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Case Type: (699) Special/Complex/Other
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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY *et al.*,

Defendants.

\*\*\*\*\*

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as  
successor in interest to ANGLO AMERICAN  
CORPORATION OF SOUTH AFRICA LTD.;  
DE BEERS PLC, individually and as successor  
in interest to DE BEERS S.A., et al.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:  
Asbestos Personal Injury Litigation  
Coordinated Docket

**REPORT ON CAPE RECEIVERSHIP IN  
THE ASBESTOS COURT**

Peter D. Protopapas, as Receiver (the “Receiver”) for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“Cape”) submits this Report on the status of the Cape receivership.<sup>1</sup> The question for the South Carolina courts is whether South Carolina law allows Cape to perpetrate a fraudulent

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<sup>1</sup> This report is being submitted by me, Peter D. Protopapas, as the Receiver for Cape. I use the third person in this Report for formality and ease of reading. As outlined below in the Penal Notice recently sent to Receiver and his counsel, the mere filing of this report in my capacity as the court-appointed Receiver will likely be weaponized by Altrad owners in England and Wales against me personally and anyone else who acts on any matters relating to the Receivership.

scheme to hide in the United Kingdom when it has assets in the United States that are responsive to innocent South Carolinians victimized by Cape.

As has been well documented, Cape employed a scheme to flee the jurisdiction of the United States and hide in the UK because of the risk of asbestos litigation exposure in the United States. Cape implemented its scheme to avoid liability to U.S. citizens in the 1970s with advice from attorneys. Today, Cape and its owners at Altrad recognize that Cape's mining and selling of asbestos harmed innocent people. Cape and its owners have stated that for UK citizens, Cape and Altrad are "firmly committed to settling cases that are determined to have merit."<sup>2</sup> As it pertains to U.S. citizens and South Carolinians, Cape and Altrad still rely on its scheme from the 1970s.

Cape and Altrad, having failed to dismantle the properly established Receivership in the South Carolina Circuit Court, South Carolina Court of Appeals, South Carolina Supreme Court, and United States Federal District Court over the last eighteen months, launched a collateral attack on the Receivership in England. The collateral attack in England resulted in an Order issuing from the High Court of Justice in England and Wales which Womble Dickson Bond, South Carolina attorneys for Mohed Altrad and Altrad Investment Authority SAS filed, in the South Carolina Circuit Court, South Carolina Court of Appeals, and South Carolina Supreme Court.<sup>3</sup> The English Order (hereinafter "Womble filing") was unilaterally obtained in England by Altrad owned Cape Intermediate Holdings Limited and Cape plc (Jersey). The English Order purports to enjoin Peter

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<sup>2</sup> See Exhibit 1, Altrad 2023 Annual Report, Cape\_Receiver\_00040840, at -40862

<sup>3</sup> Altrad Group is headed by Mohed Altrad, founder and President of the group, and by Jan Vanderstraeten and Ran Oren, joint-Chief Executive Officers. Altrad Group acquired the Cape UK entities in 2017. Altrad CEO Ran Oren, who also serves as the sole Director of Cape Intermediate Holdings Limited and Director of Cape, plc, initiated the English suit on behalf Cape, plc and Cape Intermediate Holdings Limited .

<https://find-and-update.company-information.service.gov.uk/company/00040203/officers>.

D. Protopapas individually rather than the Receivership and purports to order Peter D. Protopapas from fulfilling his duties as a Court appointed Receiver for Cape Intermediate Holdings Limited. The Order further attempts to usurp the South Carolina courts authority to act on any matters related to the Receivership, including matters currently pending before the trial court and appellate courts. The English Order was accompanied by a PENAL NOTICE (omitted from the Womble filing but also served on the Receiver and his counsel):

**IF YOU THE DEFENDANT DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY PERSON WHO KNOWS OF THIS ORDER AND DISOBEYS THIS ORDER OR DOES ANYTHING WHICH HELPS OR PERMITS ANY PERSON TO WHOM THIS ORDER APPLIES TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED**

Threatening criminal prosecution and imprisonment to anyone who dares to take action anywhere in the world involving litigation with a South Carolina Receiver that has, thus far, passed both state and federal scrutiny, is violative of the integrity and ethics of the American judicial system and practice of law. The degree of indifference to the rule of law in South Carolina and in the United States by the filers and advocates of these threats is extraordinary. Respectfully, the High Court of Justice in England and Wales cannot enjoin and jail members of the Federal and State Bench, its lawyers, or officers for enforcing United States and South Carolina law. As such the Womble filing violates the Receiver Appointment Order, the Barton Doctrine and improperly attempts to advance its litigation position in the United States by purporting to enjoin and by threatening the South Carolina Receiver and the South Carolina and American courts with imprisonment.

The question for the South Carolina courts is whether South Carolina law allows an English court to exercise jurisdiction over assets located in the United States, enjoin a properly established U.S. Receivership and U.S. courts, under threat of imprisonment. Furthermore, the Receivership is preventing a fraudulent scheme (by Cape) to shelter its assets *located in the United States* from legitimate claims of innocent South Carolinians victimized by Cape. Aside from the lack of comity shown by the English Order, the findings therein illustrate a basic misunderstanding of the purpose of a Receivership in South Carolina. While a Receiver in England may be obligated to protect its Board, shareholders, and assets to the exclusion of legitimate creditors, a Receiver in the United States is tasked with marshaling assets of the entity who refuses to address its legitimate creditors. It is Cape's scheme to avoid liability to injured South Carolinians and U.S. citizens which necessitated the appointment of a Receiver. The Receiver is an officer of the Court and is obligated to follow the directions of the appointing Court. Cape's attempt to enjoin Peter D. Protopapas individually is not a mechanism that stops a Court appointed Receiver from fulfilling the duties of the Receivership.

This type of ultra vires activity and disregard and disrespect of our judicial system in the United State and, particularly, in South Carolina has run rampant. Sereal improper appeals, discovery abuses, forum shopping, and open attacks on judges through filings and other outlets are burdening the courts and subverting the administration of justice.

## **I. BACKGROUND - CAPE RECEIVERSHIP APPOINTMENT**

The Receiver's appointment stems from an underlying asbestos lawsuit in which Cape was named but refused to participate. On June 4, 2021, Isabella Park filed a lawsuit asserting personal injury claims arising from asbestos exposure against (among others) an English entity, Cape PLC,

individually and as successor in interest to Cape Asbestos Company Ltd.<sup>4</sup> Ms. Park sought relief after being “diagnosed with mesothelioma caused by exposure to asbestos dust and fibers” unintentionally “brought home” for years “as a result of her husband’s work with and around asbestos-containing products.”<sup>5</sup>

On June 9, 2021, less than five months after her diagnosis, and within five days of filing her lawsuit, Ms. Park passed away. On November 17, 2021, Ms. Park’s son, Keith, amended the complaint, appearing individually and as personal representative to Ms. Park’s estate (the “*Park* Plaintiffs”), to assert a wrongful death action.<sup>6</sup> The amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) as a defendant.<sup>7</sup> In December 2021, the *Park* Plaintiffs served the named Cape entity, which (as has been Cape’s practice for decades) never answered, moved, or otherwise responded.

After Cape failed to answer the *Park* Complaint, Ms. Park moved for the appointment of a Receiver.<sup>8</sup> On March 17, 2023, this Court appointed Peter D. Protopapas as a receiver for an entity identified as “Cape PLC as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)” pursuant to S.C. Code § 15-65-10(5), as well as § 15-65-10(4) in the alternative.<sup>9</sup>

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<sup>4</sup> See Compl., *Park v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (June 4, 2021), at 1, 7.

<sup>5</sup> *Id.* at ¶ 4. *Id.* at ¶ 4.

<sup>6</sup> See First Amended Compl., *Park et al. v. Armstrong Int’l, Inc., et al.*, No. 2021-CP04002727 (Nov. 17, 2021).

<sup>7</sup> *Id.* at 9.

<sup>8</sup> See Mot. to Appoint Receiver (March 6, 2023) (2021-CP-40-02727, Richland County).

<sup>9</sup> See Order, *Park et al. v. Armstrong Int’l, Inc., et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) (“Appointment Order”), at 1.

## II. THIRD-PARTY ACTION AND FAILURE TO PARTICIPATE IN DISCOVERY

Following his appointment, the Receiver confirmed from court records and other publicly available information that Cape's failure to appear in *Park* was just one example of a decades-long liability avoidance scheme described herein. Further, the Receiver discovered that rather than perpetuate that scheme alone, Cape's business practices were directed, guided, and inured to the benefit of numerous entities associated with Cape over their histories.

### *A. The Receiver Filed a Third-Party Complaint on June 30, 2023*

On June 30, 2023, the Receiver filed the Third-Party Complaint, asserting claims against four groups of Third-Party Defendants for (i) unjust enrichment (first cause of action), (ii) constructive trust (second cause of action), (iii) alter ego and veil-piercing liability (third cause of action), and (iv) accounting (fourth cause of action). *See* Third-Party Compl., *Tibbs v. 3M Company, et al.*, No. 2023-CP-40-01759 (June 30, 2023). Each of the Third-Party Defendants named in the Third-Party Complaint are alleged to have facilitated, caused, or directed Cape's U.S.-based asbestos sales and liability-avoidance scheme, or otherwise acted as successors in interest to or beneficiaries of entities involved in that scheme, and are therefore responsible for the bodily injury underlying the claims against Cape, including specifically those claims asserted by South Carolinians.

