10	syndicate 36:12	term 161:1, 6	100:9 112:15
sufficiently 11:16	system 8:9 107:8,	terminate 73:11, 13	113:2 127:8, 12
suggest 151:21	14, 15 147:2 148:21	terminated 82:25	128:2, 9, 20 129:4
suggested 59:11	< T >	terms 14:1, 3	136:4, 10 146:19,
suggesting 98:4	tab 35:10	39:21 41:4 42:6	21 147:23 149:18
suggests 58:6	tabbed 35:5	60:11 86:14	152:24 156:23, 25
suit 63:18	table 77:8	105:20 114:10	157:14, 19, 22, 23
Suite 3:4, 10, 15	take 32:18 42:21	152:19	158:15
4:6, 12, 23	47:20 59:22 63:20	Terry 159:17	think 12:1, 5 19:14
suits 116:1, 4	73:19 79:17 81:5	testify 163:6	25:22 28:9, 12
sum 25:13	84:22 96:22 102:3	testimony 130:15	29:2, 21 31:19
	104:17 106:10	163:7, 9	32:9 33:24 34:3
		tethered 155:15	37:13 38:3 40:24

49:4 63:12 67:16 68:9 70:22 71:17 73:5 75:8, 14 77:8, 14, 15 79:5 80:21 81:4, 25 82:2 83:11 85:2, 9 88:5, 14, 15 89:9 91:9 92:11 96:11, 13, 17, 19 97:4 99:16 101:10 109:3 110:20 111:16 113:17 115:2 121:14 125:9, 20 126:12, 25 127:1, 15 131:8 132:23 135:1, 3 148:3 153:20 155:3 160:15 thinking 123:3 third 71:8 136:21 THIRD-PARTY 3:6, 18 4:3, 9, 15 102:13 114:3, 4 116:14, 20 117:1, 9, 10, 17, 21, 25 118:3, 21 119:7, 21 120:6, 22 121:8, 19, 20 122:23 123:22 124:14, 15, 16, 21 125:16 126:6, 20 129:19, 24 155:13 thought 40:12 91:10 111:11 thousand 134:23 three 24:6 32:23 70:3 79:2 103:2 110:15, 19 Tibbs 1:4 6:8, 14 17:12 19:23 20:13 22:18 33:15, 16, 23, 25 71:16, 18 72:8, 20 73:1 75:16 90:23 93:25 94:3 96:25 115:22 126:17, 19 136:22 141:5 155:12 Tillman 140:23 142:25 TIME 1:19, 20 8:7, 19, 20, 22 9:22	10:15, 16 11:20 15:11 20:3, 4, 6, 10 26:3, 25 28:5 34:4 36:18, 19 37:10, 16 40:1 42:18 44:9 53:20 64:9 66:10 70:15 77:6 78:1, 5 95:15 96:22, 23 104:23 109:17 114:18 115:18 118:16 120:12, 21 125:23 127:2 128:19, 24 153:14 156:10, 20 157:4 163:5, 7, 10 timeline 7:8 11:12 12:2 times 19:3, 9 51:24 53:3 64:6 65:3 79:2 99:7 127:22 tired 129:5 tmcvey@kassellaw.c om 2:5 TOAL 1:15 Toal's 49:6, 7 today 7:6, 25 9:13 16:13 20:9 26:6 27:15 38:16 47:19 71:21 96:14 97:10 100:20 115:12 126:3, 14 131:16, 19 132:13 133:12 157:24 159:20 today's 95:13 TODD 3:9 156:3 todd.carroll@wbd- us.com 3:11 told 47:22, 25 48:3 52:15 53:16, 24 55:10, 11 82:13 104:16 140:2 tolling 155:22, 25 tomes 152:6 ton 34:14 75:21 top 59:3 89:11, 19 106:15 tort 41:4 torts 7:25 totally 151:14	touch 99:7 159:23 track 86:23 156:23 tradition 64:7 traditional 13:20, 21 64:2 65:14 traditionally 24:2 tranche 137:16 transacted 30:3 transaction 22:15 29:4 transcribed 163:8 transcript 163:5 transfer 26:17 transferred 10:21 transfers 25:17 transmitted 46:10 transparent 29:24 85:20 treated 29:10, 16 Trey 48:7 49:1 trial 8:23 11:12 14:18 19:5 31:2 38:18 62:21 71:16 72:9 86:1 94:17 95:14 103:21 104:19 105:1 122:13 125:10 126:13, 15 127:12 128:20 130:8 131:5 133:13 134:11, 19, 25 135:12 137:21 141:1 157:9 159:8, 9 trials 86:3 135:4 tribunal 144:2 tried 10:24 26:4 68:25 71:15 75:7, 11 79:13 trigger 104:7 105:21 113:4 trip 154:2 true 20:14 108:8 163:9 truly 140:7 trust 24:24, 25 25:2, 5, 6, 8 27:7, 8, 9 28:21, 22 29:7 42:8 46:2, 7, 18 47:7 52:5 58:10,	11, 21, 23 60:11, 13 63:8 86:20 117:5 trustees 53:8 trusts 51:5 59:22 truth 52:16 55:7, 10, 11, 12 163:6 try 35:8 38:13 77:19 84:14 87:2 106:7, 12 114:11 131:1 135:17 140:8 145:1 160:12 161:9 trying 34:2 50:11, 13, 23 57:7 62:9 65:17, 19, 20 66:4 70:12 76:17 78:12 83:20 86:4, 5, 22 92:22 97:1 109:12, 24 113:10 123:15 124:2 145:4 150:7 156:21 158:1, 14 Tuesday 125:2 turn 12:20 17:9, 23 20:15 32:22 68:11 113:24 136:20 turned 89:22 Turner 1:3, 4, 5 6:23 9:15 11:7, 9, 10 17:9, 24 19:20 20:16, 24, 25 21:19 22:3 24:4, 17 25:4, 11, 13, 23 26:1 27:11, 17, 18, 24 28:9, 10, 13 29:14, 18, 22 30:1 33:17 34:8, 9, 12, 15, 20 37:4, 12 38:1, 8 39:4, 19 40:22 41:1, 12, 21 46:11 51:14 52:5 61:9, 17, 24 68:10 73:7 81:16 83:17 86:10 87:11, 20 88:8 93:7 94:5, 17 100:3 Turner's 21:21 30:20 68:12 turning 102:19 turnover 160:7

turns 55:8
twice 142:14
two 17:17 18:3
 23:10 33:16 43:10
 71:5 73:2, 14
 74:22 85:13, 17, 19,
 20 86:10, 21, 22
 97:1, 2, 23 102:10
 105:5, 13 106:3, 25
 107:13 110:4
 113:2 119:11
 134:22 151:23
 155:11 159:2
type 62:2 133:22
 134:8
typed 163:9
types 16:2

< U >
U.S.-based 117:2
UK 3:19 4:4
 117:13 130:18
ultimate 74:7
ultimately 14:2
 27:13 54:14
unappealable 72:18
uncertain 28:12
uncertainty 157:16
uncollectable 30:2
uncovered 54:6
underlying 52:22
 84:22 103:19
 142:19 145:18
understand 12:8
 15:13 18:16 42:4,
 20 52:18 55:16
 57:4 59:24 61:21
 62:6 67:21 68:3, 6,
 9 69:8 70:2, 18, 21
 72:5 74:11 75:3
 78:13 80:4 83:9
 84:5 91:21 93:3
 95:2 99:6 109:18
 129:14 135:8
 138:19 140:7, 8
 144:13 147:7
 148:14 153:19
 154:3, 11, 19, 20, 25
understanding
 28:10 43:18 44:4

47:15 56:21 61:6,
 22 107:22 113:11
 146:3, 4, 7 155:13
Understood 16:18
 98:21 146:22
underwriter 11:22
UNDERWRITERS
 5:4 49:20
unenhanced 109:21
Unfortunately 65:1
 133:13
uniform 128:6
unilateral 134:4
UNION 5:3
unique 88:7
United 26:8 29:11,
 13 54:4 89:25
unjust 117:5
UNNAMED 5:4
unrecognized 18:12
unrelated 155:9
unsigned 36:15
unusual 65:13
update 33:12
 129:23
urgency 135:9
use 35:8 64:14
 65:5 149:10
Usually 8:5 93:6
utilize 156:20

< V >
Vacate 145:16
Valek 20:1 101:24
valid 81:25 82:2
varieties 75:12
variety 118:11
various 9:14 16:1
 85:9 118:2, 21
 138:12 157:22
 158:15
veil-piercing 117:6
vendor 107:23
verdict 37:24 54:9
verify 52:14
versus 100:25
 101:4, 8, 21 102:2,
 13, 20 104:25
 106:7 140:5 143:1,

15
viable 105:13
VICTOR 4:11
victory 148:19
videotaped 86:3
view 24:10 37:5
 38:17 138:3
violating 69:24
virtually 147:3
vis-a-vis 13:22
volatile 64:22
vrawl@grsm.com
 4:13
vs 1:8

< W >
wait 128:25 156:6
waive 74:2
waiver 153:23
 154:2
waiving 83:25
want 19:20 20:2
 21:23 30:24 38:4
 39:5 48:16, 23
 61:3 62:7 63:10
 69:1 79:8, 25 82:7
 88:17, 21 90:13
 91:23 92:14 93:4
 94:14 95:10 96:8
 101:19 110:2
 112:22 126:2
 128:23, 24 130:7, 8,
 11 137:3, 6, 12
 154:12 155:1
 156:3, 8 157:1, 2
 159:25 160:13
wanted 34:17
 85:25 110:12
 129:21 145:8
wanting 129:3
wants 7:19 60:3
 77:25
war 17:19 88:13
warranted 67:23
Washington 2:19
waste 37:15 128:19
watch 77:18
watched 77:19 86:1
way 10:5 11:24
 17:4 22:5 30:4

37:20 60:9 69:16
 82:7 83:15 84:10,
 24 88:17 93:15
 99:20 102:21
 128:20 145:4 158:5
ways 86:10 139:9
wearing 154:24
weary 128:3
Wednesday 1:18
week 15:3 31:2
 77:16, 17 81:15, 18
 84:14 123:15, 19
 133:13 135:15
 156:21, 22
weekly 89:12
weeks 10:2 17:17
 23:11 97:1, 2, 24
 106:11 111:2
 113:9 114:12
 134:3 159:2
weird 64:24
Welch 44:18, 19, 22
 45:7, 24 57:11 73:2
Well 11:3, 17
 17:22 19:19 20:12
 24:16 32:1 44:21
 45:18 47:3, 18
 48:2 50:6, 12
 51:23 52:25 57:19
 58:5 59:18 61:18
 67:21 68:8 69:19
 70:25 74:8 75:23
 76:9 78:11 81:1
 82:10 83:3 86:3,
 25 90:15 91:21
 92:20 93:9, 18, 25
 94:2 96:24 97:21
 98:6 104:18
 107:24 108:8
 110:8, 15 111:19
 112:14, 18 117:7
 121:22 122:14
 125:11 126:1, 21
 127:7, 11 129:2, 11
 130:1 133:19
 135:25 138:9
 141:21 142:10, 22,
 24 143:3 144:13,
 25 145:24 147:10,
 12, 17 148:1 150:8,

15, 20 151:2, 10
 154:21 155:4
 156:4, 14 160:11,
 19 161:3, 7, 8, 21
Wells 3:14
went 73:10 77:3,
 13, 14, 18 120:1
we're 9:17, 23 10:5
 22:22 32:11 44:24
 54:16, 24 55:19
 60:21 61:18 62:9
 65:18, 20 84:1
 87:15, 17 88:9, 11,
 14 89:6, 13 93:22
 96:24 100:18, 24
 102:18 104:24
 106:12 112:19
 124:1 127:2
 129:12, 16, 20
 133:12, 20 134:14
 135:23 137:12
 138:4, 19 140:3
 143:15 146:17
 147:14 149:3
 150:13, 16 156:7, 19
WESLEY 5:6
we've 19:7 28:4
 38:14 53:3 56:6
 67:11 75:6 84:14
 87:16, 17 91:13, 15,
 16, 19 96:11 100:1
 109:22 113:16
 115:1 123:7, 24
 125:8 128:1 130:3
 131:18 133:25
 135:19 137:16, 18
 140:5, 17 149:14
 153:14
whichever 115:25
 116:1
whispering 77:9
WHITE 3:1
widespread 135:9
willing 62:12
willingness 39:14
willy-nilly 73:20
window 114:13, 15
Winters 109:14, 15,
 18, 25 110:6 111:9,

20, 23
wire 154:2
wish 112:12
withdraw 132:8
 133:6
Witness 163:13
witnesses 38:10
 87:22, 24 89:4, 13,
 14, 16, 17 94:18
 100:17 124:8
 130:13
WOMBLE 3:9, 11
won 8:11, 13, 14
wondering 155:19
word 73:15 154:22
words 17:20 19:18
 38:1 145:23
work 7:17 10:7
 62:22 67:8 99:8
 112:6 116:22
 124:2 126:9
worked 57:6 85:23
workers 21:16
 23:19
working 16:24
 32:2 40:18 84:13
 85:14 88:5, 19
 111:5 116:19
 129:12
worksites 39:17
 91:14
world 28:25 70:12
 82:13 127:16
worry 29:22 94:3
 98:7
worst 111:8 151:3
worthwhile 17:9
write 119:4
writing 24:8
 158:15
written 39:25 40:1
 54:24 77:5 78:2
 84:11 92:13, 14
wrong 66:6 80:17
 139:17, 18 140:2
wrongdoing 66:3
wrote 35:23 132:7
 143:4
wsawyer@murphygr

antland.com 5:8
 < Y >
y'all 51:1 88:18
 129:11 149:18
 156:8
Yeah 6:7 16:4, 17
 35:4 44:20 70:10
 81:7 97:16 100:8
 159:19 160:6, 16
 161:3, 20
year 107:3 130:7
 136:4
years 25:19 26:21
 31:17 53:24 65:4
 90:3 104:3 106:25
 146:23
yesterday 6:6 18:1
 20:1 49:3, 7 98:2
 109:13 113:21
 116:23 125:5, 12
 127:17
yoke 152:5
YORK 3:20, 22
you-all 82:18 97:5
 99:12 152:11
 < Z >
zero 32:14 34:13
Zurich 24:14

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

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

Plaintiff,

vs.

ANGLO AMERICAN PLC, individually and as
successor in interest to ANGLO AMERICAN
CORPORATION OF SOUTH AFRICA LTD.;
DE BEERS PLC; DE BEERS CENTENARY
AG; DE BEERS CONSOLIDATED MINES
LTD.; DE BEERS S.A.; DE BEERS UK LTD.;
DE BEERS JEWELLERS LTD.; DE BEERS
JEWELLERS US, INC.; ANGLO AMERICAN
US HOLDINGS INC.; ELEMENT SIX US
CORP.; ELEMENT SIX TECHNOLOGIES US
CORP.; ELEMENT SIX TECHNOLOGIES (OR)
CORP.; FIRST MODE HOLDINGS, INC.;
PLATINUM GUILD INTERNATIONAL
(U.S.A.) JEWELRY INC.; LIGHTBOX
JEWELRY INC.; FOREVERMARK US INC.;
ANGLO AMERICAN CROP NUTRIENTS
(U.S.A.), LLC; CHARTER CONSOLIDATED
LTD.; ESAB CORPORATION; CENTRAL
MINING & INVESTMENT CORPORATION
LTD.; CAPE HOLDCO LTD.; THE LAW
DEBENTURE CORPORATION PLC; CAPE
INDUSTRIAL SERVICES GROUP LTD.;
MOHED ALTRAD; ALTRAD UK LTD.; CAPE
UK HOLDINGS NEWCO LTD.; ALTRAD
SERVICES LTD., f/k/a CAPE INDUSTRIAL
SERVICES LTD.; ALTRAD INVESTMENT
AUTHORITY S.A.S.; SPARROWS OFFSHORE
GROUP LTD.; HAWK BIDCO US INC.;
ARRANCO US, LLC; SPARROWS
OFFSHORE, LLC; THE SPARROWS GROUP,
LLC,

Defendants.

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

NOTICE OF REMOVAL

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

BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BASIS FOR REMOVAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

s/ James H. Elliott, Jr.

James H. Elliott, Jr. (Fed. Bar No. 07043)
Cameron D. Berthelsen (Fed Bar No. 13434)
235 Magrath Darby Blvd., Ste. 100
Mt. Pleasant, SC 29464
Tel: 843.805.6550
Fax: 843.805.6599
Email: jelliott@richardsonplowden.com
Email: cberthelsen@richardsonplowden.com

**HERBERT SMITH FREEHILLS
NEW YORK LLP**

Scott S. Balber (*Application Forthcoming*)
Benjamin C. Rubinstein (*Application Forthcoming*)
Maxwell D. Herman (*Application Forthcoming*)
Elizabeth C. Kaminski (*Application Forthcoming*)
200 Park Avenue 16th Floor
New York, New York 10166
Tel: 917-542-7600
Fax: 917-542-7601
Email: scott.balber@hsf.com
benjamin.rubinstein@hsf.com
maxwell.herman@hsf.com
elizabeth.kaminski@hsf.com

*Attorneys for Defendant
Anglo American plc*

June 28, 2024
Mount Pleasant, South Carolina

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; 4520 CORP., INC.; A.O. SMITH CORPORATION; A.W. HESTERTON COMPANY; ABB INC.; AIR & LIQUID SYSTEMS CORPORATION; AIW-2010 WIND DOWN CORP.; AMENTUM ENVIRONMENT & ENERGY, INC.; ANCHOR/DARLING VALVE COMPANY; ARMSTRONG INTERNATIONAL, INC.; ASBESTOS CORPORATION LIMITED ASCO, L.P.; ATLAS ASBESTOS CO.; ATLAS TURNER, INC.; AWT AIR COMPANY, INC.; BAHNSON, INC.; BANNER INDUSTRIES INTERNATIONAL, INC.; BANNER INDUSTRIES, LLC; BANNER INDUSTRIES OF N.E., INC.; BARRETT'S MINERALS INC.; BEATY INVESTMENTS, INC.; BECHTEL CORPORATION; THE BONITZ COMPANY; BRAND INSULATIONS, INC.; BW/IP INC. CANVAS CT, LLC; CAPE PLC; CARBOLINE COMPANY; CB&I LAURENS, INC.; CLEAVER-BROOKS, INC.; CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC.; COPE'S-VULCAN, INC.; COVIL CORPORATION; CRANE INSTRUMENTATION & SAMPLING, INC.; CROSBY VALVE, LLC; DANIEL INTERNATIONAL CORPORATION; DAVIS MECHANICAL CONTRACTORS, INC.; DEZURIK, INC.; DUKE ENERGY CAROLINAS, LLC; DUKE ENERGY CORPORATION; EATON CORPORATION; ELLINGTON INSULATION COMPANY, INC.; EMERSON ELECTRIC CO.; FISHER CONTROLS INTERNATIONAL LLC; FLAME REFRACTORIES, INC.; LOWSERVE CORPORATION; FLOWSERVE US INC.; FLUOR CONSTRUCTORS

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

ANSWER OF CAPE PLC

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

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

Defendants.

NOW COMES Defendant Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“Cape”), by and through its Receiver Peter D. Protopapas, and answers the Amended Complaint as follows:

GENERAL DENIAL

1. To the extent it is not inconsistent with the allegations of its Third Party Complaint, Cape hereby denies each and every allegation contained in the Amended Complaint.

AFFIRMATIVE DEFENSES

1. Cape reserves the right to raise all affirmative defenses available to it under the South Carolina Rules of Civil Procedure and the applicable statutory and case law.

[SIGNATURE ON FOLLOWING PAGE]

RIKARD & PROTOPAPAS, LLC

/s/ Brian M. Barnwell

RIKARD & PROTOPAPAS, LLC

Brian M. Barnwell (S.C. Bar # 78249)

2110 N. Beltline Blvd.

PO Box 5640

Columbia, SC 29204

Phone: 803.978.6111

bb@rplegalgroup.com

Counsel for the Receiver of Cape

June 29, 2023

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; 4520 CORP., INC.; A.O. SMITH CORPORATION; A.W. HESTERTON COMPANY; ABB INC.; AIR & LIQUID SYSTEMS CORPORATION; AIW-2010 WIND DOWN CORP.; AMENTUM ENVIRONMENT & ENERGY, INC.; ANCHOR/DARLING VALVE COMPANY; ARMSTRONG INTERNATIONAL, INC.; ASBESTOS CORPORATION LIMITED ASCO, L.P.; ATLAS ASBESTOS CO.; ATLAS TURNER, INC.; AWT AIR COMPANY, INC.; BAHNSON, INC.; BANNER INDUSTRIES INTERNATIONAL, INC.; BANNER INDUSTRIES, LLC; BANNER INDUSTRIES OF N.E., INC.; BARRETT'S MINERALS INC.; BEATY INVESTMENTS, INC.; BECHTEL CORPORATION; THE BONITZ COMPANY; BRAND INSULATIONS, INC.; BW/IP INC. CANVAS CT, LLC; CAPE PLC; CARBOLINE COMPANY; CB&I LAURENS, INC.; CLEAVER-BROOKS, INC.; CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC.; COPE'S-VULCAN, INC.; COVIL CORPORATION; CRANE INSTRUMENTATION & SAMPLING, INC.; CROSBY VALVE, LLC; DANIEL INTERNATIONAL CORPORATION; DAVIS MECHANICAL CONTRACTORS, INC.; DEZURIK, INC.; DUKE ENERGY CAROLINAS, LLC; DUKE ENERGY CORPORATION; EATON CORPORATION; ELLINGTON INSULATION COMPANY, INC.; EMERSON ELECTRIC CO.; FISHER CONTROLS INTERNATIONAL LLC; FLAME REFRACTORIES, INC.; LOWSERVE CORPORATION; FLOWSERVE US INC.; FLUOR CONSTRUCTORS

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

SUMMONS

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

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

Defendants.

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as successor in interest to ANGLO AMERICAN CORPORATION OF SOUTH AFRICA LTD.; DE BEERS PLC; DE BEERS CENTENARY AG; DE BEERS CONSOLIDATED MINES LTD.; DE BEERS S.A.; DE BEERS UK LTD.; DE BEERS JEWELLERS LTD.; DE BEERS JEWELLERS US, INC.; ANGLO AMERICAN US HOLDINGS INC.; ELEMENT SIX US CORP.; ELEMENT SIX TECHNOLOGIES US CORP.; ELEMENT SIX TECHNOLOGIES (OR) CORP.; FIRST MODE HOLDINGS, INC.; PLATINUM GUILD INTERNATIONAL (U.S.A.) JEWELRY INC.; LIGHTBOX JEWELRY INC.; FOREVERMARK US INC.; ANGLO AMERICAN CROP NUTRIENTS (U.S.A.), LLC; CHARTER CONSOLIDATED LTD.; ESAB CORPORATION; CENTRAL MINING & INVESTMENT CORPORATION LTD.; CAPE HOLDCO LTD.; THE LAW DEBENTURE CORPORATION PLC; CAPE INDUSTRIAL SERVICES GROUP LTD.; MOHED ALTRAD; ALTRAD UK LTD.; CAPE UK HOLDINGS NEWCO LTD.; ALTRAD SERVICES LTD., f/k/a CAPE INDUSTRIAL SERVICES LTD.; ALTRAD INVESTMENT AUTHORITY S.A.S.; SPARROWS OFFSHORE GROUP LTD.; HAWK BIDCO US

INC.; ARRANCO US, LLC; SPARROWS
OFFSHORE, LLC; THE SPARROWS GROUP,
LLC,

Third-Party Defendants.

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANTS:

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

[Signature page follows]

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

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

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

Gray T. Culbreath, SC Bar No. 11907

Lindsay A. Joyner, SC Bar No. 77437

Laura W. Jordan, SC Bar No. 100374

Eleanor L. Jones, SC Bar No. 104678

1201 Main Street, Suite 1200

PO Box 7368 (29202)

Columbia, SC 29201

jlay@gwblawfirm.com

gculbreath@gwblawfirm.com

ljoyner@gwblawfirm.com

ljordan@gwblawfirm.com

ejones@gwblawfirm.com

(803) 779-1833

Attorneys for Third-Party Plaintiff

Dated: June 30, 2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY; 4520 CORP., INC.; A.O. SMITH CORPORATION; A.W. HESTERTON COMPANY; ABB INC.; AIR & LIQUID SYSTEMS CORPORATION; AIW-2010 WIND DOWN CORP.; AMENTUM ENVIRONMENT & ENERGY, INC.; ANCHOR/DARLING VALVE COMPANY; ARMSTRONG INTERNATIONAL, INC.; ASBESTOS CORPORATION LIMITED ASCO, L.P.; ATLAS ASBESTOS CO.; ATLAS TURNER, INC.; AWT AIR COMPANY, INC.; BAHNSON, INC.; BANNER INDUSTRIES INTERNATIONAL, INC.; BANNER INDUSTRIES, LLC; BANNER INDUSTRIES OF N.E., INC.; BARRETT'S MINERALS INC.; BEATY INVESTMENTS, INC.; BECHTEL CORPORATION; THE BONITZ COMPANY; BRAND INSULATIONS, INC.; BW/IP INC. CANVAS CT, LLC; CAPE PLC; CARBOLINE COMPANY; CB&I LAURENS, INC.; CLEAVER-BROOKS, INC.; CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC.; COPE'S-VULCAN, INC.; COVIL CORPORATION; CRANE INSTRUMENTATION & SAMPLING, INC.; CROSBY VALVE, LLC; DANIEL INTERNATIONAL CORPORATION; DAVIS MECHANICAL CONTRACTORS, INC.; DEZURIK, INC.; DUKE ENERGY CAROLINAS, LLC; DUKE ENERGY CORPORATION; EATON CORPORATION; ELLINGTON INSULATION COMPANY, INC.; EMERSON ELECTRIC CO.; FISHER CONTROLS INTERNATIONAL LLC; FLAME REFRACTORIES, INC.; LOWSERVE CORPORATION; FLOWSERVE US INC.; FLUOR CONSTRUCTORS

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

THIRD-PARTY COMPLAINT

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

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

Defendants.

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as successor in interest to ANGLO AMERICAN CORPORATION OF SOUTH AFRICA LTD.; DE BEERS PLC; DE BEERS CENTENARY AG; DE BEERS CONSOLIDATED MINES LTD.; DE BEERS S.A.; DE BEERS UK LTD.; DE BEERS JEWELLERS LTD.; DE BEERS JEWELLERS US, INC.; ANGLO AMERICAN US HOLDINGS INC.; ELEMENT SIX US CORP.; ELEMENT SIX TECHNOLOGIES US CORP.; ELEMENT SIX TECHNOLOGIES (OR) CORP.; FIRST MODE HOLDINGS, INC.; PLATINUM GUILD INTERNATIONAL (U.S.A.) JEWELRY INC.; LIGHTBOX JEWELRY INC.; FOREVERMARK US INC.; ANGLO AMERICAN CROP NUTRIENTS (U.S.A.), LLC; CHARTER CONSOLIDATED LTD.; ESAB CORPORATION; CENTRAL MINING & INVESTMENT CORPORATION LTD.; CAPE HOLDCO LTD.; THE LAW DEBENTURE CORPORATION PLC; CAPE INDUSTRIAL SERVICES GROUP LTD.; MOHED ALTRAD; ALTRAD UK LTD.; CAPE UK HOLDINGS NEWCO LTD.; ALTRAD

SERVICES LTD., f/k/a CAPE INDUSTRIAL SERVICES LTD.; ALTRAD INVESTMENT AUTHORITY S.A.S.; SPARROWS OFFSHORE GROUP LTD.; HAWK BIDCO US INC.; ARRANCO US, LLC; SPARROWS OFFSHORE, LLC; THE SPARROWS GROUP, LLC,

Third-Party Defendants.

COMES NOW Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd. (“Third-Party Plaintiff”), by and through its duly appointed receiver Peter D. Protopapas (the “Receiver”), complaining of the Third-Party Defendants Anglo American PLC (individually and as successor in interest to Anglo American Corporation of South Africa Ltd.), De Beers PLC, De Beers Centenary AG, De Beers Consolidated Mines Ltd., De Beers S.A., De Beers UK Ltd., De Beers Jewellers Ltd., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.), LLC, Charter Consolidated Ltd., ESAB Corporation, Central Mining & Investment Corporation Ltd., Cape Holdco Ltd., The Law Debenture Corporation PLC, Cape Industrial Services Group Ltd., Mohed Altrad, Altrad UK Ltd., Cape UK Holdings NewCo Ltd., Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.), Altrad Investment Authority S.A.S., Sparrows Offshore Group Ltd., Hawk BidCo US Inc., Arranco US, LLC, Sparrows Offshore, LLC, and The Sparrows Group LLC (collectively, “Third-Party Defendants”), who through undersigned counsel respectfully shows unto the Court as follows:

INTRODUCTORY STATEMENT

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

PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION

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

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

VENUE

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

FACTUAL BACKGROUND

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

40. Cape PLC is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates (collectively, “Cape”), which was and is a private company organized and existing under the laws of the United Kingdom, with its principal place of business in England. At all times relevant, Cape was deeply involved in all elements of the global asbestos industry, mining hundreds of thousands of tons of raw asbestos in Apartheid-era South Africa and then selling asbestos fiber to scores of manufacturers of asbestos-containing products in the United States—substantial quantities of which were used in South Carolina.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

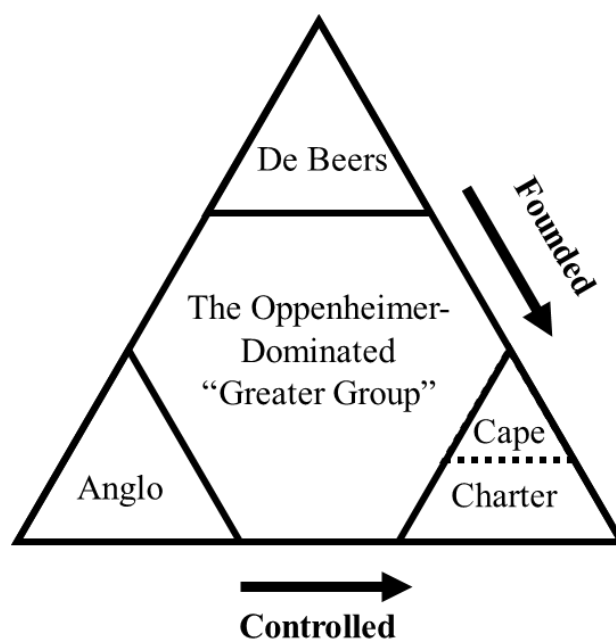
⁶ In turn, in later years (*see infra* ¶ 54), Charter could “call on the comprehensive technical services of Anglo,” which Charter acknowledged “contributed greatly to the examination and evaluation of the many mining and prospecting projects initiated by or brought to” Charter. *See* Charter 1966 Annual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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Cape Created NAAC to Facilitate Its Asbestos Scheme.

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

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

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

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

72. NAAC's Role at Cape. Cape designed NAAC to operate as Cape's wholly controlled instrumentality for the "purpose of expediting and facilitating the movement" of asbestos from South African mines into the United States (including South Carolina).¹⁹ To facilitate this, NAAC had both marketing and distribution roles: (i) serving as Cape's sales agency in the United States, with sole authority to offer Cape products and responsibility for transmitting information about customer needs to Cape mines, and (ii) ensuring the proper distribution of asbestos products from Africa "all the way through to the customer's plant," including to locations in South Carolina or through South Carolina ports.²⁰ NAAC "effect[ively] . . . put the Mines at every U.S. port." CAPE000988–89. By 1970, NAAC was the "largest U.S. importer of Amphibole Fibres," which were "re-distributed from . . . warehouse locations in East Coast, Gulf Coast and West Coast Ports." CAPE000878–79.

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

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

²⁰ *See* CAPE000263–66 (describing intended business of NAAC); CAPE000333 (1975 Cape cover letter of NAAC director resignations); CAPE000729 (appointment announcement describing NAAC as "specialize[d] in marketing and distribution of Blue and Amosite asbestos in the United States, Canada, Mexico and the Caribbean"); CAPE000988–89 (1969 NAAC memorandum describing customer services).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁹ *See* CAPE000123 (NAAC discouraging Cape visits to the U.S. in 1978 or else negate “maneuvers” related to “continued problems with product liability litigation”); CAPE000152 (1975 letter suggesting to “disassociate the Parent Company as fully as possible from the operating companies”); CAPE000154 (1975 letter raising whether to “do something to change the identity of NAAC in order to avoid exposing the company unnecessarily,” while doing “everything possible to maintain a successful selling operation in the United States”); CAPE000166–67 (1974 lawyer letter suggesting that “no one from Cape be an officer of NAAC since we want it to be as independent as possible in order to avoid any contention that it is the alter ego of Cape and that Cape is doing business in the United States”); CAPE000333 (1975 Cape Asbestos letter stating “that it would be a sensible precaution against Cape’s involvement in any future proceedings for [Cape personnel] to resign from the N.A.A.C. Board,” and enclosing resignation letters).

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

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

92. Opinion of Moral Irresponsibility. More broadly, according to Cape executives, this strategy was warranted because they “really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of the US product liability cult.” Tweedale & Flynn (2007) at 283; CAPE000486.

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

³⁰ *See* CAPE000550–51 (NAAC personnel opining in 1978 “that it is most unlikely that any plaintiff would bother to pursue collection of any default judgments against Cape”); CAPE000702 (NAAC counsel in 1979 confirming receipt of correspondence stating that “U.K. and South African lawyers confirm that any resulting judgments will not be enforceable against Cape’s U.K. and South African assets” and that “the potential loss of all NAAC’s outstanding assets is not material in the Cape Group context”).