The four groups of Third-Party Defendants were as follows:

1. **The Altrad Owners Third-Party Defendants** (as successors to Cape): Mohed Altrad and Altrad Investment Authority S.A.S.;
2. **The Charter Third-Party Defendants** (as successors to Charter and Central Mining): Central Mining & Investment Corporation Ltd.; Charter Consolidated Ltd., and ESAB Corporation

3. **The De Beers/Anglo Third-Party Defendants:** De Beers PLC, De Beers Centenary AG; De Beers UK Ltd.; De Beers Consolidated Mines Proprietary Ltd.; and Anglo American PLC
4. **The Altrad Sparrows Third-Party Defendants** (recently dismissed): ArranCo US LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore LLC

The Altrad and Charter Third Party Defendants’ refusal to participate in discovery, as chronicled below, has limited the Receiver’s ability to learn key information related to its causes of action other than from publicly available sources. After a series of Motions to Compel designed to remedy the Altrad and Charter Third-Party Defendants’ wholesale refusal to participate in the discovery process, this Court entered adverse inferences against the Charter and Altrad Third-Party Defendants.<sup>10</sup> To date, the Altrad and Charter Third-Party Defendants have not rebutted those adverse inferences.

***B. Trial Was Continued Due to Third-Party Defendants’ Refusal to Participate.***

Although originally set for a bench trial in the trial block set to commence April 15, 2024, this Court was forced to continue the trial during the April 10, 2024 pre-trial hearing “because of the Altrad and Charter Third Party Defendants’ refusal to provide any discovery to the Receiver to prepare this case for trial.” Order Granting Cape Receiver’s Mot. for Sanctions (May 23, 2024); *see also* Order Setting Trial Date (June 20, 2024) (trial continued “due to the lack of participation in the discovery process” by the Charter and Altrad Third-Party Defendants). The trial was reset for December 9, 2024 by a Scheduling Order dated June 20, 2024.<sup>11</sup> The Altrad Owners Third-Party Defendants, the Altrad Sparrows Third-Party Defendants, and the Charter Third-Party Defendants appealed the Scheduling Order to the South Carolina Court of Appeals, which

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<sup>10</sup> *See generally* Order Granting Cape Receiver’s Mot. for Sanctions (May 23, 2024).

<sup>11</sup> *See* Order Scheduling Trial Date (June 20, 2024).

dismissed the improper appeal.<sup>12</sup> Following a September 4, 2024 Status Conference and motions hearing on discovery, the Court issued an amended Scheduling Order on October 2, 2024, setting the trial for February 3, 2025.<sup>13</sup> The Altrad Owners Third-Party Defendants, the Altrad Sparrows Third-Party Defendants, and the Charter Third-Party Defendants again improperly appealed the Scheduling Order on November 1, 2024, which was dismissed four days later.<sup>14</sup> A Petition for Rehearing En Banc is once again pending.

The trial is now scheduled for February 3, 2025.

***C. This Court Entered Adverse Inferences After It Granted Two Motions to Compel.***

Two Orders on Motions to Compel further demonstrate the Charter and Altrad Third-Party Defendants' discovery recalcitrance. First, on March 12, 2024, this Court directed all Third-Party Defendants "(i) to provide responsive, substantive, and complete answers to the Receiver's Discovery Requests within 14 days of entry of this Order and (ii) to begin producing documents in response to the Receiver's Requests for Production the same day," among other things.<sup>15</sup> The Third-Party Defendants did not meaningfully comply with this Order.

As a result, on May 23, 2024, this Court granted the Receiver's second Motion to Compel. This time, the Court found that the "only excuses offered by these Third-Party Defendants are frivolous. . . . They argue that Rule 205, SCACR, poses a jurisdictional bar preventing this third-

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<sup>12</sup> See Order in *Tibbs v. 3M Co.*, No. 2024-001446 (S.C. Ct. App. Sep. 18, 2024) ("After careful consideration, the motion [to dismiss] is granted and the appeal is dismissed."). The South Carolina Court of Appeals subsequently denied Petitioners' Petition for Rehearing. See Order in *Tibbs v. 3M Co.*, No. 2024-001446 (S.C. Ct. App. Nov. 14, 2024).

<sup>13</sup> See Scheduling Order (Oct. 2, 2024).

<sup>14</sup> See Order in *Tibbs v. 3M Co.*, No. 2024-001862 (S.C. Ct. App. Nov. 5, 2024) ("This appeal arises out of a scheduling order of the circuit court setting timelines for the completion of discovery in anticipation of trial. The appeal is dismissed because the order on appeal is not immediately appealable.").

<sup>15</sup> Order Granting Receiver's Mot. Compel Disc. Resps. (March 12, 2014), at 13.

party action from continuing, because by simply appealing [their] denied motions to dissolve the receivership, they can deprive the trial court of jurisdiction for an indeterminate time period.” May 23, 2024 Order at 11-12. Citing a string of orders by the South Carolina Court of Appeals and the South Carolina Supreme Court in receivership actions, the Court reasoned, “Thus, the Supreme Court and Court of Appeals have made clear that—categorically—the denial of motions to dismiss and dissolve a receivership, like discovery orders, are not immediately appealable.” *Id.* at 12.

The Court found that the Charter and Altrad Third-Party Defendants’ “continued discovery misconduct”—*i.e.*, their refusal to participate in discovery “amount[ed] to bad faith, willful disobedience, and gross indifference to the rights of the Receiver and this Court’s management of its docket,” entered a series of adverse inferences against the Charter and Altrad Third-Party Defendants.<sup>16</sup>

### **III. MOTION FOR SUMMARY JUDGMENT AGAINST ALTRAD & ESAB**

On November 8, 2024, the Receiver filed a Motion for Summary Judgment against Charter Consolidated Ltd., ESAB Corporation, Mohed Altrad, and Altrad Investment Authority S.A.S., seeking summary judgment with respect to the Receiver’s equitable claims for alter ego and veil piercing liability against those Third-Party Defendants for their participation in and/or successor liability for the scheme to evade U.S. liability for the sale of Cape asbestos products in the U.S. market.

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<sup>16</sup> Order Granting Cape Receiver’s Mot. Sanctions (May 23, 2024), at 15, 17, 27-31 (“[T]he Altrad and Charter Third-Party Defendants continue to refuse any effort at compliance with the Court’s orders and the discovery rules of this State. Despite multiple warnings by this Court and directives to **proceed with discovery**, these Third Party Defendants have continued their misconduct while filing multiple frivolous appeals that, based on clearly applicable precedent, will inevitably be dismissed.” (emphasis in original)).

As the Summary Judgment Motion explains in great detail, Cape and its immediate parent, as part of a much larger Group System led by the Oppenheimer family, made the conscious decision to avoid future U.S. liability by appearing to exit the U.S. market, but then creating a series of shell entities to continue asbestos sales in the United States for several years. This evasion technique continues to the present where, through baseless legal challenges to this Court's appointment of the Receiver, serial improper appeals of this Court's discovery orders, and an outright refusal to participate in the discovery process, the Charter and Altrad persist in the scheme of litigation avoidance instituted decades earlier.

#### **IV. ALTRAD'S UK ACTIVITY**

Nearly eighteen (18) months after the appointment of Peter D. Protopapas as Receiver for Cape, plc, Cape Intermediate Holdings Limited and Cape PLC (a company incorporated under the laws of Jersey) initiated an action in the High Court of Justice in England and Wales against *Peter D. Protopapas*, individually, seeking to enjoin me personally from certain activities relating to Cape Intermediate Holdings Limited ("UK action"). It should be noted that Cape PLC (a company incorporated under the laws of Jersey) is not involved in the present action in the United States. Furthermore, Mr. Protopapas in his capacity as Court-appointed Receiver of Cape was not named in the UK action and no action has been commenced against Mr. Protopapas or served on Mr. Protopapas in his capacity as the Court-appointed Receiver of Cape.

On November 22, 2024, the High Court of Justice issued an Order enjoining Peter D. Protopapas from personally taking any action regarding Cape Intermediate Holdings Limited or from prosecuting the Third-Party Complaint. These directives are in direct contravention to the orders of this Court, the United States District Court, United States Fourth Circuit Court of Appeals, and the United States Supreme Court under the doctrine articulated in *Barton v. Barbour*,

104 U.S. 126 (1881). Under the “*Barton* doctrine,” the state court that appoints the receiver maintains exclusive jurisdiction over all claims filed by and against that receiver—subject only to the state court’s own waiver of that exclusive jurisdiction. *McDaniel v. Blust*, 668 F.3d 153, 157 (4th Cir. 2012).

The Altrad Owners’ efforts to overturn this Court’s Appointment Order, which not only violates U.S. law but attempts to nullify this Court’s jurisdiction through an action in the High Court of Justice of England and Wales, necessitates guidance from this court. A brief history is in order:

1. On October 11, 2024, the Receiver filed a motion before this Court to Enforce the Appointment Order. The Receiver requested the Court to order the Altrad Owners to terminate their action in the England directed against the Receiver.<sup>17</sup>

2. After a request by the Receiver’s Counsel John T. Lay on October 21 that the Court take up the Receiver’s motion “at its earliest convenience,”<sup>18</sup> the Court promptly responded the following day, recognizing the importance of comity and stating “[I am aware of Cape’s London litigation. While I am sympathetic with your client Receiver Protopapas’ situation, I do not think it is appropriate for this Court to attempt to be involved in litigation before the High Court of Justice of England and Wales. Therefore, I decline to take any immediate action on Cape’s Motion to Enforce the Appointment Order. The matter before me involving Cape is scheduled for pre-trial on January 29, 2025, and trial beginning February 3, 2025. This gives the Court abundant time to address any rulings in the London litigation.]

”<sup>19</sup>

3. On November 1, the Receiver filed a motion to Clarify Order Appointing a Receiver for Cape PLC.<sup>20</sup> The Receiver sought clarification that the Receiver’s efforts relating to the “Cape litigation to date has all been conducted within the appropriate scope of his appointment.”<sup>21</sup>

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<sup>17</sup> See Mot. To Enforce the Appointment Order (Oct. 11, 2024).

<sup>18</sup> See Exhibit 2, E-mail from J. Lay to Chief Justice Toal (Oct. 21, 2024).

<sup>19</sup> *Id.* at E-mail from the Court to J. Lay.

<sup>20</sup> See Receiver’s Mot. to Clarify in *Park v. Armstrong Int’l, Inc.*, No. 2021-CP-40-02727 (Nov. 1, 2024).

<sup>21</sup> *Id.* at 5.

4. The Court issued an Order granting the Receiver's Motion to Clarify on November 5.<sup>22</sup> The Court reminded the Altrad Owners of (i) the applicability of the *Barton* doctrine to the case, and (ii) the authority of the Receiver and the Receivership Court. The Court cited numerous decisions (4<sup>th</sup> Circuit, District Court and South Carolina Appellate Courts) affirming these principles. The Court noted that a recent filing in the High Court - purportedly in support of the Altrad Owners' claims - by retired jurist William W. Wilkins (U.S. Fourth Circuit Court of Appeals)<sup>23</sup> warranted the Court's clarification of the Appointment Order.<sup>24</sup>

5. A few days later, Judge Wilkins supplemented his expert report.<sup>25</sup> Judge Wilkins was apparently misled by the Altrad Owners in soliciting his initial report because, as he noted, "...apparently a rich history of facts exists in relation to [the receivership] litigation – facts of which I remain unaware."<sup>26</sup> Judge Wilkins went on to state that his report "should not be construed as somehow implying that the South Carolina Court exceeded its authority or that the South Carolina Court's Receiver has done anything outside the scope of the Court's Appointment Order."<sup>27</sup> The Altrad Owners solicited an "opinion" from Judge Wilkins, but told him *nothing* about the underlying litigation before Your Honor.

6. After a Hearing in the UK in which the Receiver did not participate, the High Court (through Justice Mann) on November 22 issued a decision finding in favor of the Altrad Owners. Notably, this injunction purports to enjoin Mr. Protopapas personally from complying with this Court's Order of Appointment and preclude him from acting as receiver for Cape PLC not just in England and Wales, but also..." "worldwide," and specifically in South Carolina<sup>28</sup>

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<sup>22</sup> See Order Granting Receiver's Motion to Clarify Order Appointing a Receiver for Cape PLC in *Park v. Armstrong Int'l, Inc.*, No. 2021-CP-40-02727 (Nov. 5, 2024).

<sup>23</sup> See Exhibit 3, October 30, 2024 Report of Wilkins. Judge Wilkins (ret.) authored the Fourth Circuit opinion in *SAS Institute, Inc. v. World Programming Ltd.*, 952 F.3d 513 (2020), in which the court affirmed a district court decision granting two injunctions to protect a U.S. judgment in the face of a later-obtained U.K. anti-suit injunction, as "[f]ailing to take even these modest steps would have encouraged any foreign company and company to undermine the finality of a U.S. judgment." The U.K. company argued that the U.K. court "took independent action under a U.K. statute" and did not "relitigate, attack, or alter the district court's judgment," but Judge Wilkins rejected the argument: "As an initial matter, it strains logic to characterize a proceeding as separate and independent of a previous proceeding when its sole purpose is to vitiate the previous judgment." *Id.* at 524, (internal quotation marks omitted). Judge Wilkins ended his opinion with the observation, "[t]o have done nothing would invite foreign litigants to undermine the finality of many an American judgment and foreign countries to doubt the very efficacy of American law." *Id.* at 531.

<sup>24</sup> *Id.* 3 ("Recent events, including an expert report by retired jurist William W. Wilkins, warrant further clarification of the Appointment Order.").

<sup>25</sup> See Exhibit 4, Supplemental Report of W. Wilkins (Nov. 11, 2024).

<sup>26</sup> *Id.* at p. 2.

<sup>27</sup> *Id.* at p. 2.

<sup>28</sup> See Exhibit 5, UK Order at page 3 (Nov. 22, 2024).

7. Two days later, the Altrad Owners by and through their counsel, Womble Bond Dickson,<sup>29</sup> filed Judge Mann’s decision in this case and “supplemented” their pending appeal to the Supreme Court of South Carolina by attaching Justice Mann’s decision. The gist of this filing was that this Court’s Appointment Order was in violation of a 1990 decision from the Court of Appeal of England and Wales (*Adams v. Cape Industries plc* (1990) 1 Ch 433(CA)).

By way of background, the *Adams* case involved an effort 40 years ago by Texas asbestos personal injury plaintiffs to collect - in England - on a default judgment entered against Cape in the United States District Court for the Eastern District of Texas. As this Court knows from the Receiver's action here in South Carolina, Cape and its U.S. subsidiary North American Asbestos Corporation (“NAAC”) sold tens of thousands of tons of amosite and crocidolite fibre to US product manufacturers. Confident of its perceived immunity to claims in its home country – England - by dead and dying U.S. asbestos plaintiffs, Cape defaulted in the Texas action.

Cape was well-aware that, in England, the wall between parent and subsidiary is inviolable – merely setting up a literal one-man “corporation” in Chicago was all Cape thought needed to shield itself from claims in England by U.S. plaintiffs. The issue in *Adams* was whether Cape had had a “presence” in the United States through NAAC. Upon finding for Cape, *Adams* insulated

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<sup>29</sup> Ironically, Womble Bond Dickson was same counsel that was involved in the (adverse) decision in the Fourth Circuit Court of Appeals confirming that the Receiver may not sue or sued in a court other than the exclusive jurisdiction of the Receiver court. See *Protopapas v. Travelers Casualty & Surety Co.*, 94 F.4th 351 (4th Cir. 2024) (“Exercising federal jurisdiction over a suit by or against a state-appointed receiver, who functions as an ‘arm,’ or ‘executive’ of the state-receivership court, would infringe on the state court’s control over the receivership assets—its exclusive jurisdiction. Thus, as a matter of comity, as well as custom, the *Barton* doctrine rests on this exclusivity of the state receivership over the assets before it as a matter of jurisdiction, and indeed we have confirmed as much” (*Id.* at 358)). Womble Dickson Bond also was involved in the (adverse) decision in the South Carolina Supreme Court in Childers. See *Childers v. Davis Mechanical Contractors, Inc.*, No. 2024-000005 (S.C.S.C. March 27, 2024) (“We grant the motion for certification and motion for joinder, dispense with further briefing, vacate the court of appeals denial of sanctions, and dismiss the appeal because the underlying circuit court order at issue is not immediately appealable.”).

Cape from exposure in England, and the U.S. plaintiffs in the case – and many hundreds of thousands of plaintiffs to come in the United States – were left with no remedy *in England*.

One might have thought – given this Court’s reluctance to interject itself into litigation in England – that Justice Mann might have taken a similar approach to comity and reciprocated. But Justice Mann went to the opposite extreme and deemed himself empowered to not only reach into the State of South Carolina, but also to nullify or overturn this Court’s Appointment Order as it related to litigation *in South Carolina*, and nullify litigation “worldwide” involving this Receiver. But Justice Mann’s November 22 decision is a one-legged stool – it rests entirely on the *Adams* case. The Receiver will therefore address the relevance of *Adams* to this Court’s Appointment Order and the Receiver’s action in South Carolina..

First, the obvious. This Court is not bound by *Adams* or Justice Mann’s November 22 decision. The Altrad Owners can pretend all they like that a decision from a court in England takes precedence “worldwide,” but one need not waste much time on that pretention.

Second, the *Adams* case involved US plaintiffs who went *to England* to enforce a Texas judgment *in England* pursuant *to English law* such that as company *in England* would be compelled to pay on the Texas judgment. The South Carolina receivership action does involve US plaintiffs, but any similarity to *Adams* stops there. The Receiver has not and does not intend to go to England to seek any relief. Any future judgment from this Court will not be enforced in England. And for many of the third-party defendants, a judgment would be enforced in the United States. The entirety of this receivership action has been and will be governed by US law - specifically, South Carolina law.