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

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

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

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

97. Accepting Defaults to Perpetuate the Liability-Avoidance Scheme. NAAC's liquidation was central to Cape's liability-avoidance strategy, and was predicated on legal advice that no British or South African court would enforce a judgment against a Cape entity if it never appeared again in the United States.³² That strategy, more broadly, was taken right out of the Oppenheimer empire's operational playbook in the United States: (i) profit greatly from a business (including for the sale of asbestos), (ii) extract those profits from the United States to foreign entities, across an ever-changing, byzantine corporate structure, (iii) undercapitalize the United States operating entity, (iv) liquidate ownership interests when they sensed liability was imminent, while otherwise maintaining that there was no physical presence in the United States, and (v) retain overseas the massive financial fruits of their unlawful schemes, which, as to asbestos sales, were at the expense of dead and dying Americans, including South Carolinians. *See, e.g.*, Kanfer (1995) at 317–18 (describing De Beers' abrupt sale of equity in an American company to avoid antitrust liability,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

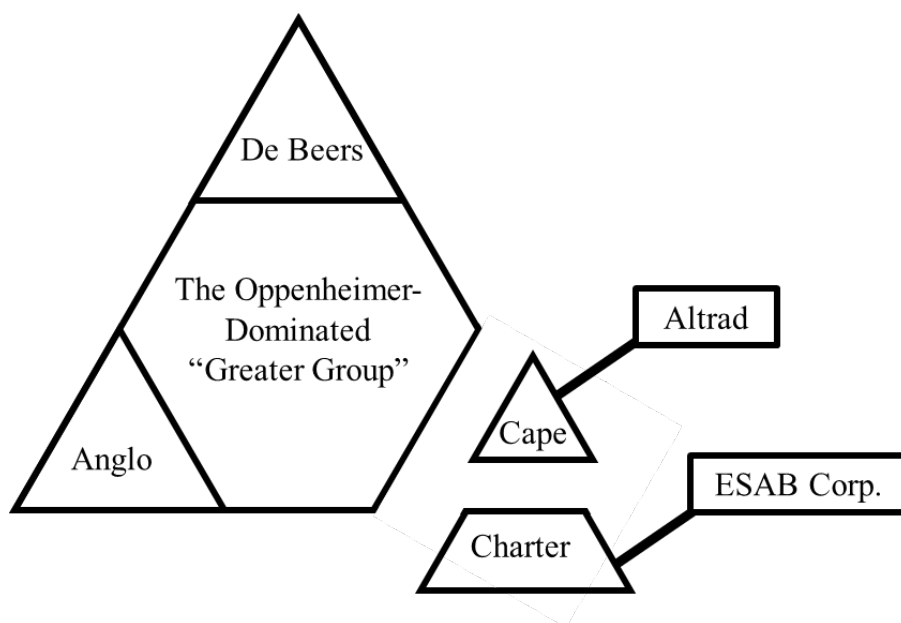
acknowledged “substantially changed” its “assets and business interests.” Charter 1980 Annual Report, at 5, 9 (June 24, 1980). Although Charter was purported to have received “a substantial amount of cash” from that sale, proceeds were used to repay debt and acquire Minorco shares. *See id.* at 5–6.

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

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

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

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



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

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

114. Unmet Responsibilities. Although Cape in the prior decades had entered into certain agreements to compensate for illness and death resulting overseas from its products (such as entering into a “Scheme of Arrangement” with former employees in 2006), Cape has done **nothing** about its massive unpaid responsibility for the death and illness caused by its asbestos products in South Carolina and elsewhere in the United States.

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

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

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

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

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

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

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

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

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

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

120. Involvement of Affiliated Oppenheimer Businesses. At all times relevant to Cape's business in the United States and its perpetuation of the liability-avoidance scheme, Cape was owned, controlled, operated by, and dominated in furtherance of and in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere—to those entities' substantial financial benefit.

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

⁴¹ Available at <https://www.angloamerican.com/~media/Files/A/Anglo-American-Group-v5/PLC/investors/annual-reporting/2022/aa-annual-report-full-2022.pdf>. In 1998, Anglo American Corporation of South Africa Ltd. moved its headquarters to London and re-registered as Anglo American PLC, which involved complex changes to its corporate structure that included absorbing Minorco and moving assets out of South Africa (thereby mitigating the risk of post-Apartheid nationalization). *See* McNeil Article. In November 2011, moreover, the Oppenheimer family sold its direct stake in the De Beers Group to Anglo American PLC for \$5.1 billion, while (on information and belief) retaining indirect ownership through other entities. *See, e.g.,* Mark Scott, *Anglo American in Deal to Take Control of De Beers*, N.Y. Times, Nov. 4, 2011.

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

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

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

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

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

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

124. Charter Third-Party Defendants. By 2022, Colfax sold its interests in Charter’s businesses, including, on information and belief, those associated with Cape-related liabilities—namely, ESAB Corporation. *See Enovis (Formerly Colfax) Completes Spin-Off of ESAB Corporation* (Apr. 5, 2022).⁴⁶ On information and belief, ESAB Corporation is currently the parent company of, as well as a successor in interest to, Charter Consolidated Ltd., along with Charter’s subsidiary Central Mining & Investment Corporation Ltd., and each is collectively referred to as “Charter Third-Party Defendants.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

138. South Carolina recognizes the imposition of liability under an "alter ego" theory based on a factual assessment of several factors, including: (i) common ownership; (ii) financial dependence; (iii) the degree of selection of executive personnel and failure to observe corporate formalities; and (iv) the degree of control over marketing and operational policies.

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

- A. For the Court to exercise its equitable power and authority against the Third-Party Defendants as requested herein;
- B. For a full accounting of each of the Third-Party Defendants' records and other information related to the allegations herein, including the extent to which each of the Third-Party Defendants has financially benefited from the liability-avoidance scheme; and
- C. For such other and further relief as the Court may deem just and proper, including pre-judgment and post-judgment interest as provided by South Carolina law.⁴⁷

[Signature block on following page]

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

Dated: June 30, 2023
Columbia, South Carolina

GALLIVAN, WHITE & BOYD, P.A.

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

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

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

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

Brady Edwards (*pro hac vice forthcoming*)

- 66 -

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

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

Attorneys for Third-Party Plaintiff

JOHN A. TIBBS, ET AL,)
)
 Plaintiffs,)
)
 -VS-) TRANSCRIPT OF RECORD
)
)
 3M COMPANY, ET AL,)
)
 Defendants.)

July 16, 2024
Columbia, South Carolina

B E F O R E:

THE HONORABLE CHIEF JUSTICE JEAN TOAL, Presiding Judge

A P P E A R A N C E S:

THEILE B. MCVEY, ESQ.,
JON T. LAY, ESQ.,
JON M. ROBINSON, ESQ.,
PETER D. PROTOPAPAS, ESQ.
ATTORNEYS FOR THE PLATINIFF'S

M. TODD CARROLL, ESQ.,
STEVEN J. PUGH, ESQ.,
BENJAMIN P. CARLTON, ESQ.,
A. VICTOR RAWL, JR., ESQ.,
PAYTON D. HOOVER, ESQ.,
ATTORNEYS FOR THE DEFENDANT

LaToya Camack Perry

Official Court Reporter
Post Office Box 991
Winnsboro, SC 29180

1 THE COURT: This is a status conference in the
2 matter of Tibbs against 3M; civil action number 2023-CP-
3 40-01759. As you may recall, this status conference was
4 set before the latest development in this matter which is
5 a removal, and I don't know exactly what is aimed at
6 removing, the caption on the federal pleadings is a
7 removal of a third-party action which is a derivative
8 action in the Tibbs matter. I don't know if it's
9 permitted to remove a derivative part of a state court
10 action in federal court. But I want to hear all parties
11 on the status of this case. It's set for pretrial. It's
12 set for trial. Every effort that could be made to delay
13 this matter has been made. I want to move this matter
14 forward. All right, so, I want to understand what the
15 positions of the parties about this case is. And Mr.
16 Lay, you are the person who requested the status
17 conference. So I'll hear from you now.

18 MR. LAY: Yes, ma'am. And if I can just --

19 THE COURT: Now, I might say that action in this
20 case between the principles in this matter which is the
21 Tibbs represented by Ms. McVey and the other defendants.
22 This has mostly been a battle about a defendant from whom
23 a receiver was appointed. Mr. Lay represents the
24 receiver in that matter in defending this action. And
25 his ability to act as receiver on behalf of the company

1 or companies wherein the receiver has been thwarted at
2 every turn by activity on the part of the parties in
3 receivership. Activity which contest legitimacy of the
4 receivership that this court created. So that's the
5 posture we're in now. The plaintiff and the other
6 defendants are proceeding on as I understand or has all
7 that been kind of brought to halt, Ms. McVey?

8 MS. MCVEY: Your Honor -- Sorry, I didn't hand the
9 court reporter a card so I wasn't sure I was going to say
10 anything. But Theile McVey for the Tibbs family. The
11 only thing that I am concerned about is we still have a
12 case against ACL. ACL appealed the order where you held
13 them in contempt and struck their answer and appointed a
14 receiver for ACL.

15 THE COURT: Right.

16 MS. MCVEY: That's up on appeal. But when these
17 defendants in the third-party case removed the case, the
18 appellate courts apparently have held in abeyance my
19 underlying case as well.

20 THE COURT: Let me ask you. ACL -- Is ACL a
21 defendant in the third-party action by Cape or by the
22 receiver for Cape?

23 MS. MCVEY: No, ma'am.

24 THE COURT: So ACL is an appeal party in the first-
25 party action. And the caption doesn't not remove the

1 first-party action.

2 MS. MCVEY: If I could, can I just show you a letter
3 from the Court of Appeals that we just received recently
4 about the underlying case.

5 THE COURT: All right. It says -- This is a letter
6 addressed to Mr. Brown, Mr. Hines, Mr. Gainey and Mr.
7 Olive. We're in receipt of a notice of removal.
8 Therefore, this appeal will be held in abeyance. Have
9 you replied to this to explain -- I mean, I have been
10 more understanding and gracious than I ought to have been
11 with Mr. Brown. And I want to explore today whether he's
12 had any active participation in this removal business
13 because I don't know how else would have taken it upon
14 themselves to notify the South Carolina Court of Appeals
15 that somehow activity in the ACL appeal was stayed by
16 this if it weren't Mr. Brown.

17 MS. MCVEY: It wasn't Mr. Brown, but I believe it
18 was some of these lawyers who have removed what they're
19 calling just a third-party derivative case which I don't
20 think you can just remove part of a case.

21 THE COURT: There's a case right on point.

22 MS. MCVEY: So I guess what I wanted to do, and I
23 don't want to interrupt, Mr. Lay, or you, is get some
24 clarity on that because we'd, like, the other pieces of
25 the Tibbs is due to move forward. I expect it's going to

1 get remanded anyway, but I just hate to sit still when
2 we're already fully briefed in --

3 THE COURT: I'm in the same boat as you are. And we
4 will see what the parties tell all of us this afternoon
5 about what they think the posture of this matter.

6 MS. MCVEY: I think that makes sense. And I'll sit
7 down, but I did just want to just tell what was going on
8 with the underlying case as well.

9 MR. LAY: It was one case. One civil action number
10 that got removed. And there has been no clarity brought
11 to that issue. Unsurprisingly, it brought chaos. I
12 mean, that's --

13 THE COURT: The whole thing is under one civil
14 action number. The third-party removal action is
15 derivative of the initial action that was filed and given
16 a CP number. And that is the way all cases are handled
17 which have a third-party derivative claim. They are part
18 of the original claim. I can't concede that it is
19 possible to remove one without the other. And I know of
20 no basis upon which to remove the case in chief. That
21 ship sailed a long time ago. There was an initial
22 attempts to do that that were rejected by about, I think,
23 maybe four different United States Federal District Court
24 judges and sent them back here. So I think the way is
25 very clear on the initial cases. And so I guess you move

1 forward and tell me what you would like to tell me, Mr.
2 Lay.

3 MR. LAY: Yes, ma'am. And I really wanted to get in
4 front of you to communicate the continued problems that
5 we were having in discovery. When I contacted you via
6 letter on June 19th, that followed all of the third-party
7 defendants, again, pushing off the 30(b)(6) depositions
8 with Altrad. Altrad, Sparrows and Charter are third-
9 party defendants. They were relying on rule 205 and
10 that's a complete nonparticipation in discovery. And the
11 Oppenheimer third-party defendants were wanting more time
12 to work through objections to the topic. So again, they
13 were put off.

14 It was in that posture that we reached out to try to
15 get a status conference with you, Your Honor. And part
16 of it, too, was to make sure we were trying to get
17 confidentiality order in place to make sure that we can
18 get the production of documents. It was also to try to
19 get a trial date. From the date that I ask for the
20 status conference, you set the trial date and the
21 pretrial conference fortunately. But one of the things
22 that we were coming to you to ask for which I think is
23 critical in this case and we think the inevitable remand
24 of this case, we're going to be coming, on bended knee,
25 asking for more court time. And I realize your situation

1 and the amount of time that you can devote. You work
2 very hard and you work very hard on these cases. And
3 we're going to be asking for more court time because
4 every single thing that we've done in discovery in this
5 case has been thwarted. Everything.

6 THE COURT: Let me interrupt you and ask you this.
7 When you say you're asking for more court time, are you
8 saying that you're going to have to ask for more time in
9 which to try the case that's set for two-week trial or
10 are you saying you're going to ask for a continuance?

11 MR. LAY: No, ma'am. We're going to be ready for
12 trial on December 9th. What we're asking you to do to
13 make sure -- We're going to have the case ready. But
14 what we're going to do, and what we're entitled to do, is
15 make sure that get a dispute on the merits and we're able
16 to get discovery, appropriate discovery, from the
17 defendants. And right now, it's a complete failure to
18 participate on discovery. And we have a right to that.
19 And we're getting thwarted at every moment. If we're
20 getting obstacles put up at every single thing that we
21 do, we're going to need to come to you more often asking
22 for assistance so we can advance the ball.

23 To give you a little bit more context on that, I
24 mean, basic interrogatories and request for production
25 that were served in July of last year have not been

1 responded to. We have noticed depositions, 30(b)(6)
2 depositions, numerous times, cancelled unilaterally.
3 We're not participating in discovery. The Oppenheimer
4 defendants had some limited -- And I was very hopeful
5 that we would have some sort of participation in
6 discovery from the Oppenheimer defendants. And what we
7 have is spained participation in discovery. We've gotten
8 maybe a thousand documents from them at this point. I
9 had a conversation with their counsel where they talked
10 about the review of millions of documents. Where the
11 heck are they? We don't have them. We've had promises
12 to continued production was going to occur and it has not
13 occurred. Instead, we end up getting this removal that
14 occurred.

15 We've had to file numerous motions to compel. Your
16 Honor has issued orders compelling the production of
17 documents, compelling attendance at depositions. We've
18 gotten nothing, zero, in going forward with case except
19 for very limited sparse discovery responses from the
20 Oppenheimer defendants. It is protracted delay. I'm
21 frustrated. And I'm not trying to make this personal,
22 but I am frustrated by the defendant's reactions to the
23 discovery process. It feels like they're thumbing their
24 nose at me, at my co-counsel and my client, at this
25 court, at the Court of Appeals, at the Supreme Court. It

1 goes on and on.

2 We have discovery for a reason. We have a lawsuits
3 for a reason in which courts come in here and we litigate
4 the merits of the case. Litigate the merits. That's all
5 we have. If you didn't do this, then we will discover
6 that during the discovery process. Because the evidence
7 we have now seems overwhelming. If it didn't happen,
8 okay, produce the information you have to show that's not
9 the case. Merit-based lawsuits, that's what our system
10 is based on. Not procedural tactics and strategy to put
11 off and put off and put off to what end. I don't know.
12 But to make sure that this doesn't come to ahead.
13 Everything from appeals being converted from a discovery
14 appeal. A discovery order is issued and converted to
15 some sort of injunction unilaterally so it,
16 quote/unquote, becomes appealable. Or taking a discovery
17 sanction and converting it to some sort of contempt
18 order, when it decidedly was not that, to try to make it
19 an appealable issue. Those sorts of things are going on
20 over and over and over again and it looks like from other
21 cases, it looks like from the way they're dealing with
22 some of the appeals in the Cape case the Court of Appeals
23 is buying none of it. But what has happened, and this
24 has been very successful, is that we started discovery
25 process in July of last year and we don't have anything.

1 We have nothing. We have a trial date on December 9th
2 and I'm telling you right now we're going to be ready for
3 trial. And I'm going to be coming in here over and over
4 and over again asking for assistance if this kind of
5 behavior continues. These defendants have to play ball.

6 This case is going to come back. It is going to be
7 remanded. The Barton Doctrine is very clear on this.
8 The arguments that are being made there in this case are,
9 I think, spurious and never should have been removed.
10 But its been removed. We got to deal with it. We got to
11 wait til the case is remanded. Hopefully, that comes
12 back soon. We'll see. But when it does, we have, right
13 now, six motions. Six motions in front of you. And they
14 are ranging for we have a motion to compel against the
15 Oppenheimer third-party defendants. We have the
16 receiver's motion for protective order requesting
17 protection on discovery and communications with the Tibbs
18 and plaintiffs. We have the Oppenheimer third-party
19 defendant's motion to compel on those issues, on the
20 receiver's discovery responses. We have receiver's
21 motion for protective order as to expert opinions and
22 preventing discovery on experts until their opinions are
23 finalized. We have the receiver's report on attorney's
24 fees and cost pursuant to the sanctions order. We have
25 another motion to compel on a second set interrogatories

1 which haven't been produced. We have the receiver's
2 fourth motion to compel filed on June 28th as to the
3 second set of request to production. We, again, have the
4 30(b)(6) depositions that we're going to move forward
5 with any way that we can. If there is some sort of
6 dispute of objections, we want to bring that to ahead.
7 If they're not going to do what they committed to do, the
8 Oppenheimer defendants, and producing additional
9 documents, it was supposed to be imminent, we're going to
10 be back in front of you with another motion to compel on
11 that.

12 We just want to play ball. We want to move forward
13 with discovery in this case. We want to get the case
14 ready. If we win, we win. If we lose, we lose. But
15 we're going to go forward on the merits. That's all
16 we're asking. And we want to do that on December 9th in
17 front of Your Honor. That's the status of the case.
18 Now, Mr. Robinson is going to talk about the impact of
19 this removal on the appellate issues because I do think
20 there is a little bit more complexity on that that he
21 can enlighten you that, Your Honor.

22 THE COURT: All right. Mr. Robinson.

23 MR. ROBINSON: Good afternoon, Your Honor. Jon
24 Robinson here for the receiver and Mr. Protopapas in Cape
25 and also in other receiverships that are impacted by

1 this. Your Honor, I've prepared a chart. Charts are
2 typically --

3 THE COURT: Bring it up here where I can see it.

4 MR. ROBINSON: I'm going to hand you a copy, Your
5 Honor.

6 THE COURT: Oh, okay, hand me a copy.

7 MR. ROBINSON: Your Honor, these are the appeals
8 just in the Tibbs action that are still pending and are
9 in various stages of either being briefed or have been
10 fully briefed. And, as you can see, they began with your
11 order back in September of 2023 appointing a receiver in
12 ACL in this Tibbs case. That has been -- That is
13 presently at the Court of Appeals. An amicus -- It's
14 fully briefed. An amicus was requested and the removal
15 that the parties filed last week resulted in all of these
16 appeals getting an order saying that they are being held
17 in abeyance now including ACL. So again, in the ACL case
18 which is, we'll start with that one, which is in this
19 Tibbs matter -- Again, ACL was a defendant in the case as
20 the court knows. They refused to participate in the
21 case. You issued an order appointing a receiver. Mr.
22 Protopapas was appointed. They appealed that in the
23 Tibbs case. That issue has been fully briefed at the
24 Court of Appeals and is pending at the Court of Appeals.
25 But the blanket or, we'll call it the amorphous removal,

1 that happened last week has stayed that appeal as well as
2 every other appeal that is sitting in the appellate
3 courts including the parties own petition for cert in
4 front of the South Carolina Supreme Court on your
5 discovery order that was renamed an injunction order.
6 That is in front of the Supreme Court as well. The
7 Supreme Court has, likewise, held that in abeyance.

8 So as you pointed out, ironically, a year ago -- I'm
9 sorry, this month five years ago, July of 2019, I pulled
10 the transcript, you had a status conference on July 11th
11 of 2019. There are about five underlying court cases
12 pending. You have a status conference and the day before
13 your status conference, they attempted to remove your
14 status conference. You might remember that. July of
15 2019.

16 In dismissing that appeal, Judge Hendricks called
17 it, For the reasons stated above, this case is dismissed
18 as improperly removed and all pending motions at moot
19 because the court lacks jurisdiction. She stated, that's
20 an objection, in the preceding sentence, That's an
21 objection they should already have assuredly raised with
22 Justice Toal. However, manufacturing a removable action
23 in an attempt to stall the underlying state court
24 proceeding is not the answer. That's what Judge
25 Hendricks wrote on July 26 of 2019. And where we find

1 ourselves today is in the same place with a different --
2 The same proceeding. The same type of removal. It's not
3 allowed. It's simply just something that is stalled, not
4 only the Cape case and the Tibbs action, but other cases
5 including the ACL, again, which is ready and briefed.

6 Also, it is impacting the original receiver Covil.
7 As the court may recall, Covil was a defendant in the
8 original Tibbs case. And Covil has settled the case with
9 Mr. and Mrs. Tibbs. Penn National, who is a third-party
10 defendant in the Tibbs case, has thus far refused to
11 contribute to the settlement. This court --

12 THE COURT: They refused to provide insurance
13 deposits. We had a whole hullabaloo about Penn National
14 because it's scheduled for trial shortly.

15 MR. ROBINSON: Correct, Your Honor. In fact, we had
16 a trial against Penn National where this court, a
17 separate case, where this court made certain
18 determinations regarding Penn National policies. And of
19 course, that was affirmed by the Court of Appeals. And
20 that now has a petition for cert that's recently been
21 filed on that. But the Court of Appeals affirmed Your
22 Honor's opinion. There are actually -- There are, like,
23 three Penn actions. You've been affirmed on one of the
24 Penn Nationals. There's another round of appeals on
25 other Penn National cases that are moving forward.

1 THE COURT: Right.

2 MR. ROBINSON: So I do want to clarify that. So
3 Covil in the Tibbs case has a third-party action against
4 Penn National which now is also, by virtue of this
5 amorphous removal in a state of, you know, uncertainty.
6 As you pointed out back in 2019, there's one civil
7 action. And that civil action, once it's removed, that
8 case is removed. The Court of Appeals has issued the
9 letter. The Supreme Court has issued a letter. The
10 clerk of court has it marked as removed. How that
11 impacts the underlying Tibbs, the actual plaintiffs which
12 was your concern back in 2019, you know, when you have an
13 improper removal, it is a very difficult to properly
14 respond to it. It caused chaos then and it is now.

15 So Your Honor, I gave you this list. These are all
16 of the appeals that have happened that are still pending,
17 either been briefed -- In fact, I believe the Court of
18 Appeals the day after they removed, or the next business
19 day, issued two more orders denying their motions for
20 reconsideration before the Court of Appeals was aware of
21 the removal. So, you know. That's a whole different set
22 of issues that there were additional orders coming out
23 which denied their motions to reconsider. And most of
24 those do, of course, come from the Childers and the Payne
25 and Keller fourth circuit and Supreme Court orders. And

1 most of those issues have been dealt with. And of
2 course, the Barton Doctrine applies to all of the cases
3 as the Fourth Circuit have said.

4 So that, Your Honor, I'll be happy to answer any
5 questions. But, you know, there are a number of
6 uncertainties and we don't know the answer to them. As
7 far as I'm aware, none of the removing parties, all of
8 whom have alleged they gotten the consent with the non-
9 removing parties, none of them have notified the courts
10 that, as far as I'm aware, that there is any part of the
11 case that they claim is not removed or stayed. They did,
12 as you know, unilaterally just changed the caption which
13 is, you know, kind of what we saw back in 2019 where they
14 created the In Re: Protopapas action. And Judge
15 Hendricks --

16 THE COURT: That didn't fool her.

17 MR. ROBINSON: I'm sorry?

18 THE COURT: That did not fool her. She understood
19 it was part of a broader action.

20 MR. ROBINSON: Her description was, The court
21 declines to rule by proxy in the instant case apparent
22 manufactured out of wholecloth on issues relevant to
23 another action pending. So again, Your Honor, this is
24 unfortunately another example of an amorphous and
25 manufactured case that has been removed that impacts all

1 of our appellate courts, our Supreme Courts and our
2 underlying plaintiff and at least three of your receivers
3 in the Tibbs case.

4 THE COURT: All right. Let me ask you this, Mr.
5 Robinson. Has any of this information you have supplied
6 and Mr. Lay supplied today about the history and ruling
7 previously by federal courts -- Of course, you can add to
8 that the removal that took place, one case is to be tried
9 and that removal was remanded, dissolved and remanded by
10 Judge Anderson two days later. Has any of that
11 information been transmitted to Judge Lewis, the
12 presiding judge in this current removal?

13 MR. ROBINSON: Well, Your Honor, in light of the
14 fact that we have been given numerous opportunities to
15 hone in on writing about this topic, we filed a motion to
16 remand the day after they removed and notified the court
17 regarding the fourth circuit case which we believe is now
18 not being followed by the opposing parties as well as the
19 other district court cases that have weighed in on this.

20 THE COURT: So that information has been supplied to
21 the court that's got this case now?

22 MR. ROBINSON: Your Honor, we filed an immediate
23 motion to remand. Their response was due today, as I
24 understand it. And I would anticipate we will quickly
25 complete the briefing on that so that it will be fully

1 briefed and ready for her consideration hopefully this
2 week.

3 THE COURT: Okay.

4 MR. ROBINSON: Any further questions, Your Honor?

5 THE COURT: No further questions. All right. Who
6 will speak for the removing parties? Cape?

7 (Whereupon, there was no response.)

8 THE COURT: Don't be looking at each other. Y'all
9 are all here and you know why you are here. So who's
10 going to go first? Mr. Carroll?

11 MR. CARROLL: Your Honor, I really don't have a
12 presentation.

13 THE COURT: Are you the attorney for one of the
14 removing parties?

15 MR. CARROLL: My client consented to the removal,
16 yes, ma'am. We didn't file a removal. We consented to
17 it.

18 THE COURT: All right. Who filed the removal?

19 MR. CARROLL: The Oppenheimer defendants.

20 THE COURT: Is that you, Mr. Rawl?

21 MR. RAWL: No, ma'am, Your Honor. I represent --

22 THE COURT: Who represents the filing party?
23 Anybody that's here in this room today?

24 MR. HOOVER: Your Honor, I'm here on the Atwood and
25 De Beers for James Elliott who is --

1 THE COURT: Well, James Elliott ought to be here and
2 ought to be at counsel table. He's the guy who filed
3 this removal action.

4 MR. HOOVER: Well --

5 THE COURT: Isn't that correct?

6 MR. HOOVER: It's my understanding that is correct,
7 Your Honor. Our client took the position that once --

8 THE COURT: Come forward. Come and identify
9 yourself. Come up here to counsel table.

10 MR. HOOVER: Sure. Payton Hoover here on behalf of
11 the Atwood and De Beers defendants. I was sent here
12 simply to monitor. Our clients takes the position that
13 once the removal was final, jurisdiction is in federal
14 court. Now, subject to remand which is being briefed and
15 hopefully will be decided fairly shortly, but that was
16 the position that was taken. I'm here strictly to, you
17 know, to monitor the case and was told by my client not
18 to make a formal appearance based on jurisdiction.

19 THE COURT: All right. This is a status conference
20 about this matter. And I explained in this matter why --
21 The status conference was set before this removal took
22 place, number one. Number two, grave questions about
23 whether this removal is proper in light of the fact that
24 it recasts the caption of the case in which only a
25 derivative third-party action would be covered by the

1 caption that was used. Do you know why that was done?

2 MR. HOOVER: I do not, Your Honor. My understanding
3 is is this is going to be fully briefed and the federal
4 courts is going to make its decision based on those
5 briefs and arguments contained therein. And that that
6 briefing is taking place as we sit here and a reply brief
7 is being filed today.

8 THE COURT: Please convey to Mr. Elliott from me, in
9 whom I have confidence and respect, just recently tried a
10 case in front of me, but I am disappointed that a party,
11 who is a signed party in this matter, not coming. It's a
12 very simple thing for him to come and tell me he's not
13 authorized to speak just as you have. But it disappoints
14 me that I set a status conference in this matter and that
15 I communicated to the federal judge involved that I would
16 be having this status conference so as to try to get some
17 clarity as to how it is that this third-party action
18 alone can be removed and I am disappointed in Mr. Elliott
19 for not having enough consideration for this court to
20 come personally to this hearing. And I'm very
21 disappointed in your clients in making the kind of
22 instructions they've made. It's part of the wholecloth.
23 They've taken the position all along that they can defy
24 the basic authority of this court because of theories
25 they have about Quebec law and the like. I've ruled on

1 those matters. Some of those matters are on appeal. But
2 you can't simply be a party in a controversy and when you
3 lose preliminary motions, decide I'm simply not going to
4 participate anymore. Our system of justice just doesn't
5 work that way. And I am very disappointed of a South
6 Carolina lawyer whom I respect would treat this court
7 like that.

8 MR. HOOVER: And, Your Honor, on his behalf, he's in
9 trial, two week construction defect case, that starts
10 Monday. Right after he filed the notice of removal,
11 there was a for-trial witness that was scheduled for a
12 two-day deposition starting today. Otherwise, he would
13 be here. His interpretation of it was once the clerk
14 received noticed of the removal, that this status
15 conference would not take place because this court didn't
16 have jurisdiction. He cited some case law for me. I can
17 read it to you --

18 THE COURT: I understand that. But, of course, I
19 made that communication to all parties explaining why I
20 was conducting this proceeding to try to get some further
21 information about exactly how it is that the baseline
22 trial of this case is not proceeding in an orderly way.
23 That's the gist of what the parties beyond their
24 complaint about the third-party action, the removal. The
25 gist of the matter by the baseline parties in this case

1 is how can we move forward and get some cooperation about
2 discovery? And that's what I'm still concerned about.
3 And you can tell Mr. Elliott I said that.

4 Now, Mr. Carroll, your client is Travelers, again,
5 in this matter?

6 MR. CARROLL: No, ma'am, Travelers are not in this
7 case.

8 THE COURT: Okay. Who is your client in this case?

9 MR. CARROLL: Mr. Altrad and Altrad Investment
10 Authority.

11 THE COURT: All right. So you're here on behalf of
12 named clients in this matter and not some kind of
13 derivative actions that deals with insurance, correct?

14 MR. CARROLL: Yes, ma'am. I don't believe insurance
15 has any role in --

16 THE COURT: That doesn't have any bearings on this.
17 You're here representing named clients in this matter,
18 right?

19 MR. CARROLL: Yes, ma'am, my clients are parties.

20 THE COURT: Defendants in this matter?

21 MR. CARROLL: Correct.

22 THE COURT: All right. And you have consented to
23 removal of this matter, right?

24 MR. CARROLL: Yes, ma'am.

25 THE COURT: How about explain to me why?

1 MR. CARROLL: My clients were asked if they would
2 consent and they consented. That's what we be will be
3 briefing with Judge Lewis. Our briefs were due to today.

4 THE COURT: Let's assume this matter is remanded.

5 MR. CARROLL: Yes, ma'am.

6 THE COURT: All right. What will your clients be
7 doing to forward the basic schedules for discovery and
8 the like that are necessary for this case to move forward
9 on the trial schedule I set a year and a half ago?

10 MR. CARROLL: Well, Your Honor, we have several
11 issues that are pending the appellate courts. Many of
12 which is dispositive the whole case. So until those are
13 completed, I do not know what else will happen in the
14 trial level of this case.

15 THE COURT: Well, explain to me how you can have
16 matters on appeal and, yet, remove this matter from the
17 trial court?

18 MR. CARROLL: Your Honor, my clients didn't remove
19 the case. We were asked if we would consent. We
20 consented.

21 THE COURT: Well, what is your position with respect
22 to the trial of this case and the ability for the case to
23 go forward to trial on the schedule that's been set forth
24 by the court?

25 MR. CARROLL: Your Honor, I think that, I mean, the

1 case is presently within the jurisdiction of the district
2 of South Carolina. I do not know if --

3 THE COURT: I'm asking if the case is remanded, are
4 you going to take the position that the appeals you have,
5 appeals that you have, appeals of various trial rulings
6 that have been made, are you going to take the position
7 that those appeals will stop this case from going forward
8 to trial?

9 MR. CARROLL: Your Honor, I honestly do not know at
10 this standpoint. I know that we strongly believe in our
11 rule 205 arguments. I know that Your Honor disagrees.
12 But I think that since this is an appellate court rule,
13 that we will --

14 THE COURT: Well, not only do I disagree, but
15 appellate authorities have also disagreed with that
16 interpretation a couple times.

17 MR. CARROLL: Well, Your Honor, we do not need to
18 re-plow that ground. You know that I disagree with that
19 remark.

20 THE COURT: So the bottom line, you're saying that,
21 hey, it doesn't matter if this thing gets remanded,
22 you're not going to try it.

23 MR. CARROLL: Oh, Your Honor, I'd never say it
24 doesn't matter if this thing gets remanded. What I'm
25 saying is I don't know -- You're asking me to commit my

1 client to a position based on variety of unknown
2 variables. And I can't do that. You know I can't do
3 that.

4 THE COURT: Well, I don't have any understanding
5 along those lines at all. I think it's a perfectly
6 reasonable question on my part particularly in the face
7 of plethora of rulings by the appellate courts about
8 status of these kinds of appeals from trial court's
9 rulings and moving the case along. The process, I
10 supposed, will just have to take its course. But unless
11 the appellate authorities in this state take a different
12 position than the positive they've taken heretofore,
13 these matters will be tried as I understand. And I'm
14 just asking you if that is the case, what is your
15 position going to be about moving forward with the trial
16 and participating in discovery and all the normal things
17 one would do?

18 MR. CARROLL: Your Honor, again, my clients,
19 whenever that point comes, if it comes, my clients will
20 have to evaluate the status of the case, the status of
21 what's discovery been -- Your Honor, you've already pre-
22 admitted 1450 exhibits. I don't know what's left to be
23 done.

24 THE COURT: Well, lots is still left to be done in
25 terms of 30(b)(6)'s and a whole bunch of other things. I

1 mean, the exhibits are just a start with getting the
2 thing shaped for trial.

3 MR. CARROLL: Your Honor, my client will make
4 decisions based on the facts and the law as presented at
5 that moment in time. Right now, the case is pending in
6 front of the federal district court. And I don't know
7 how else to respond.

8 THE COURT: Thank you. Mr. Rawl, same question.

9 MR. RAWL: Your Honor, exactly the same answers as
10 Mr. Carroll just stated on behalf of his client. I have
11 a card for the court reporter, but for the record, I
12 represent ESAB Charter and Central Mining. But if you
13 ask me the exact same questions in regards to my clients,
14 the answers will be the same.

15 THE COURT: You consented on behalf of your clients
16 for the removal?

17 MR. RAWL: My clients did consent to the removal.

18 THE COURT: Mr. Pugh.

19 MR. PUGH: Good afternoon, Your Honor. Steven Pugh
20 on behalf of defendants ArranCo US LLC; Hawk Bidco US,
21 Inc. and Sparrowws Offshore, LLC. I gave my card when we
22 began to the court reporter. I would have nothing
23 further to add than what my colleagues have said. And
24 yes, indeed, my clients did consent to the removal.

25 THE COURT: All right. Mr. Lay. Mr. Protopapas.

1 MR. PROTOPAPAS: Your Honor, I would ask if the
2 defendants would do the courtesy to the ACL and the Tibbs
3 folks as to did they intend to remove the Tibbs v. ACL
4 case where Tibbs family suffered a death, they sued 53
5 defendants, one of whom is ACL. This court appointed me
6 the receiver. We have fully briefed the issued in Court
7 of Appeals. Is it their intent that that action was
8 stopped? Would they give us a courtesy to that answer if
9 they can. If they won't, so be it. But I feel that the
10 Court of Appeals has done a fair amount of work already
11 in receiving the briefing, the final volumes. And the
12 Tibbs family itself, who I sat through mediation, read
13 materials on. They deserve their day in court against
14 ACL if the Court of Appeals rules in favor of the Tibbs
15 family. Are they stopping that case as well?