Justice Mann pays great reverence to the *Adams* case, but he never addresses this litigation reality: if a *South Carolina* court determines that it has jurisdiction over the Altrad Owners, and

if the Receiver prevails *in South Carolina* on its liability claims against those defendants pursuant *to South Carolina law*, and if the enforcement of any judgement against those defendants would take place *in the United States* (or any place other than in England), what then? The notion that *Adams* precludes a remedy as a matter of law in this scenario is nonsense. Would the reverse be true? If an English court determined that an action filed in England satisfied all English legal requirements such that a South Carolina corporation were liable in England to English plaintiffs, would this Court have primacy to block a remedy in England? Of course not. Procedurally and factually, the *Adams* case has no relevance in this case under these unique circumstances.

Third, even if *Adams* was a decision that would need to be reconciled with the relief being sought in the United States, the fact remains that the claims against Cape 40 years ago are not identical to the claims being made in the Receivership action. The expert evidence in this case, in fact, was not presented in *Adams*. The facts here are more fully developed and align with this new expert testimony. While it is true that alter ego is a relevant theory in the Receivership case, South Carolina law on alter ego and corporate separateness in 2024 is materially – even radically – different from English law that *Adams* applied. The amalgamated enterprise cause of action was only recently endorsed in South Carolina in 2018 with the *Pertuis* decision (*Pertius v Front Roe Restaurants, Inc*, 423 S.C. 640, 817 S.E. 2d 273 (2018), and its parameters continue to be established and may further be refined with this case. This Receiver has established an expansive record on amalgamation – and it is solely up to this Court to determine if those claims satisfy South Carolina law.

Finally, the conclusions in *Adams* do not go un rebutted in the United States. As this Court pointed out in its December 6, 2023 Order denying the third-party defendants’ motions to dissolve

the receivership and for lack of personal jurisdiction,<sup>30</sup> a number of US courts have determined that plaintiffs' alter ego and other claims against Cape were more than sufficient to get to a jury.<sup>31</sup> All of these decisions are dated in the *Adams* time period and were based largely on the same evidence that was before the English court in *Adams*. The US courts applied US law and saw the plaintiffs' claims differently than did the English court in *Adams*.<sup>32</sup>

In sum, the *Adams* case and Justice Mann's decision have no relevance here, and are certainly not controlling.

## **V. LETTERS FROM SIGNATURE LITIGATION LLP TO THE RECEIVER AND HIS COUNSEL**

Cape's lawyers in England – Signature Litigation LLP – notified the Receiver of Justice Mann's decision on November 22, 2024. On November 27, Signature Litigation LLP sent another letter to the Receiver stating that “you are hereby instructed to cease and desist from all conduct related [to] [Cape]...including but not limited to any and all proceedings currently pending in the courts of South Carolina.”<sup>33</sup> The letter reiterated that this Court's Appointment Order has “no legal effect in England and Wales and worldwide.”<sup>34</sup> The letter also states that your Receiver is obligated to pay the costs associated with the application before Justice Mann that resulted in the

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<sup>30</sup> See Order Denying Third-Party Def. Mot. to Dismiss (Dec. 6, 2023).

<sup>31</sup> *Id.* at 68, fn. 36.

<sup>32</sup> To the extent the Injunction Order asserts: “The problems that the English Board faces” and that “[t]here are potentially two centres of power . . . Absent a determination by the court, the director may find himself in difficulties in running the company's business with the receivership in the background. He claims, understandably, to be uncertain in areas such as signing off company accounts, executing documents, selling or buying assets and other commercial transactions.” See p. 56-57 of the injunction Order. The Receiver is not interested, nor has he ever been interested in managing Cape. Rather, the Receiver is interested in marshalling the assets of Cape in South Carolina and the United States to pay legitimate claims in South Carolina.

<sup>33</sup> Exhibit 6, Letter from Signature Litigation to P. Protopapas, Nov. 27, 2024.

<sup>34</sup> *Id.*

Nov. 22 Order.<sup>35</sup> The letter closes with a request to cease acting as this Court’s Receiver, and threatening, “If you fail to do so and continue to act in breach, action will be taken against you without further notice.”<sup>36</sup>

Later in afternoon on November 27, Signature Litigation LLP sent a letter to Morgan Lewis & Bockius – addressed, specifically, to eight lawyers who represent the Receiver in the Cape matter, and the General Counsel of the law firm – demanding that the Firm “advise [the Receiver] that he is hereby instructed to cease and desist from all conduct” related to Cape “worldwide.”<sup>37</sup> Then, on November 28, Signature Litigation LLP sent a letter to Justice Mann informing him of actions taken by your Receiver in South Carolina, such as disclosing expert witness reports related to the trial, and other affirmative pleadings.<sup>38</sup> Finally, on November 29, Signature Litigation LLP sent letters to Smith Robinson and Gallivan, White & Boyd, nearly identical to the letter to Morgan Lewis, and again demanding that the firms “advise [the Receiver] that he is hereby instructed to cease and desist from all conduct” related to Cape “worldwide.”<sup>39</sup>

With all respect to Counsel at Signature Litigation LLP, and to Justice Mann, it appears to be a somewhat contradictory position to presume that the Courts in England and Wales have jurisdiction over the South Carolina appointed Receiver and the responsive assets located in the United States but that the United States federal and state courts do not have jurisdiction over a South Carolina Receiver and responsive assets of the Receiver located in the United States. The

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 2.

<sup>37</sup> Exhibit 7, Letter from Signature Litigation to Morgan Lewis lawyers T. Brown, D. Becker. S. Kim, P. Scrudato, M. Coffey, B. Edwards, R. Jacques, L. Semlinger, and D. Waldron, Nov. 27, 2024.

<sup>38</sup> Exhibit 8, Letter from Signature Litigation to Justice Mann, Nov. 28, 2024.

<sup>39</sup> Exhibit 9, Letter from Signature Litigation to J. Robinson of Smith Robinson, Nov. 29, 2024; Exhibit 10, Letter from Signature Litigation to J.T. Lay and W. McGee of Gallivan White & Boyd, Nov. 29, 2024.

correspondence to Morgan Lewis, Smith Robinson, and Gallivan White & Boyd; and to this Court's Receiver threatening the imposition of costs and the Penal notice threatening imprisonment of anyone who acts on any matter related to this Receivership violates rules against threatening criminal prosecution to gain an advantage in a civil matter and is designed to intimidate and subvert justice, and nothing more. As discussed below, the Receiver stands ready to try this case on February 3, 2025.

#### **V. THE RECEIVER'S MOTION TO AMEND THE THIRD-PARTY COMPLAINT**

On October 31, 2024, the Receiver moved to amend its Third-Party Complaint to conform to the additional evidence the Receiver has uncovered in his investigation.<sup>40</sup> Specifically, the Receiver seeks to amend the Complaint to add a separate cause of action for amalgamation. Although amalgamation is related to the alter ego/veil piercing claim, the evidence the Receiver has uncovered to date establishes that the Third-Party defendants were or are intertwined with Cape acting with a common business purpose to perpetuate the ongoing scheme to evade responsibility for harm caused to South Carolinians and other Americans by Cape's asbestos, while also financially benefitting from that scheme.

#### **VI. FEBRUARY 3-7, 2025 TRIAL**

This case is currently set for a bench trial to begin on February 3, 2025. At the bench trial, the Receiver will be prepared to present live witnesses and evidence to support its equitable claims against all then-named third-party defendants, including that which is presented in the currently pending Motion for Summary Judgment and presentations as to the liability for the De Beers Third-Party Defendants and Anglo American PLC.

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<sup>40</sup> See Mot. for Leave to Amend (Oct. 31, 2024).

In compliance with this Court's Scheduling Order, the Receiver served its expert disclosures, along with the reports of Dr. Stephen Press and Dr. Barry Castleman, on November 27, 2024. The Receiver will continue to comply with all deadlines within this Court's Scheduling Order.

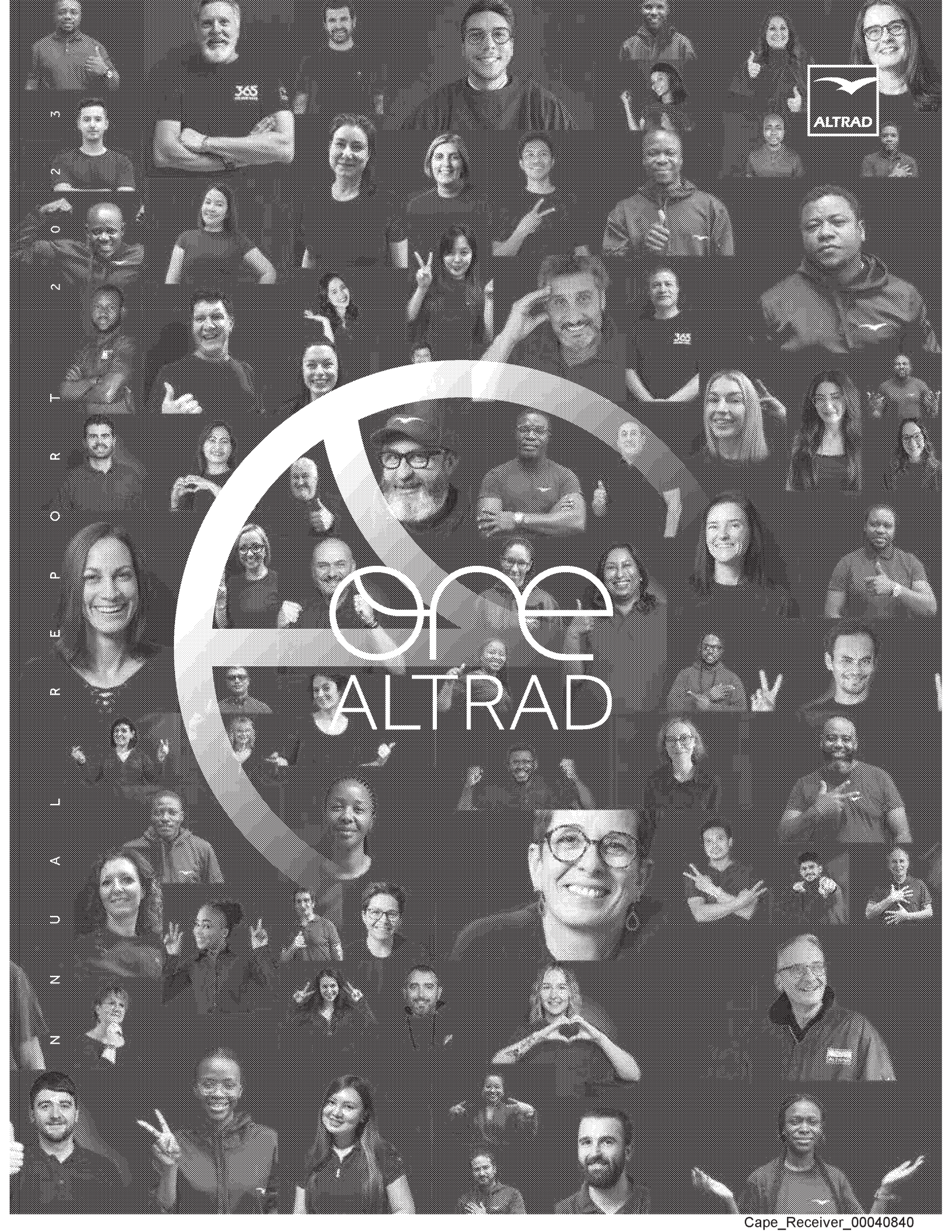
## **VII. CONCLUSION**

As set forth above, the Receiver does not believe that the Order from the High Court of Justice of England and Wales impacts proceedings in South Carolina despite its threat of jailing the Receiver, his lawyers, Court officials, and Judges. However, in an abundance of caution and in light of the drastic actions being threatened against me personally, the Receivership and its counsel, as well as the Courts and anyone involved in the Receivership, the Receiver respectfully submits this report. A copy of this report is also being furnished to the South Carolina Supreme Court, in response to the Womble filing purporting to enjoin the Receiver and that Court as well.

Respectfully submitted,

s/ Peter D. Protopapas  
Peter D. Protopapas, Receiver  
SC BAR No 68304  
2110 N. Beltline Blvd  
Columbia, South Carolina 29204  
803.978.6111  
[pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)

This 6<sup>th</sup> Day of December, 2024



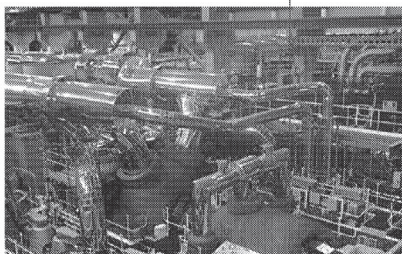
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## Consolidation & integration

As the Altrad Group has grown, Altrad Services UK, a company formed from the earlier merger of Cape, Hertel and Altrad NSG, and which now includes Altrad Babcock has been a key vector for consolidating and integrating services and product offerings for our clients.

|                             |      |
|-----------------------------|------|
| Cape Group (United Kingdom) | 2017 |
| Hertel (Netherlands)        | 2015 |
| NSG                         | 2011 |



### Altrad Services UK, Ireland & Nordics

Company: Altrad Services UK  
Headquartered: United Kingdom  
Founded: 1893  
Acquired by Altrad: 2011 (NSG), 2015 (Hertel) and 2017 (Cape plc)  
Operating Regions: UK, Ireland & Nordics  
Expertise: Access, Fabric Maintenance, Asset Integrity, Cleaning & Decontamination, Heat Exchangers  
Employees: 10,960  
Revenue: €958 million

*"You don't meet many companies like Altrad. The Altrad Group operates a devolved management approach which allows its regional leadership to develop their future strategy and then execute it. It's a hugely empowering environment and promotes a fast-paced entrepreneurial culture."*

*—Peter Hughes, Executive Vice President at Altrad Services UK*

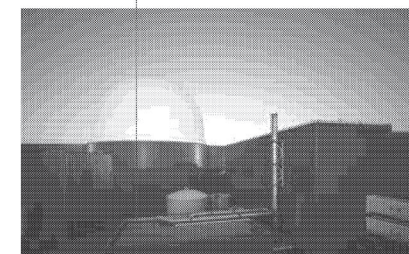
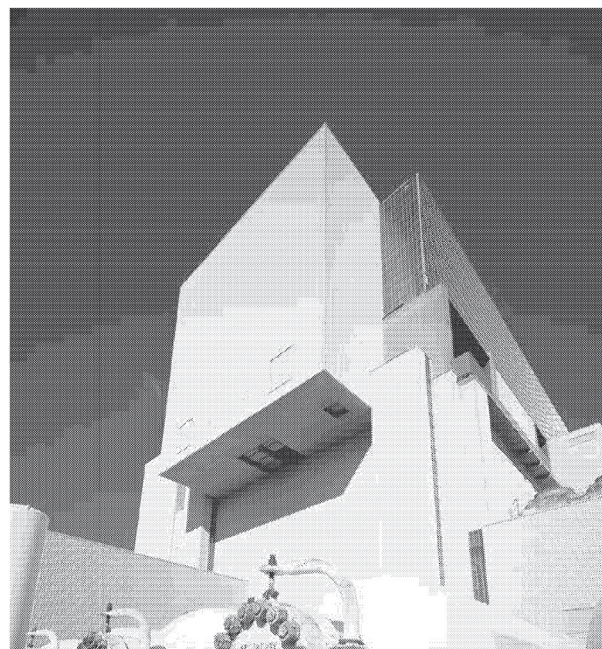
#### The Leading Provider of Support Services

The Altrad Group through earlier mergers of Cape, Hertel and Altrad NSG, positioned the Altrad Services UK brand as a leading provider of support services to some of the world's most respected companies in a range of different industrial sectors.

- Recent acquisitions such as Babcock and Sparrows have significantly improved the ability of Altrad Services UK to expand its relationship with both current and future potential clients, leading to the creation of new Integrated Service Offerings that previously did not exist.
- Cross-selling initiatives have been developed which targets key strategic clients and ensures continuous progress in engaging with clients to promote their awareness of the new integrated capabilities and the value it could offer them.
- The combination of services and skills represents a compelling proposition, particularly so, when clients are looking to rationalise their strategic supply-chain partners, eliminate interface risks and lower their overall cost of managing multiple contractors.
- Several clients are now engaging with Altrad Services UK and through other Altrad businesses to understand the benefits available from these combinations, which have the potential to provide a value proposition that is not available in the market.

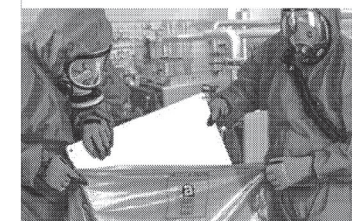
Digital transformation and innovation sit at the heart of Altrad's strategy, as it embraces the opportunities it offers us to simplify and improve what we do. Altrad's new Altrad Integrated Reporting (AIR) system, has been developed "in-house", to manage and streamline HSEQ reporting processes, and allow in-depth analysis of data leading to more informed operational decision making.

*"When Sabic UK Petrochemicals Ltd went to the market for its term maintenance contract looking to consolidate our totally outsourced maintenance operations to a single supplier, to reduce interfaces and drive value for money. It became clear, Altrad has created a very strong proactive offering across the full range of services."*  
*—Steven Willson MBE, Senior Manager, Maintenance, Sabc UK Petrochemicals Ltd*



#### Altrad committed to supporting victims of Asbestos

When Altrad acquired Cape in 2017, the acquired business had well disclosed outstanding claims related to the manufacture and distribution of asbestos in the mid twentieth century and the resulting damaging health consequences of exposure, leading to related industrial diseases including mesothelioma. Altrad, although not having ever been involved as a company in the manufacture or distribution of asbestos is firmly committed to settling claims that are determined to have merit pursuant to Cape's court approved mechanism for settling such claims. An amount of £118 million has been paid or set aside for the settling of valid claims. Altrad takes these commitments seriously. No other company in the United Kingdom has done this, since many have gone insolvent in the intervening years leaving victims without compensation. Looking forward, the company is actively looking for opportunities to support victims of mesothelioma through a range of initiatives.