16 THE COURT: Who notified the Court of Appeals of the
17 removal?

18 MR. PROTOPAPAS: Your Honor, I'm not 100 percent
19 sure. However, a letter was sent on July 1st of 2024.
20 May I approach, Your Honor?

21 THE COURT: Yes.

22 MR. PROTOPAPAS: The letter was a letter from
23 Richardson Plowden. And on the first page, Your Honor,
24 it identifies a civil action. There's only one civil
25 action number in the state courts --

1 THE COURT: Well, it not only identifies a civil
2 action number, but it correctly recited the case as John
3 A. Tibbs versus Cape. That's the caption of the case.
4 And I supposed it did recite the civil action number that
5 this case which I'm holding this hearing today bares.

6 MR. PROTOPAPAS: I believe the Court of Appeals,
7 Your Honor, in that letter, on the second page, Your
8 Honor, all the attorneys for the removing parties signed.
9 That, I believe our Court of Appeals being efficient,
10 identified every case tied to the civil action number. I
11 did --

12 THE COURT: Well, then, they did the favor of
13 reciting all the appellate numbers.

14 MR. PROTOPAPAS: Yes, Your Honor --

15 THE COURT: Mr. Pugh, this was not -- Mr. Pugh, I
16 hope you're listening. This is a letter from you to the
17 Court of Appeals. That's how they got word of this.
18 They don't simply sit out there, nor does the federal
19 courts, simply sit out there. You sent them a letter --

20 MR. PUGH: Correct. Out of courtesy --

21 THE COURT: Wait a minute.

22 MR. PUGH: I'm sorry.

23 THE COURT: Wait for my question, please.

24 MR. PUGH: I'm sorry.

25 THE COURT: You sent them a letter to inform them

1 that the notice of removal had been filed with the
2 federal district court. And you gave them all the names
3 of these cases. But the caption of the removal matter is
4 the derivative action only. Please explain that to me.

5 MR. PUGH: I don't have an explanation for you other
6 than to say the following: One, this letter was sent to
7 the Court of Appeals as a courtesy to them because as you
8 know, having been on the appellate court --

9 THE COURT: Did you intend to remove the Tibbs case
10 as well as the derivative third-party action?

11 MR. PUGH: The Tibbs/ACL matter, those folks -- My
12 understanding -- I was not the person that filed the
13 removal. I did send this letter as a courtesy to the
14 appellate courts.

15 THE COURT: Well, you sent them the letter in order
16 to implement and stop the appeal. They would not have
17 known that on their own. They don't know things like
18 that unless the lawyers involved send it to them.
19 Federal court or anything else doesn't automatically
20 notify the Court of Appeals. In fact, the federal court
21 had none of the information which would have caused it to
22 notify the court.

23 MR. PUGH: I can tell Your Honor --

24 THE COURT: Sir?

25 MR. PUGH: I can tell Your Honor, it was not my

1 intention in sending this letter to the Court of Appeals
2 to effectuate anything with regard to ACL and the Tibbs
3 case when ACL was not even a person who consented to the
4 removal of the case.

5 THE COURT: But what you did was to caption this
6 case in such a way and frame your letter of July the 1st,
7 2024 in such a way as to inform Ms. Kitchens that all of
8 these cases were stayed by the removal.

9 MR. PUGH: It is my understanding, Your Honor, --

10 THE COURT: No, I'm looking at your letter. Don't
11 tell me your understanding. Look at the letter you sent.

12 MR. PUGH: That's what I'm getting ready to tell
13 you. Your Honor, it's my belief, how about that, that
14 the ACL/Tibbs appeal is not one of appellate cases that's
15 listed.

16 THE COURT: The caption of this case is Tibbs
17 against 3M and many others. And among those many others
18 is Cape, PLC. Now, you changed this thing -- The caption
19 of the case in front of me is John A. Tibbs and Margaret
20 B. Tibbs against 3M and many others. And included in
21 those many others are some entities that are also listed
22 as third-party defendants in a case brought by the
23 receiver on behalf of Cape PLC. Now you reconfigured
24 that caption completely. This is not any kind of caption
25 of anything. This is -- there's no such case as Tibbs

1 against Cape Asbestos Company Limited bearing the civil
2 action number we're talking about. There is a case Tibbs
3 against 3M and many others including some other entities.
4 But the Cape versus Anglo American is a third-party
5 derivative action filed as a derivative action to the
6 main case. You made this caption appear as if the main
7 case was being removed. Was that your intent?

8 MR. PUGH: No, Your Honor.

9 THE COURT: Well, why did you caption it that way?
10 Because that's exactly what you made come to a screeching
11 halt by doing it that way. If that wasn't your
12 intention, you need to write Ms. Kitchens immediately and
13 tell her that there is not such case as the named-caption
14 here which includes all these appellate numbers. There
15 is a case, a third-party derivative case, Cape PLC versus
16 Anglo American, but this filing is not correct. It's not
17 accurate. And you have stopped all the appeals in these
18 matters by making it appear as if that's the case you
19 removed. But that's not so.

20 MR. PUGH: Then, Your Honor, I can tell you that
21 that, one, was not my intention. Two, I did not list the
22 appellate case involving ACL. And three, I will do as
23 Your Honor has said and instructed me to do and we will
24 take whatever action we need to do. We'll be filing
25 something later today in the district court that sets

1 forth our position in that regard. And we will do
2 whatever we need to do to get straight with Ms. Kitchens
3 because I am telling Your Honor, who I have deep respect
4 for, it was never my intention to mislead, misconstrue,
5 misnomer, anything.

6 THE COURT: Well, the problem, the heartburn I got
7 with it is the main case, which is the Tibbs versus 3M
8 case, that's the case -- I haven't even gotten to the
9 derivative action. I'm trying to get ready for the trial
10 in the main case; the Tibbs against 3M case. And so far,
11 no cooperation in discovery, whole bunch of delay tactics
12 and everything including the filing of these appeals.
13 Most all of them, in my view, is not appealable, but
14 we'll have to see what the appellate court says about
15 that. But you filed pleadings with Ms. Kitchens that
16 leads her to believe that all these matters have been
17 removed. Yet, you tell me today it wasn't my intention
18 to remove Tibbs case and 3M at all.

19 MR. PUGH: What I said, Your Honor, to be clear, it
20 was not my intention to reference to the court that the
21 ACL appeal was one of those being affected by the removal
22 which is entirely the case which is borne out by what was
23 filed in --

24 THE COURT: Well, what was intended to be affected
25 by the removal? The third-party derivative action?

1 MR. PUGH: Your Honor, as you may imagine, as will
2 be, I think, borne out by the briefs and is borne out by
3 some of the briefings so far even in the notice for
4 removal, there's a question as to whether there even is a
5 third-party action. And so that's what's going to be
6 briefed at the district court.

7 THE COURT: But being -- That is quintessentially a
8 case for the state courts to deal with. Motions can be
9 made in that third-party derivative action in this court.
10 It's not something the federal courts have a thing to do
11 with. But you're removing something on the basis that
12 it's not really an action.

13 MR. PUGH: No, Your Honor, that's all -- I
14 apologize. I did not come here today thinking that we
15 were going to have a full blown argument about what is
16 pending in the district court or what may or may not come
17 back to this court. I will say to the court, once again,
18 I apologize. I apologize to this court for what I viewed
19 as I was giving notice to the appellate court and
20 sometimes we don't perhaps do that in the exact manner
21 that it needed to be done. And that was not something
22 that I was trying to -- I just wasn't attempting to
23 misnomer anything, Your Honor. I just wasn't. And I'm
24 just telling you that.

25 THE COURT: Well, I just asked you one more time,

1 how you came up with the In Re in your letter says, In
2 Re: John A. Tibbs and Margaret Tibbs versus Cape PLC.
3 And then gives this action number. Is there such as case
4 as that?

5 MR. PUGH: I am not --

6 THE COURT: You see where my heartburn is now?

7 MR. PUGH: I'm not seeing where you're reading from.

8 THE COURT: I am reading the letter of July the 1st,
9 2024, received by the Court of Appeals that same day.
10 Bearing the signature of Steven J. Pugh --

11 MR. PUGH: That's me.

12 THE COURT: -- and Todd Carroll and Vic Rawl and
13 copied to all counsel of record. And the In Re on the
14 letter is a caption that says John a Tibbs and Margaret
15 B. Tibbs versus Cape PLC individually and as successor,
16 so forth and so on. There is no such case captioned as
17 that. The main case which is Tibbs versus 3M and many
18 others with Cape PLC individually and successor through
19 its appointed received Protopapas, third-party plaintiff,
20 against Anglo American PLC. There isn't a case captioned
21 such as this. But you've used this caption and then cite
22 all these numbers for appeals that have been taken and
23 everything. And it's not an accurate representation to
24 the court. You signed that and so did Mr. Carroll and so
25 did Mr. Rawl.

1 MR. PUGH: I would like to -- I don't have the
2 material here in front of me, but I would like to confirm
3 that --

4 THE COURT: You want to see the letter?

5 MR. PUGH: I have a copy of the letter. What I'm
6 telling you I'd like to confirm is I believe that In Re
7 caption is the caption of the appeal pending before the
8 Court of Appeals. That's my belief.

9 THE COURT: Well, if that's how you have captioned
10 it, you have committed another sin in my book which is
11 captioning something in a way that does not comport with
12 this caption in the circuit court. Because it's
13 captioned in the circuit court as I have described it
14 which is a double caption now; Tibbs against 3M Company
15 and Cape PLC by and through its successor and receiver,
16 third-party plaintiff, against Anglo American. That's
17 the derivative case. This is the main case. If that's
18 the way you captioned it at the Court of Appeals, that's
19 just an extra piece of heartburn I have because it
20 suggests, the way it appears on this page, that that's
21 the civil action number. Its civil action number so
22 forth and then appellate case number recites all these.
23 This is not the correct caption. This is an attempt to
24 conflate the two in such a way that as it makes that seem
25 as if it's a part of a named case and it's not. It's a

1 conflation of the main case and third-party derivative
2 case. And there's a whole lot of law that talks about
3 third-party derivative cases and under what circumstances
4 they can be independently removed. And I'm sure that's
5 one thing y'all are going to brief up there too. But
6 this conflates the two in such a way that it misleads the
7 appellate court and on that basis, they determine that
8 although you captioned this thing in federal court, the
9 removal, only Cape PLC against Anglo American PLC.
10 That's how you captioned it in the removal thing. Did
11 not use this caption in your letter. It is not a case
12 that exist anywhere. Nor did you use the double caption
13 if it's appropriate caption. You used something that
14 suggest a situation that does not exist and that's what
15 got me much much unhappy and much much disturbed. It's
16 okay to play on the battlefield where everybody gets all
17 the facts out and the court can decide. If the district
18 court decides that this is a case where you can, without
19 having ever tried it in state court, go to federal court,
20 take a third-party derivative out, remove it and let the
21 federal courts look at your arguments, then, of course,
22 I'll have to abide by it. You're saying there was no
23 attempt to mess with the underlying Tibbs tort case. But
24 you've done that.

25 MR. PUGH: Well, I didn't intend to do it, Your

1 Honor.

2 THE COURT: Well, I think you did and I think it was
3 quite intentional. And I'm very disappointed in that.

4 MR. PUGH: Well, I will say this, Your Honor --

5 THE COURT: Y'all are good lawyers. This is not
6 something -- This is -- Third graders can diagram this
7 thing. We're not talking about rocket science here.
8 We're talking about basic English language and captions.
9 And, you know, that's just not a fair way to deal with me
10 and my court. Nor is it a fair way to deal with United
11 States District Court judges and their court.

12 MR. CARLTON: Your Honor, can I add a few things on
13 this? I'm Ben Carlton in the same law firm. I'm
14 probably the one who typed this letter. So --

15 THE COURT: Well, again -- Come on, now. Let's not
16 do some after the fact, oh, I didn't realize I was doing
17 anything.

18 MR. CARLTON: No, I don't intend to, Your Honor.
19 But I do think it's appropriate here in that when these
20 appeals were filed, as Your Honor's aware, the Court of
21 Appeals sent a letter that says, Please caption all
22 filings with this following caption. And so given that,
23 we are not the removing defendant but we are the
24 defendants who have active appeals. The De Beers and the
25 Oppenheimer defendants didn't. We felt it was incumbent

1 on our side to say, hey, we have pending appeals, the
2 removing defendants doesn't. Otherwise, they wouldn't
3 have notice. We listed the appellate court action
4 numbers where we had active appeals. ACL was not
5 included. So for all those reasons, the In Re line was
6 nothing more than try and comport --

7 THE COURT: And who is you represent?

8 MR. CARLTON: Sparrows Offshore LLC, Hawk Bidco and-

9 THE COURT: Did you turn out to be the main player
10 in the removal? That's all I got to say.

11 MR. CARLTON: I wouldn't say we're the main player
12 in the removal --

13 THE COURT: You're the one that filed it.

14 MR. CARLTON: No, ma'am. No, ma'am. We consented
15 to it. The Oppenheimer defendants filed it. So this is
16 letter is not saying, hey, we removed it. It's saying
17 someone else did, but we're the only ones that have
18 active appeals in addition to Todd's clients and Vic's
19 clients.

20 THE COURT: Well --

21 MR. CARLTON: James Elliott is the removing counsel
22 for De Beers, Anglo American and a couple others. They
23 had no pending appeals. That was the reason we felt it
24 necessary --

25 THE COURT: Oh, yeah, I can see why they wanted you

1 because otherwise they couldn't have stopped the matter
2 in Court of Appeals or in this court. Particularly in
3 light of the fact -- It's a very intentional thing that
4 was done. Not anything that, okay, this is how the court
5 captioned it, therefore, since we weren't named --
6 Bologna. This was a direct attempt to stop this state
7 court's proceeding with a removal that's probably not
8 valid. But even worse, by trying to conflict and confuse
9 the case names so that the entire thing would come to a
10 blinding halt. That's how I see it.

11 MR. CARLTON: Understood. Our intent was to comport
12 with the caption given to us. The answer to your
13 question about ACL is it is not included. It was never
14 included in our listing of appellate cases effective.
15 That would be made further clear today in federal court
16 briefing that is due and we will be happy to send a
17 follow-up letter to the appellate courts to confirm, for
18 the sake of clarity, that appeal is not included.

19 THE COURT: Well, do as you will.

20 MR. CARLTON: Yes, Your Honor.

21 THE COURT: I think, thus far, it's been very
22 misleading thing that was done. But do as you will. Mr.
23 Protopapas?

24 MR. PROTOPAPAS: Nothing further, Your Honor.

25 THE COURT: All right. So where we stand is this,

1 of course, I'm not going to defy Judge Lewis. And as I
2 understand it, briefing is almost completed, but not
3 completed as of today, I guess. So she'll have it and
4 she'll make a decision. And I'll certainly await that
5 before I do anything further. But if this case is
6 remanded, I will be going forward with some pretty strong
7 moves to try to get this thing ready for trial. That
8 will include getting discovery back on track pursuant to,
9 not only Mr. Lay's request, but the plaintiff's request
10 made through Ms. McVey with respect to try and get
11 discovery in a posture where this case can move forward
12 to trial.

13 One of the things that, and again, I'm telling the
14 very able lawyers that try asbestos cases, anyone that
15 you do not know, but this is a specialized docket. It's
16 set a year in advanced. And we do that to have a very
17 orderly way, a fair way with very busy and very talented
18 lawyers on complicated cases a way forward to plan upon
19 trial or resolution without trial on this matter. Chief
20 Judge Kittredge has reached out to me recently and asked
21 me to continue what I do with respect to asbestos docket.
22 And I'll do it for some time more. But I'm a part-time
23 judge with a part-time law clerk. And that is why I try
24 to get the cooperation to set this matter and move
25 forward in an orderly way.

1 It just blows a complete hole in everything I try to
2 do to have this kind of activity occur so close to the
3 trial of the matter. And at certain point in time, it
4 just, again, makes me think back to my practice days. I
5 sometimes had to tell clients no. And I mostly did
6 defense work. Sometimes you just have to tell the client
7 that's not something that's appropriate or proper to do
8 and I'm not going to do it. And I am disappointed at the
9 lengths to which some of the defendants involved in these
10 matters and insurers go to try to delay these matters
11 rather than have them proceed in an orderly way. I say
12 that without any imputation of impropriety or
13 unprofessional conduct on the part of any lawyer in this
14 room and all the rest of the bar. I respect you greatly.
15 But I am frustrated with what your clients push you to do
16 when I try as best I can to take a very complicated
17 docket and get it tee'd up in a way to move things
18 forward to resolution of the trial in an orderly way.

19 So I will await the guidance of the district court.
20 I hope it comes to us quickly. And whatever it is, we'll
21 be prepared to honor. If that means if the case comes
22 back, then I will set some pretty tight deadlines and I
23 will probably rule on a lot of things on papers and try
24 to get this case back up and tee'd up and ready for
25 trial. If its case that ends up in federal court, then

1 I'll have to move on. That'll be to the disappointment
2 of some of the litigants, but unlike some of the folks
3 who participated before me in this case, I do not deny
4 the authority of other courts including our appellate
5 courts or the federal courts. I will never do that. All
6 right. Court will be in recess.

7

8

END OF TRANSCRIPT

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FAIFIELD)

I, LaToya C. Perry, Official Court Reporter for
the Sixth Judicial Circuit of 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 trial of
the captioned case, relative to appeal, in the Circuit
Court of Richland County, South Carolina, on the 16th day
of July, 2024.

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

July 22, 2024

LaToya C. Perry

LaToya C. Perry, Court Reporter

My Commission Expires: 06-29-2027

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JOHN A. TIBBS,

Plaintiff,

vs.

C/A No.: 2023-CP-40-0179

3M COMPANY, ET AL.,

Defendants.

H E A R I N G
BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Thursday, April 25, 2024

TIME START: 1:03 p.m.

TIME END: 5:10 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202

APPEARANCES:

ATTORNEYS FOR THE RECEIVER:

GALLIVAN, WHITE & BOYD, P.A.
BY: JOHN T. LAY, ESQUIRE
-and- LINDSAY A. JOYNER, ESQUIRE
1201 Main Street, Suite 1200
Columbia, South Carolina 29201
803.779.1833
jlay@gwblawfirm.com
ljoyner@gwblawfirm.com

ATTORNEYS FOR THE DEFENDANTS

ALTRAD INVESTMENT AUTHORITY AND MOHED ALTRAD:

WOMBLE BOND DICKINSON, LLC
BY: M. TODD CARROLL, ESQUIRE
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
803.454.6504
todd.carroll@wbd-us.com

ATTORNEYS FOR THE DEFENDANTS

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

RICHARDSON, PLOWDEN & ROBINSON, P.A.
BY: STEVEN J. PUGH, ESQUIRE
1900 Barnwell Street
Columbia, South Carolina 29201
803.576.3721
spugh@richardsonplowden.com

ATTORNEYS FOR THE DEFENDANTS

CHARTER ENTITIES, ESAB, AND
CENTRAL MINING:

GORDON REES SCULLY MANSUKHANI, LLP
BY: A. VICTOR RAWL, ESQUIRE
40 Calhoun Street, Suite 350
Charleston, South Carolina 29401
843.714.2501
vrawl@grsm.com

APPEARANCES CONTINUED:

ATTORNEYS FOR THE DEFENDANTS
DE BEERS ANGLO AND OPPENHEIMER:

RICHARDSON, PLOWDEN & ROBINSON, P.A.
BY: JAMES H. ELLIOTT, JR., ESQUIRE
235 Magrath Darby Boulevard, Suite 100
Mount Pleasant, South Carolina 29464
843.805.6550
jelliott@richardsonplowden.com

I N D E X

	PAGE
Motions Before the Court	5
Certificate of Reporter	71

E X H I B I T S

(None were proffered.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - -

P R O C E E D I N G S

- - -

* * * * *

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

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

THE COURT: Right. Right. Right. Right.

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

THE COURT: Okay. I got them.

MR. LAY: And then the --

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

How do we want to start this thing? Do we want to start with that, or we want to go to the motions to preadmit and come back to it?

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

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

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

7 MR. PUGH: That's what we discussed. I
8 didn't want to mess with your agenda.

9 THE COURT: Listen, as confused as this
10 thing is, any order is appreciated.

11 Mr. Lay.

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

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

1 in discovery.

2 We've got four groups of defendants here.
3 We have the Sparrow defendants that Mr. Pugh
4 represents. We have the Altrad, owner
5 defendants, with Mr. Carroll represents. We
6 have the Charter defendants with Mr. Rawl
7 represents. And then we have a group called the
8 Oppenheimer defendants that Mr. Elliott
9 represents.

10 This motion is directed -- these motions
11 are directed to each group of those defendants
12 except the Oppenheimer defendants because there
13 has been some recent movement in participating
14 in the discovery process.

15 Now, we have some issues we're going to
16 have to deal with, but I'm dealing with -- these
17 motions, we're dealing with the groups of
18 defendants that have completely failed to
19 participate in discovery in any way whatsoever.

20 And I wanted to remind the Court, just by
21 way of background, some essential facts here.
22 This case has been filed since June of last
23 year. Discovery was served on the defendant
24 groups in July of last year. Deposition notices
25 were served in August and September of last

1 year. There was a motion practice process that
2 took place. You issued an order in December.
3 Communication to the Court and all parties
4 understanding that the discovery was going to
5 proceed. Discovery did not proceed.

6 There were additional motions. There were
7 additional deposition notices. There was
8 additional discovery. And there was complete
9 failure to respond primarily due to the
10 defendant's continued assertion of 205,
11 everything stay.

12 You issued an order pursuant to a motion to
13 compel that was filed in March of this year
14 where you ordered the parties to provide
15 responsive, substantive, and complete answers to
16 the receiver's discovery requests and begin the
17 production of documents. And you gave a
18 court-imposed deadline of March 26th.

19 We received from the Oppenheimer defendants
20 in March 15th for the first time initial
21 discovery. We produced 142,000 pages of
22 documents by March 25th. We produced another
23 30,000 documents by April 4th. All well within
24 the deadline.

25 We have gotten some pretty tepid responses,

1 in our view -- this is not to be argued today --
2 from the Oppenheimer defendants. We're trying
3 to get that worked out. We've got a pending
4 motion to compel, that's not on this agenda, we
5 filed yesterday. But we've got some discovery
6 issues we're dealing with with them that are
7 significant, but we try to do our best.

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

15 Everybody's saying over and over and over
16 and over again that the cases are not stayed
17 just because you've got an appeal on the
18 dissolution motion of a receiver.

19 We know the answer. We don't have to guess
20 that these other cases in which we have gotten
21 orders from Judge Verdin, we've gotten orders
22 from Judge Williams, we've gotten orders from
23 the entire Supreme Court, included appeals that
24 were both discovery and an attack on the
25 receivership itself, and they very clearly

1 stated move along, get going with discovery.
2 And it just hasn't happened. Don't know what
3 else to do.

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

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

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

24 Because of that, because we haven't gotten
25 a response to basic discovery requests that have

1 been outstanding since July of last year,
2 because we had not gotten a single witness
3 produced for simple 30(b)(6) notices and just
4 completely ignoring the attendance at these
5 depositions. I got letters. I'm not going ...

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

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

17 We've got a list of documents that the
18 authentication of these documents are going to
19 come in multiple ways, but we can short circuit
20 all that. It would be ancient documents. It's
21 public documents. It's self-authenticating
22 documents. It's documents that could be
23 authenticated simply by taking a 30(b)(6)
24 deposition and saying, here, here's the
25 deposition transcript, here's a witness that was

1 identified for your company. Is this an
2 authentic deposition?

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

6 What is clear and why we are here, these
7 defendants are not going to stop. There's been
8 no change in position except for Mr. Elliott
9 with this initial engagement and some form of
10 discovery with the Oppenheimer defendants, the
11 other defendants. There's been no change in
12 position. There's not going to be a change in
13 position.

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

18 MR. LAY: Yes, ma'am.

19 THE COURT: One of the defendants in that
20 case is Anglo American PLCs, right?

21 MR. LAY: Yes, ma'am.

22 THE COURT: And Cape individually and as
23 successor to Cape Asbestos Limited, which is in
24 a receivership, is another allied company with
25 the defendant tortfeasor in the Tibbs case,

1 correct?

2 MR. LAY: Yes, ma'am.

3 THE COURT: All right. Mr. Protopapas was
4 appointed as a receiver for Cape PLC as the
5 successor in interest to Cape Asbestos Company,
6 correct?

7 MR. LAY: Yes, ma'am.

8 THE COURT: And you are representing the
9 receiver --

10 MR. LAY: Yes, ma'am.

11 THE COURT: -- in connection with
12 marshaling assets in order to defend in the
13 Tibbs case?

14 MR. LAY: Yes, ma'am.

15 THE COURT: And one of the things you are
16 doing is suing an allied corporation, which has
17 control of some of the insurance assets, in that
18 the policies were issued to it. And it is the
19 insurers of these allied corporations who are
20 not cooperating with your third-party action
21 against them to discover these insurance assets.

22 MR. LAY: So it's the companies that have
23 been aligned with Cape that are subsidiaries,
24 parents, it's an amalgamation of interest
25 scenarios. There's a group of South African

1 companies, UK companies, U.S.-based companies
2 that are all associated with Cape. And the
3 theory is you made it so that Cape received all
4 of these profits from the distribution of brown
5 asbestos throughout the United States.

6 And when the tort system started trying to
7 hold defendants accountable for asbestos issues
8 that came about in the 1970s, there was a
9 conscious decision to shut Cape down and escape
10 the jurisdiction.

11 So those companies are responsible for
12 that. We think they did that wrongfully. We
13 don't think that was correct. There's been a
14 lot of literature. There's been -- we've got
15 treatises, we've got articles, we've got
16 documentaries that have all addressed this issue
17 of Cape, who would be as akin to the tobacco
18 litigation. It would be, you know, one of the
19 top tobacco producers escaping any and all
20 liability of any kind whatsoever. That's what
21 we're talking about.

22 So this is simply a receiver who's
23 representing this entity holding, these
24 companies that controlled Cape, holding them
25 accountable. I am sure that they got carriers

1 involved. These are direct actions against
2 these --

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

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

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

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

24 MR. LAY: That's right. These defendants
25 completely refused to engage in a valid

1 discovery response process in any way or shape
2 whatsoever.

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

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

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

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

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

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

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

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

1 THE COURT: Right.

2 MR. LAY: And they appeal that issue. You
3 made a ruling on it, that, no, the appointment
4 of the receiver was appropriate.

5 THE COURT: Right.

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

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

23 MR. LAY: That's right. Part of it is
24 stripping assets. There's also control. I
25 mean, there are lots of different issues wrapped

1 in that. One of those is unjust enrichment.
2 Which is one of the equitable claims we have,
3 that they took assets of Cape inappropriately
4 because they were the controlling company and
5 were charged with making sure that Cape escaped
6 and without damage to what they did.

7 THE COURT: So while time is important in
8 terms of moving to try to identify their assets,
9 they say that that can all be stayed by an
10 appeal in the Tibbs action of the legitimacy of
11 the receivership.

12 Who lodged that appeal?

13 MR. LAY: So all of the third-party
14 defendants that Cape sued under the amalgamation
15 of interest theories -- I mean, I'm using that
16 broadly -- all of them, all four groups lodged
17 that appeal after moving to dissolve the
18 receivership, after attacking the receivership
19 on multiple grounds, that was then appealed.

20 THE COURT: Okay.

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

1 THE COURT: Right. And the Court --

2 MR. LAY: And the Court came back and
3 dismissed all that.

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

8 MR. LAY: That's right.

9 THE COURT: All right. I think we've got
10 the context. So the first matter is Arranco
11 U.S., Hawk, and Sparrows Motion to Enforce 205
12 and Motion to Enjoin.

13 MR. LAY: My co-counsel rightfully wanted
14 me to explain this, and I think it is a good
15 issue to make sure you understand.

16 There's also on the dissolution motion, we
17 filed a Motion to Dismiss that appeal, too,
18 based on some of the orders that have come down.
19 They've gotten extensions on that. They
20 requested extensions, they hadn't gotten it yet.
21 We're trying to figure out how that's going to
22 play up. But we think that's going to
23 imminently occur.

24 Regardless, the motion on the appeal on
25 your order to compel captioned as a request for

1 injunction has been dismissed.

2 THE COURT: Okay.

3 MR. LAY: There's one appeal still open.
4 One issue.

5 THE COURT: Okay. So how do we need to
6 proceed now? Do we need to just march through
7 these motions? The first motion is the motion
8 by your adversaries to enforce 205 and to
9 enjoin. Is that the first thing we ought to
10 hear?

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

13 THE COURT: Why don't you then begin with
14 number 2 and go forward. We'll come back to
15 number 1, which is the Motion to Enforce 205 and
16 Motion to Enjoin.

17 MR. LAY: All right. Again, on the --
18 we're at -- this is a motion to preadmit
19 exhibits. We've got a lot of exhibits that that
20 have come from libraries, that are public
21 documents that come from a lot of different
22 sources. And one of the things that we were
23 attempting to do in discovery through Requests
24 to Admit, through 30(b)(6) depositions, through
25 interrogatories and Requests to Production, is

1 to try to get authentication of documents, and
2 we have been thwarted.

3 So one of the things that we're trying to
4 do is find a half step, not a burn your house
5 down, not strike the answer, not setting this
6 for a hearing determine value of the unjust
7 enrichment, but a half step here because I think
8 we're in a situation where the behavior is not
9 going to stop.

10 The clinging to 205, clinging to the
11 concept that this case is stayed and I don't
12 care what anybody says, that is going to count
13 unless the defendants are held to account for
14 taking that position.

15 What is a reasonable half step to hold them
16 to account? What is a reasonable half step to
17 hold them to account that is related to the
18 problems that have been caused thus far?

19 This case has been filed for almost a year.
20 We haven't gotten a single response to discovery
21 until just a couple of weeks ago from Mr. --
22 from Mr. Elliott's clients, the Oppenheimer
23 defendants. So we have been thwarted for
24 months.

25 Your ability -- this is a bench trial. And

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

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

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

1 receiver needs to get its work done, and we need
2 to get this case moving.

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

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

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

24 Rule 205 does not stop the train on this
25 kind of case. It's a reason for that. And I

1 think we haven't really talked through what's
2 the reason for a dissolution motion that's in
3 effect. Why is that not stopping the train?
4 It's easy. There's case law on this.

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

14 But that's the reason. That's the public
15 policy reasons for that. There is no stay of
16 the case because there's an attack on the
17 dissolution. We are marshaling and assimilating
18 assets. We're not out there wasting assets.
19 We're trying to secure assets. That's what
20 we're trying to do. And hold account to make
21 sure that the ability to access assets is there.
22 It's that simple.

23 The only way to make this stop is to do
24 something. In my humble opinion, if this Court
25 has got -- if it wants the 205 inappropriate

1 tactic to stop, there has to be something that
2 happens that holds them accountable.
3 Authentication of documents to preadmit is a
4 good start.

5 A second part of that would be the motion
6 for an adverse inference. And, you know, that's
7 a discovery issue. That's also a Rule 37
8 sanction. Where there's been something
9 inappropriate in discovery, there can be an
10 adverse inference.

11 And what we're asking for on the adverse
12 inference, in that motion, is that Altrad
13 third-party defendants with the alter ego of
14 Cape and otherwise liable as a matter of veil
15 piercing, including with respect to Cape's
16 ongoing liability avoidance scheme, and have
17 been unjustly enriched due to Cape's liability
18 avoidance scheme.

19 Second, each of the third-party Charter
20 defendants, relevant at all times, or including
21 with respect to the implementation of liability
22 afforded scheme in the 1980s, and before the
23 alter ego of Cape and otherwise liable as a
24 matter of veil piercing and have been unjustly
25 enriched due to Cape's liability avoidance

1 scheme with ESAB Corporation acting as the
2 corporate successor with respect to the
3 liability of Charter Consolidated, Central
4 Mining and Investment -- and Central Mining and
5 Investment.

6 The Sparrow defendants particularly have
7 argued that that's premature. It simply isn't.

8 This is -- adverse inference is a half step
9 too. If they choose, and they could choose
10 this. This is a choice to ignore the Court of
11 Appeals, the Supreme Court, your order is a
12 choice. These defendants have made a choice.

13 They can also choose to engage in
14 discovery. They've got an adverse inference.
15 If they start engaging in discovery, they can
16 present evidence to you to try to overcome the
17 adverse inference on the documents that have
18 been presented to you. That is a choice they
19 can make.

20 But they continued to completely thumb
21 their nose. These defendants are thumbing their
22 nose at the Court. Something has got to be
23 done. And I do think this half step, this
24 reasonable step is exactly what should be done
25 to try to get the engagement, the appropriate

1 engagement that respects the Court, that defends
2 this case on the merits.

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

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

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

25 All we're asking is let's get it started.

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

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

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

15 We are asking for attorneys' fees on this
16 motion from these defendants for having to bring
17 these motions. Which I have never done.

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

20 MR. PUGH: Yes, Your Honor. May it please
21 the Court. Steve Pugh on behalf of -- and I
22 gave the court reporter my card earlier.

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

1 I represent Hawk Bidco U.S., Inc., which was
2 incorporated in 2012.

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

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

17 I think I can synthesize it down to this,
18 Your Honor. The receivership over Cape PLC was
19 created by Your Honor in the Park case. And in
20 the Park case, Cape PLC and another entity,
21 CIHL, were both named as defendants.

22 The receivership -- two separate
23 defendants. No question about that. The
24 receivership was created over Cape PLC in Park.

25 Then we fast forward into the Tibbs case,

1 and we've got the third-party complaint filed by
2 the receiver for Cape PLC, as to my clients, and
3 you've heard three other groups of third-party
4 Defendants who filed various motions.

5 And as a result of those motions, in
6 Your Honor's December 6th, 2023, order denying
7 those motions, the receivership -- we take the
8 position that a new receivership was granted
9 over CIHL, which had been a defendant in Park
10 but was not put into a receivership in Park.

11 And so we take the position that pursuant
12 to 14-3-330, we were specifically permitted to
13 take an appeal with regard to the granting
14 continuing modifying of receivership. And we
15 have so -- we have done so. And that appeal is
16 still with the Court of Appeals.

17 Mr. Lay is correct. Our reply or response
18 to their motion to dismiss is coming up, but
19 that appeal is still pending.

20 So without going line by line through the
21 other orders, which I have done or attempted to
22 do in my response in opposition, that's kind of
23 the global view of how we differentiate those
24 orders to the specifics of this case. Because
25 as Your Honor knows, that appealability standard

1 has to be viewed as to the case and on a
2 case-by-case basis. That's -- Your Honor knows
3 that far better than I do.