**From:** John T. Lay  
**To:** Bridenback, Tasha; Lindsav Joyner; Jon Robinson; James Elliott; Toal, Jean  
**Cc:** Helen Elliott; Dot Faulkenberry; Carroll, Todd; Stacey Smith; mcanon@dobslegal.com; spepin@dobslegal.com; TMCvey@kassellaw.com; EMoultrie@kassellaw.com; jrutkoski@kassellaw.com; dsimon@dobslegal.com; Shanon Peake; murrell@smithrobinsonlaw.com; Brown, Troy S.; Becker, Dana E.; Edwards, Brady; kpaul@dobslegal.com; Jacques, Robert; Scrudato, Paul A.; angela.strickland@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; Daniel White; Ron Tate; David Rheney; William Maurides; Jessica Laffitte; TPeck@foxrothschild.com; sfllynn@foxrothschild.com; ncherry@foxrothschild.com; irussell@foxrothschild.com; kkolb@foxrothschild.com; Atwilley@foxrothschild.com; jntechman@ewhlaw.com; asrogers@ewhlaw.com; plsisk@ewhlaw.com; pamcgrath@ewhlaw.com; louis@milliganlawfirm.com; jackie@milliganlawfirm.com; Mark.phillips@nelsonmullins.com; Robert.meriwether@cs-law.com; Jase.glenn@cs-law.com; Sc-asbestos@cs-law.com; Eric Hawkins; vrawl@grsm.com; William Kleindienst; Bahnson-GRSM; Leslie.packer@elliswinters.com; ashley.brathwaite@elliswinters.com; curtis.shipleigh@elliswinters.com; joe.hammond@elliswinters.com; Covilparalegal@elliswinters.com; Derrick.foard@elliswinters.com; Scottie.Lee@elliswinters.com; AGeddes@nexsenpruet.com; AWaring@nexsenpruet.com; aaustin@nexsenpruet.com; kiones@nexsenpruet.com; bjowers@nexsenpruet.com; rcavalchire@nexsenpruet.com; Steve Pugh; Megan White; wharte@richardsonplowden.com; mmiller@richardsonplowden.com; Charity McQueen; 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; kristinhoward@piercesloan.com; caseyhewett@piercesloan.com; jessicamiller@piercesloan.com; hollyparker@piercesloan.com; O'Neill, Elizabeth; WBD.SCASBESTOS; Wells, Sarah; Bogle, Michael; Sullivan, Kimberly; Rubenstein, Rosa; Lehman-Wooten, Deborah; 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; aserrat@smithlaw.com; chona@smithlaw.com; Michael Montgomery; rhutchens@robinsongray.com; wcollins@brblaw.com; mkalwait@brblaw.com; Mark.wall@walltempleton.com; Tara.sullivan@kigates.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; mcdonald@hsblawfirm.com; AGeddes@maynardnexsen.com; jdunlap@vwlawfirm.com; jay.thompson@murphygrantland.com; wsawyer@murphygrantland.com; junumb@murphygrantland.com; kbickford@murphygrantland.com; lchappell@murphygrantland.com; Peter Protopapas; Brian Barnwell; gmp@rplegalgroup.com; sbrown@vcrlaw.com; tgandy@vcrlaw.com; Cameron Berthelsen; Marcy Dalton; Ben Carlton; Hall, Kevin; cgourdine@maronmarvel.com; bi@maronmarvel.com; cla@maronmarvel.com; KLN@maronmarvel.com; mmiller@maronmarvel.com; Alnglis@maronmarvel.com; focol@maronmarvel.com; jasmine.whatley@lewisbrisbois.com; rlevy@williamsmullen.com; rwillis@williamsmullen.com; styer@williamsmullen.com; kmartin-rothrock@williamsmullen.com; italy@williamsmullen.com; Nes, W. Brad; Danny Nieto; Eleanor Jones; Gonzalez, Gabrielle R.; Gray Culbreath; Jillian Hansen; Lindsav Valek; Moir, Peter; Tina; Vanessa Brown; thranham@dobslegal.com; Ben Nicholson; Helen Elliott; "Rubinstein, Benjamin"; Balber, Scott; Herman, Maxwell; Kaminski, Elizabeth; Emch, Chris  
**Subject:** RE: In Re: Tibbs v. 3M Company et al Case No. 2023-CP-40-01759 September 24, 2024 hearing  
**Date:** Monday, October 21, 2024 3:50:35 PM  
**Attachments:** [image003.png](#)  
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Dear Chief Justice Toal and Ms. Bridenback:

As you know, I represent Peter Protopapas, the duly-appointed receiver for Cape, PLC (n/k/a Cape Intermediate Holdings Ltd.), in the above-referenced matter.

As the Court is aware from previous filings, Cape PLC and Cape Intermediate Holdings Ltd. (both companies owned by third-party defendants Mr. Mohed Altrad and his Altrad Group) have filed suit against Mr. Protopapas – in his personal capacity – in the High Court of Justice of England and Wales. By way of their lawsuit, they have asked a court in London to enjoin the Receiver from carrying out the very duties this Court appointed him to execute. The final hearing on this request to enjoin the Receiver is set to take place in London during the week of November 11, 2024.

Because Cape's London litigation violates this Court's *Barton* doctrine injunction in its appointment order and potentially places the Receiver in the untenable position of having two courts give him contradictory instruction, on October 11, 2024, our firm filed the attached **Receiver for Cape, PLC's Motion to Enforce the Appointment Order** to get this Court's guidance.

Given the impending injunction hearing in London, I write to request that the Court take up this motion at its earliest convenience.

Best regards,  
John T.

John T. Lay, Jr.  
Partner  
[jl@gwblawfirm.com](mailto:jl@gwblawfirm.com)

Gallivan, White & Boyd P.A.  
1201 Main Street | Suite 1200 | Columbia SC 29201  
803 724 1800 Direct | 803 779 1833 Main | 803 331 5368 Mobile | 803 779 1767 Fax  
Mailing Post Office Box 7368 | Columbia SC 29202



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**From:** Bridenback, Tasha <tbridenback@sccourts.org>

**Sent:** Tuesday, October 1, 2024 6:03 PM

**To:** Lindsay Joyner <ljoyner@gwblawfirm.com>; Jon Robinson <Jon.Robinson@smithrobinsonlaw.com>; James Elliott <JElliott@RichardsonPlowden.com>; Toal, Jean <JToal@sccourts.org>

**Cc:** Helen Elliott <HElliott@RichardsonPlowden.com>; Dot Faulkenberry <Dot.Faulkenberry@smithrobinsonlaw.com>; Carroll, Todd <Todd.Carroll@wbd-us.com>; Stacey Smith <sasmith@grsm.com>; mcanon@dobslegal.com; spepin@dobslegal.com; TMCvey@kassellaw.com; EMoultrie@kassellaw.com; jrutkoski@kassellaw.com; dsimon@dobslegal.com; Shanon Peake <Shanon.peake@smithrobinsonlaw.com>; Murrell Smith <murrell@smithrobinsonlaw.com>; Troy Brown <troy.brown@morganlewis.com>; Dana Becker <dana.becker@morganlewis.com>; Brady Edwards <brady.edwards@morganlewis.com>; kpaul@dobslegal.com; Robert Jacques <Robert.jacques@morganlewis.com>; Paul A. Scrudato <paul.scrudato@morganlewis.com>; angela.strickland@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; Daniel White <Dwhite@gwblawfirm.com>; Ron Tate <Rtate@gwblawfirm.com>; David Rheney <drheney@gwblawfirm.com>; William Maurides <wmaurides@gwblawfirm.com>; Jessica Laffitte <jlaffitte@gwblawfirm.com>; TPeck@foxrothschild.com; sgflynn@foxrothschild.com; ncherry@foxrothschild.com; lrussell@foxrothschild.com; kkolb@foxrothschild.com; Atwilley@foxrothschild.com; jmttechman@ewhlaw.com; asrogers@ewhlaw.com; plsisk@ewhlaw.com; pamcgrath@ewhlaw.com; louis@milliganlawfirm.com; jackie@milliganlawfirm.com; Mark.phillips@nelsonmullins.com; Robert.meriwether@cs-law.com; Jase.glenn@cs-law.com; Sc-asbestos@cs-law.com; Eric Hawkins <ehawkins@grsm.com>; Vic Rawl <vrawl@grsm.com>; William Kleindienst <wkleindienst@grsm.com>; Bahnson-GRSM <Bahnson-GRSM@grsm.com>; leslie.packer@elliswinters.com; ashley.brathwaite@elliswinters.com; curtis.shipley@elliswinters.com; joe.hammond@elliswinters.com; Covilparalegal@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; Steve Pugh <SPugh@RichardsonPlowden.com>; Megan White <MWhite@RichardsonPlowden.com>; wharte@richardsonplowden.com; mmiller@richardsonplowden.com; Charity McQueen <CMcQueen@RichardsonPlowden.com>; carlpierce@piercesloan.com; pattiwilliams@piercesloan.com; bensmoot@piercesloan.com; carsonparker@piercesloan.com; Jameskennedy@piercesloan.com; elizabethtaylor@piercesloan.com; daniellynch@piercesloan.com; treypierce@piercesloan.com; willearly@piercesloan.com; kristinhoward@piercesloan.com; caseyhewett@piercesloan.com; jessicamiller@piercesloan.com; hollyparker@piercesloan.com; O'Neill, Elizabeth <Elizabeth.ONeill@wbd-us.com>; WBD.SCASBESTOS <WBD.SCASBESTOS@wbd-us.com>; Wells, Sarah <Sarah.Wells@wbd-us.com>; Bogle, Michael <Michael.Bogle@wbd-us.com>; Sullivan, Kimberly <Kimberly.Sullivan@wbd-us.com>; Rubenstein, Rosa <Rosa.Rubenstein@wbd-us.com>; Lehman-Wooten, Deborah <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; aserrat@smithlaw.com; cbona@smithlaw.com; Michael Montgomery <mmontgomery@robinsongray.com>; rhutchens@robinsongray.com; wcollins@brblegal.com; mkalwajtys@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;

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**Subject:** RE: In Re: Tibbs v. 3M Company et al Case No. 2023-CP-40-01759 September 24, 2024 hearing [IMAN-IMANMAIN.FID1086139]

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Ms. Bridenback,

As discussed at the hearing, attached is the proposed scheduling order which has been consented to by counsel for the

Receiver and counsel for certain Third-Party Defendants (Anglo American, De Beers Centenary, De Beers Consolidated Mines Proprietary Ltd., De Beers PLC, and De Beers UK).