4 As to specific motions that have been filed
5 by the receiver, I'll kind of take those
6 globally unless you want me to address them
7 individually. I'm happy to do them either way,
8 Your Honor.

9 The first one was with regard to admission
10 or preadmission of exhibits. The proposed trial
11 exhibit list from the receiver contains 2,538
12 exhibits. I'm not sure how many pages that is,
13 but I think it's maybe more than a hundred
14 thousand. I'm not sure.

15 There are a sum total of 14 exhibits that
16 apply to my clients. 14 out of 2,538. And
17 those exhibits reference exactly how I began
18 this morning, which is my clients were born in
19 2003, 2008, and 2012. Yet in this case, my
20 clients are being called upon to answer for
21 conduct, to be the alter ego of, to have somehow
22 siphoned off assets and funds for actions that
23 occurred pursuant to the third-party claim
24 between 1953 and 1978. 40 to 50 years before my
25 clients ever existed.

1 So, Your Honor, we think that the sanctions
2 being requested -- and I appreciate Mr. Lay's
3 view of it, that this is an intended half step
4 and perhaps not the hydrogen bomb sanction
5 contemplated by Bloom Plantation, which we cite
6 in our responsive pleadings. But it effectively
7 holds my clients in default, strikes their
8 answer, and determines the case.

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

11 MR. PUGH: And an adverse inference as to
12 the liability. So I grouped them together.
13 They've got both separate motions.

14 THE COURT: They're separate motions.

15 MR. PUGH: And they have the global
16 motions.

17 THE COURT: I understand that.

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

21 THE COURT: You don't cooperate with a
22 thing. They allege that they are trying to do
23 what the receivership appointed them to do,
24 which is pursue assets of Cape. And then you
25 come back and say "I'm entitled to all this

1 consideration about my liability being presented
2 and everything even though I'm not going to
3 cooperate one bit with any discovery, and I base
4 that on an appeal that's been sent back to the
5 circuit court."

6 And on 205 -- which I still cannot
7 understand this argument at all. 205 says
8 "Nothing in these rules shall prohibit the lower
9 court, commission, or tribunal from proceeding
10 with matters not affected by the appeal."

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

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

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

23 THE COURT: All I can say is I have very
24 little respect for arguments that begin by
25 saying that these are legitimate appeals. And

1 further, that say that an appeal stops
2 everything in the circuit court when the
3 appellate authorities themselves have said now
4 several times that the receivership should
5 continue, and I should continue to move that
6 phase of it along.

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

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

25 MR. PUGH: My argument is this, Your Honor.

1 The appeal I took -- the appeal we --

2 THE COURT: I have -- let me just say this.
3 I have made the ruling now a good many times
4 that these appeals do not stop these
5 receiverships. So I've made that ruling.

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

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

25 MR. PUGH: My argument is simple to the

1 language that you read earlier, Your Honor. And
2 that is my appeal and my belief, my appeal
3 involves matters affected by --

4 THE COURT: Okay. Well, to the extent you
5 make that argument, let me just tell you right
6 now, and I'll solve it for everybody else around
7 me. I deny that argument. And I will
8 overrule -- I will rule against you on that
9 argument. I think you have a separate thing --
10 asked me to rule on 205. I don't know why I
11 should be doing that. I'm the trial court.

12 The appellate courts have already made that
13 ruling.

14 And so my ruling is this: I will not hear
15 anything further about the authority of this
16 Court to proceed with the receivership matters.
17 It is my understanding that both provisions of
18 Appellate Rule 205 and the rulings of the
19 South Carolina Supreme Court and the rulings of
20 the Court of Appeals indicate that the
21 receiverships that are under attack in certain
22 appeals pending in front of them shall continue
23 in the face of the appeal.

24 And I am going to abide by their rulings
25 and by my understanding of the Appellate Court

1 Rule 205. So you don't need to make any further
2 arguments about that.

3 MR. PUGH: May I make one other different
4 argument very briefly?

5 THE COURT: All right, sir.

6 MR. PUGH: Your Honor, the other argument
7 that we asserted in our responses in opposition
8 to the receiver's three motions was the issue
9 under Rule 14. And clearly as Your Honor and
10 everyone knows, the third-party claims are
11 derivative of the first-party claims and we
12 learned -- I learned for the first time a week
13 or so ago -- excuse me, on April 10, that there
14 was in place a tolling agreement apparently
15 between Cape PLC and the Tibbs plaintiffs.

16 And so, Your Honor, for that reason, again,
17 we believe that under Rule 14 that derivative
18 claims should not go forward or toll or in the
19 alternative should be severed from the
20 first-party Tibbs claims.

21 THE COURT: Rule 14 of the state court
22 Rules of Civil Procedure? Third-party practice.
23 Specifically what is it in that rule that you
24 say makes me unable to rule on requests for
25 preadmission and sanctions and so forth against

1 your clients?

2 MR. PUGH: Because frankly what they're
3 attempting to do at this juncture is put the
4 cart before the horse. There's been no
5 liability in the underlying Tibbs claim.
6 There's no judgment against Cape for whom they
7 stand in the shoes of. There's nothing for them
8 to proceed.

9 What they're really attempting to do is I
10 suppose some type of an expansive advisory
11 opinion regarding hypothetical liabilities that
12 may or may not occur in the underlying Tibbs
13 case.

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

16 The receiver is tasked by my orders of
17 appointment to marshal assets. And the receiver
18 for Cape is charged with marshaling the assets
19 of Cape. And the receiver has in the process of
20 doing that discovered that your client may be a
21 successor in interest who stripped assets from
22 Cape that ultimately wound up in the possession
23 of your client that formed the asset base of
24 your client's existence. That's essentially in
25 rough style what I think is being asserted.

1 The receiver is charged with pursuing those
2 assets, and that is what is being done in this
3 third-party litigation. I don't see anything in
4 Rule 14 that prevents discovery from being
5 engaged in to ascertain whether or not the
6 averments in the third-party complaint that your
7 client is the holder of certain assets that
8 should be with Cape can't be explored.

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

15 He is pursuing a claim against your client
16 that is based on contentions that your client
17 now has assets that should be in the possession
18 and control of Cape of which is the receiver.
19 And that is a straight-up piece of litigation
20 that's going to be pursued.

21 And what you said in response to that is
22 because although I'm not participant in the
23 receivership litigation at all, and I'm going to
24 refuse to answer anything, I can nevertheless be
25 absolved of any responsibility to participate in

1 discovery. I don't get that. It doesn't make
2 any sense to me.

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

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

13 MR. PUGH: The Tibbs had a claim against
14 Cape.

15 THE COURT: No, no, no. Tibbs had a claim
16 against Cape for a tort.

17 MR. PUGH: Correct.

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

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

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

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

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

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

23 MR. LAY: Can I do one thing?

24 THE COURT: Yes, sir.

25 MR. LAY: I just want to make sure. I'm

1 craving reference to our motion on what we're
2 seeking on the adverse inference. I'm going to
3 try to weed out any defenses. All of the
4 defendants, except for James Elliott's
5 Oppenheimer defendants. That's where we're
6 seeking the adverse inference on alter ego,
7 crave reference to that in the motion. I just
8 don't want that lost.

9 THE COURT: Right. I understand.

10 Mr. Carroll.

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

13 THE COURT: On behalf of?

14 MR. CARROLL: John Carroll on behalf of the
15 Altrad Investment Authority and Mr. Altrad
16 individually.

17 Your Honor, as you imagine, my client -- my
18 clients join what Mr. Pugh's presented this
19 morning -- this afternoon, rather. We don't
20 think the Court has jurisdiction to proceed. We
21 don't think the receiver has jurisdiction to
22 proceed under Rule 205. I don't intend to
23 reargue that ground. Just want to say it on the
24 record.

25 The sanctions sought are the equivalent of

1 granting judgment against my clients. Given
2 that this is a bench trial, I don't know how you
3 can have an adverse inference in a bench trial.
4 The judge is the decider.

5 I agree with Mr. Pugh with regard to if
6 there's no liability to Ms. -- to the Tibbs
7 family, then this whole case is moot. Because
8 Rule 14 only allows a third party to try to
9 transmit the first-party liability to the
10 third-party defendants. If there is no
11 first-party liability, then there's nothing to
12 transmit the third-party defendants.

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

18 THE COURT: It's a tolling agreement
19 between who and who?

20 MR. CARROLL: My understanding is it's
21 between the plaintiffs and the receiver.

22 THE COURT: And it tolled what? The
23 statute of limitations?

24 MR. CARROLL: I don't know.

25 THE COURT: That's way too doggone vague

1 for me to make any sense.

2 MR. CARROLL: Your Honor, the last time --
3 Your Honor, the last time we were here, on
4 April 10th or whatever, there was -- Your Honor
5 had a lot of proceedings regarding the Tibbs
6 case. And it was represented to the Court at
7 the time that there were only two defendants
8 left in Tibbs, Atlas and ACL.

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

15 THE COURT: All right.

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

17 THE COURT: All right.

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

20 THE COURT: How about the preadmit?

21 MR. CARROLL: Yes, ma'am. On the
22 preadmission, my clients are very similarly
23 situated to Mr. Pugh's. If you search this list
24 of 2,538 -- 2,538 exhibits, Altrad -- the name
25 Altrad shows up in maybe 40, and most of them

1 are just corporate disclosures.

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

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

9 There's a video in here -- if you will
10 pardon me, there's a video in their list from a
11 YouTube poster named Cradle of Anal, A-N-A-L.
12 I'm sorry. That's on their list. How is my
13 client supposed to know anything about that?

14 They have The State newspaper article about
15 how Frank Martin's basketball team liked the
16 pregame dance of a rugby team that my client
17 owns. What does that have to do with anything?
18 It's a State newspaper article. That's hearsay.
19 That's irrelevant. I don't know if it's
20 authentic.

21 THE COURT: If you haven't filed any of
22 those things specifically, you're just saying
23 generally they can't do it because the
24 receivership is not any good. It's all under
25 appeal and so forth. But I take it that you

1 have not ticked down the specific list of these
2 exhibits to say which ones you think ought not
3 to be admitted.

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

7 THE COURT: I got it.

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

15 THE COURT: As a sanction for your not
16 participating in discovery.

17 MR. CARROLL: I understand, Your Honor.

18 THE COURT: Put aside all these other
19 arguments, if I decide that this matter moves
20 forward despite your arguments about the
21 effective appeals and so forth and so on, it's
22 very likely I would do, I've done that a number
23 of times, then you're responsible to respond to
24 discovery. And you have not done it, right?

25 MR. CARROLL: Well, and I would just point

1 out for the record our -- the receiver did send
2 us a set of requests to admit for the
3 authenticity of a very small universe of these
4 documents.

5 THE COURT: Right. And so what's the
6 problem going on with that?

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

11 Your Honor, you understand our position.

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

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

17 THE COURT: That's been since last year
18 when this thing was filed, right?

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

21 THE COURT: Okay.

22 MR. CARROLL: Thank you.

23 THE COURT: All right.

24 MR. RAWL: Briefly, Your Honor. Vic Rawl.
25 For the record, I represent the Charter

1 Entities, ESAB, and Central Mining.

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

12 THE COURT: Who was that struck?

13 MR. RAWL: This is the Tibbs matter.

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

18 MR. RAWL: That would stay the Tibbs
19 matter.

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

24 MR. RAWL: This is in the Tibbs matter.

25 The Notice of Appeal was filed September 13,

1 2023.

2 THE COURT: Yeah.

3 MR. RAWL: The next appeal, then, would be
4 the one that we're talking about where my
5 clients appealed the order where they relate to
6 both personal jurisdiction and to receivership.

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

13 MR. RAWL: My understanding is that ESAB is
14 not a citizen of South Carolina for general
15 jurisdiction purposes.

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

20 MR. RAWL: I think they do. I think it
21 does. I don't know the answer to the question.
22 I don't think there's any claim that ESAB
23 doesn't do business --

24 THE COURT: It's not acceptable for you to
25 come into this court asserting lack of

1 jurisdiction on behalf of ESAB and then stand up
2 here in front of me and tell me that you don't
3 know whether they have a plant in Florence.

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

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

8 THE COURT: Do that.

9 MR. RAWL: I don't think that there is any
10 claim by ESAB that it doesn't do work in
11 South Carolina. The personal jurisdiction
12 argument was made because it was not organized
13 in South Carolina. It is not headquartered in
14 South Carolina.

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

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

21 THE COURT: It's a matter of tracing
22 assets. That's what they're talking about
23 doing. And this business about not having a
24 citizenship in South Carolina, if you've got an
25 800-employee plant in South Carolina, you better

1 be domesticated in South Carolina. And I would
2 imagine they are.

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

4 THE COURT: Before you begin to represent
5 that client in my court on assertions about
6 jurisdiction of this court, I think you need to
7 find that out. So before this hearing is over,
8 I want you to have an answer for me on that.

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

11 THE COURT: Yes, sir.

12 MR. RAWL: Let me make a couple more
13 points. The third appeal which would relate to
14 the 205 argument is the actual appeal of the
15 order where the discovery stems from. It is
16 the -- this Court's March 12th, 2024 --

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

21 Do you question the notion that discovery
22 orders are not immediately appealable?

23 MR. RAWL: No, Your honor.

24 THE COURT: Well, that was a discovery
25 order, was it not?

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

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

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

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

14 You're challenging the ability of the
15 receiver to engage in discovery with your
16 client. And you wrap it up or tie it in a bow
17 that is called something else simply to try to
18 make it appealable. That's what's happening
19 here.

20 MR. RAWL: Your Honor, my client very much
21 believes that it should be able to have its
22 appeal decided --

23 THE COURT: Well, it can't have its appeal
24 decided on something that's interlocutory. And
25 squabbles over discovery, whether you

1 characterize your opposition to discovery by
2 saying that you are somehow challenging their
3 right to make a discovery request, but you are
4 not. Discovery matters are not immediately
5 appealable.

6 MR. RAWL: Your Honor, I understand that.
7 And the injunction that was requested was regard
8 to any action, you know, of those either in this
9 case or outside of this case.

10 THE COURT: Was it the actions that were
11 complained about were discovery actions, were
12 they not?

13 MR. RAWL: Your Honor, respectfully, we
14 made arguments about discovery, and we made
15 arguments about, you know, injunctive relief.

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

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

25 But my only point is, is with regard to the

1 sanctions that are being asked for today, they
2 derive from the March 12th, 2024, order, which
3 has been appealed by my client.

4 And, Your Honor, the appeals --

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

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

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

14 MR. RAWL: It has.

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

18 MR. RAWL: Yes, Your Honor.

19 THE COURT: Okay.

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

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

1 MR. RAWL: What, Your Honor?

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

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

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

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

16 THE COURT: You're darn right, it is not
17 appealable, right?

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

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

1 that is coming up.

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

15 THE COURT: All right. I'm not going to
16 hear those arguments. You are asking someone
17 else to hear those arguments right now, so I
18 don't need to -- I certainly don't need to waste
19 any time on those arguments.

20 MR. RAWL: From my client's standpoint,
21 their appeals are gone. They want to be able to
22 participate. But our understanding of the
23 rule -- of Rule 205 is that until the Court of
24 Appeals sends back this remittitur, that the
25 jurisdiction is exclusively with the Court of

1 Appeals. So that is only point I want to make,
2 Your Honor. Thank you so much.

3 THE COURT: Yeah. My understanding is
4 that, again, this entire scenario that you just
5 painted is a direct attempt to defy the
6 authority of the Appellate Court rules, the
7 Court of Appeals, the Supreme Court, and this
8 Court, where you've been told repeatedly that
9 orders of this type are not directly appealable.
10 And you've been told it in the context of
11 receiverships, which have been specifically
12 directed to proceed.

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

16 MR. RAWL: Your Honor, I apologize. In no
17 way would I ever want to offend you. This is
18 very similar to the argument that I made to
19 Your Honor for a very long time in the ACL
20 matter. And if I -- I'll just incorporate that
21 argument I made earlier.

22 THE COURT: All right.

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

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

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

7 THE COURT: I want you to find it out
8 before you leave here today.

9 MR. RAWL: Yes, ma'am.

10 THE COURT: All right. All right. Who
11 else? Is that it?

12 All right. Mr. Lay.

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

15 The Oppenheimer defendants, and we're
16 dealing with discovery with them, did it the way
17 the system contemplates that it be done.

18 There is an appeal. The appeal goes up.
19 They've been told they need to participate in
20 discovery. We're fussing about discovery, but
21 there's some engagement. You don't get to
22 selectively decide that I'm going to take my
23 ball and go home and not play ball because you
24 don't like the answer that you've been given and
25 say I'm not going to participate.

1 If they had participated in discovery, for
2 example, in any way -- and this isn't just about
3 not authenticating requests to admit, which they
4 know. It's a complete failure to engage in any
5 way in discovery. Discovery has been served
6 since July of last year. We got nothing from
7 three-fourths of these defendants. They know
8 that.

9 All they have to do is engage, and they
10 could have provided information if they think
11 they're not supposed to be involved in the case.
12 We think they are.

13 We've got -- you know, they're making
14 references to where a document was pulled off a
15 website that is at PBS. They know this. It's a
16 PBS document, is what it is. It just doesn't
17 exist anywhere other than this crazy website.
18 But it's an absolutely legitimate exhibit.

19 If they had engaged in discovery, they
20 would have known that there was a tolling
21 agreement. Well, good grief, we have a receiver
22 that's appointed, supposed to protect his
23 assets. He has no assets to defend any of these
24 cases. If he just simply throws his hands up
25 and says "I don't have any money," then there's

1 going to be default judgments in effect, how is
2 that protecting anybody?

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

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

20 It is not a striking of the answer at all.
21 There are documents where there's going to be an
22 adverse inference. If they participate, they
23 put up their own evidence. And then you, as the
24 bench trial judge, can make a decision on what
25 should happen here. That's all we're asking.

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

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

13 THE COURT: All right. Anything further?

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

19 I am going to grant the motion to preadmit.

20 I am going to take under advisement the
21 motion for sanctions. And I'm going to ask
22 Cape's receiver to draft for my consideration
23 exactly what an adverse inference document would
24 look like. I'm inclined to give consideration
25 to signing an order that directs certain adverse

1 inferences to be made because of the failure to
2 cooperate in discovery.

3 But I want to see exactly what the receiver
4 would have in mind.

5 Now, we've also got the third-party
6 defendants' adoption notice joinder in the
7 filings of other third-party defendants. I've
8 taken that into consideration in connection with
9 what I rule. So I understand that some parties
10 are adopting other parties' request for
11 remedies.

12 We've also got what was argued after that
13 with Defendant Altrad's adoption and notice of
14 joinder in the filings of other third-party
15 defendants. And I understand that and have
16 taken that into account in the rulings I have
17 made.

18 Mr. Lay, what I would ask you to do is to
19 prepare an order that reflects these rulings in
20 the Tibbs state receivership third-party matter.
21 Send them to me within ten days, which will --

22 Eva, let's give a date there so --

23 It would fall on May 6th. And then I would
24 give opposing parties until May the 13th to
25 respond to what is filed by Mr. Lay. So that

1 that gives you specific dates that I'm talking
2 about.

3 Now, then we've got these motions to
4 enforce 205 and enjoin. I have already made my
5 positions pretty clear about that bunch of
6 activity in connection with the matters
7 Mr. Robinson argued earlier today and the
8 directions I made.

9 I would similarly, Mr. Robinson, ask you to
10 share with Mr. Lay, who is here for these
11 arguments as well. I'm going to go on and rule
12 on these things, although it carries with it the
13 peril that we start this vicious cycle of
14 spiraling appeals. And I hope at some point if
15 these matters are ruled on as I think they will,
16 we will address the expense of all of that.

17 But in the meantime, I want you to consult
18 with Mr. Robinson on -- I'm not going to repeat
19 them all now, but I made a good many
20 observations and rulings with respect to the
21 interplay between the rules of appellate
22 practice and the circuit court rules in
23 connection with my basic holding that these
24 matters are not stayed because there's no valid
25 appeal of things that are being considered in

1 the matters that have come before me today.

2 And the receivership continues and
3 therefore the same applies here as it did in
4 some of these other cases. It's a slightly
5 different situation. And those receiverships,
6 the insurance assets are being marshaled. And
7 this receivership is insurance and other assets
8 of the receivership corporation that is being
9 marshaled, but the concepts are the same.

10 Now, what we've still got is Atlas Turner,
11 Goldfein, but let's go back for a minute.

12 MR. ELLIOTT: Your Honor, before we move
13 on --

14 THE COURT: Mr. Elliott.

15 MR. ELLIOTT: James Elliott for the
16 De Beers Anglo defendants.

17 THE COURT: We're still now back in Cape
18 and I've already made my ruling?

19 MR. ELLIOTT: No. I want to let you
20 finish, and then I wanted to say just this:
21 None of those motions are directed at my
22 clients. One of the rulings has to do with
23 preadmitting evidence into the case.

24 THE COURT: Right.

25 MR. ELLIOTT: I just want to make it clear

1 on the record that is not a ruling that evidence
2 is going to be preadmitted against my client.
3 And I just want to make that clear. None of
4 these motions are directed at my client. None
5 of them are for that one in particular because
6 it's maybe one trial.

7 THE COURT: Sure. Sure.

8 MR. ELLIOTT: I understand that's not going
9 to be directed at my client. We may have the
10 same document.

11 THE COURT: I understand, Mr. Elliott. And
12 Mr. Lay and Mr. Smith are nodding agreement with
13 that. So I think we understand that's what the
14 situation is. And you're on the record and
15 please know that I tell you now, as presiding am
16 judge over this matter, that I agree with that.

17 MR. ELLIOTT: Thank you.

18 THE COURT: And all parties do. But you
19 are not affected by these other rulings with
20 regard the noncooperating third-party
21 defendants.

22 All right. Now, let's go back for a minute
23 to the Asbestos Corporation Limited Lewis --
24 where are we now? As I understand it, I -- my
25 rules -- Mr. Robinson, I'm just looking at the

1 agenda. Have I given you enough directive or do
2 I need to give further direction about these
3 motions? The motions to dismiss in Lewis?

4 MR. ROBINSON: So, Your Honor, of course in
5 the Davis matter you gave us very specific items
6 that you wanted to --

7 THE COURT: But we still haven't done
8 anything about Lewis.

9 MR. ROBINSON: Correct. When we break, you
10 had heard all the arguments in Lewis, but have
11 not made any announcement regarding your rulings
12 in that case.

13 THE COURT: Now, do you regard the record
14 as clear enough on both the Motions to Dismiss
15 and the Motions for Protective Order?

16 The Motion for Protective Order, just as
17 Motion to Stay All Discovery, et cetera, et
18 cetera, which is another way of saying the
19 appeal -- the appeals stay everything. And I
20 already indicated what my rulings are about that
21 in the Motion to Dismiss. The appeals don't
22 affect the ongoing ability of this Court to deal
23 with receivership matters.

24 These Motions for Protective Orders are all
25 Motions to Stay all further discovery. I think

1 they're all by you, Mr. Rawl, are they not?

2 MR. RAWL: Your Honor, I made some and then
3 several of the other defendants made some as
4 well. I would probably say I made more than
5 others.

6 THE COURT: Well, I'm trying to look and
7 see what -- who else I see.

8 Okay. 19 and 20 were Liberty Mutual and
9 CLMI.

10 Ms. Mastrianni.

11 MS. MASTRIANNI: Yes, ma'am.

12 THE COURT: You're -- she's Allstate.

13 MS. MASTRIANNI: Correct. We don't have a
14 discovery motion pending.

15 THE COURT: All right. Who is Liberty
16 Mutual?

17 MR. GOTTSCHALL: That's me.

18 THE COURT: Mr. Gottschall.

19 Mr. Gottschall, your motion for a protective
20 order/injunction, this is just the same old
21 routine you've been arguing for some time. You
22 take the position that you're entitled to a
23 protective order and an injunction because these
24 matters are on appeal, right?

25 MR. GOTTSCHALL: In part, Your Honor, we're

1 asking the Court in its discretion to also
2 consider that if the ACL's appeal is successful,
3 as to Liberty Mutual, there's no loss, no harm
4 in staying discovery at this time.

5 THE COURT: Sure. But that's all an
6 argument in aid of the Motion for Protective
7 Order and Motion for Injunctive Relief, which
8 has the appeal -- has the effect of having me
9 say that the appeal stays everything, right?

10 MR. GOTTSCHALL: That would be one avenue
11 if the Court ruled that way.

12 THE COURT: Right. Right. Okay. And I've
13 indicated in the direction I've given
14 Mr. Robinson that I don't think that the appeal
15 stays these things.

16 So, Mr. Robinson, that's going to apply to
17 these various motions for protective orders.

18 Now, who has CLMI?

19 MR. MANOS: I do, Your Honor.

20 THE COURT: Yeah, Mr. Manos. The rationale
21 I've already given in the Motion to Dismiss part
22 of this thing would apply to these Motions for
23 Injunction and for a protective order. I regard
24 them as proxies for a contention that everything
25 is stayed by appeal in these receiverships.

1 And I've also indicated a good many other
2 opinions I have about the interplay between the
3 Appellate Court rules and the rulings of both
4 the Court of Appeals and the Supreme Court.
5 We've outlined that in detail.

6 But basically, Mr. Robinson, collaborate
7 with Mr. Lay on being sure that we cover all
8 these motions and generally use the same
9 rationale that I've used in saying that I don't
10 think the appeal stays anything here.

11 - - -

12 (The hearing recessed at 2:28 p.m.)

13 - - -

14 * * * * *

15 THE COURT: Anything else to come before
16 this court?

17 MR. ROBINSON: Your Honor, one last
18 question that you've asked that has not been
19 answered, and that's of Mr. Rawl about ESAB
20 being in Florence.

21 THE COURT: That's correct.

22 MR. ROBINSON: One of my colleagues pointed
23 out that question is still pending out there.

24 THE COURT: Mr. Rawl, what have you got for
25 me?

1 MR. RAWL: I stayed through that last
2 hearing just so I can answer the question. My
3 client has no assets in South Carolina.

4 THE COURT: Do you hear that, Mr. Robinson?

5 MR. ROBINSON: I did hear it, and it's on
6 the record, Your Honor.

7 THE COURT: Very good. Thank you so much.

8 - - -

9 (The hearing concluded at 5:15 p.m.)

10 - - -

CERTIFICATE OF REPORTER

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

That the foregoing proceedings were taken before me on the date and at the time mentioned on page 1 and the proceedings were recorded stenographically by me and were thereafter transcribed under my direction; that the foregoing transcript as typed is a true, accurate and complete record of the proceedings to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 29th day of April, 2024, at Lexington, Lexington County, South Carolina.



Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
November 1, 2033

WORD INDEX

< 1 >	205 5:20 8:10 11:10 16:20 17:9 19:11 20:8, 15 21:10 23:24 24:25 29:4 33:6, 7 36:10, 18 37:1 42:22 46:6 47:16 48:4, 5 51:14 56:23 63:4 221(b) 55:20 235 3:1 25 1:1 25th 8:22 26th 8:18 29201 2:1 29202 1:1 29401 2:1 29464 3:1 29th 71:10	803.576.3721 2:1 803.779.1833 2:1 843.714.2501 2:1 843.805.6550 3:1	adverse 5:13, 18 6:15 16:4 25:6, 10, 11 26:8, 14, 17 32:11 42:2, 6 43:3 60:22 61:23, 25 advisement 61:20 advisory 38:10 affect 35:22 66:22 affidavits 27:7 affixed 71:10 afforded 25:22 34:22 African 13:25 afternoon 42:19 agenda 6:8 9:4 66:1 ago 21:21 33:20 37:13 50:20 agree 35:6 38:14 40:5 43:5 65:16 agreeing 11:14 agreement 37:14 43:13, 18 44:13 59:21 65:12 ahead 22:5 35:16 aid 15:17 68:6 akin 14:17 AL 1:1 aligned 13:23 allege 32:22 allegedly 15:4 16:17 allied 12:24 13:16, 19 34:11 allowed 46:6 allows 43:8 Allstate 22:3 67:12 alter 25:13, 23 31:21 42:6 alternative 37:19 ALTRAD 2:1 7:4 25:12 42:15 44:24, 25 Altrad's 62:13 amalgamation 13:24 18:14 ambit 35:11 American 12:20 Anal 45:11
1 20:15 71:6, 16 1:03 1:1 10 37:13 100 3:1 10th 6:22 44:4 1200 2:1 1201 2:1 1221 2:1 12th 51:16 54:2, 13 55:10 13 48:25 13th 48:9 62:24 14 31:15, 16 37:9, 17, 21 39:4 43:8 142,000 8:21 14-3-330 30:12 1459 1:1 15th 6:21 8:20 10:5 16 29:14 1600 2:1 1701 1:1 19 67:8 1900 2:1 1953 31:24 1970s 14:8 1978 31:24 1980s 25:22	< 3 > 30(b)(6) 11:3, 23 20:24 30,000 8:23 350 2:1 37 16:8 22:12, 16 25:7 3M 1:1 12:16	< A > abide 36:24 ability 21:25 22:1 24:21 35:22 52:14 66:22 71:8 able 10:19, 20 52:21 56:21 absolutely 59:18 absolved 39:25 acceptable 49:24 access 24:21 account 21:13, 16, 17 24:20 28:10 62:16 accountability 28:4 accountable 10:19, 20, 23 14:7, 25 25:2 accurate 71:7 accused 17:21 ACL 34:11 44:8 48:7 57:19 ACL's 48:16 68:2 act 52:9 acting 26:1 action 13:20 18:10 41:10 48:7 53:8 actions 15:1, 11 31:22 53:10, 11 activity 15:16 63:6 acts 10:17 actual 51:14 additional 8:6, 7, 8 address 31:6 63:16 addressed 14:16 17:13 admission 31:9 Admit 20:24 47:2 59:3 admitted 46:3 admitting 45:7 adopting 62:10 adoption 62:6, 13 advance 23:11 advancing 23:15 adversaries 20:8	
< 2 > 2 20:14 2,538 31:11, 16 44:24 2:28 69:12 20 67:8 2003 28:24 31:19 2006 39:13 2008 28:25 31:19 39:13 2012 29:2 31:19 2023 12:17 30:6 48:9 49:1 2023-CP-40-0179 1:1 2024 1:1 51:16 54:2 71:10 2033 71:16	< 4 > 40 2:1 31:24 44:25 4th 8:23 < 5 > 5 4:1 5:10 1:1 5:15 70:9 50 31:24 500 27:14 < 6 > 6th 30:6 62:23 < 7 > 71 4:1 < 8 > 8 29:14 800-employee 50:25 803.454.6504 2:1		

A-N-A-L 45:11
ancient 11:20
ANGLO 3:1 12:20
 64:16
announcement
 66:11
answer 9:19 21:5
 31:20 32:8, 10
 39:24 48:8 49:21
 50:5 51:8 56:2
 58:24 60:20 70:2
answered 69:19
answers 8:15 48:16
anybody 21:12
 28:5 48:10 60:2
anyway 46:13
apologize 50:6
 57:16
apparently 37:14
 41:8
appeal 5:22 9:17
 16:22 17:2, 6, 10
 18:10, 12, 17 19:5,
 6, 17, 24 20:3
 30:13, 15, 19 33:4,
 10 34:1 35:1, 9
 36:2, 23 45:25
 48:7, 10, 11, 25
 49:3 51:13, 14
 52:2, 22, 23 54:6, 8,
 10, 12, 25 55:3, 13,
 24 58:18 63:25
 66:19 67:24 68:2,
 8, 9, 14, 25 69:10
appealability 30:25
appealable 51:18,
 22 52:18 53:5
 55:17 56:5 57:9
appealed 16:24
 18:19 48:9 49:5
 54:3 55:5
Appeals 9:13, 23
 23:18, 22 24:10
 26:11 30:16 33:11,
 14, 25 35:4, 22
 36:20, 22 46:21
 48:5 54:4 55:14
 56:4, 21, 24 57:1, 7
 63:14 66:19, 21
 69:4

APPEARANCES
 2:1 3:1
appellate 34:3
 35:7, 13 36:12, 18,
 25 57:6 63:21 69:3
apple 52:5
applies 64:3
apply 29:14 31:16
 45:4 68:16, 22
appointed 13:4
 24:5, 6, 7 32:23
 40:20, 23 59:22
appointment 17:3
 38:17 48:22
appreciate 32:2
appreciated 6:10
appropriate 17:4
 22:10 26:25
April 1:1 6:21, 22
 8:23 10:5 37:13
 44:4 71:10
argued 6:16 9:1
 26:7 58:5 62:12
 63:7
arguing 67:21
argument 16:20
 22:11 33:7 34:24,
 25 35:17, 25 36:5,
 7, 9 37:4, 6 38:15
 40:23 41:1, 21
 45:2 48:4, 21
 50:12 51:14 52:12
 56:6 57:18, 21 68:6
arguments 16:14
 17:18 28:12 33:24
 35:8, 21 37:2
 46:19, 20 47:16
 48:2 53:14, 15
 56:16, 17, 19 58:6
 63:11 66:10
ARRANCO 2:1
 19:10 28:24
article 45:14, 18
articles 14:15
asbestos 10:13
 12:23 13:5 14:5, 7
 65:23
ascertain 39:5
aside 46:18

asked 36:10 46:9
 52:8 54:1 56:3
 69:18
asking 23:3 25:11
 27:25 28:15 49:16
 56:16 60:19, 25
 68:1
asserted 37:7 38:25
asserting 49:25
assertion 8:10 9:11
 34:12
assertions 51:5
asset 38:23
assets 10:11, 16
 13:12, 17, 21 15:4,
 7, 10, 17, 18, 22
 16:17 17:22, 24
 18:3, 8 24:7, 8, 9,
 12, 18, 19, 21 27:7
 31:22 32:24 33:16
 35:20 38:17, 18, 21
 39:2, 7, 17 40:21
 50:22 56:10, 11
 59:23 60:3, 7, 9
 64:6, 7 70:3
assimilate 60:3
assimilating 24:17
associated 14:2
assume 43:14
Atlas 44:8 64:10
attack 9:24 16:24
 17:9 24:16 36:21
attacking 18:18
attempt 57:5
attempted 15:8
 29:9, 11 30:21
attempting 20:23
 38:3, 9
attempts 11:7
attendance 11:4
ATTORNEYS 2:1
 3:1 28:15
August 7:25
authentic 11:14, 15
 12:2 45:20 46:14
authenticate 11:7, 8
 12:4 22:5
authenticated 11:23
authenticating 59:3

authentication
 11:11, 18 21:1 25:3
authenticity 45:7
 47:3
authorities 34:3
 35:13
AUTHORITY 2:1
 35:11 36:15 42:15
 57:6
avail 34:20
avenue 68:10
avermens 39:6
avoid 10:17 16:10
avoidance 25:16, 18,
 25
avoided 10:11

< B >
back 5:25 19:2
 20:14 22:10 32:25
 33:4, 12 41:12
 56:24 60:12 61:16
 64:11, 17 65:22
background 7:21
bad 10:17
ball 23:11, 15
 58:23
Barnwell 2:1
base 33:3 38:23
based 19:18 39:16
basic 10:25 63:23
basically 69:6
basis 31:2
basketball 45:15
BEERS 3:1 64:16
began 31:17
behalf 28:21 42:13,
 14 50:1
behavior 21:8
belief 36:2
believe 17:8, 12
 23:18 37:17 40:5
believes 52:21
bench 6:20 21:25
 22:4 43:2, 3 60:24
best 9:7 51:9 71:8
better 31:3 50:25
beyond 43:17
BIDCO 2:1 29:1

bit 16:15 17:17, 19 33:3 35:6 38:15 Bloom 32:5 bomb 32:4 BOND 2:1 born 31:18 Boulevard 3:1 bow 52:16 Box 1:1 11:16 BOYD 2:1 break 66:9 briefest 41:19 briefly 37:4 47:24 bring 22:5 28:16 34:18 bringing 34:10 broadly 18:16 brought 12:17 brown 10:12 14:4 22:2 bunch 63:5 burn 21:4 business 49:23 50:23 busy 22:24 23:17 BYERS 1:1 71:2, 14 < C > C/A 1:1 Calhoun 2:1 call 22:15 52:4 called 7:7 31:20 52:17 Cape 6:19 10:11, 12, 16 12:22, 23 13:4, 5, 23 14:2, 3, 9, 17, 24 15:4, 9 18:3, 5, 14 25:14, 23 29:18, 20, 24 30:2 32:24 34:11 37:15 38:6, 18, 19, 22 39:8, 18 40:14, 16, 20 41:3, 4 43:16 44:10 50:19 55:24 56:7 60:4 61:15, 18 64:17 Cape's 15:18 25:15, 17, 25 40:11	61:22 caption 12:15 captioned 19:25 card 28:22 care 6:1 21:12 40:19, 21 CAROLINA 1:1 2:1 3:1 27:8, 9, 20 36:19 49:11, 14 50:11, 13, 14, 24, 25 51:1 55:20 70:3 71:4, 11, 15 carriers 14:25 carries 63:12 CARROLL 2:1 7:5 42:10, 11, 14 43:20, 24 44:2, 16, 18, 21 45:6 46:4, 8, 17, 25 47:7, 15, 19, 22 48:3 cart 38:4 39:9 case 6:18, 19, 20 7:22 9:12 10:5 12:16, 20, 25 13:13 16:22 17:10, 14 21:11, 19 22:1, 3 23:2, 14, 15, 25 24:4, 16 27:2, 5 29:19, 20, 25 30:24 31:1, 19 32:8 38:13 43:7, 15, 16 44:6, 9 48:6 53:9 56:8 59:11 60:18 61:3, 11 64:23 66:12 case-by-case 31:2 cases 9:16, 20 17:12 23:22 35:14 59:24 60:5 64:4 cause 28:4, 5 71:9 caused 21:18 Center 1:1 CENTRAL 2:1 26:3, 4 48:1 certain 36:21 39:7 61:25 certainly 56:18 Certificate 4:1 71:2 certify 71:4, 8	cetera 66:17, 18 challenge 35:14 challenging 52:14 53:2 change 12:8, 11, 12 60:16, 17 chaos 34:18 characterize 53:1 characterized 55:15 charged 18:5 38:18 39:1 Charleston 2:1 CHARTER 2:1 7:6 25:19 26:3 47:25 check 11:15 50:7 CHIEF 1:1 choice 26:10, 12, 18 choose 26:9, 13 CIHL 29:21 30:9 circuit 11:19 33:5 34:2 63:22 cite 32:5 cited 22:2 citizen 49:14 citizenship 50:24 Civil 37:22 claim 31:23 38:5 39:15 40:13, 15, 19 49:22 50:10 60:6, 7 claiming 55:12 claims 18:2 37:10, 11, 18, 20 40:4, 5, 6, 9, 10, 12 41:2, 4, 6, 7, 9 clear 12:6 41:2 48:4 51:19 63:5 64:25 65:3 66:14 clearly 9:25 18:24 37:9 client 38:20, 23 39:7, 15, 16 42:17 45:7, 13, 16 48:3 51:5 52:3, 8, 16, 20 54:3 56:2 57:25 65:2, 4, 9 70:3 clients 21:22 30:2 31:16, 18, 20, 25 32:7 38:1 42:18	43:1 44:22 49:5 55:4 64:22 client's 38:24 55:22, 25 56:20 clinging 21:10 CLMI 67:9 68:18 co-counsel 19:13 collaborate 69:6 colleagues 69:22 collectively 6:16 Columbia 1:1 2:1 come 5:25 11:19 19:18 20:14, 20, 21 32:9, 25 47:7 49:25 64:1 69:15 coming 30:18 56:1 commerce 34:13 commission 33:9 71:16 COMMON 1:1 Communication 8:3 companies 11:13 13:22 14:1, 11, 24 15:3, 18, 19 16:9, 16, 24 39:13 COMPANY 1:1 12:1, 24 13:5 16:18 18:4 35:18 compel 8:13 9:4 18:22 19:25 complained 53:11 complaint 30:1 39:6 complete 6:24 8:8, 15 9:8 22:16 59:4 60:13 71:7 completely 7:18 11:4 15:25 26:20 34:20 45:3 47:13 48:21 complied 55:12 concept 21:11 concepts 64:9 concluded 70:9 conduct 31:21 confidentiality 61:6 confused 6:9 connection 13:11 62:8 63:6, 23

conscious 14:9
 consider 68:2
 consideration 33:1
 61:22, 24 62:8
 considered 63:25
 Consolidated 26:3
 consult 63:17
 contains 31:11
 contemplated 32:5
 contemplates 58:17
 contention 68:24
 contentions 39:16
 context 12:15
 15:15 19:10 22:11
 57:10
 continue 9:11
 33:15 34:5 36:22
 CONTINUED 3:1
 6:22 8:10 9:8
 26:20
 continues 64:2
 continuing 30:14
 52:9
 control 13:17
 17:24 39:18
 controlled 14:24
 controlling 18:4
 cooperate 32:21
 33:3 34:20 62:2
 cooperating 13:20
 34:23
 cooperation 34:16
 corporate 11:12
 26:2 45:1 49:9
 56:12
 corporation 13:16
 26:1 34:12 35:20,
 21 58:2 64:8 65:23
 corporations 13:19
 15:8
 correct 13:1, 6
 14:13 30:17 40:17
 46:4 47:14 66:9
 67:13 69:21
 counsel 23:13 71:9
 count 21:12
 country 15:12
 COUNTY 1:1
 71:11

couple 21:21 50:20
 51:12 58:13
 course 66:4
 COURT 1:1 4:1
 5:5, 12, 15, 17 6:5,
 9, 17 7:20 8:3
 9:13, 14, 23 12:14,
 19, 22 13:3, 8, 11,
 15 15:3, 14 16:3, 9,
 15, 21 17:1, 5, 16
 18:7, 20 19:1, 2, 4,
 9 20:2, 5, 13 22:4,
 20 23:16, 17, 18, 21
 24:24 26:10, 11, 22
 27:1 28:9, 18, 21,
 22 30:16 32:9, 14,
 17, 21 33:5, 9, 11,
 13, 23 34:2, 10
 35:2, 7, 16 36:4, 11,
 16, 19, 20, 25 37:5,
 21 38:14 40:8, 15,
 18 41:12, 19, 24
 42:9, 13, 20 43:18,
 22, 25 44:6, 15, 17,
 20 45:2, 21 46:7,
 15, 18 47:5, 12, 17,
 21, 23 48:12, 14, 20
 49:2, 7, 16, 24, 25
 50:8, 15, 21 51:4, 5,
 6, 11, 17, 24 52:4, 8,
 10, 23 53:10, 16
 54:5, 12, 15, 19, 20,
 23, 24 55:2, 7, 14,
 16, 18, 19 56:4, 15,
 23, 25 57:3, 6, 7, 8,
 22 58:1, 7, 10
 61:13 63:22 64:14,
 17, 24 65:7, 11, 18
 66:7, 13, 22 67:6,
 12, 15, 18 68:1, 5,
 11, 12, 20 69:3, 4,
 15, 16, 21, 24 70:4, 7
 court-imposed 8:18
 courts 15:11 36:12
 Court's 51:16
 cover 34:21 69:7
 Cradle 45:11
 crave 42:7
 craving 42:1

crazy 59:17
 created 29:19, 24
 cycle 63:13
 < D >
 damage 18:6
 damaged 34:14
 dance 45:16
 Darby 3:1
 darn 55:16
 DATE 1:1 10:4
 62:22 71:5
 dates 63:1
 Davis 66:5
 day 71:10
 days 62:21
 DE 3:1 64:16
 deadline 8:18, 24
 47:7, 9
 deal 7:16 33:16
 66:22
 dealing 7:16, 17
 9:6 58:16
 dealt 27:21
 December 8:2 30:6
 decide 22:7 39:10
 46:19 58:22
 decided 35:12
 52:22, 24
 decider 43:4
 decision 14:9 22:8
 60:24
 default 32:7 60:1
 defend 13:12
 57:25 59:23
 defendant 7:23
 12:25 15:5 17:22
 30:9 44:11 62:13
 Defendants 1:1 2:1
 3:1 6:25 7:2, 3, 5,
 6, 8, 11, 12, 18 8:19
 9:2, 9 12:7, 10, 11,
 19 14:7 15:5, 24
 18:14 21:13, 23
 22:23 23:10 25:13,
 20 26:6, 12, 21
 27:4, 12 28:2, 6, 8,
 16 29:21, 23 30:4
 41:4 42:4, 5 43:10,
 12 44:7 58:15

59:7 62:6, 7, 15
 64:16 65:21 67:3
 defendant's 8:10
 defended 60:4
 defends 27:1
 defenses 42:3
 define 50:16
 definitely 57:24
 defy 57:5
 delay 22:22
 delivered 29:15
 demanding 60:14
 denial 18:25
 denials 11:11
 denied 54:9
 deny 36:7
 denying 30:6
 Deposition 7:24
 8:7 11:24, 25 12:2
 depositions 11:5
 20:24
 derivative 37:11, 17
 40:5, 11 41:3, 6, 9
 derive 54:2
 despite 17:11 46:20
 detail 69:5
 details 43:16
 determine 21:6
 determines 32:8
 DICKINSON 2:1
 difference 17:19
 different 16:15
 17:17, 25 20:21
 23:21 24:6 37:3
 56:7, 13 64:5
 differentiate 29:12
 30:23
 direct 15:1 16:17
 57:5
 directed 7:10, 11
 57:12 64:21 65:4, 9
 direction 60:17
 66:2 68:13 71:7
 directions 63:8
 directive 66:1
 directly 17:13
 23:16, 17 35:14
 57:9
 directs 61:25

disappear 24:13	12:4, 5 20:21 21:1	ENTITIES 2:1	extensions 19:19, 20
discernment 22:7	25:3 26:17 45:8	17:20 48:1	extent 36:4
disclosures 11:12	47:4 60:21	entitled 32:25	
45:1	doggone 43:25	67:22	< F >
discover 13:21	doing 13:16 36:11	entity 14:23 29:20	face 33:13 35:17
40:20	38:20 47:9 50:23	equal 22:21	36:23
discovered 38:20	domesticated 51:1	equitable 18:2	facts 7:21
discovery 7:1, 14,	draft 61:22	equivalent 42:25	failed 7:18 11:6
19, 23 8:4, 5, 8, 16,	due 8:9 25:17, 25	ESAB 2:1 26:1	failure 6:24 8:9
21 9:5, 10, 24 10:1,		27:7, 13 48:1, 15	9:9 22:16 27:22
25 12:10 15:20	< E >	49:9, 13, 22 50:1,	59:4 60:13 62:1
16:1, 6, 7, 10 20:23	earlier 20:12 28:22	10, 19 69:19	fall 47:20 62:23
21:20 22:12, 25	36:1 54:22 55:23	escape 14:9 15:10	family 43:7
25:7, 9 26:14, 15	57:21 63:7	16:12	far 15:21 21:18
27:6, 22 33:3	easy 24:4	escaped 18:5	31:3
34:18 39:4 40:1	effect 24:3 39:10	escapes 45:3	fast 29:25
46:16, 24 47:14	60:1 68:8	escaping 14:19	feel 33:20
51:15, 17, 21, 24	effective 46:21	ESQUIRE 2:1 3:1	fees 28:15
52:6, 10, 15, 25	effectively 32:6	essential 7:21	fiduciary 33:17
53:1, 3, 4, 11, 14, 18,	efficacy 16:24	essentially 38:24	figure 19:21
20 54:7 55:9, 15	efficiency 22:14	ET 1:1 66:17	filed 7:22 8:13
58:16, 20 59:1, 5,	ego 25:13, 23	Eva 62:22	9:5 19:17 21:19
19 60:15 62:2	31:21 42:6	events 71:9	30:1, 4 31:4 41:16
66:17, 25 67:14	either 31:7 53:8	everybody 36:6	45:21 47:18 48:25
68:4	ELLIOTT 3:1 7:8	Everybody's 9:15	54:24 55:2 62:25
discretion 68:1	12:8 64:12, 14, 15,	EVERYWORD 1:1	filings 62:7, 14
discussed 6:2, 7	19, 25 65:8, 11, 17	evidence 26:16	Financial 11:13
discussion 29:4, 7	Elliott's 21:22 42:4	60:23 64:23 65:1	find 21:4 50:7
61:18	employees 27:14	Exactly 19:4 26:24	51:7, 9 56:9 58:2,
disingenuous 52:12	enforce 5:20 19:11	31:17 61:23 62:3	5, 7
Dismiss 19:17	20:8, 15 63:4	example 59:2	finding 27:12
30:18 55:24 66:3,	engage 15:20, 25	exclusively 56:25	finish 64:20
14, 21 68:21	26:13 28:6 52:10,	excuse 37:13	first 6:5 8:20
dismissed 19:3	15 59:4, 9	exhibit 31:11 59:18	19:10 20:7, 9 31:9
20:1 54:10, 13, 21	engaged 39:5 59:19	exhibits 5:9, 11	37:12 48:6 55:6, 7
56:4	engagement 12:9	16:4 20:19 22:19	first-party 37:11,
disputes 48:10	26:25 27:1, 24	23:4 31:10, 12, 15,	20 41:7, 10 43:9,
dissolution 9:18	58:21	17 32:10 44:24	11, 15
19:16 24:2, 17	engaging 22:24	46:2	Florence 27:13
dissolve 18:17	26:15 53:17	exist 59:17	49:9, 19 50:3 58:2
distribution 10:12	enjoin 5:21 19:12	existed 31:25	69:20
14:4	20:9, 16 52:9	existence 38:24	folks 41:16
docket 34:16	53:17 63:4	expansive 38:10	footing 22:21
document 59:14, 16	enriched 25:17, 25	expectations 23:14	forced 6:21
61:23 65:10	enrichment 18:1	expense 63:16	foregoing 71:5, 7
documentaries	21:7	expires 71:16	form 12:9
14:16	entered 44:13	explain 19:14	formed 38:23
documents 8:17, 22,	entire 9:23 17:10	explanation 27:17	39:13 50:19
23 10:6 11:7, 8, 14,	57:4	explored 39:8	forth 37:25 39:14
17, 18, 20, 21, 22			

45:25 46:21 49:11
forthcoming 34:16
forum 35:12
forward 20:14
 29:25 37:18 41:8
 46:20 61:11, 12
four 7:2 18:16
Frank 45:15
frankly 38:2
Friday 29:16
front 36:22 39:11
 50:2
frustrated 33:18, 20
funds 31:22
further 34:1 36:15
 37:1 61:13 66:2,
 25 71:8
fussing 58:20

< G >

GALLIVAN 2:1
general 27:15
 49:14, 17
generally 45:23
 69:8
Give 5:5 61:24
 62:22, 24 66:2
Given 43:1 58:24
 66:1 68:13, 21
gives 63:1
giving 15:21
global 30:23 32:15
globally 31:6
go 5:24 6:5 20:14
 22:4 28:18 35:15
 37:18 41:17 56:9
 57:23 58:23 60:9,
 12 61:14, 16 63:11
 64:11 65:22
goes 58:18
going 7:15 8:4
 10:1, 18 11:5, 18
 12:7, 12 18:23
 19:21, 22 21:9, 12
 22:7 30:20 33:2
 35:8 36:24 39:20,
 23 41:8, 20 42:2
 43:14 47:6 49:7
 52:11 54:5, 8
 56:10, 15 58:22, 25

60:1, 21 61:15, 19,
 20, 21 63:11, 18
 65:2, 8 68:16
Goldfein 64:11
good 19:14 25:4
 33:12 35:3 45:24
 59:21 63:19 69:1
 70:7
goodness 11:12
 27:20
GORDON 2:1
gotten 8:25 9:20,
 21, 22 10:24 11:2
 17:12 19:19, 20
 21:20
GOTTSCALL
 67:17, 18, 19, 25
 68:10
grant 61:19
granted 30:8
granting 30:13
 43:1
great 22:1
grief 59:21
ground 29:8 42:23
grounds 18:19
group 7:7, 11
 13:25 34:8
grouped 32:12
groups 7:2, 17, 24
 9:9 18:16 30:3
guess 9:19 40:25
 53:22
guidance 17:11

< H >

half 21:4, 7, 15, 16
 26:8, 23 32:3 60:19
hand 71:10
handled 60:5
hands 59:24
happen 54:5, 8
 60:25
happened 10:2
 40:21 44:10
happening 41:9
 52:18 57:14
happens 25:2
happy 31:7
harm 68:3

HAWK 2:1 19:11
 29:1
head 35:24
headquartered
 50:13
headquarters 27:13
hear 6:3 20:10
 27:18 36:14 56:16,
 17 70:4, 5
heard 16:14 17:18
 27:3 30:3 41:21
 66:10
hearing 6:22, 23
 21:6 44:10 51:7
 69:12 70:2, 9
hearsay 45:18
held 21:13
help 5:5 22:14
hereunto 71:10
hide 19:5
history 6:18
hold 10:19, 20, 22
 14:7 21:15, 17
 24:20 28:10
holder 39:7
holding 14:23, 24
 63:23
holds 25:2 32:7
home 58:23
Honor 28:20 29:3,
 5, 12, 15, 18, 19
 30:25 31:2, 8 32:1
 33:22 34:25 36:1
 37:6, 9, 16 40:4
 41:11 42:12, 17
 44:2, 3, 4 46:9, 17
 47:11, 24 50:6
 51:3, 10, 23 52:1,
 20 53:6, 13, 20
 54:4, 11, 18, 22
 55:1, 4 57:2, 16, 19
 58:4 64:12 66:4
 67:2, 25 68:19
 69:17 70:6
HONORABLE 1:1
Honor's 30:6
hope 63:14
horse 38:4 39:10
hours 29:6

house 21:4
humble 24:24
hundred 31:13
hungry 61:10
hydrogen 32:4
hypothetical 38:11

< I >

identified 5:10
 12:1 44:11
identify 18:8 24:9
ignore 26:10
ignoring 11:4
illegitimacy 35:10
imagine 42:17 51:2
immediately 51:18,
 22 53:4 56:5
imminently 19:23
impact 48:16
implementation
 25:21
important 18:7
 23:15
inappropriate
 24:25 25:9
inappropriately
 18:3 24:8
incentivize 28:1
inclined 61:24
included 9:23
 28:12
including 25:15, 20
incorporate 48:2
 57:20
incorporated 28:24,
 25 29:2
incorporates 6:14
indicate 36:20
indicated 66:20
 68:13 69:1
individually 12:22
 31:7 42:16
inference 5:14, 18
 6:15 16:4 25:6, 10,
 12 26:8, 14, 17
 32:11 42:2, 6 43:3
 60:22 61:23
inferences 62:1
information 15:22

49:10 59:10 initial 8:20 12:9 injunction 19:5 20:1 52:2, 4 53:7, 23 67:23 68:23 injunctive 18:25 53:15, 16 68:7 inquired 44:10 insurance 13:17, 21 56:9, 11 64:6, 7 insurers 13:19 17:20 intend 29:7 42:22 intended 32:3 interest 13:5, 24 18:15 38:21 interested 71:9 interlocutory 18:24 19:7 52:24 interplay 63:21 69:2 interpretations 35:7 interrelated 5:8 interrogatories 20:25 interrupted 61:17 INVESTMENT 2:1 26:4, 5 42:15 involve 34:11 involved 10:21 15:1 59:11 involvement 27:10 involves 36:3 irrelevant 45:19 issue 14:16 17:2, 13 19:15 20:4 25:7 27:16 29:4 37:8 46:10 issued 8:2, 12 13:18 issues 7:15 9:6 14:7 17:25 items 66:5 its 10:17 15:6, 9 23:1 34:11 40:21 52:21, 23 56:12 57:25 68:1 < J >	JAMES 3:1 42:4 64:15 JEAN 1:1 jelliott@richardsonp lowden.com 3:1 jlay@gwblawfirm.co m 2:1 job 28:1 60:9 JOHN 1:1 2:1 6:5 42:14 join 42:18 joinder 62:6, 14 JOYNER 2:1 JR 3:1 Judge 9:21, 22 22:6 43:4 60:24 65:16 judgment 38:6 43:1 judgments 60:1 Judicial 1:1 July 7:24 11:1 59:6 juncture 38:3 June 7:22 61:5 jurisdiction 14:10 27:9, 15, 16 42:20, 21 49:6, 15, 17, 18 50:1, 11, 16 51:6 56:25 JUSTICE 1:1 < K > kind 14:20 23:25 30:22 31:5 41:21 49:18 57:13 kindly 22:20 knew 33:21 know 9:19 10:2, 10, 13, 19, 21 11:15 14:18 23:8, 11 25:6 29:6 33:19 36:10 41:14 43:2, 16, 24 44:16 45:8, 13, 19 46:12, 14 47:8 49:21 50:3, 15 51:3 53:8, 15 55:25 56:6 59:4, 7, 13, 15 65:15 known 59:20	knows 30:25 31:2 37:10 < L > lack 49:25 language 36:1 lapsed 47:10 large 49:9, 18 71:4, 15 law 24:4 27:20 LAY 2:1 5:6, 7, 13, 16 6:1, 11, 12 12:14, 18, 21 13:2, 7, 10, 14, 22 15:13, 24 16:7, 13, 19, 23 17:2, 6, 23 18:13, 21 19:2, 8, 13 20:3, 11, 17 30:17 40:8 41:13, 23, 25 43:14 58:12, 13 62:18, 25 63:10 65:12 69:7 Lay's 32:2 learn 40:6 learned 37:12 leave 58:8 left 44:8 legitimacy 18:10 33:14 35:10, 15 legitimate 16:10 22:13 33:25 34:22 59:18 letters 11:5 Lewis 65:23 66:3, 8, 10 Lexington 71:11 liabilities 38:11 liability 10:12 14:20 15:10 25:16, 17, 21, 25 26:3 32:12 33:1 38:5 43:6, 9, 11 56:14 liable 25:14, 23 35:18 Liberty 67:8, 15 68:3 libraries 20:20 liked 45:15 limitations 43:23 Limited 12:23	65:23 LINDSAY 2:1 line 30:20 lined 10:9 list 5:10 11:17 12:5 23:4 31:11 44:23 45:10, 12 46:1 Listen 6:9 lists 22:19 literature 14:14 litigation 14:18 15:6 35:23 39:3, 19, 23 litigator 34:23 little 16:15 17:17, 19 33:24 live 23:12, 14 ljoyner@gwblawfirm .com 2:1 LLC 2:1 28:23, 25 LLP 2:1 LOCATION 1:1 lodged 18:12, 16 long 57:19 longer 44:12 look 27:18 56:9 61:24 67:6 looking 65:25 looks 46:11 lose 60:11 loss 68:3 lost 42:8 lot 10:21 14:14 20:19, 21 44:5 lots 17:25 24:6 lower 33:8 < M > ma'am 6:12 12:18, 21 13:2, 7, 10, 14 15:13 42:11 44:21 47:15, 19 58:9, 13 67:11 Magrath 3:1 Main 1:1 2:1 maintained 17:14 making 18:5 22:8 40:3, 7 41:5, 11

56:6 59:13 60:4
manage 34:15
MANOS 68:19, 20
MANSUKHANI 2:1
March 8:13, 18, 20,
 22 20:6 51:16
 54:2, 13 55:9, 10
 60:13
markedly 56:7
marshal 33:16
 38:17
marshaled 64:6, 9
marshaling 13:12
 15:7, 17, 18 24:17
 38:18
Martin's 45:15
mask 19:5
Mastrianni 67:10,
 11, 13
materials 46:12
matter 9:12, 13, 14
 19:10 25:14, 24
 46:19 48:13, 19, 21,
 24 50:16, 21 55:3,
 25 56:13 57:20
 61:18 62:20 65:16
 66:5
matters 33:10 36:3,
 16 53:4 61:17
 63:6, 15, 24 64:1
 66:23 67:24
mean 6:23 12:3
 16:4 17:25 18:15
 27:3, 12 51:19
 60:11
Meaning 56:8
means 34:17
mentioned 71:5
merits 27:2
mess 6:8
message 22:23
mind 62:4
MINING 2:1 26:4
 48:1
minute 58:3 64:11
 65:22
modifying 30:14
MOHED 2:1
moment 12:15

money 59:25
month 6:21
months 21:24
 22:22
moot 43:7 60:6
morning 31:18
 42:19
motion 5:13, 17, 18
 6:14, 15 7:10 8:1,
 12 9:4, 18 18:22
 19:11, 12, 16, 17, 24
 20:7, 15, 16, 18
 23:5, 9 24:2 25:5,
 12 28:11, 16 29:10,
 11 30:18 32:10, 18
 42:1, 7 53:22
 54:17 55:24 61:19,
 21 66:16, 17, 21
 67:14, 19 68:6, 7, 21
Motions 4:1 5:8,
 20, 25 6:4, 13 7:10,
 17 8:6 20:7 28:17
 30:4, 5, 7 31:4
 32:13, 14, 16 37:8
 63:3 64:21 65:4
 66:3, 14, 15, 24, 25
 68:17, 22 69:8
Mount 3:1
move 10:1 34:5
 61:11 64:12
moved 10:11 24:12
 61:12
movement 7:13
 10:15
moves 46:19
moving 18:8, 17
 23:2 24:7
multiple 11:19
 18:19
Mutual 67:8, 16
 68:3

< N >
name 44:24
named 29:21 45:11
need 20:5, 6 23:1
 37:1 51:6 56:18
 58:19 66:2
needs 23:1 61:4, 11

neither 71:8
never 28:17
nevertheless 39:24
new 30:8
newspaper 45:14, 18
nodding 65:12
noncooperating
 65:20
nose 26:21, 22 28:9
Notary 71:4, 15
note 44:19
Notice 48:25 54:24
 55:2 62:6, 13
notices 7:24 8:7
 11:3
notion 51:21
November 71:16
number 20:14, 15
 46:22

< O >
objections 11:10
obligations 23:12
observations 63:20
obtuse 23:19
obviate 60:6
occur 19:23 38:12
occurred 22:22
 31:23
offend 57:17, 24
offended 57:14, 15
offer 52:13
official 71:10
OFFSHORE 2:1
 28:23
oh 44:12 54:16
old 67:20
ones 46:2
ongoing 25:16
 66:22
open 20:3
opinion 24:24
 38:11 54:15
opinions 69:2
OPPENHEIMER
 3:1 7:8, 12 8:19
 9:2 12:10 21:22
 42:5 58:15
opposing 62:24

opposition 29:10
 30:22 37:7 53:1
order 6:10 8:2, 12
 9:12 13:12 15:10
 17:11 18:22 19:7,
 25 22:8 23:20
 26:11 30:6 41:15
 49:5 51:15, 17, 25
 54:2, 7, 12 55:6, 8,
 9, 10, 13, 14, 15
 60:14 61:2, 6, 25
 62:19 66:15, 16
 67:23 68:7, 23
order/injunction
 67:20
ordered 8:14
orders 9:13, 14, 21,
 22 19:18 28:9
 29:13 30:21, 24
 38:16 51:22 55:5
 56:8 57:9 66:24
 68:17
organized 50:12
ought 20:9 34:22
 46:2
outline 29:12
outlined 69:5
outside 53:9
outstanding 11:1
 53:24
overcome 26:16
overly 23:7
overrule 36:8
owner 7:4
owns 45:17

< P >
P.A 2:1 3:1
p.m 1:1 69:12
 70:9
P.O 1:1
PAGE 4:1 71:6
pages 8:21 29:14
 31:12
pain 28:4
painted 57:5
pardon 45:10
parents 13:24
Park 29:19, 20, 24
 30:9, 10

Part 17:23 25:5 67:25 68:21	PLOWDEN 2:1 3:1	problem 11:9 27:11 47:6	Pugh's 42:18 44:23
participant 39:22	point 40:3, 7 41:5, 11 44:19 46:8, 25	problems 21:18	pulled 59:14
participate 6:25 7:19 9:10 22:17	53:25 57:1 63:14	Procedure 37:22	punishment 28:3
27:23 35:23 39:25	pointed 69:22	proceed 8:5 20:6	purposes 49:15
46:6 56:22 58:19, 25 60:22	points 51:13	35:16 36:16 38:8	pursuant 8:12 17:9 30:11 31:23
participated 59:1	policies 13:18	42:20, 22 57:12	pursue 15:23 32:24
participating 7:13 46:16 60:14	policy 24:15	58:1	pursued 15:11, 16 39:20
particular 50:16	position 12:8, 12, 13 17:7, 8 21:14	proceeding 33:9	pursuing 39:1, 15 40:4
54:7 65:5	30:8, 11 47:11	proceedings 44:5 71:5, 6, 8	put 22:21 30:10
particularly 26:6	54:16 67:22	proceeds 60:18	38:3 46:18 60:23
parties 8:3, 14 34:8 62:9, 10, 24	positions 63:5	process 7:14 8:1 16:1 22:15 38:19	puts 15:14
65:18	possession 38:22 39:17	produced 8:21, 22 11:3	putting 32:19 39:9
party 43:8 55:12 71:9	possible 41:20	producers 14:19	< Q >
PBS 59:15, 16	possibly 52:13	production 8:17 20:25	question 10:14, 18 29:23 39:14 49:21
pejorative 23:8	poster 45:11	Professional 71:4, 14	50:5 51:21 56:3
penalty 23:6	potentially 35:18 60:8	proffered 4:1 34:13	69:18, 23 70:2
pending 9:3 30:19 33:17 36:22 53:22	pound 17:15	profits 14:4	quickly 50:7
61:17 67:14 69:23	practice 8:1 37:22 63:22	prohibit 33:8	< R >
71:9	preadmission 23:3 31:10 37:25 44:22	proper 48:10	rationale 68:20 69:9
peril 63:13	preadmit 5:9, 17, 25 6:15 16:4	proposed 31:10	RAWL 2:1 7:6 47:24 48:13, 18, 24
permitted 30:12	20:18 22:19 25:3	protect 59:22	49:3, 8, 13, 20 50:6, 9, 18 51:3, 9, 12, 23
personal 27:8 49:6 50:11	32:10 44:20 45:4 61:19	protecting 60:2	52:1, 8, 20 53:6, 13, 19 54:10, 14, 18, 20
phase 34:6	preadmitted 65:2	protections 34:21	55:1, 4, 10, 18
pie 52:5	preadmitting 64:23	Protective 66:15, 16, 24 67:19, 23 68:6, 17, 23	56:20 57:16, 23
piece 39:19	precisely 22:9	Protopapas 13:3	58:3, 9 67:1, 2
piercing 25:15, 24	pregame 45:16	prove 10:5, 6	69:19, 24 70:1
place 8:2 37:14	premature 26:7	provide 8:14	read 36:1
Plaintiff 1:1 44:13	premised 16:5	provided 55:20 59:10	reading 23:20
plaintiffs 34:10, 14 37:15 43:21	prepare 62:19	provisions 36:17	ready 61:10
plant 49:19 50:3, 25	presence 49:9, 11	proxies 68:24	really 6:1, 13, 16 10:11 19:6 24:1
Plantation 32:5	present 26:16	prudent 10:7	28:3 38:9 52:5 57:25
play 19:22 58:23	presented 12:5 26:18 33:1 42:18	public 11:21 20:20 24:14 71:4, 15	reargue 42:23
PLC 13:4 29:18, 20, 24 30:2 37:15	preserves 60:7	PUGH 2:1 6:2, 7 7:3 20:12 28:19, 20, 21 32:9, 11, 15, 18 33:18, 19 34:25	reason 22:15 23:25 24:2, 14 28:11 34:7 37:16
PLCS 12:20	presiding 65:15	35:25 37:3, 6 38:2	reasonable 21:15, 16 26:24
pleadings 32:6	pretrial 6:23	40:3, 13, 17 41:1, 14 43:5 48:3	
PLEAS 1:1	pretty 8:25 63:5		
Pleasant 3:1	prevents 39:4		
please 28:20 65:15	primarily 8:9		
plow 29:7	primary 55:24		
	probably 67:4		

reasons 24:6, 15
recall 47:19
received 5:10 8:19 14:3
RECEIVER 2:1
 5:8 9:18 10:8
 13:4, 9 14:22 15:6
 17:4, 10 23:1, 13
 24:11 30:2 31:5,
 11 38:16, 17, 19
 39:1, 18 40:20, 22
 42:21 43:21 44:14
 47:1 48:22 52:9,
 15 55:12, 23 56:10,
 11 59:21 60:8
 61:22 62:3
receivers 24:5
receiver's 8:16 37:8
receivership 9:25
 12:24 16:18, 25
 18:11, 18 29:18, 22,
 24 30:7, 8, 10, 14
 32:23 33:13, 14, 15
 34:4, 17 35:16, 20,
 21 36:16 39:23
 40:24 45:24 49:6
 56:8 62:20 64:2, 7,
 8 66:23
receiverships 35:5,
 9, 11, 15 36:21
 57:11 64:5 68:25
recessed 69:12
recipient 35:19
reconsider 54:17
record 42:24 47:1,
 25 65:1, 14 66:13
 70:6 71:7
recorded 71:6
records 11:13
redundant 23:7
REES 2:1
reference 31:17
 42:1, 7
references 59:14
reflects 62:19
reframed 18:24
refuse 34:20 39:24
refused 15:25
regard 17:16
 30:13 31:9 43:5