Should you or Chief Justice Toal have any questions for us about it, please let me know.

Thanks,  
Lindsay



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**Subject:** RE: In Re: Tibbs v. 3M Company et al Case No. 2023-CP-40-01759 September 24, 2024 hearing

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Ms. Bridenback,

The Receiver's Motion for Sanctions against Third-Party Defendants for improper removal, filed August 16, 2024, is #8 on the hearing docket for tomorrow. The Receiver is withdrawing this Motion for Sanctions without prejudice at this time.

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**Subject:** RE: In Re: Tibbs v. 3M Company et al Case No. 2023-CP-40-01759 September 24, 2024 hearing

Mr. Elliott,

You are correct, that was an oversight on my part. Chief Justice Toal has agreed to allow the four additional motions to be heard and/or argued at her discretion.

Best,

**Tasha Bridenback**

Judicial Law Clerk

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**Subject:** RE: In Re: Tibbs v. 3M Company et al Case No. 2023-CP-40-01759 September 24, 2024 hearing

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Tasha,

The Amended Notice of Hearing just received changing the courtroom did not include the following Motions that were on the Agenda attached here that was emailed out September 17:

10. Anglo American-De Beers Defendants' Cross-Motion for Protective Order in Response to Third-party Plaintiffs' Motion to Compel Rule 30(b)(6) Depositions, filed September 13, 2024.
11. Anglo American-De Beers Defendants' Motion to Compel Production of Cape plc Documents and Information, filed September 13, 2024.
12. Anglo American-De Beers Defendants' Motion to Compel Responses from Third Party Plaintiff filed September 13, 2024.
13. The Anglo American-De Beers Defendants' Motion for a Scheduling Order, filed April 29, 2024, regarding entering a pre-trial Scheduling Order for fact and expert discovery,

mandatory mediation, summary judgment and other pretrial deadlines prior to the December 9, 2024 trial.

I suspect that was just an oversight but do you mind confirming these motions are still on the Agenda.

Thank you. James

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**Subject:** RE: In Re: Tibbs v. 3M Company et al Case No. 2023-CP-40-01759 September 24, 2024 hearing

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Good afternoon,

Please be advised that the courtroom number has changed for the hearing Sept. 24, 2024, and is reflected in the attached courtesy copy of the Amended Notice. The hearing will be in Courtroom 2A.

Best,

**Tasha Bridenback**

Judicial Law Clerk

SC Court Administration

Office: (803) 734-0833

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**Sent:** Monday, September 16, 2024 1:16 PM

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**Subject:** RE: In Re: Tibbs v. 3M Company et al Case No. 2023-CP-40-01759 September 24, 2024 hearing

Good afternoon,

Chief Justice Toal has agreed to add the motions to the agenda. However, the extent of arguments and amount of time given will be at Chief Justice Toal's discretion. Thank you.

Best,

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Chief Justice Toal and Ms. Bridenback,

Please see the attached letter from James Elliott regarding additional motions to be heard on September 24, 2024 in the Cape matter.

Thank you,



**From:** Lindsay Joyner <[ljoyner@gwblawfirm.com](mailto:ljoyner@gwblawfirm.com)>

**Sent:** Monday, August 26, 2024 5:09 PM

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Chief Justice Toal and Ms. Bridenback,

Please see the attached from John T. Lay regarding pending motions in the Cape matter.

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Lindsay



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**Sent:** Friday, July 12, 2024 12:44 PM

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**Subject:** RE: In Re: Tibbs v. 3M Company Case No. 2023-CP-40-01759; Notice of Removal filed in Civil Action No. 3:23-cv-03771-MGL

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Thank you, Mr. Robinson. See you all next week and please note the status conference will start at **2:30 PM**. We will be Courtroom 3B.

Best,

**Eva Diaz**

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**Subject:** Re: In Re: Tibbs v. 3M Company Case No. 2023-CP-40-01759; Notice of Removal filed in Civil Action No. 3:23-cv-03771-MGL

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Thank you, Eva. The Receiver will be prepared to give the Court a status update at next week's scheduled July 16th status conference.

Jon Robinson  
SMITH | ROBINSON

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On Jul 10, 2024, at 8:32 AM, Diaz, Eva <[ediaz@sccourts.org](mailto:ediaz@sccourts.org)> wrote:

Good morning.

Judge Lewis and Counsel, please see the attached correspondence from Chief Justice Toal.

Best,

**Eva Diaz**

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JOHN A. TIBBS and MARGARET B. TIBBS,
Plaintiffs,

v.

3M COMPANY *et al.*,

Defendants.

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as
successor in interest to ANGLO AMERICAN
CORPORATION OF SOUTH AFRICA LTD.;
DE BEERS PLC, individually and as successor
in interest to DE BEERS S.A.; DE BEERS
CENTENARY AG; DE BEERS
CONSOLIDATED MINES LTD., n/k/a DE
BEERS CONSOLIDATED MINES
PROPRIETARY LTD.; DE BEERS UK LTD.;
DE BEERS JEWELLERS LTD.; DE BEERS
JEWELLERS US, INC.; ANGLO AMERICAN
US HOLDINGS INC.; Element Six US Corp.;
ELEMENT SIX TECHNOLOGIES US CORP.;
Element Six Technologies (OR) Corp.; First
Mode Holdings, Inc.; PLATINUM GUILD
INTERNATIONAL (U.S.A.) Jewelry Inc.;
Lightbox Jewelry Inc.; FOREVERMARK US
INC.; ANGLO AMERICAN CROP
NUTRIENTS (U.S.A.), LLC; CHARTER
CONSOLIDATED LTD.; ESAB
CORPORATION; CENTRAL MINING &
INVESTMENT CORPORATION LTD.; CAPE
HOLDCO LTD.; The Law Debenture
Corporation PLC; CAPE INDUSTRIAL
SERVICES GROUP LTD.; MOHED

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

**THE RECEIVER FOR CAPE PLC's
MOTION TO ENFORCE THE
APPOINTMENT ORDER**

**(Priority/Expedited Review Requested
pursuant to Rule 40(h), SCRCP)**

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.

**THE RECEIVER FOR CAPE PLC'S
MOTION TO ENFORCE THE APPOINTMENT ORDER**

Third-Party Plaintiff Peter D. Protopapas, as duly appointed receiver for Cape PLC (n/k/a Cape Intermediate Holdings Ltd.) (the “Receiver” or “Receivership”), by and through undersigned counsel, hereby requests that this Court enforce the Appointment Order by ordering Mohed Altrad and Altrad Investment Authority S.A.S. (“AIA”; together, with Mr. Altrad, the “Altrad Owners Third-Party Defendants”), to terminate their improper action pending before the High Court of Justice of England and Wales seeking to enjoin the Receiver from performing his Court-ordered duties. The Altrad Owners Third-Party Defendants own Cape Intermediate Holdings Ltd. and Cape PLC, the “Claimants” in that action before the High Court of Justice of England and Wales, and are improperly attempting to personally enjoin the Receiver. The Receiver respectfully requests that this Motion be treated as a priority matter pursuant to Rule 40(h), SCRCP.

INTRODUCTION

1. This Court appointed the Receiver on March 17, 2023, pursuant to its authority under S.C. Code §15-65-10(4) and §15-65-10(5). *See Order, Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) (“Appointment Order”), at 1. As explained further below, the entity that is the subject of the Appointment Order is Cape Intermediate Holdings Ltd.

(f/k/a Cape PLC from 1989 to 2011), rather than the entity currently known as Cape PLC (as organized in the Bailiwick of Jersey in 2011).

2. Since his appointment, the Receiver has worked diligently to identify, preserve, and marshal the assets of Cape and its affiliates, including those that were funneled overseas, to ensure they are available to redress the devastating effects of the Third-Party Defendants' scheme to profit from asbestos sales, while avoiding any liability for the harms they inflicted on South Carolinians and others in the United States.

3. Despite the Third-Party Defendants' feigned ignorance of the long-plotted and well organized efforts to evade liability and abscond with responsive assets, Cape's historical records reveal that, in the 1970s, Cape employed a scheme to flee the jurisdiction of the United States and hide in England because of the risk of asbestos litigation exposure in the United States; that concern prompted its attorneys to strategize on how to organize its business to insulate affiliated companies from such exposure. Cape and its lawyers determined that if Cape fled to England, refused to participate in U.S. litigation, and hid its continued operations in the United States through Lichtenstein incorporation, Cape would avoid enforcement of any default judgment in England.