52:2 53:7, 25
 65:20 66:13 68:23
regarded 17:21
regarding 38:11
 44:5 66:11
Regardless 19:24
Registered 71:2, 14
relate 48:5 49:5
 51:13
related 21:17 48:8
 71:9
relevant 25:20
relief 18:25 53:15,
 16 68:7
rely 22:7
relying 16:20
remedies 62:11
remembers 6:17
remind 7:20
remittitur 54:22
 55:19, 21 56:24
removal 10:16
repeat 63:18
repeatedly 57:8
reply 30:17
REPORTED 1:1
Reporter 4:1
 28:22 71:2, 4, 14
represent 28:23, 24
 29:1 47:25 51:4
represented 44:6
representing 13:8
 14:23 48:15
represents 7:4, 5, 7,
 9
request 19:25
 22:14 53:3, 23
 62:10
requested 19:20
 32:2 53:7
requests 8:16
 10:25 20:23, 25
 37:24 47:2, 14 59:3
respect 15:19
 25:15, 21 26:2
 33:24 40:22 63:20
respectfully 53:13
respects 27:1

respond 8:9 11:6
 41:13, 17 46:23
 60:13 62:25
responding 16:10
 17:14
response 10:4, 25
 16:1 21:20 29:10,
 15 30:17, 22 39:21
 55:25
responses 8:25
 37:7 41:16
responsibility 10:17
 16:12 39:11, 25
responsible 10:15
 14:11 46:23
responsive 8:15
 32:6
rest 41:22
result 6:23 30:5
resulted 41:3
RET 1:1
RICHARDSON 2:1
 3:1
RICHLAND 1:1
ridiculous 60:7
Right 5:12 10:5
 12:20 13:3 15:13,
 14, 24 16:6, 9, 19
 17:1, 5, 16, 23 19:1,
 8, 9 20:17 28:18
 36:5 37:5 42:9
 44:15, 17 46:24
 47:5, 18, 23 48:23
 52:11 53:3 54:13
 55:16, 17 56:15, 17
 57:22 58:3, 10, 12
 60:3 61:13, 14
 64:24 65:22 67:15,
 24 68:9, 12
rightfully 19:13
ROBINSON 2:1
 3:1 63:7, 9, 18
 65:25 66:4, 9
 68:14, 16 69:6, 17,
 22 70:4, 5
rough 38:25
routine 67:21
RPR 1:1
rugby 45:16

Rule 16:8 17:9
 22:12, 16 23:24
 25:7 36:8, 10, 18
 37:1, 9, 17, 21, 23,
 24 39:4 42:22
 43:8 47:16 55:20
 56:23 62:9 63:11
ruled 63:15 68:11
rules 33:8 37:22
 51:19 55:21 57:6
 63:21, 22 65:25
 69:3
ruling 17:3 35:3, 5
 36:13, 14 53:21
 64:18 65:1
rulings 36:18, 19,
 24 62:16, 19 63:20
 64:22 65:19 66:11,
 20 69:3
 < S >
sakes 11:12 27:20
sanction 16:8
 22:12, 16 23:9
 25:8 32:4 45:6
 46:10, 11, 13, 15
sanctioned 22:12
 47:8
sanctions 5:19
 6:13 16:5 28:11
 29:11 32:1, 18
 37:25 42:25 54:1
 61:21
sand 17:15
sat 29:5
saying 9:15 11:24
 16:21, 23 33:15, 25
 45:22 46:13, 14
 53:2 66:18 69:9
says 21:12 33:7
 56:4 59:25
scenario 57:4
scenarios 13:25
scheduling 61:2
scheme 25:16, 18,
 22 26:1
script 35:19
SCULLY 2:1
sea 46:12

seal 71:10	simply 11:23 14:22 24:12 26:7 41:1 52:17 59:24	START 1:1 5:6, 19, 23, 24 22:24 25:4 26:15 60:14 63:13	17:22, 24
search 44:23	single 11:2 21:20	started 14:6 27:25 61:1	struck 48:12
second 25:5, 19	siphoned 31:22	STATE 1:1 17:7 37:21 45:14, 18 62:20 71:4, 15	style 38:25
secure 24:19	sir 37:5 38:14 41:24 49:16 51:11	stated 10:1	subject 27:19
see 39:3 62:3 67:7	Sitting 18:21 61:4	States 10:13, 17 14:5	submitted 61:3, 9
seeking 42:2, 6 56:11	situated 44:23	status 35:22 43:15	subsidiaries 13:23
seen 43:13 44:14	situation 21:8 23:10 64:5 65:14	statute 43:23	substantive 8:15
selectively 58:22	slightly 64:4	statutes 35:7 51:18	successful 15:9 68:2
self-authenticating 11:21	small 47:3	stay 8:11 24:15 48:18 66:17, 19, 25	successor 12:23 13:5 26:2 38:21
self-pierce 56:12	Smith 40:9 65:12	stayed 9:12, 16 17:14 18:9 21:11 48:22 63:24 68:25 70:1	sued 18:14
send 22:23 47:1 62:21	sold 50:18	stays 17:10 68:9, 15 69:10	suggest 23:20
sends 56:24	solve 36:6	stems 51:15	suing 13:16 15:7
sense 6:3 40:2 44:1	somebody 24:7 40:12	stenographically 71:6	suit 16:11
sent 33:4, 12 54:23 55:19, 21	sorry 45:12	step 21:4, 7, 15, 16 26:8, 23, 24 32:3 60:19	Suite 2:1 3:1
separate 29:22 32:13, 14 36:9	sorted 6:18	Steve 28:21	suits 34:10
September 7:25 48:9, 25	sorts 12:3 24:9	STEVEN 2:1	sum 31:15
series 24:10 28:8	sought 42:25	stood 47:15	summarizes 6:14
served 7:23, 25 59:5	sources 20:22	stop 12:7 21:9 23:24 24:23 25:1 35:4 61:12	suppose 38:10
set 6:20 10:4 12:14 47:2	SOUTH 1:1 2:1 3:1 13:25 27:8, 9, 20 36:19 49:11, 14 50:11, 13, 14, 24, 25 51:1 55:20 70:3 71:4, 11, 15	stopping 24:3	supposed 28:2 34:15 45:13 59:11, 22 60:18
setting 21:5	Sparrow 7:3 26:6	stops 34:1	Supreme 9:14, 23 26:11 33:11 36:19 57:7 69:4
severed 37:19	SPARROWS 2:1 5:20 19:11 28:23	straight 17:20	sure 6:17 10:8 14:25 18:5 19:15 24:21 28:13 31:12, 14 41:25 58:4 60:4, 8, 17 65:7 68:5 69:7
shape 16:1	specific 27:15 31:4 46:1 56:6 63:1 66:5	straight-up 39:19	synthesize 29:17
share 63:10	specifically 30:12 37:23 45:22 57:11	stream 34:13	system 14:6 28:7 58:17
SHERI 1:1 71:2, 14	specifics 30:24	Street 1:1 2:1	< T >
shoes 38:7	spiraling 63:14	strike 21:5	tactic 25:1 60:16
short 11:19	spugh@richardsonpl owden.com 2:1	strikes 32:7, 10	take 30:7, 11, 13 31:5 45:25 57:13 58:22 61:20 67:22
shortly 58:5	squabble 52:6	striking 48:8, 16 60:20	TAKEN 1:1 62:8, 16 71:5
shows 44:25	squabbles 52:25	strip 15:8	talk 39:9
shut 14:9 24:10	stand 38:7 50:1	stripped 15:4 16:17 38:21	talked 24:1
sideways 40:23	standard 30:25	stripping 15:9	talking 14:21 20:12 22:4, 9, 18 49:4, 17 50:22 52:5 55:7, 8, 11
sight 60:11	standpoint 23:6 55:22 56:20		
signed 61:8	stands 48:3		
significant 9:7			
signing 61:25			
similar 41:16 57:18			
similarity 17:18			
similarly 44:22 63:9			
simple 11:3 12:4 24:22 35:25 60:10			

63:1
talks 27:19 49:10
tasked 38:16
team 45:15, 16
tell 11:9 36:5
 40:10 46:10 49:7
 50:2 52:11 61:15
 65:15
telling 34:19
ten 62:21
tepid 8:25
terms 18:8 23:19
Thank 42:11 47:22
 57:2 65:17 70:7
theories 18:15
theory 10:10 14:3
thereof 71:9
thing 5:19, 21, 23
 6:10 12:14 20:9
 32:22 36:9 41:23
 47:18 68:22
things 11:11 12:3
 13:15 16:16 20:22
 21:3 24:9 33:12,
 16 34:13, 19 45:22
 58:14 63:12, 25
 68:15
think 10:6 14:12,
 13 19:9, 14, 22
 20:11 21:7 24:1
 26:23 27:5 29:13,
 17 31:13 32:1
 36:9 38:25 41:2,
 21 42:20, 21 44:18
 46:2, 5 48:9 49:20,
 22 50:4, 9 51:6
 59:10, 12 63:15
 65:13 66:25 68:14
 69:10
third 43:8 51:13
third-party 13:20
 16:11 18:13 25:13,
 19 30:1, 3 31:23
 35:23 37:10, 22
 39:3, 6 41:4 43:10,
 12 62:5, 7, 14, 20
 65:20
thousand 31:14

three 5:7 6:13
 29:6 30:3 37:8
 48:5
three-fourths 6:25
 59:7
throws 59:24
thumb 26:20 28:8
thumbing 26:21
Thursday 1:1
thwarted 21:2, 23
TIBBS 1:1 12:16,
 25 13:13 15:6
 16:22 18:10 29:25
 37:15, 20 38:5, 12
 40:13, 15, 22, 24
 41:2, 7 43:6, 15
 44:5, 8 48:7, 13, 18,
 21, 24 61:16 62:20
ticked 46:1
tie 52:16
TIME 1:1 8:20
 18:7 22:23, 24
 29:3 37:12 44:2, 3,
 7 50:5 56:19
 57:19 67:21 68:4
 71:5
times 25:20 33:12
 34:4 35:3 46:23
TOAL 1:1
tobacco 14:17, 19
today 9:1 15:16
 16:14 29:5 33:21
 54:1 55:11 58:8
 63:7 64:1
TODD 2:1
todd.carroll@wbd-
us.com 2:1
told 23:16, 17, 18
 35:15 43:17 44:12
 57:8, 10 58:19
toll 37:18
tolled 40:7, 10
 41:8 43:22
tolling 37:14 43:13,
 18 44:13 59:20
top 14:19
tort 12:16 14:6
 40:16
tortfeasor 12:25

tortious 15:11
torts 15:10
total 31:15
touched 5:22
tracing 50:21
train 23:24 24:3
transcribed 71:6
transcript 11:25
 71:7
transmit 43:9, 12
treatises 14:15
trial 6:20 10:4
 21:25 22:4, 6
 31:10 34:15 36:11
 43:2, 3 60:24 65:6
tribunal 33:9
tried 15:20 61:3, 4
true 49:8, 12 71:7
try 9:7 18:8 21:1
 26:16, 25 42:3
 43:8 52:17 53:17
 58:3
trying 9:2 14:6
 15:23 19:21 21:3
 23:7, 11, 12, 13
 24:19, 20 28:4, 5
 32:22 34:17 41:15
 57:25 60:3 61:2, 7
 67:6
turn 6:6 41:22
Turner 64:10
twist 16:16
two 29:22 33:20
 44:7 55:5
type 38:10 57:9
typed 56:13 71:7

< U >
U.S 19:11 28:25
 29:1
U.S.-based 14:1
UK 14:1
ultimate 35:19
ultimately 38:22
unable 37:24
uncertain 23:19
uncooperative
 15:21 47:13
underlying 38:5, 12
 41:7 56:13

understand 19:15
 32:17, 20 33:7
 34:23 42:9 46:17
 47:11 48:14 53:6
 62:9, 15 65:8, 11,
 13, 24
understanding 8:4
 36:17, 25 43:20
 49:13 56:22 57:3
underway 54:17
United 10:13, 16
 14:5
universe 47:3
unjust 18:1 21:6
unjustly 25:17, 24
upset 28:5 33:22
use 19:5 24:11
 34:17 61:8 69:8
utter 6:24

< V >
vague 43:25
valid 15:25 40:24
 63:24
value 21:6
various 15:18, 19
 30:4 68:17
veil 25:14, 24 56:12
Verdin 9:21
versus 22:2 43:16
 48:7
Vic 47:24
vicious 63:13
VICTOR 2:1
video 45:9, 10
view 9:1 23:19
 30:23 32:3
viewed 31:1
violation 16:7
violations 16:5
vrawl@grsm.com
 2:1
vs 1:1

< W >
want 5:23, 24 6:8
 10:8, 22 22:10, 19
 27:17 31:6 39:10
 41:17, 19, 25 42:8,
 23 46:8, 10 50:4

51:8 56:21 57:1,
17, 24 58:1, 4, 5, 7
60:11, 12 61:1, 3, 9,
11 62:3 63:17
64:19, 25 65:3
wanted 7:20 19:13
44:19 64:20 66:6
wants 24:25 56:2
waste 56:18
wasting 24:8, 18
way 7:19, 21 9:10
16:1 20:11 22:17
24:23 27:23 31:7
33:17 41:20 43:25
57:17 58:16 59:2,
5 60:5, 16, 18
61:11 66:18 68:11
ways 11:19 12:4
web 49:10
website 27:18
59:15, 17
weed 42:3
week 37:12
weeks 21:21 33:20
well 6:18 8:23
27:11 36:4 41:12
45:6 46:25 51:24
52:23 53:16 59:21
63:11 67:4, 6
we're 6:12 7:15, 17
9:2, 6 10:20 14:21
17:14 19:21 20:18
21:3, 8 22:9, 18
23:3, 10, 11, 12
24:18, 19, 20 25:11
27:12, 18, 25 41:2,
8 42:1, 5 49:4
52:5 56:6 58:15,
20 60:15, 19, 25
61:2, 7, 10 64:17
67:25
We've 5:7 6:17
7:2 9:3, 5, 21, 22
11:17 12:4 14:14,
15 17:12, 18 19:9
20:19 28:10 30:1
43:13 59:13 61:6
62:5, 12 63:3
64:10 69:5

whatsoever 7:19
14:20 16:2
WHITE 2:1
Williams 9:22
witness 11:2, 25
71:10
witnesses 27:10
WOMBLE 2:1
work 23:1 50:10
worked 9:3 61:7
world 29:13
wound 38:22
wrap 35:24 52:16
wrapped 17:25
wrongfully 14:12

< Y >
Yeah 49:2 57:3
68:20
year 7:23, 24 8:1,
13 11:1 21:19
47:17 59:6 61:3, 5
years 22:2 31:24
50:20
yesterday 9:5
YouTube 45:11

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

JOHN A. TIBBS and
MARGARET B. TIBBS

Plaintiffs,

v.

3M COMPANY

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.

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

FIRST AMENDED SUMMONS

BANNER INDUSTRIES, LLC	)
	)
BANNER INDUSTRIES OF N.E., INC.	)
	)
BARRETT'S MINERALS INC.	)
	)
BEATY INVESTMENTS, INC.	)
	)
BECHTEL CORPORATION	)
	)
THE BONITZ COMPANY	)
	)
BRAND INSULATIONS, INC.	)
	)
BW/IP INC.	)
	)
CANVAS CT, LLC	)
	)
CAPE PLC	)
	)
CARBOLINE COMPANY	)
	)
CB&I LAURENS, INC.	)
	)
CLEAVER-BROOKS, INC.	)
	)
CONSOLIDATED ELECTRICAL	)
DISTRIBUTORS, INC.	)
	)
COPES-VULCAN, INC.	)
	)
COVIL CORPORATION	)
	)
CRANE INSTRUMENTATION &	)
SAMPLING, INC.	)
	)
CROSBY VALVE, LLC	)
	)
DANIEL INTERNATIONAL CORPORATION	)
	)
DAVIS MECHANICAL CONTRACTORS,	)
INC.	)
	)
DEZURIK, INC.	)
	)
DUKE ENERGY CAROLINAS, LLC	)
	)

DUKE ENERGY CORPORATION)
)
EATON CORPORATION)
)
ELLINGTON INSULATION COMPANY,)
INC.)
)
EMERSON ELECTRIC CO.)
)
FISHER CONTROLS INTERNATIONAL LLC)
)
FLAME REFRACTORIES, INC.)
)
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.)
)
_____)

FIRST AMENDED SUMMONS

TO DEFENDANTS ABOVE-NAMED:

[THIS SPACE IS INTENTIONALLY LEFT BLANK]

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

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

F: 803-256-1952

tmcvey@kassellaw.com

jrutkoski@kassellaw.com

Other email: emoultrie@kassellaw.com

and

Kevin W. Paul (*To Be Admitted PHV*)

Charles W. Branham, III (*To Be Admitted PHV*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, Texas 75202

T: 214-722-5990

F: 214-722-5991

tbranham@dobslegal.com

kpaul@dobslegal.com

spepin@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

May 3, 2023

Columbia, South Carolina

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

JOHN A. TIBBS and
MARGARET B. TIBBS

Plaintiffs,

v.

3M COMPANY
f/k/a MINNESOTA MINING AND
MANUFACTURING COMPANY

4520 CORP., INC.
individually and as successor-in-interest to
BENJAMIN F. SHAW COMPANY

A.O. SMITH CORPORATION

A.W. CHESTERTON COMPANY

ABB INC.

AIR & LIQUID SYSTEMS CORPORATION
individually and as successor-in-interest to
BUFFALO PUMPS, INC.

AIW-2010 WIND DOWN CORP.
individually and as successor-in-interest to
AMERICAN INSULATED WIRE
CORPORATION

AMENTUM ENVIRONMENT & ENERGY,
INC. f/k/a AECOM ENERGY &
CONSTRUCTION, INC., individually and as
successor-in-interest to YEARGIN
CONSTRUCTION COMPANY, INC.
successor to IMPAC, INC.

ANCHOR/DARLING VALVE COMPANY

ARMSTRONG INTERNATIONAL, INC.

ASBESTOS CORPORATION LIMITED

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Living Lung Cancer

FIRST AMENDED COMPLAINT

(Jury Trial Demanded)

ASCO, L.P.	)
f/k/a ASCO VALVE, INC.	)
	)
ATLAS ASBESTOS CO	)
	)
ATLAS TURNER, INC.	)
as successor to ATLAS ASBESTOS CO, a	)
foreign company	)
	)
AWT AIR COMPANY, INC.	)
f/k/a RESEARCH-COTTRELL, INC.	)
	)
BAHNSON, INC.	)
	)
BANNER INDUSTRIES INTERNATIONAL,	)
INC.	)
	)
BANNER INDUSTRIES, LLC	)
	)
BANNER INDUSTRIES OF N.E., INC.	)
individually and as successor-in-interest to	)
BANNER INDUSTRIES, INC.	)
	)
BARRETTS MINERALS INC.	)
	)
BEATY INVESTMENTS, INC.	)
f/k/a GUY M. BEATY & CO.	)
	)
BECHTEL CORPORATION	)
	)
THE BONITZ COMPANY	)
f/k/a BONITZ INSULATION COMPANY	)
	)
BRAND INSULATIONS, INC.	)
	)
BW/IP INC.	)
and its wholly-owned subsidiaries	)
	)
CANVAS CT, LLC	)
individually and as successor to MARLEY	)
COOLING TOWER COMPANY	)
	)
CAPE PLC	)
individually and as successor-in-interest to	)
CAPE INDUSTRIES LTD. f/k/a CAPE	)
ASBESTOS COMPANY LTD. and its	)
subsidiaries and global affiliates	)

CARBOLINE COMPANY

CB&I LAURENS, INC.

individually and as successor-in-interest to
CHICAGO BRIDGE & IRON COMPANY

CLEAVER-BROOKS, INC.

f/k/a AQUA-CHEM, INC.
d/b/a CLEAVER-BROOKS DIVISION

**CONSOLIDATED ELECTRICAL
DISTRIBUTORS, INC.**

d/b/a CED, INC., individually and as successor-
in-interest to MILL-POWER SUPPLY
COMPANY

COPE-S-VULCAN, INC.

COVIL CORPORATION

**CRANE INSTRUMENTATION &
SAMPLING, INC.**

f/k/a CIRCOR INSTRUMENTATION
TECHNOLOGIES, INC. f/k/a HOKE INC.

CROSBY VALVE, LLC

**DANIEL INTERNATIONAL
CORPORATION**

**DAVIS MECHANICAL CONTRACTORS,
INC.**

DEZURIK, INC.

DUKE ENERGY CAROLINAS, LLC
f/k/a DUKE ENERGY CORPORATION

DUKE ENERGY CORPORATION

EATON CORPORATION

**ELLINGTON INSULATION COMPANY,
INC.**

EMERSON ELECTRIC CO.

individually and as successor-in-interest to)
 COPELAND CORPORATION)
)
FISHER CONTROLS INTERNATIONAL)
LLC)
)
FLAME REFRACTORIES, INC.)
)
FLOWSERVE CORPORATION)
 f/k/a THE DURIRON COMPANY INC.)
)
FLOWSERVE US INC.)
 individually and as successor-in-interest to)
 EDWARD VALVES, INC. and ROCKWELL)
 MANUFACTURING COMPANY)
)
FLUOR CONSTRUCTORS)
INTERNATIONAL)
 f/k/a FLUOR CORPORATION)
)
FLUOR CONSTRUCTORS)
INTERNATIONAL, INC.)
)
FLUOR DANIEL SERVICES)
CORPORATION)
)
FLUOR ENTERPRISES, INC.)
)
FMC CORPORATION)
 on behalf of its former Peerless Pump business)
)
FOSTER WHEELER ENERGY)
CORPORATION)
)
GARDNER DENVER NASH, LLC)
 individually and as successor-in-interest to THE)
 NASH ENGINEERING COMPANY)
)
GENERAL BOILER CASING COMPANY,)
INC.)
)
GENERAL CABLE CORPORATION)
)
GENERAL CABLE INDUSTRIES, INC.)
 individually and as successor-in-interest to)
 CAROL CABLE CO.)
)

GENERAL ELECTRIC COMPANY)
)
GOULD ELECTRONICS INC.)
 individually and as successor-in-interest to ITE)
 CIRCUIT BREAKER CO.)
)
GOULDS PUMPS, INCORPORATED)
)
GOULDS PUMPS LLC)
 f/k/a GOULDS PUMPS INC.)
)
GREAT BARRIER INSULATION CO.)
)
GRINNELL LLC)
 d/b/a GRINNELL CORPORATION)
)
HAJOCA CORPORATION)
)
HOWDEN NORTH AMERICA INC.)
 f/k/a HOWDEN BUFFALO, INC., individually)
 and as successor-in-interest to BUFFALO)
 FORGE COMPANY and NEW)
 PHILADELPHIA FAN CO.)
)
HPC INDUSTRIAL SERVICES, LLC)
 f/k/a CLEAN HARBORS INDUSTRIAL)
 SERVICES INC., solely in its capacity as the)
 successor-by-merger and name change to)
 BRAND INSULATIONS, INC.)
)
IMO INDUSTRIES INC.)
)
ITT LLC)
 f/k/a ITT CORPORATION, ITT INDUSTRIES)
 INC., ITT FLUID PRODUCTS CORP.,)
 HOFFMAN SPECIALTY MFG. CORP., BELL)
 & GOSSETT COMPANY, ITT MARLOW and)
 KENNEDY VALVE COMPANY)
)
JOY GLOBAL UNDERGROUND MINING)
LLC)
 f/k/a JOY TECHNOLOGIES, INC., f/k/a JOY)
 TECHNOLOGIES LLC)
)
K-MAC SERVICES INCORPORATED)
)
)

METROPOLITAN LIFE INSURANCE COMPANY)
a wholly owned subsidiary of METLIFE INC.)
MINE SAFETY APPLIANCES COMPANY, LLC)
MP SUPPLY, INC.)
f/k/a MILL-POWER SUPPLY COMPANY)
THE NASH ENGINEERING COMPANY)
OCCIDENTAL CHEMICAL CORPORATION)
individually and as successor-in-interest to)
DUREZ CORPORATION)
PARAMOUNT GLOBAL)
f/k/a VIACOMCBS INC., f/k/a CBS)
CORPORATION, a Delaware corporation f/k/a)
VIACOM, INC., successor-by-merger to CBS)
CORPORATION, a Pennsylvania corporation,)
f/k/a WESTINGHOUSE ELECTRIC)
CORPORATION and as successor-in-interest to)
BF STURTEVANT)
PATTERSON PUMP COMPANY)
PECW HOLDING COMPANY)
f/k/a PLASTICS ENGINEERING COMPANY)
PFIZER INC.)
PIEDMONT INSULATION, INC.)
PLASTICS ENGINEERING COMPANY)
d/b/a PLENCO)
PRESNELL INSULATION CO., INC.)
REDCO CORPORATION)
f/k/a CRANE CO.)
RILEY POWER INC.)
f/k/a BABCOCK BORSIG POWER INC.,)
f/k/a DB RILEY, INC., f/k/a RILEY STOKER)
CORPORATION)

ROCKWELL AUTOMATION, INC.
 individually and as successor-in-interest to
 ALLEN-BRADLEY COMPANY LLC f/k/a
 ROCKWELL INTERNATIONAL
 CORPORATION

RSCC WIRE & CABLE LLC
 d/b/a ROCKBESTOS SUPERNANT CABLE
 CORP.

SCHNEIDER ELECTRIC USA, INC.
 f/k/a SQUARE D COMPANY

SEQUOIA VENTURES INC.
 f/k/a BECHTEL CORPORATION

SPIRAX SARCO, INC.

SPX CORPORATION
 individually and as successor-in-interest to
 KINNEY PUMPS

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.
 f/k/a THERMO ELECTRIC WIRE & CABLE
 CO.

UNION CARBIDE CORPORATION

VALVES AND CONTROLS US, INC.
 f/k/a WEIR VALVES & CONTROLS USA
 INC. d/b/a ATWOOD & MORRILL CO., INC.

VELAN VALVE CORP.

VIKING PUMP, INC.

VISTRA INTERMEDIATE COMPANY
LLC

individually and as successor-in-interest to
CRSS INC.

THE WILLIAM POWELL COMPANY

WIND UP, LTD.

YUBA HEAT TRANSFER LLC

ZURN INDUSTRIES, LLC

individually and as successor-in-interest to
ZURN INDUSTRIES, INC.

Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT

Plaintiffs, JOHN A. TIBBS and MARGARET B. TIBBS (hereinafter "Plaintiffs"), sue the named Defendants for compensatory and punitive damages, by and through their attorneys, and come before this court and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff John A. Tibbs has been diagnosed with lung cancer.

2. This Court has personal jurisdiction over Defendants because Plaintiffs' claims arise from Defendants' conduct in:

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

- (e) Entering into a contract to be performed in whole or in part by either party in this State.

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

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

- (a) the Premises Defendants owned the property and approved the use of asbestos-containing materials on its premises.
- (b) the Premises Defendants invited the Plaintiff John A. Tibbs as a mechanic electrician, and/or his father as a superintendent of maintenance, on to Defendants’ premises to perform construction work for Defendants’ benefit. Plaintiff was an invitee who had express permission to enter Defendants’ premises for the purpose of benefitting the owner (Defendant).
- (c) the Premises Defendants owed a duty of due care to discover risks and take safety precautions to warn of and eliminate unreasonable risks.
- (d) the Premises Defendants’ failure to warn of or eliminate the unreasonable risks associated with working on or around asbestos-containing materials on Defendants’ premises was a substantial factor contributing to cause Plaintiff John A. Tibbs’s lung cancer.

5. Each Defendant, or its predecessors in interest, that provided labor, materials, goods, and/or services as architects, consultants, engineers, draftsmen, technicians, surveyors, or

otherwise in connection with the design and/or repairs at the work sites where Plaintiff John A. Tibbs and/or his father experienced occupational exposure as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment, are referred to herein as the “Design Defendants.”

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

7. Plaintiffs’ claims against the Premises Defendants, as defined herein, arise out of Defendants’ ownership and/or control of real property located in South Carolina and North Carolina, and the purchase and use of asbestos-containing products on their premises located in South Carolina and North Carolina, and/or contracting with the employer of Plaintiff John A. Tibbs and/or his father John H. Tibbs in South Carolina and North Carolina for Plaintiff and others to cross state lines to work on Defendant’s premises.

8. Plaintiffs’ claims against the Design Defendants, as defined herein, arise out of Defendants’, and/or Defendants’ employees’, direct and/or indirect purchase and use of asbestos and/or asbestos-containing products, materials, or equipment at the various industrial sites located in South Carolina where Plaintiff John A. Tibbs experienced occupational exposure to lethal doses of asbestos as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment.

9. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Plaintiff John A. Tibbs to asbestos in this State, subjecting them to the

jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

10. In addition to being exposed through his own work, Plaintiff John A. Tibbs was exposed to asbestos through asbestos dust and fibers brought home on his father John H. Tibbs's work clothes, from asbestos dust in his vehicle and asbestos dust on his body including his hair, and from the dust being distributed and re-entrained in the family home. Plaintiff John A. Tibbs's exposure to asbestos dust and fibers occurred through his contact with his father John H. Tibbs's work clothing and person when greeting him and interacting with him on a daily basis at the end of each workday. Plaintiff John A. Tibbs's exposure to asbestos dust and fibers also occurred through spending time in his father's vehicle in which asbestos dust and fibers had been deposited, and through sharing a home contaminated with asbestos fibers that were constantly being stirred up and re-entrained in the air that they breathed throughout their family home.

11. Plaintiff John A. Tibbs's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff John A. Tibbs's lung cancer and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

12. Plaintiffs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

13. Plaintiff John A. Tibbs worked with, or in close proximity to others who worked with, asbestos-containing materials including but not limited to asbestos-containing products and other asbestos-containing materials manufactured and/or sold by Defendants identified above.

14. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an "alternate entity" as hereinafter defined. Defendants are liable for the acts of their "alternate entity" and each of them, in that there has been a corporate

name change, Defendant is the successor by merger, by successor in interest, or by other acquisition resulting in a virtual destruction of Plaintiffs' remedy against each such "alternate entity"; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"; such "alternate entities" have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiffs' remedy against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

DEFENDANT	ALTERNATE ENTITY
3M COMPANY	MINNESOTA MINING AND MANUFACTURING COMPANY
4520 CORP., INC.	BENJAMIN F. SHAW COMPANY
AIR & LIQUID SYSTEMS CORPORATION	BUFFALO PUMPS, INC.
AIW-2010 WIND DOWN CORP.	AMERICAN INSULATED WIRE CORPORATION
AMENTUM ENVIRONMENT & ENERGY, INC.	AECOM ENERGY & CONSTRUCTION, INC., YEARGIN CONSTRUCTION COMPANY, INC., and IMPAC, INC.
ASCO, L.P.	ASCO VALVE, INC.
ATLAS TURNER, INC.	ATLAS ASBESTOS CO
AWT AIR COMPANY, INC.	RESEARCH-COTTRELL, INC.
BANNER INDUSTRIES OF N.E., INC.	BANNER INDUSTRIES, INC.
BEATY INVESTMENTS, INC.	GUY M. BEATY & CO.

DEFENDANT	ALTERNATE ENTITY
THE BONITZ COMPANY	BONITZ INSULATION COMPANY
BW/IP INC.	its wholly owned subsidiaries
CANVAS CT, LLC	MARLEY COOLING TOWER COMPANY
CAPE PLC	CAPE INDUSTRIES LTD., CAPE ASBESTOS COMPANY LTD., and its subsidiaries and global affiliates
CB&I LAURENS, INC.	CHICAGO BRIDGE & IRON COMPANY
CLEAVER-BROOKS, INC.	AQUA-CHEM, INC. and CLEAVER-BROOKS DIVISION
CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC.	CED, INC. and MILL-POWER SUPPLY COMPANY
CRANE INSTRUMENTATION & SAMPLING, INC.	CIRCOR INSTRUMENTATION TECHNOLOGIES, INC. and HOKE INC.
DUKE ENERGY CAROLINAS, LLC	DUKE ENERGY CORPORATION
EMERSON ELECTRIC CO.	COPELAND CORPORATION
FLOWERVE CORPORATION	THE DURIRON COMPANY INC.
FLOWERVE US INC.	EDWARD VALVES, INC. and ROCKWELL MANUFACTURING COMPANY
FLUOR CONSTRUCTORS INTERNATIONAL	FLUOR CORPORATION
FMC CORPORATION	PEERLESS PUMP
GARDNER DENVER NASH, LLC	THE NASH ENGINEERING COMPANY

DEFENDANT	ALTERNATE ENTITY
GENERAL CABLE INDUSTRIES, INC.	CAROL CABLE CO.
GOULD ELECTRONICS INC.	ITE CIRCUIT BREAKER CO.
GOULDS PUMPS LLC	GOULDS PUMPS INC.
GRINNELL LLC	GRINNELL CORPORATION
HOWDEN NORTH AMERICA INC.	HOWDEN BUFFALO INC., BUFFALO FORGE COMPANY, and NEW PHILADELPHIA FAN CO.
HPC INDUSTRIAL SERVICES, LLC	CLEAN HARBORS INDUSTRIAL SERVICES INC. and BRAND INSULATIONS, INC.
ITT LLC	ITT CORPORATION, ITT INDUSTRIES INC., ITT FLUID PRODUCTS CORP., HOFFMAN SPECIALTY MFG. CORP., BELL & GOSSETT COMPANY, ITT MARLOW and KENNEDY VALVE COMPANY
JOY GLOBAL UNDERGROUND MINING LLC	JOY TECHNOLOGIES, INC. and JOY TECHNOLOGIES LLC
METROPOLITAN LIFE INSURANCE COMPANY	METLIFE INC.
MP SUPPLY, INC.	MILL-POWER SUPPLY COMPANY
OCCIDENTAL CHEMICAL CORPORATION	DUREZ CORPORATION
PARAMOUNT GLOBAL	VIACOMCBS INC., CBS CORPORATION, a Delaware corporation, VIACOM, INC., CBS CORPORATION, a Pennsylvania corporation, WESTINGHOUSE ELECTRIC CORPORATION, and BF STURTEVANT
PECW HOLDING COMPANY	PLASTICS ENGINEERING COMPANY

DEFENDANT	ALTERNATE ENTITY
PLASTICS ENGINEERING COMPANY	PLENCO
REDCO CORPORATION	CRANE CO.
RILEY POWER INC.	BABCOCK BORSIG POWER INC., DB RILEY, INC., and RILEY STOKER CORPORATION
ROCKWELL AUTOMATION, INC.	ALLEN-BRADLEY COMPANY LLC and ROCKWELL INTERNATIONAL CORPORATION
RSCC WIRE & CABLE LLC	ROCKBESTOS SUPERNANT CABLE CORP.
SCHNEIDER ELECTRIC USA, INC.	SQUARE D COMPANY
SEQUOIA VENTURES INC.	BECHTEL CORPORATION
SPX CORPORATION	KINNEY PUMPS
THERMO ELECTRIC COMPANYYY, INC.	THERMO ELECTRIC WIRE & CABLE CO.
VALVES AND CONTROLS US, INC.	WEIR VALVES & CONTROLS USA INC. and ATWOOD MORRILL CO., INC.
VISTRA INTERMEDIATE COMPANY LLC	CRSS INC.
WIND UP, LTD.	PIPE & BOILER INSULATION, INC. and CAROLINA INDUSTRIAL INSULATING CO.
ZURN INDUSTRIES, LLC	ZURN INDUSTRIES, INC.

15. Plaintiffs have been informed and believe, and thereon allege, that at all times herein mentioned, Defendants or their “alternate entities” were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and

existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

16. Plaintiffs have been informed and believe, and thereon allege, that progressive lung disease, lung cancer and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

17. As a direct and proximate result of the conduct as alleged within, Plaintiff John A. Tibbs suffered permanent injuries, including, but not limited to, lung cancer and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

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

19. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff John A. Tibbs incurred, and will continue to incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs pray leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

20. Plaintiffs hereby disclaim each and every claim or cause of action which does or may arise from or on any federal enclave. Plaintiffs are disclaiming each and every claim or cause of action arising from any exposure to asbestos as a result of the Plaintiffs presence on or at any federal enclave. Plaintiffs further disclaim each and every claim or cause of action arising under the United States Constitution and under any Federal Law or Regulation. Finally, Plaintiffs disclaim each and every claim or cause of action which may be asserted under federal admiralty or maritime law. Courts across the Country have found that such disclaimers are proper and within the province of the Plaintiffs to disclaim. Any removal by any defendant on the basis of the disclaimed claims will result in a motion for sanctions and seeking attorneys' fees.

THE PARTIES

21. Plaintiffs John A. Tibbs and Margaret B. Tibbs are currently residents of the State of North Carolina. Plaintiff John A. Tibbs was exposed to asbestos during the course of his career at various job sites, primarily located in South Carolina and North Carolina. He was also exposed to asbestos fibers carried home on the clothing and person of his father while he also worked as a superintendent of maintenance at various jobsites while Plaintiff John A. Tibbs lived in the family home.

22. Defendant, **3M COMPANY** f/k/a MINNESOTA MINING AND MANUFACTURING COMPANY, was and is a Delaware corporation with its principal place of business in Minnesota. At all times material hereto, 3M COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, or products fraudulently marketed to prevent asbestos exposure including, but not limited to, 3M masks and other asbestos-containing products. 3M COMPANY is sued as a Product

Defendant. Plaintiffs' claims against 3M COMPANY arise out of this Defendant's business activities in the State of South Carolina.

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

24. Defendant, **A.O. SMITH CORPORATION**, was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, A.O. SMITH CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing boilers and heaters, including Burkey boilers, present at numerous jobsites in South Carolina and North Carolina. A.O. SMITH CORPORATION is sued as a Product Defendant. Plaintiffs' claims against A.O. SMITH CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

25. Defendant, **A.W. CHESTERTON COMPANY**, was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, A.W. CHESTERTON COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing cloth, gaskets, packing, and rope, present at numerous jobsites in South Carolina and North Carolina. A.W. CHESTERTON COMPANY is sued as a Product Defendant. Plaintiffs' claims against A.W. CHESTERTON COMPANY arise out of this Defendant's business activities in the State of South Carolina.

26. Defendant, **ABB INC.**, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, ABB INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing ITE circuit breakers, present at numerous jobsites in South Carolina and North Carolina. ABB INC. is sued as a Product Defendant. Plaintiffs' claims against ABB INC. arise out of this Defendant's business activities in the State of South Carolina.

27. Defendant, **AIR & LIQUID SYSTEMS CORPORATION**, individually and as successor-in-interest to BUFFALO PUMPS, INC., was and is a Pennsylvania corporation with its principal place of business in Pennsylvania. At all times material hereto, AIR & LIQUID SYSTEMS CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Buffalo pumps present at numerous jobsites in South Carolina and North Carolina. AIR & LIQUID SYSTEMS CORPORATION is sued as a Product Defendant. Plaintiffs'

claims against AIR & LIQUID SYSTEMS CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

28. Defendant, **AIW-2010 WIND DOWN CORP.**, individually and as successor-in-interest to AMERICAN INSULATED WIRE CORPORATION, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, AIW-2010 WIND DOWN CORP. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing electrical wires, present at numerous jobsites in South Carolina and North Carolina. AIW-2010 WIND DOWN CORP. is sued as a Product Defendant. Plaintiffs' claims against AIW-2010 WIND DOWN CORP. arise out of this Defendant's business activities in the State of South Carolina.

29. Defendant, **AMENTUM ENVIRONMENT & ENERGY, INC.**, f/k/a AECOM ENERGY & CONSTRUCTION, INC., individually and as successor-in-interest to YEARGIN CONSTRUCTION COMPANY, INC. successor to IMPAC, INC., was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, AMENTUM ENVIRONMENT & ENERGY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. AMENTUM ENVIRONMENT & ENERGY, INC. is sued as a Product Defendant. AMENTUM ENVIRONMENT & ENERGY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of

asbestos. Plaintiffs' claims against AMENTUM ENVIRONMENT & ENERGY, INC. arise out of this Defendant's business activities in the State of South Carolina.

30. Defendant, **ANCHOR/DARLING VALVE COMPANY**, was and is a Pennsylvania corporation with its principal place of business in Texas. At all times material hereto, ANCHOR/DARLING VALVE COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Darling valves present at numerous jobsites in South Carolina and North Carolina. ANCHOR/DARLING VALVE COMPANY is sued as a Product Defendant. Plaintiffs' claims against ANCHOR/DARLING VALVE COMPANY arise out of this Defendant's business activities in the State of South Carolina.

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

32. Defendant, **ASBESTOS CORPORATION LIMITED**, was and is a corporation organized and existing under the laws of the country of Canada, with its principal place of business in Canada. At all times material hereto, ASBESTOS CORPORATIONN LIMITED mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced,

repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina. ASBESTOS CORPORATION LIMITED is sued as a Product Defendant. Plaintiffs' claims against ASBESTOS CORPORATION LIMITED arise out of this Defendant's business activities in the State of South Carolina.

33. Defendant, **ASCO, L.P.**, f/k/a ASCO VALVE, INC., was and is a Delaware limited partnership with its principal place of business in New Jersey. At all times material hereto, ASCO, L.P. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing ASCO valves present at numerous jobsites in South Carolina and North Carolina. ASCO, L.P. is sued as a Product Defendant. Plaintiffs' claims against ASCO, L.P. arise out of this Defendant's business activities in the State of South Carolina.

34. Defendant, **ATLAS ASBESTOS CO**, was and is a corporation organized and existing under the laws of the country of Canada, with its principal place of business in Canada. At all times material hereto, ATLAS ASBESTOS CO mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina. ATLAS ASBESTOS CO is sued as a Product Defendant. Plaintiffs' claims against ATLAS ASBESTOS CO arise out of this Defendant's business activities in the State of South Carolina.

35. Defendant, **ATLAS TURNER, INC.**, as successor to ATLAS ASBESTOS CO, was and is a corporation organized and existing under the laws of the country of Canada, with its principal place of business in Canada. At all times material hereto, ATLAS TURNER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at jobsites in South Carolina and North Carolina. ATLAS TURNER, INC. is sued as a Product Defendant. Plaintiffs' claims against ATLAS TURNER, INC. arise out of this Defendant's business activities in the State of South Carolina.

36. Defendant, **AWT AIR COMPANY, INC.**, f/k/a RESEARCH-COTTRELL, INC., was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, AWT AIR COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing precipitators present at numerous jobsites in South Carolina and North Carolina. AWT AIR COMPANY, INC. is sued as a Product Defendant. Plaintiffs' claims against AWT AIR COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

37. Defendant, **BAHNSON, INC.**, was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, BAHNSON, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other

asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. BAHNSON, INC. is sued as a Product Defendant. BAHNSON, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against BAHNSON, INC. arise out of this Defendant's business activities in the State of South Carolina.

38. Defendant, **BANNER INDUSTRIES INTERNATIONAL, INC.**, was and is a Delaware corporation with its principal place of business in Massachusetts. At all times material hereto, BANNER INDUSTRIES INTERNATIONAL, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Patterson pumps present at numerous jobsites in South Carolina and North Carolina. BANNER INDUSTRIES INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiffs' claims against BANNER INDUSTRIES INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

39. Defendant, **BANNER INDUSTRIES, LLC**, was and is a Delaware limited liability company with its principal place of business in Massachusetts. At all times material hereto, BANNER INDUSTRIES, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Patterson pumps present at numerous jobsites in South Carolina and North Carolina. BANNER INDUSTRIES, LLC is sued as a Product Defendant. Plaintiffs' claims against BANNER INDUSTRIES, LLC arise out of this Defendant's business activities in the State of South Carolina.

40. Defendant, **BANNER INDUSTRIES OF N.E., INC.**, individually and as successor-in-interest to BANNER INDUSTRIES, INC., was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, BANNER INDUSTRIES OF N.E., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Patterson pumps present at numerous jobsites in South Carolina and North Carolina. BANNER INDUSTRIES OF N.E., INC. is sued as a Product Defendant. Plaintiffs' claims against BANNER INDUSTRIES OF N.E., INC. arise out of this Defendant's business activities in the State of South Carolina.

41. Defendant, **BARRETTS MINERALS INC.**, was and is a Delaware corporation with its principal place of business in Montana. At all times material hereto, BARRETTS MINERALS INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing talc present at numerous jobsites in South Carolina and North Carolina. BARRETTS MINERALS INC. is sued as a Product Defendant. Plaintiffs' claims against BARRETTS MINERALS INC. arise out of this Defendant's business activities in the State of South Carolina.

42. Defendant, **BEATY INVESTMENTS, INC.** f/k/a GUY M. BEATY & CO., was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, BEATY INVESTMENTS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to

gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. BEATY INVESTMENTS, INC. is sued as a Product Defendant. BEATY INVESTMENTS, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Beaty Investments, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against BEATY INVESTMENTS, INC. arise out of this Defendant's business activities in the State of South Carolina.

43. Defendant, **BECHTEL CORPORATION**, was and is a Nevada corporation with its principal place of business in Virginia. At all times material hereto, BECHTEL CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. BECHTEL CORPORATION is sued as a Product Defendant. BECHTEL CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against BECHTEL CORPORATION arise out of this Defendant's business activities in the State of South Corporation.

44. Defendant, **THE BONITZ COMPANY** f/k/a BONITZ INSULATION COMPANY, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, THE BONITZ COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment,

including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. THE BONITZ COMPANY is sued as a Product Defendant. THE BONITZ COMPANY is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of The Bonitz Company, exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against THE BONITZ COMPANY arise out of this Defendant's business activities in the State of South Carolina.

45. Defendant, **BRAND INSULATIONS, INC.**, was and is an Illinois corporation with its principal place of business in Illinois. At all times material hereto, BRAND INSULATIONS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. BRAND INSULATIONS, INC. is sued as a Product Defendant. BRAND INSULATIONS, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against BRAND INSULATIONS, INC. arise out of this Defendant's business activities in the State of South Corporation.

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

products, materials, or equipment, including, but not limited to, asbestos-containing Byron Jackson pumps and Borg Warner pumps and valves present at numerous jobsites in South Carolina and North Carolina. BW/IP INC. is sued as a Product Defendant. Plaintiffs' claims against BW/IP INC. arise out of this Defendant's business activities in the State of South Carolina.

47. Defendant, **CANVAS CT, LLC**, individually and as successor to MARLEY COOLING TOWER COMPANY, was and is a Delaware limited liability company with its principal place of business in Kansas. At all times material hereto, CANVAS CT, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Marley cooling towers present at numerous jobsites in South Carolina and North Carolina. CANVAS CT, LLC is sued as a Product Defendant. Plaintiffs' claims against CANVAS CT, LLC arise out of this Defendant's business activities in the State of South Carolina.

48. Defendant, **CAPE PLC**, individually and as successor-in-interest to CAPE INDUSTRIES LTD f/k/a CAPE ASBESTOS COMPANY LTD., and its subsidiaries and global affiliates, was and is a private liability company organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland with its court appointed Receiver maintaining its principal place of business in South Carolina. At all times material hereto, CAPE PLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina. CAPE PLC is sued as a Product Defendant. Plaintiffs' claims against CAPE PLC arise out of this Defendant's business activities in the State of South Carolina.

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

50. Defendant, **CB&I LAURENS, INC.**, individually and as successor-in-interest to CHICAGO BRIDGE & IRON COMPANY, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, CB&I LAURENS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foxboro valves present at numerous jobsites in South Carolina and North Carolina. CB&I LAURENS, INC. is sued as a Product Defendant. Plaintiffs' claims against CB&I LAURENS, INC. arise out of this Defendant's business activities in the State of South Carolina.

51. Defendant, **CLEAVER-BROOKS, INC.** f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-BROOKS DIVISION, was and is a Delaware corporation with its principal place of business in Georgia. At all times material hereto, CLEAVER-BROOKS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Cleaver-Brooks boilers and distillers present at numerous jobsites in South Carolina and North Carolina. CLEAVER-BROOKS, INC.

is sued as a Product Defendant. Plaintiffs' claims against CLEAVER-BROOKS, INC. arise out of this Defendant's business activities in the State of South Carolina.

52. Defendant, **CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC.**, d/b/a CED, INC., individually and as successor-in-interest to MILL-POWER SUPPLY COMPANY, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing insulation materials, gaskets, packing, fireproofing, refractory products, and equipment which contained asbestos-containing materials present at numerous jobsites in South Carolina and North Carolina. CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC. is sued as a Product Defendant. Plaintiffs' claims against CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC. arise out of this Defendant's business activities in the State of South Carolina.

53. Defendant, **COPES-VULCAN, INC.**, was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, COPES-VULCAN, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Vulcan blowers and valves present at numerous jobsites in South Carolina and North Carolina. COPES-VULCAN, INC. is sued as a Product Defendant. Plaintiffs' claims against COPES-VULCAN, INC. arise out of this Defendant's business activities in the State of South Carolina.

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

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

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

56. Defendant, **CROSBY VALVE, LLC**, was and is a Nevada limited liability company with its principal place of business in Missouri. At all times material hereto, CROSBY VALVE, LLC manufactured, processed, imported, converted, compounded, supplied, installed,

replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Crosby valves present at numerous jobsites in South Carolina and North Carolina. CROSBY VALVE, LLC is sued as a Product Defendant. Plaintiffs' claims against CROSBY VALVE, LLC arise out of this Defendant's business activities in the State of South Carolina.

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

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

limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. DAVIS MECHANICAL CONTRACTORS, INC. is sued as a Product Defendant. DAVIS MECHANICAL CONTRACTORS, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Davis Mechanical Contractors, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against DAVIS MECHANICAL CONTRACTORS, INC. arise out of this Defendant's business activities in the State of South Carolina.

59. Defendant, **DEZURIK, INC.**, was and is a Delaware corporation with its principal place of business in Minnesota. At all times material hereto, DEZURIK, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Vulcan blowers and valves present at numerous jobsites in South Carolina and North Carolina. DEZURIK, INC. is sued as a Product Defendant. Plaintiffs' claims against DEZURIK, INC. arise out of this Defendant's business activities in the State of South Carolina.

60. Defendant, **DUKE ENERGY CAROLINAS, LLC** f/k/a DUKE ENERGY CORPORATION, was and is a North Carolina limited liability company with its principal place of business in North Carolina. At all times material hereto, DUKE ENERGY CAROLINAS, LLC owned and/or controlled premises at which Plaintiff John A. Tibbs and his father John H. Tibbs was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities in South Carolina and North Carolina, including but not limited to the Duke power plants listed in paragraph 134 of this Complaint. DUKE ENERGY CAROLINAS, LLC is sued as a Premises Defendant.

61. Defendant, **DUKE ENERGY CORPORATION**, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, DUKE ENERGY CORPORATION owned and/or controlled premises at which Plaintiff John A. Tibbs and his father John H. Tibbs was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities in South Carolina and North Carolina, including but not limited to the Duke power plants listed in paragraph 134 of this Complaint. DUKE ENERGY CORPORATION is sued as a Premises Defendant.

62. Defendant, **EATON CORPORATION**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, EATON CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Cutler-Hammer electrical products present at numerous jobsites in South Carolina and North Carolina. EATON CORPORATION is sued as a Product Defendant. Plaintiffs' claims against EATON CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

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

INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Ellington Insulation Company, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against ELLINGTON INSULATION COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

64. Defendant, **EMERSON ELECTRIC CO.**, individually and as successor-in-interest to COPELAND CORPORATION, was and is a Missouri corporation with its principal place of business in Missouri. At all times material hereto, EMERSON ELECTRIC CO. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Hancock valves present at numerous jobsites in South Carolina and North Carolina. EMERSON ELECTRIC CO. is sued as a Product Defendant. Plaintiffs' claims against EMERSON ELECTRIC CO. arise out of this Defendant's business activities in the State of South Carolina.

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

66. Defendant, **FLAME REFRACTORIES, INC.**, was a North Carolina corporation with its principal place of business in Florida. At all times material hereto, FLAME REFRACTORIES, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. FLAME REFRACTORIES, INC. is sued as a Product Defendant. FLAME REFRACTORIES, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Flame Refractories, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against FLAME REFRACTORIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

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

68. Defendant, **FLOWERVE US INC.**, individually and as successor-in-interest to EDWARD VALVES, INC. and ROCKWELL MANUFACTURING COMPANY, was and is a

Delaware corporation with its principal place of business in Texas. At all times material hereto, FLOWERVE US INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Edward valves and Rockwell valves present at numerous jobsites in South Carolina and North Carolina. FLOWERVE US INC. is sued as a Product Defendant. Plaintiffs' claims against FLOWERVE US INC. arise out of this Defendant's business activities in the State of South Carolina.

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

70. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.**, was and is a California corporation with its principal place of business in Texas. At all times material hereto,

FLUOR CONSTRUCTORS INTERNATIONAL, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. FLUOR CONSTRUCTORS INTERNATIONAL, INC. is sued as a Product Defendant. FLUOR CONSTRUCTORS INTERNATIONAL, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against FLUOR CONSTRUCTORS INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

71. Defendant, **FLUOR DANIEL SERVICES CORPORATION**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLUOR DANIEL SERVICES CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. FLUOR DANIEL SERVICES CORPORATION is sued as a Product Defendant. FLUOR DANIEL SERVICES CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to

lethal doses of asbestos. Plaintiffs' claims against FLUOR DANIEL SERVICES CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

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

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

74. Defendant, **FOSTER WHEELER ENERGY CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto,

FOSTER WHEELER ENERGY CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foster Wheeler boilers and exhausters present at numerous jobsites in South Carolina and North Carolina. FOSTER WHEELER ENERGY CORPORATION is sued as a Product Defendant. Plaintiffs' claims against FOSTER WHEELER ENERGY CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

75. Defendant, **GARDNER DENVER NASH, LLC**, individually and as successor-in-interest to THE NASH ENGINEERING COMPANY, was and is a Delaware limited liability company with its principal place of business in Pennsylvania. At all times material hereto, GARDNER DENVER NASH, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Nash pumps present at numerous jobsites in South Carolina and North Carolina. GARDNER DENVER NASH, LLC is sued as a Product Defendant. Plaintiffs' claims against GARDNER DENVER NASH, LLC arise out of this Defendant's business activities in the State of South Carolina.

76. Defendant, **GENERAL BOILER CASING COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, GENERAL BOILER CASING COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at

numerous jobsites throughout the southeastern United States. GENERAL BOILER CASING COMPANY, INC. is sued as a Product Defendant. GENERAL BOILER CASING COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of General Boiler Casing Company, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against GENERAL BOILER CASING COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

77. Defendant, **GENERAL CABLE CORPORATION**, was and is a Delaware corporation with its principal place of business in Kentucky. At all times material hereto, GENERAL CABLE CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Carol wires present at numerous jobsites in South Carolina and North Carolina. GENERAL CABLE CORPORATION is sued as a Product Defendant. Plaintiffs' claims against GENERAL CABLE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

78. Defendant, **GENERAL CABLE INDUSTRIES, INC.**, individually and as successor-in-interest to CAROL CABLE CO., was and is a Delaware corporation with its principal place of business in Kentucky. At all times material hereto, GENERAL CABLE INDUSTRIES, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Carol wires present at numerous jobsites in South Carolina and North Carolina. GENERAL CABLE

INDUSTRIES, INC. is sued as a Product Defendant. Plaintiffs' claims against GENERAL CABLE INDUSTRIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

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

80. Defendant, **GOULD ELECTRONICS INC.**, individually and as successor-in-interest to ITE CIRCUIT BREAKER CO., was and is a Arizona corporation with its principal place of business in Ohio. At all times material hereto, GOULD ELECTRONICS INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing ITE circuit breakers present at numerous jobsites in South Carolina and North Carolina. GOULD ELECTRONICS INC. is sued as a Product Defendant. Plaintiffs' claims against GOULD ELECTRONICS INC. arise out of this Defendant's business activities in the State of South Carolina.

81. Defendant, **GOULDS PUMPS, INCORPORATED**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, GOULDS PUMPS, INCORPORATED manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or

asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Goulds pumps present at numerous jobsites in South Carolina and North Carolina. GOULDS PUMPS, INCORPORATED is sued as a Product Defendant. Plaintiffs' claims against GOULDS PUMPS, INCORPORATED arise out of this Defendant's business activities in the State of South Carolina.

82. Defendant, **GOULDS PUMPS LLC** f/k/a GOULDS PUMPS INC., was and is a Delaware limited liability company with its principal place of business in New York. At all times material hereto, GOULDS PUMPS LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Goulds pumps present at numerous jobsites in South Carolina and North Carolina. GOULDS PUMPS LLC is sued as a Product Defendant. Plaintiffs' claims against GOULDS PUMPS LLC arise out of this Defendant's business activities in the State of South Carolina.

83. Defendant, **GREAT BARRIER INSULATION CO.**, was an Alabama corporation with its principal place of business in Florida. At all times material hereto, GREAT BARRIER INSULATION CO. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. GREAT BARRIER INSULATION CO. is sued as a Product Defendant. GREAT BARRIER INSULATION CO. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Great

Barrier Insulation Co., exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against GREAT BARRIER INSULATION CO. arise out of this Defendant's business activities in the State of South Carolina.

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

85. Defendant, **HAJOCA CORPORATION**, was and is a Maine corporation with its principal place of business in Pennsylvania. At all times material hereto, HAJOCA CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing transite pipe at numerous jobsites in South Carolina and North Carolina. HAJOCA CORPORATION is sued as a Product Defendant. Plaintiffs' claims against HAJOCA CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

86. Defendant, **HOWDEN NORTH AMERICA, INC.** f/k/a HOWDEN BUFFALO INC., individually and as successor-in-interest to BUFFALO FORGE COMPANY and NEW PHILADELPHIA FAN CO., was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, HOWDEN NORTH AMERICA, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced,

repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Buffalo Forge fans and New Philadelphia fans present at numerous jobsites in South Carolina and North Carolina. HOWDEN NORTH AMERICA, INC. is sued as a Product Defendant. Plaintiffs' claims against HOWDEN NORTH AMERICA, INC. arise out of this Defendant's business activities in the State of South Carolina.

87. Defendant, **HPC INDUSTRIAL SERVICES, LLC**, f/k/a CLEAN HARBORS INDUSTRIAL SERVICES INC., solely in its capacity as the successor-by-merger and name change to BRAND INSULATIONS, INC., was and is a Delaware limited liability company with its principal place of business in Massachusetts. At all times material hereto, HPC INDUSTRIAL SERVICES, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. HPC INDUSTRIAL SERVICES, LLC is sued as a Product Defendant. HPC INDUSTRIAL SERVICES, LLC is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against HPC INDUSTRIAL SERVICES, LLC arise out of this Defendant's business activities in the State of South Corporation.

88. Defendant, **IMO INDUSTRIES INC.**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, IMO INDUSTRIES INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced,

repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing DeLaval pumps used at numerous jobsites in South Carolina and North Carolina. IMO INDUSTRIES INC. is sued as a Product Defendant. Plaintiffs' claims against IMO INDUSTRIES INC. arise out of this Defendant's business activities in the State of South Carolina.

89. Defendant, **ITT LLC** f/k/a ITT CORPORATION, ITT INDUSTRIES INC., ITT FLUID PRODUCTS CORP., HOFFMAN SPECIALTY MFG. CORP., BELL & GOSSETT COMPANY, ITT MARLOW, and KENNEDY VALVE COMPANY, was and is an Indiana limited liability company with its principal place of business in Connecticut. At all times material hereto, ITT LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Kennedy valves present at numerous jobsites in South Carolina and North Carolina. ITT LLC is sued as a Product Defendant. Plaintiffs' claims against ITT LLC arise out of this Defendant's business activities in the State of South Carolina.

90. Defendant, **JOY GLOBAL UNDERGROUND MINING LLC**, f/k/a JOY TECHNOLOGIES, INC., f/k/a JOY TECHNOLOGIES LLC, was and is a Delaware limited liability company with its principal place of business in Pennsylvania. At all times material hereto, JOY GLOBAL UNDERGROUND MINING LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Joy compressors present at numerous jobsites in South Carolina and North Carolina. JOY GLOBAL UNDERGROUND MINING LLC is sued as a Product Defendant.

Plaintiffs' claims against JOY GLOBAL UNDERGROUND MINING LLC arise out of this Defendant's business activities in the State of South Carolina.

91. Defendant, **K-MAC SERVICES, INC.**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, K-MAC SERVICES, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. K-MAC SERVICES, INC. is sued as a Product Defendant. K-MAC SERVICES, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of K-Mac Services, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against K-MAC SERVICES, INC. arise out of this Defendant's business activities in the State of South Carolina.

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

93. Defendant, **MINE SAFETY APPLIANCES COMPANY, LLC**, was and is a Pennsylvania limited liability company with its principal place of business in Pennsylvania. At all times material hereto, MINE SAFETY APPLIANCES COMPANY, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or

equipment, or products fraudulently marketed to prevent asbestos exposure including, but not limited to, MSA masks and respirators and other asbestos-containing products. MINE SAFETY APPLIANCES COMPANY, LLC is sued as a Product Defendant. Plaintiffs' claims against MINE SAFETY APPLIANCES COMPANY, LLC arise out of this Defendant's business activities in the State of South Carolina.

94. Defendant, **MP SUPPLY, INC.** f/k/a MILL-POWER SUPPLY COMPANY, was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, MP SUPPLY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing insulation materials, gaskets, packing, fireproofing, refractory products, and equipment which contained asbestos-containing materials present at numerous jobsites in South Carolina and North Carolina. MP SUPPLY, INC. is sued as a Product Defendant. Plaintiffs' claims against MP SUPPLY, INC. arise out of this Defendant's business activities in the State of South Carolina.

95. Defendant, **THE NASH ENGINEERING COMPANY**, was and is a Connecticut corporation with its principal place of business in Maine. At all times material hereto, THE NASH ENGINEERING COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Nash pumps used at numerous jobsites in South Carolina and North Carolina. THE NASH ENGINEERING COMPANY is sued as a Product Defendant. Plaintiffs' claims against THE NASH ENGINEERING COMPANY arise out of this Defendant's business activities in the State of South Carolina.

96. Defendant, **OCCIDENTAL CHEMICAL CORPORATION**, individually and as successor-in-interest to DUREZ CORPORATION, was and is a New York corporation with its principal place of business in Texas. At all times material hereto, OCCIDENTAL CHEMICAL CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers used at numerous jobsites in South Carolina and North Carolina. OCCIDENTAL CHEMICAL CORPORATION is sued as a Product Defendant. Plaintiffs' claims against OCCIDENTAL CHEMICAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

97. Defendant, **PARAMOUNT GLOBAL** f/k/a VIACOMCBS INC., f/k/a CBS CORPORATION, a Delaware corporation, f/k/a VIACOM, INC., successor-by-merger to CBS CORPORATION, a Pennsylvania corporation, f/k/a WESTINGHOUSE ELECTRIC CORPORATION and as successor-in-interest to BF STURTEVANT, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PARAMOUNT GLOBAL manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Westinghouse turbines and BF Sturtevant forced-draft blowers present at numerous jobsites in South Carolina and North Carolina. PARAMOUNT GLOBAL is sued as a Product Defendant. Plaintiffs' claims against PARAMOUNT GLOBAL arise out of this Defendant's business activities in the State of South Carolina.

98. Defendant, **PATTERSON PUMP COMPANY**, was and is an Ohio corporation with its principal place of business in Georgia. At all times material hereto, PATTERSON PUMP

COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Patterson pumps present at numerous jobsites in South Carolina and North Carolina. PATTERSON PUMP COMPANY is sued as a Product Defendant. Plaintiffs' claims against PATTERSON PUMP COMPANY arise out of this Defendant's business activities in the State of South Carolina.

99. Defendant, **PECW HOLDING COMPANY**, f/k/a PLASTICS ENGINEERING COMPANY, was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, PECW HOLDING COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers used at numerous jobsites in South Carolina and North Carolina. PECW HOLDING COMPANY is sued as a Product Defendant. Plaintiffs' claims against PECW HOLDING COMPANY arise out of this Defendant's business activities in the State of South Carolina.

100. Defendant, **PFIZER INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PFIZER INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing talc used at numerous jobsites in South Carolina and North Carolina. PFIZER INC. is sued as a Product Defendant. Plaintiffs' claims against PFIZER INC. arise out of this Defendant's business activities in the State of South Carolina.

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

102. Defendant, **PLASTICS ENGINEERING COMPANY**, d/b/a **PLENCO**, was and is a Wisconsin corporation with its principal place of business in Wisconsin. At all times material hereto, **PLASTICS ENGINEERING COMPANY** manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers used at numerous jobsites in South Carolina and North Carolina. **PLASTICS ENGINEERING COMPANY** is sued as a Product Defendant. Plaintiffs' claims against **PLASTICS ENGINEERING COMPANY** arise out of this Defendant's business activities in the State of South Carolina.

103. Defendant, **PRESNELL INSULATION CO., INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto,

PRESNELL INSULATION CO., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. PRESNELL INSULATION CO., INC. is sued as a Product Defendant. PRESNELL INSULATION CO., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Presnell Insulation Co., Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against PRESNELL INSULATION CO., INC. arise out of this Defendant's business activities in the State of South Carolina.

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

105. Defendant, **RILEY POWER INC.** f/k/a BABCOCK BORSIG POWER INC., f/k/a DB RILEY, INC., f/k/a RILEY STOKER CORPORATION, was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, RILEY POWER INC. manufactured, processed, imported, converted, compounded, supplied,

installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Riley Stoker boilers and associated asbestos materials present at numerous jobsites in South Carolina and North Carolina. RILEY POWER INC. is sued as a Product Defendant. Plaintiffs' claims against RILEY POWER INC. arise out of this Defendant's business activities in the State of South Carolina.

106. Defendant, **ROCKWELL AUTOMATION, INC.**, individually and as successor-in-interest to ALLEN-BRADLEY COMPANY LLC f/k/a ROCKWELL INTERNATIONAL CORPORATION, was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, ROCKWELL AUTOMATION, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Allen-Bradley electrical panels and electrical products used at numerous jobsites in South Carolina and North Carolina. ROCKWELL AUTOMATION, INC. is sued as a Product Defendant. Plaintiffs' claims against ROCKWELL AUTOMATION, INC. arise out of this Defendant's business activities in the State of South Carolina.

107. Defendant, **RSCC WIRE & CABLE LLC**, d/b/a ROCKBESTOS SUPERNANT CABLE CORP., was and is a Delaware limited liability company with its principal place of business in Connecticut. At all times material hereto, RSCC WIRE & CABLE LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Rockbestos wire and cable used at numerous jobsites in South Carolina and North Carolina. RSCC WIRE & CABLE LLC is sued as

a Product Defendant. Plaintiffs' claims against RSCC WIRE & CABLE LLC arise out of this Defendant's business activities in the State of South Carolina.

108. Defendant, **SCHNEIDER ELECTRIC USA, INC.**, f/k/a SQUARE D COMPANY, was and is a Delaware corporation with its principal place of business in Massachusetts. At all times material hereto, SCHNEIDER ELECTRIC USA, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Square D electrical panels and components used at numerous jobsites in South Carolina and North Carolina. SCHNEIDER ELECTRIC USA, INC. is sued as a Product Defendant. Plaintiffs' claims against SCHNEIDER ELECTRIC USA, INC. arise out of this Defendant's business activities in the State of South Carolina.

109. Defendant, **SEQUOIA VENTURES INC.** f/k/a BECHTEL CORPORATION, was and is a Delaware corporation with its principal place of business in Virginia. At all times material hereto, SEQUOIA VENTURES INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. SEQUOIA VENTURES INC. is sued as a Product Defendant. SEQUOIA VENTURES INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against

SEQUOIA VENTURES INC. arise out of this Defendant's business activities in the State of South Carolina.

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

111. Defendant, **SPX CORPORATION**, individually and as successor-in-interest to KINNEY PUMPS, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, SPX CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Kinney pumps present at numerous jobsites in South Carolina and North Carolina. SPX CORPORATION is sued as a Product Defendant. Plaintiffs' claims against SPX CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

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

to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. STAFFORD INSULATION COMPANY is sued as a Product Defendant. STAFFORD INSULATION COMPANY is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Stafford Insulation Company, exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against STAFFORD INSULATION COMPANY arise out of this Defendant's business activities in the State of South Carolina.

113. Defendant, **STANDARD INSULATION COMPANY OF N. C., INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STANDARD INSULATION COMPANY OF N. C., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. STANDARD INSULATION COMPANY OF N. C., INC. is sued as a Product Defendant. STANDARD INSULATION COMPANY OF N. C., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Standard Insulation Company of N. C., Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against STANDARD INSULATION COMPANY OF N. C., INC. arise out of this Defendant's business activities in the State of South Carolina.

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

115. Defendant, **STARR DAVIS COMPANY OF S.C., INC.**, was a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY OF S.C., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY OF S.C., INC. is sued as a Product Defendant. STARR DAVIS COMPANY OF S.C., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company of S.C. Inc., exposed tens of thousands of people, including

the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against STARR DAVIS COMPANY OF S.C., INC. arise out of this Defendant's business activities in the State of South Carolina.

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

117. Defendant, **TE WIRE & CABLE LLC**, was and is a Delaware limited liability company with its principal place of business in New Jersey. At all times material hereto, TE WIRE & CABLE LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Thermo Electric wire and cable used at numerous jobsites in South Carolina and North Carolina. TE WIRE & CABLE LLC is sued as a Product Defendant. Plaintiffs' claims against TE WIRE & CABLE LLC arise out of this Defendant's business activities in the State of South Carolina.

118. Defendant, **THERMO ELECTRIC COMPANY, INC.**, f/k/a THERMO ELECTRIC WIRE & CABLE CO., was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, THERMO ELECTRIC COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced,

repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Thermo Electric wire and cable used at numerous jobsites in South Carolina and North Carolina. THERMO ELECTRIC COMPANY, INC. is sued as a Product Defendant. Plaintiffs' claims against THERMO ELECTRIC COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

119. Defendant, **UNION CARBIDE CORPORATION**, was and is a New York corporation with its principal place of business in Texas. At all times material hereto, UNION CARBIDE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Calidria raw asbestos fibers used in drywall compounds and Bakelite boards at numerous jobsites in South Carolina and North Carolina. UNION CARBIDE CORPORATION is sued as a Product Defendant. Plaintiffs' claims against UNION CARBIDE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

120. Defendant, **VALVES AND CONTROLS US, INC.**, f/k/a WEIR VALVES & CONTROLS USA INC. d/b/a ATWOOD & MORRILL CO., INC., was and is a Texas corporation with its principal place of business in Oregon. At all times material hereto, VALVES AND CONTROLS US, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Atwood & Morrill valves at numerous jobsites in South Carolina and North Carolina. VALVES AND CONTROLS US, INC. is sued as a Product Defendant. Plaintiffs' claims against

VALVES AND CONTROLS US, INC. arise out of this Defendant's business activities in the State of South Carolina.

121. Defendant, **VELAN VALVE CORP.**, was and is a Delaware corporation with its principal place of business in Vermont. At all times material hereto, VELAN VALVE CORP. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Velan valves at numerous jobsites in South Carolina and North Carolina. VELAN VALVE CORP. is sued as a Product Defendant. Plaintiffs' claims against VELAN VALVE CORP. arise out of this Defendant's business activities in the State of South Carolina.

122. Defendant, **VIKING PUMP, INC.**, was and is a Delaware corporation with its principal place of business in Iowa. At all times material hereto, VIKING PUMP, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Viking pumps at numerous jobsites in South Carolina and North Carolina. VIKING PUMP, INC. is sued as a Product Defendant. Plaintiffs' claims against VIKING PUMP, INC. arise out of this Defendant's business activities in the State of South Carolina.

123. Defendant, **VISTRA INTERMEDIATE COMPANY LLC**, individually and as successor-in-interest to CRSS INC., was and is a Delaware limited liability corporation with its principal place of business in Texas. At all times material hereto, VISTRA INTERMEDIATE COMPANY LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities

that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. VISTRA INTERMEDIATE COMPANY LLC is sued as a Product Defendant and a Design Defendant. VISTRA INTERMEDIATE COMPANY LLC is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against VISTRA INTERMEDIATE COMPANY LLC arise out of this Defendant's business activities in the State of South Carolina.

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

125. Defendant, **WIND UP, LTD.**, individually and as successor-in-interest to PIPE & BOILER INSULATION, INC. f/k/a CAROLINA INDUSTRIAL INSULATING CO., was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, WIND UP, LTD. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation

and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. WIND UP, LTD. is sued as a Product Defendant. WIND UP, LTD. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Wind Up, Ltd., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiff's claims against WIND UP, LTD. arise out of this Defendant's business activities in the State of South Carolina.

126. Defendant, **YUBA HEAT TRANSFER LLC**, was and is a Delaware limited liability company with its principal place of business in Oklahoma. At all times material hereto, YUBA HEAT TRANSFER LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Yuba water pre-heaters present at numerous jobsites in South Carolina and North Carolina. YUBA HEAT TRANSFER LLC is sued as a Product Defendant. Plaintiffs' claims against YUBA HEAT TRANSFER LLC arise out of this Defendant's business activities in the State of South Carolina.

127. Defendant, **ZURN INDUSTRIES, LLC**, individually and as successor-in-interest to ZURN INDUSTRIES, INC., was and is a Delaware limited liability company with its principal place of business in Wisconsin. At all times material hereto, ZURN INDUSTRIES, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Zurn boilers present at numerous jobsites in South Carolina and North Carolina. ZURN INDUSTRIES, LLC is

sued as a Product Defendant. Plaintiffs' claims against ZURN INDUSTRIES, LLC arise out of this Defendant's business activities in the State of South Carolina.

128. Plaintiff John A. Tibbs experienced further occupational exposure as a result of working with asbestos-containing equipment in his immediate vicinity at his work site, the premises of Defendants DUKE ENERGY CAROLINAS, LLC and DUKE ENERGY CORPORATION (collectively, hereinafter the "Premises Defendants"). All other Defendants (except for METROPOLITAN LIFE INSURANCE COMPANY), or their applicable predecessors in interest, were engaged in the manufacture, sale, distribution and/or installation of asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action. At all times relevant to this action, the Defendants and the predecessors of the Defendants, for whose actions the Defendants are legally responsible, were engaged in the manufacture, sale, distribution, and/or installation of asbestos-containing products and raw materials for use in South Carolina and other states at times relevant to this action.

BACKGROUND FACTS

129. Plaintiffs bring this action for monetary damages as a result of Plaintiff John A. Tibbs contracting an asbestos-related disease.

130. Plaintiff John A. Tibbs was diagnosed with lung cancer on or about December 15, 2022.

131. Plaintiff John A. Tibbs's lung cancer was caused by his exposure to asbestos during the course of his employment, as well as through the asbestos carried home on the clothing and person of his father during the years in which he lived in the family home.

132. During his work history, Plaintiff John A. Tibbs was exposed to Defendants' asbestos-containing products through his work as a mechanic electrician from approximately the late 1950s to the late 1970s, at various industrial jobsites located primarily in South Carolina and

North Carolina. Plaintiff performed a variety of tasks throughout his worksites, which include but are not limited to, working on asbestos-containing pipe, block, cement, insulation, turbines, boilers, valves, steam traps, pumps, furnaces, and other equipment, as well as cutting, repairing, installing and removing asbestos-containing insulation, materials and other products. All of these activities exposed Plaintiff to asbestos and asbestos-dust.

133. During his work history, Plaintiff was further exposed through his work around other trades including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. Plaintiff worked near and closely to a variety of tradesmen working on asbestos-containing pipe, block, cement, insulation, turbines, boilers, valves, steam traps, pumps, furnaces, and other equipment, as well as tradesmen mixing, cutting, repairing, installing and removing asbestos-containing insulation, materials and other products. All of these activities exposed Plaintiff to asbestos and asbestos-dust.

134. Plaintiff John A. Tibbs was exposed to Defendants' asbestos-containing products through his work as a mechanic electrician for Duke Power Company from approximately the late 1950s to the late 1970s, at various locations, including but not limited to the following:

- Ninety-Nine Islands Hydroelectric Station – Blacksburg, SC
- Gaston Shoals Hydroelectric Station – Blacksburg, SC
- Portman Shoals Hydroelectric Station – Williamston, SC
- Rocky Creek Hydroelectric Station – Great Falls, SC
- Cedar Creek Hydroelectric Station – Great Falls, SC
- Boyd's Mill Hydroelectric Station – Poplar Springs, SC
- Oxford Hydroelectric Station – Conover, NC
- Rhodhiss Hydroelectric Station – Rhodhiss, NC
- Tumbling Shoals Hydroelectric Station/Dam – Lake Lure, NC
- Holiday's Bridge Hydroelectric Station – Belton, SC
- Riverbend Steam Station – Mount Holly, NC
- Cowans Ford Hydroelectric Station/Dam – Huntersville, NC
- Marshall Steam Station – Sherrills Ford, NC
- Dan River Steam Station – Eden, NC
- Oconee Nuclear Station – Seneca, SC
- Jocassee Hydroelectric Station/Dam – Salem, SC

- Keowee Hydroelectric Station – Seneca, SC
- Cliffside Steam Station – Mooresboro, NC
- Belews Creek Steam Station – Belews Creek, NC
- Allen Steam Station – Belmont, NC
- Buck Steam Station – Salisbury, NC
- Lee Steam Station – Williamston, SC

135. During the course of Plaintiff John A. Tibbs's employment at the location(s) mentioned above, during other occupational and non-occupational work projects and in other ways, Plaintiff was exposed to and inhaled, ingested, or otherwise absorbed asbestos dust and fibers emanating from certain products he was working around.

136. Plaintiff John A. Tibbs was further exposed as a result of his father John H. Tibbs's employment as a superintendent of maintenance for Duke Power Company from approximately the late 1930s to the early 1980s. Plaintiff's father was exposed to asbestos through his work throughout the various facilities, and was further exposed through his work around various other trades, including but not necessarily limited to premises workers, maintenance workers, insulators, pipefitters, welders, boilermakers, electricians, and others who installed and removed asbestos-containing materials.

137. While employed as a superintendent of maintenance, Plaintiff's father John H. Tibbs wore his own clothes to work, was exposed to asbestos dust and fibers that he brought home on his work clothes, fell off in his vehicle and were on his body including his hair, that distributed and re-entrained in his vehicle and home which caused Plaintiff John A. Tibbs to be exposed to said asbestos dust in sufficient amounts as to cause him to develop lung cancer.

138. From approximately the early 1940s to the early 1960s, Plaintiff John A. Tibbs was exposed to asbestos dust and fibers from products, services, and goods manufactured, distributed and/or sold by Defendants for use at Plaintiff's father's jobsites which Plaintiff came in contact with off premises through contact with his father's work clothes, personal possessions, and vehicle.

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

139. Plaintiff John A. Tibbs's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff John A. Tibbs's lung cancer and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

140. Plaintiffs and Plaintiff John A. Tibbs's father John H. Tibbs were not aware at the time of exposure that asbestos and/or asbestos-containing products presented any risk of injury and/or disease.

141. Plaintiffs are informed and believe, and thereon allege, that progressive lung disease, lung cancer and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

142. As a direct and proximate result of the conduct as alleged within, Plaintiff John A. Tibbs suffered permanent injuries, including, but not limited to, lung cancer and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

143. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff John A. Tibbs has incurred, and will continue to incur, liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof

being unknown to Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff John A. Tibbs's medical treatment is ascertained.

144. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiffs have incurred loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs request leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

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

Plaintiffs Complain of Defendants for a Cause of Action for Negligence Alleging as Follows:

145. Plaintiffs incorporate herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

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

147. At all times herein mentioned, Defendants, and/or their “alternate entities” singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products, in that said products caused personal injuries to Plaintiff John A. Tibbs and others similarly situated, (hereinafter collectively called “exposed persons”), while being used for their intended purpose and in a manner that was reasonably foreseeable.

148. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos and asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing Plaintiff John A. Tibbs’s lung cancer, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff’s lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their “alternate entities.” The gravity of the potential harm resulting from the use of Defendants’ asbestos or asbestos-containing products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate

use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by Plaintiff John A. Tibbs and his father John H. Tibbs. Defendants and/or their “alternate entities” had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

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

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

151. Plaintiff John A. Tibbs, Plaintiff’s family members and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein

in a manner that was reasonably foreseeable. Plaintiff's and his father John H. Tibbs's exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint.

152. Plaintiff John A. Tibbs suffers from lung cancer, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff John A. Tibbs and his father John H. Tibbs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

153. Defendants' conduct and defective products as described in this cause of action were a direct cause of Plaintiff John A. Tibbs's injuries, and all damages thereby sustained by Plaintiff John A. Tibbs. Plaintiffs therefore seek all compensatory damages in order to make them whole, according to proof.

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

155. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, Defendants and/or their "alternate entities" did so with conscious disregard for the safety of "exposed persons" who came in contact with asbestos and asbestos-containing products, in that Defendants and/or their "alternate entities"

had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, asbestosis, lung cancer, and other lung damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their “alternate entities.”

156. Defendants and their “alternate entities” were aware that members of the general public and other “exposed persons,” who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products, could cause injury, and Defendants, and their “alternate entities,” each of them, knew that members of the general public and other “exposed persons,” who came in contact with asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health and human life.

157. The above-referenced conduct of Defendants, and their “alternate entities,” was motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Defendants, their “alternate entities,” and each of them consciously disregarded the safety of “exposed persons” in pursuit of profit. Defendants were consciously willing and intended to permit asbestos and asbestos-containing

products to cause injury to “exposed persons” without warning them of the potential hazards and further induced persons to work with and be exposed thereto, including Plaintiff John A. Tibbs.

158. Plaintiff John A. Tibbs, his father John H. Tibbs, and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos containing-products, and products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff John A. Tibbs, his father John H. Tibbs, or other exposed persons. Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

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

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

FOR A SECOND CAUSE OF ACTION

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

As a Second and Distinct Cause of Action for Strict Liability, Plaintiffs Complain of Defendants, and Allege as Follows:

161. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

162. Plaintiff John A. Tibbs suffers from lung cancer, a cancer related to exposure to asbestos, asbestos-containing products and products manufactured for foreseeable use with

asbestos products. Plaintiff John A. Tibbs and his father John H. Tibbs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

163. The Product Defendants' conduct and defective products as described above were a direct cause of Plaintiff John A. Tibbs's injuries, and the injuries and damages thereby sustained by Plaintiffs.

164. Furthermore, the Defendants' conduct and that of their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff John A. Tibbs, his father John H. Tibbs, and the public without adequate warnings or proper use instructions, was done in a conscious disregard and indifference to the safety and health of Plaintiff John A. Tibbs, his father John H. Tibbs, and others similarly situated.

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

166. Plaintiff John A. Tibbs, Plaintiff's family members, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, referred to herein in a manner that was

reasonably foreseeable. Plaintiff's and his father John H. Tibbs's exposure to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products occurred at various locations as set forth in this Complaint.

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

168. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants' asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing Plaintiff John A. Tibbs's lung cancer, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

169. The defect existed in the said products at the time they left the possession of defendants and/or their "alternate entities," and each of them. Said products were intended to reach

the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including lung cancer, asbestosis, other lung damage, and cancer to “exposed persons,” including Plaintiff John A. Tibbs herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

170. Plaintiff John A. Tibbs, his father John H. Tibbs, and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff John A. Tibbs, his father John H. Tibbs, or other exposed persons. Said Defendants and/or their “alternate entities” further failed to adequately warn of the risks to which Plaintiff John A. Tibbs, his father John H. Tibbs, and others similarly situated were exposed.

171. Defendants’ defective products as described above were a direct cause of Plaintiff John A. Tibbs’s injuries, and the damages thereby sustained.

172. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, Defendants and/or their “alternate entities,” and each of them, did so with conscious disregard for the safety of Plaintiff John A. Tibbs, his father John H. Tibbs, and other exposed persons who came in contact with the asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, in that Defendants and/or their “alternate entities” had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products or products manufactured for

foreseeable use with asbestos products, including, but not limited to, lung cancer, asbestosis, other lung damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their “alternate entities.”

173. Defendants and/or their “alternate entities” were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products could cause injury. Defendants and/or their “alternate entities” further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact exposure was extremely hazardous to health and human life.

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

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

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

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

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

As a Third Distinct Cause of Action Against Defendants, Plaintiffs Bring this Third Cause of Action for Vicarious Liability of Defendants Based upon Respondeat Superior and Allege as Follows:

178. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

179. Prior to and during all relevant times Defendants and/or their “alternate entities” employed workers (hereinafter “employees”) in areas where defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff John A. Tibbs and/or his father John H. Tibbs worked and/or spent time as alleged above.

180. At all times herein mentioned, Defendants’ employees frequently encountered asbestos-containing products, materials, and debris during the course and scope of their employment, and during their regular work activities negligently disturbed asbestos-containing materials to which Plaintiff John A. Tibbs and his father John H. Tibbs were exposed.

181. Employees handling and disturbing asbestos-containing products in Plaintiff John A. Tibbs’s and his father John H. Tibbs’s vicinity were the agents and employees of defendants and at all times relevant were subject to the control of Defendants with respect to their acts, labor, and work involving (a) the removal, transport, installation, cleaning, handling, and maintenance of asbestos-containing products, materials, and debris, and (b) the implementation of safety policies and procedures. Defendants controlled both the means and manner of performance of the work of their employees as described herein.

182. Employees handling and disturbing asbestos-containing products in Plaintiff John A. Tibbs’s, Plaintiff’s family members and others’ vicinity received monetary compensation from

Defendants in exchange for the work performed and these employees performed the work in the transaction and furtherance of Defendants' businesses.

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

184. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Plaintiff John A. Tibbs and his father John H. Tibbs, who also inhaled those fibers, and on the surfaces of work areas, where further activity caused the fibers to once again be released into the air and inhaled by Plaintiff John A. Tibbs.

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

186. Defendants' employees' use, handling and manipulation of asbestos-containing materials, as required by their employment and occurring during the course and scope of their employment, did in fact, cause personal injuries, including lung cancer and other lung damage, to exposed persons including Plaintiff John A. Tibbs.

187. Defendants' employees were negligent in their use, handling and manipulation of said products in that they failed to isolate their work with asbestos and/or to suppress asbestos fibers from being released into the air and surrounding areas. They also failed to take appropriate steps to learn how to prevent exposure to asbestos, failed to warn and/or adequately warn Plaintiff John A. Tibbs and his father John H. Tibbs that they were being exposed to asbestos, failed to adequately warn Plaintiff John A. Tibbs and his father John H. Tibbs of the harm associated with his exposure to asbestos, and provide them with protection to prevent their inhalation of asbestos.

188. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Plaintiff John A. Tibbs and his father John H. Tibbs.

189. Defendants' employees owed Plaintiff John A. Tibbs and his father John H. Tibbs a duty to exercise due care and diligence in their activities while they were lawfully on the premises so as not to cause them harm.

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

191. At all times mentioned, Plaintiff John A. Tibbs and his father John H. Tibbs were unaware of the dangerous condition and unreasonable risk of personal injury created by Defendants' employees' use of and work with asbestos-containing products and materials.

192. As a direct result of the Defendants' employees conduct, Plaintiff John A. Tibbs's and his father John H. Tibbs's exposure to asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products, each individually and together, caused severe and permanent injury to Plaintiff John A. Tibbs and the damages and injuries as complained of herein by Plaintiffs.

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

194. Based on the foregoing, Defendants as the employers of said employees are vicariously liable under the doctrine of respondeat superior for all negligent acts and omissions

committed by their employees in the course and scope of their work that caused harm to Plaintiff John A. Tibbs.

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

As a Fourth Distinct Cause of Action for General Negligence, Plaintiffs Complain of Defendants, and Allege as Follows:

195. Plaintiffs incorporate by reference, the preceding paragraphs as if fully set forth herein.

196. Prior to and during all relevant times, the Defendants and/or their “alternate entities” employed workers in areas where Defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff John A. Tibbs and his father John H. Tibbs worked and/or spent time.

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

198. Defendants were negligent in selecting, supplying, distributing and disturbing the asbestos-containing products and in that said products were unsafe. Said products were unsafe because they released asbestos fibers and dust into air when used which would be inhaled by Plaintiff John A. Tibbs, and his father John H. Tibbs, and settled onto their clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers and by-standers including Plaintiff John A. Tibbs would be exposed to dangerous asbestos dust beyond the present.

199. The asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products described herein were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air, and the inhalation of asbestos fibers causes serious disease and death. Here, the handling of the above-

described asbestos-containing materials by Defendants' employees, as required by their employment and occurring during the course and scope of their employment, did, in fact, cause personal injuries, including lung cancer and other lung damage, to exposed persons, including Plaintiffs.

200. At all times herein mentioned, Defendants knew or should have known that its employees and bystanders thereto, including Plaintiff John A. Tibbs and his father John H. Tibbs, frequently encountered asbestos-containing products and materials during the course and scope of their work activities.

201. At all times herein mentioned, Defendants knew or should have known that the asbestos-containing materials encountered by its employees and bystanders thereto including Plaintiff John A. Tibbs and his father John H. Tibbs were unsafe in that harmful asbestos fibers were released during the use, handling, breaking, or other manipulation of asbestos-containing products and materials, and that once released, asbestos fibers can be inhaled, and can alight on the clothes, shoes, skin, hair, and body parts of those exposed, where further activity causes the fibers to once again be released into the air where they can be inhaled, all of which causes serious disease and/or death.

202. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that absent adequate training and supervision, their employees and bystanders thereto, including Plaintiff John A. Tibbs and his father John H. Tibbs, were neither qualified nor able to identify asbestos-containing products nor to identify the hazardous nature of their work activities involving asbestos-containing products.

203. At all times herein mentioned, Plaintiff John A. Tibbs and his father John H. Tibbs were unaware of the dangerous condition and unreasonable risk of personal injury created by the presence and use of asbestos-containing products and materials.

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

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

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

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

208. Defendants failed to warn their employees and bystanders thereto, including Plaintiff John A. Tibbs and his father John H. Tibbs, of the known hazards associated with asbestos and the asbestos-containing materials they were using and/or disturbing.

209. As a direct and proximate result of the conduct of Defendants in selecting, supplying, distributing and disturbing asbestos-containing materials or products manufactured for

foreseeable use with asbestos products and failing to adequately train and supervise their employees and failing to adopt and implement adequate safety policies and procedures as alleged herein, Plaintiff John A. Tibbs became exposed to and inhaled asbestos fibers, which was a substantial factor in causing Plaintiff John A. Tibbs to develop asbestos-related lung cancer, and to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION
(Negligence Per Se)

As a Fifth Distinct Cause of Action for Negligence Per Se, Plaintiffs Complain of Defendants, and Allege as Follows:

210. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

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

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

213. The negligence per se of Defendants was a proximate cause of Plaintiff John A. Tibbs's injuries.

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

As a Sixth Distinct Cause of Action for Negligence, Plaintiffs Complain of Design Defendants and Allege as Follows:

214. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

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

- (a) In failing and neglecting to properly inspect the building for defects in the construction, design, and defects in the asbestos-containing products, materials and/or equipment.
- (b) In failing and neglecting to properly train employees in the proper installation of asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (c) In failing and neglecting to properly supervise employees, contractors, subcontractors, and/or suppliers in the proper installation of asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (d) In failing and neglecting to employ careful contractors and/or employees.
- (e) In failing and neglecting to properly install asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (f) In failing to properly install the asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (g) In failing to properly warn Plaintiff John A. Tibbs and his father John H. Tibbs of dangers and risks associated with the conditions of the material and work product which was being installed for use by Plaintiff, his father, and others in their vicinity.
- (h) By such other failures as will be proved at trial.

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

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

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

As a Seventh Distinct Cause of Action for Negligent Design Services, Plaintiffs Complain of Design Defendants and Allege as Follows:

217. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

218. Design Defendants owed Plaintiff John A. Tibbs and his father John H. Tibbs a duty to perform professional design services, including construction administration, in accordance with professional standards obtained in South Carolina for the delivery and performance of such services.

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

- (a) In failing and neglecting to take reasonable care in the design of said building.
- (b) In failing and neglecting to properly design said building, to issue proper construction, to prevent continuous and substantial exposure to asbestos and/or asbestos-containing products.
- (c) In failing and neglecting to properly supervise the construction of said building.
- (d) In failing and neglecting to properly and reasonably design said building to eliminate exposure to asbestos and/or asbestos-containing products, including but not limited to asbestos-containing insulation.

- (e) In negligently specifying the use of inappropriate, improper and/or defective and deficient building systems, materials, and components, including but not limited to asbestos-containing insulation.
- (f) By such other failures as will be proved at trial.

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

FOR AN EIGHTH CAUSE OF ACTION

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

As an Eighth Distinct Cause of Action for Breach of Implied Warranties, Plaintiffs Complain of Defendants and Allege as Follows:

221. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

222. Each of the Defendants and/or their “alternate entities” impliedly warranted that their asbestos materials or asbestos-containing products were of good and merchantable quality and fit for their intended use.

223. The implied warranty made by the Defendants and/or their “alternate entities” that the asbestos and asbestos-containing products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Plaintiff John A. Tibbs and his father John H. Tibbs carried out their duties and was inhaled by Plaintiff John A. Tibbs.

224. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Plaintiff John A. Tibbs and his father John H. Tibbs were exposed to Defendants' asbestos, asbestos-containing products, and/or products manufactured for foreseeable use with asbestos products, and Plaintiff John A. Tibbs consequently developed lung cancer, causing Plaintiffs to suffer all damages attendant thereto.

FOR A NINTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Ninth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiffs Complain of Defendants, and Allege as Follows:

225. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

226. That during, before and after Plaintiff John A. Tibbs's exposure to asbestos products manufactured by Defendants and/or their "alternate entities", the Defendants and/or their "alternate entities" falsely represented facts, including the dangers of asbestos exposure to Plaintiff John A. Tibbs and his father John H. Tibbs in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff John A. Tibbs and his father John H. Tibbs. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

227. The foregoing representations were material conditions precedent to Plaintiff John A. Tibbs's continued exposure to asbestos-containing products. Defendants and/or their "alternate entities" each intended that Plaintiff John A. Tibbs act upon the representations by continuing his work around, and thereby exposure to, the asbestos products. Plaintiff John A. Tibbs was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

228. As a direct and proximate result Plaintiff John A. Tibbs's and his father John H. Tibbs's reliance upon Defendants' false representations, Plaintiffs have suffered injury and damages as described herein.

FOR A TENTH CAUSE OF ACTION
(Conspiracy, Concert of Action – Defendant Metropolitan Life Insurance Company)

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

229. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

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

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

232. The conspirators through their agent, Lanza of Met Life, made a concerted effort to discredit and to terminate the experiments of certain scientists who were developing data of

profound importance for the area of public health in relation to the cancer hazard which existed for workers and bystanders in the asbestos industry.

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

234. Defendant Met Life rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Plaintiff John A. Tibbs and his father John H. Tibbs were exposed, and such assistance by Met Life aided and abetted the negligence and the marketing of unreasonably dangerous asbestos-containing products by such manufacturers which proximately caused Plaintiff John A. Tibbs's illness.

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

236. Plaintiff John A. Tibbs and his father John H Tibbs unwittingly and justifiably relied upon the thoroughness of Met Life's tests and information dissemination, the results of which Met Life published in leading medical journals.

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

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

239. Additionally and alternatively, as a direct and proximate result of Met Life's actions and omissions, Plaintiff John A. Tibbs and his father John H. Tibbs were caused to remain ignorant of all the dangers of asbestos resulting in Plaintiff and his father, their co-workers, their wives, their family, and the general public to be unaware of the true and full dangers of asbestos, depriving Plaintiff John A. Tibbs and his father John H. Tibbs of the opportunity to decide for themselves whether they wanted to take the risk of being exposed to asbestos, denied Plaintiff and his father the opportunity to take precautions against the dangers of asbestos and proximately caused Plaintiff's damages herein.

240. During the relevant time period the Plaintiff John A. Tibbs and his father John H. Tibbs were exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied, and/or sold by the Johns Manville and/or Raybestos/Raymark.

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

- (a) In 1932, Met Life, through Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos-related disease. Further collaboration between Manville and Met Life continued the cover-up.
- (b) Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Lanza, Associate Director of Met Life, which was then insurer of Manville and Raymark, that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as 'fatal' and through other selective editing that affirmatively misrepresent asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark, and Met Life as insurer. Furthermore, upon information and belief, it is alleged that Met Life, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.
- (c) In 1936, the conspirators or some of them entered into an agreement with the Saranac Laboratories. Under this agreement, these conspirators acquired the power to decide what information Saranac could publish about asbestos disease and to control in what form such publications would occur. This agreement gave these conspirators power to affirmatively misrepresent the

results of the work at Saranac, and also gave these conspirators power to material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.

- (d) By November 1948, or earlier, Manville, Met Life (acting through Lanza), Raymark, and others decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.
- (e) At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensities of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the Plaintiff John A. Tibbs and his father John H. Tibbs.
- (f) As a direct result of influence exerted by the above described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and deliberately disseminated this misleading Vorwald publication to universities, libraries, government officials, agencies and others.
- (g) Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.
- (h) For many decades, Met Life, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature, and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly.

- (i) Despite the medical and scientific data, literature and test reports possessed by and available to Met Life, individually and in conspiracy with Manville and Raymark, Fraudulently, willfully and maliciously withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, lung cancer, and other illnesses and diseases from Plaintiff who using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products; caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, lung cancer, and other illnesses and diseases, which Metropolitan, Manville and Raymark knew were either incorrect, incomplete, outdated and misleading; distorted the results of medical examinations conducted upon workers who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm which workers suffered; and failed to adequately warn the Plaintiff of the dangers to which he was exposed when they knew of the dangers.
- (j) By the false and fraudulent representations, omissions, failures, and concealments set forth above, Met Life, Manville and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the Plaintiff John A. Tibbs and his father John H. Tibbs to rely upon said false and fraudulent representations, omissions, failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Said misrepresentations were false, incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

242. Plaintiff John A. Tibbs and his father John H. Tibbs reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Met Life, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

243. As a direct and proximate result of the conspiracy and concert of action between Met Life, Manville and Raymark, the Plaintiff John A. Tibbs and his father John H. Tibbs were deprived of the opportunity of informed free choice and connection with the use of and exposure

to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result brought asbestos dust or fibers home on their clothes, hair, shoes, and contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the Plaintiff has been damaged.

FOR AN ELEVENTH CAUSE OF ACTION
(Loss of Consortium)

For an Eleventh Distinct Cause of Action for Loss of Consortium, Plaintiff Margaret B. Tibbs Complains of Defendants, and Alleges as Follows:

244. Plaintiff incorporates by reference, the preceding paragraphs, where relevant.

245. Plaintiffs John A. Tibbs and Margaret B. Tibbs were married on or about June 23, 1962 and at all times relevant to their action were husband and wife.

246. Prior to his injuries as alleged, Plaintiff John A. Tibbs was able and did perform his spousal duties. As a proximate result thereof, subsequent to the injuries, Plaintiff John A. Tibbs has been unable to perform his spousal duties and the work and service usually performed in the care, maintenance and management of the family home. As a proximate result thereof, Plaintiff Margaret B. Tibbs was deprived of the consortium of her spouse, including the performance of duties, all to Plaintiffs' damages, in an amount presently unknown to Plaintiffs but which will be proven at time of trial.

247. As a direct and proximate result of the acts of Defendants and/or their "alternate entities" and the severe injuries caused to Plaintiff John A. Tibbs as set forth herein, Plaintiff's spouse and co-Plaintiff Margaret B. Tibbs suffered loss of consortium, including but not by way of limitation, loss of services, marital relations, society, comfort, companionship, love and affection of her spouse, and has suffered severe mental and emotional distress and general

nervousness. Plaintiff prays judgment against Defendants, their “alternate entities” and each of them, as hereinafter set forth.

PRAYER FOR RELIEF

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

1. For Plaintiffs’ actual damages according to proof, including pain and suffering, mental distress, as well as medical, surgical and hospital bills;
2. For loss of income or earnings according to proof;
3. For loss of care, comfort and society;
4. For punitive damages according to proof;
5. For cost of suit herein;
6. For damages for breach of implied warranty according to proof;
7. For damages for fraudulent misrepresentation according to proof;
8. For damages for conspiracy, concert of action (as to Defendant Metropolitan Life Insurance Company); and
9. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

F: 803-256-1952

tmcvey@kassellaw.com

jrutkoski@kassellaw.com

Other email: emoultrie@kassellaw.com

and

Kevin W. Paul (*To Be Admitted PHV*)

Charles W. Branham, III (*To Be Admitted PHV*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, Texas 75202

T: 214-722-5990

F: 214-722-5991

tbranham@dobslegal.com

kpaul@dobslegal.com

spepin@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

May 3, 2023

Columbia, South Carolina

s/Steven J. Pugh

Steven J. Pugh (S.C. Bar No. 14341)
Benjamin P. Carlton (S.C. Bar No. 101142)
Carmen V. Ganjehsani (S.C. Bar No. 73515)
Ashwin R. Sanzgiri (S.C. Bar No. 105198)
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street
Columbia, South Carolina 29201
Tel.: (803) 771-4400
spugh@richardsonplowden.com
bcarlton@richardsonplowden.com
cganjehsani@richardsonplowden.com
asanzgiri@richardsonplowden.com

*Attorneys for Appellants ArranCo US,
LLC, Hawk Bidco (US) Inc., and Sparrows Offshore,
LLC*

September 10, 2024

Sep 10 2024

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 **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).

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Ioannis (Ian) George Conits (iconits@gwblawfirm.com)
Amelia M. Farmer (farmer@conlaw.com)

Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)

Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Peter D. Protopapas (pdp@rplegalgroup.com)
Brian M. Barnwell (bb@rplegalgroup.com)

Counsel for the Receiver for Cape PLC

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

Counsel for Plaintiffs

James H. Elliott, Jr. (jelliott@richardsonplowden.com)

Cameron D. Berthelsen (cberthelsen@richardsonplowden.com)

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

John S. Nichols (john@bluesteinattorneys.com)

A. Victor Rawl, Jr. (vrawl@grsm.com)

William J. Blount (wblount@grsm.com)

Counsel for Co-Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

M. Todd Carroll (todd.carroll@wbd-us.com)

Kevin A. Hall (kevin.hall@wbd-us.com)

M. Elizabeth O'Neill (elizabeth.oneill@wbd-us.com)

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

/s Ashwin R. Sanzgiri

Ashwin R. Sanzgiri

Date: September 10, 2024

From: [Ashwin Sanzgiri](#)
To: [Vic Rawl](#); [John Nichols](#); [Meredith Brown](#); tmcvey@kassellaw.com; jkassel@kassellaw.com; kpaul@dobslegal.com; jrutkoski@kassellaw.com; tbranham@dobslegal.com; achapman@dobslegal.com; dhumen@dobslegal.com; khardin@dobslegal.com; tbarnes@dobslegal.com; pdp@rplegalgroup.com; jchandler@rplegalgroup.com; bb@rplegalgroup.com; Kevin.Hall@wbd-us.com; Elizabeth.ONeill@wbd-us.com; [James Elliott](#); [Cameron Berthelsen](#); [Steve Pugh](#); [Ben Carlton](#); [Carmen Ganjehsani](#); farmer@conlaw.com; jon@smithrobinsonlaw.com; murrell@smithrobinsonlaw.com; ljoyner@gwblawfirm.com; jlay@gwblawfirm.com; gculbreath@gwblawfirm.com; ljordan@gwblawfirm.com; ejones@gwblawfirm.com; dana.becker@morganlewis.com; brady.edwards@morganlewis.com; robert.jacques@morganlewis.com; paul.scrudato@morganlewis.com; iconits@gwblawfirm.com; shanonp@smithrobinsonlaw.com; Charity McQueen; wblount@grsm.com; Donna.Yingling@wbd-us.com; Todd.Carroll@wbd-us.com; [Helen Elliott](mailto:Helen.Elliott); troy.brown@morganlewis.com
Subject: John Tibbs v. Asbestos Corporation (12) (Appellate Case No. 2024-001446)
Date: Tuesday, September 10, 2024 5:46:26 PM
Attachments: [Return to Motion to Dismiss - Sparrows Appellants 09-10-24 \(3497512\).pdf](#)
[Appendix - Sparrows Appellants \(3497515\).pdf](#)

Good evening!

Please find served upon you the Return to the Motion to Dismiss and Expedite and accompanying Appendix on behalf of ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC, which will be filed with the Court of Appeals of South Carolina later today. Please let me know if you have any questions.

Thanks,

Ashwin

HOME	BIO	LOCATION
		
Ashwin R. Sanzgiri Attorney ASanzgiri@RichardsonPlowden.com		
Richardson Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, SC 29201 Tel: 803.576.3732 Fax: 803.779.0016 www.RichardsonPlowden.com		

The information contained in this e-mail message may be attorney-client privileged, attorney work product, or strictly confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (803) 771-4400 and permanently delete this e-mail.