I realize that the mines have been advised that if they do not sell directly in the United States or through a United States subsidiary or any of the Cape group, they will be protected from even default judgment and this is the main reason for setting up the Lichtenstein Corporation. However, I am concerned if the Lichtenstein Corporation is merely the alter ego of the mining companies themselves"; "[I]f there is an accumulation of factors . . . the entire set of circumstances could well jeopardize the entire concept of the new organization insofar as insulation from default judgments is concerned.

March 6, 1978 Letter from M. E. Meyer to A. J. Penna, Esq. Group Solicitor, Cape Industries Limited, Cape_Receiver_00127824, Exhibit A.

4. Even today, notwithstanding the current owners of Cape's repeated acknowledgement of responsibility for Cape's asbestos-related liabilities and their stated "firm[] commit[ment] to settling cases that are determined to have merit," the focus on escaping liability in the United States endures, evidenced most recently in their attempt to enjoin the Receiver from fulfilling his duties in accordance with this Court's Appointment Order. Altrad's representations to the South Carolina state and federal courts cannot be reconciled with the admissions they have made publicly and around the world:

When Altrad acquired Cape in 2017, the acquired business had well disclosed outstanding claims related to the manufacture and distribution in the mid twentieth century and the resulting damaging health consequences of exposures . . . Altrad, although not ever having been involved as a company in the manufacture or distribution of asbestos[,] **is firmly committed to settling cases that are determined to have merit** pursuant to Cape's court approved mechanism for settling such claims. An amount of £ 118 million has been paid or set aside for the settling of valid claims. Altrad takes these commitments seriously. No other company in the UK has done this, since many have gone insolvent in the intervening years leaving victims without compensation. **Looking forward, the company is actively looking for opportunities to support victims of mesothelioma through a range of initiatives.**

See Altrad 2023 Annual Report, Cape_Receiver_00040840, at -40862, Exhibit B.¹

5. Since 2017, Cape has been owned and controlled by the Altrad Group, which was founded by and is led by its President, Mr. Altrad. See Altrad 2017 Annual Report, Cape_Receiver_00040509, at -40529, Exhibit D ("Today, Altrad holds 100% of Cape [plc in

¹ Today, the Altrad Group and Cape are recognizing their responsibility to compensate victims of their asbestos conduct in the UK. This is in stark contrast to Cape's position to their U.S. victims, which was set forth in the 1970s and continues today: "We here, having heard more disturbing information recently about the value of Texas awards are rapidly coming to the conclusion that Cape and Cape Fibers should take a risk on the UK enforceability and withdraw, as in practice we cannot foresee any court or government here enforcing a judgement which would have enormous financial and employment repercussions, when *we really cannot be said to have a moral responsibility* and are simply victims of the US product liability cult." April 7, 1977 Letter from A. J. Penna, Esq. Group Solicitor, Cape Industries Limited, Cape_Receiver_00127615, Exhibit C (emphasis added).

Jersey].”). In particular, in 2017, AIA acquired Cape for approximately £332.2 million through its wholly owned subsidiary Altrad UK Ltd., which (i) was incorporated in June 2017 for the specific purpose of acquiring Cape, (ii) acts as a “wholly owned subsidiary of AIA [that has been] financed by AIA through a current account,” and (iii) also “proceeded to refinance Cape’s debt” as part of the acquisition. *Id.* at -40530. In 2017, Mr. Altrad “h[e]ld 77.78% of the [Altrad Group’s] shares.” *Id.* at -40519. Since AIA’s acquisition of Cape, Mr. Altrad’s ownership of the Altrad Group has grown; as of September 30, 2023, Mr. Altrad controlled 97.60% of the Altrad Group.² *See* Altrad 2023 Annual Report, Cape_Receiver_00040840, at -40879, Exhibit B.

6. From the inception of this third-party action, the Receiver’s efforts to identify, preserve, and marshal the assets of Cape and its affiliates have been thwarted, including by the Altrad Owners Third-Party Defendants. Indeed, multiple Third-Party Defendants named in this action—all members of the Altrad Group—have refused to appear in this action in any capacity, including Altrad UK Ltd.; Cape Industrial Services Ltd., n/k/a Altrad Services Ltd. (since June 1, 2021); Cape Holdco Ltd.; Cape Industrial Services Group Ltd.; and Cape UK Holdings Newco

² Mr. Altrad has also previously served as a director of Cape Group entities, including Altrad UK Ltd. (during its acquisition of Cape), Cape UK Holdings Newco Ltd., and Cape Industrial Services Group Ltd. The current CEO of the Altrad Group, Ran Oren, is a “director of several other associated entities within the Cape group of companies,” including Cape PLC (Jersey) and the sole director for Cape Intermediate Holdings Ltd. *See* Witness Statement of Ran Oren, at 1, Exhibit E; Cape Intermediate Holdings Ltd. Annual Report (Aug. 31, 2023), Cape_Receiver_00201272, at -1273, Exhibit F. Accordingly, the Altrad Group CEO is responsible for overseeing the operation of Cape Intermediate Holdings Ltd., including (i) approving that entity’s financial statements on behalf of its board of directors, and (ii) ensuring that Cape Intermediate Holdings can operate, including from financial support of AIA, as a going concern. *See* Cape Intermediate Holdings Ltd. Annual Report (Aug. 31, 2023), Cape_Receiver_00201272, at -1277–1280, Exhibit F. In his dual role as Altrad Group CEO and the sole director for Cape Intermediate Holdings Ltd., Mr. Oren submitted a witness statement in support of the litigation brought against the Receiver in England. *See* Witness Statement of Ran Oren, at 1, Exhibit E. While the Receiver disputes the contents of that affidavit, the mere fact of its submission in support of the UK action is further evidence of the Altrad Owners Third-Party Defendants’ obstructionism and disregard for this Court’s authority.

Ltd. *See* Order on Third-Party Plaintiffs' Motions for Entry of Default (Dec. 6, 2024) (entering default against affiliates of Cape Intermediate Holdings Ltd. and Cape PLC (Jersey), including Altrad Services Ltd., Altrad UK Ltd., Cape Holdco Ltd., Cape Industrial Services Group Ltd., and Cape UK Holdings Newco Ltd.).

7. Those Third-Party Defendants that *have* appeared have engaged in extensive efforts to date to obstruct the Receiver's efforts, including by filing frivolous appeals and refusing to cooperate in discovery. Having failed in their efforts before every domestic court petitioned, the Altrad Owners Third-Party Defendants' latest gambit is to take their grievances overseas: as the Receiver informed this Court on August 30, 2024, Cape PLC (as organized in the Bailiwick of Jersey in 2011) and Cape Intermediate Holdings Ltd. (f/k/a Cape PLC from 1989 to 2011)³—both part of the Altrad Group owned and controlled by AIA and Mr. Altrad—are seeking an injunction against the Receiver, in his individual capacity, in the UK, before the High Court of Justice of England and Wales. In effect, they have asked a UK court to enjoin the Receiver from carrying out the very duties this Court appointed him to execute.⁴

8. As explained further below, this action in the UK represents an assault upon the authority of this Court that should not be permitted to continue. Accordingly, the Receiver respectfully requests that this Court enforce the Appointment Order by instructing the Altrad Owners Third-Party Defendants to withdraw their action purportedly brought on behalf of Cape PLC (Jersey) and Cape Intermediate Holdings Ltd., pending before the High Court of Justice of England and Wales.

³ The 'Cape PLC' entity proceeding against the Receiver in the UK is distinct from 'Cape PLC' (n/k/a Cape Intermediate Holdings Ltd.).

⁴ By order dated October 9, 2024, the final hearing of this request to enjoin the Receiver is set for the week of November 11, 2024. *See* Sealed Order of Trower, J., dated 9 October 2024, Exhibit G.

FACTUAL & PROCEDURAL BACKGROUND

9. The Receiver was appointed on March 17, 2023 as receiver for Cape PLC, as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.), after that Cape entity organized in England and served in the underlying *Park* asbestos proceeding refused to appear (in accordance with the decades-long litigation avoidance strategy). *See* Appointment Order at 1. As the Court confirmed months later, the core entity affected by the appointment order was the “130-year-old Cape PLC entity, not [a] newly formed Bailiwick of Jersey Entity,” with service of the *Park* complaint properly effected on the former prior to the Court’s appointment of a receiver. *See* Order Denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction, at 16–19 (Dec. 6, 2023).

10. Pursuant to the Appointment Order, the Receiver was invested with the “power and authority [to] fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf Cape and take any and all steps necessary to protect the interests of Cape”—in proper satisfaction of claims against Cape—“whatever they may be.” Appointment Order at 1. Further, the Receiver was vested with “rights, authority and powers with respect to” Cape’s property, including to “obtain from any . . . third party, any financial records belonging to or pertaining to” Cape. *Id.* at 2.

11. This Court further ordered that “the Receiver or Cape may not be sued outside this Court without obtaining the Receiver’s consent or an order of this Court prior to doing so.” *Id.* at 3; *see also* *McDaniel v. Blust*, 668 F.3d 153, 156 (4th Cir. 2012) (citing *Barton v. Barbour*, 104 U.S. 126 (1881)) (explaining the *Barton* doctrine, under which “before another court may obtain

subject-matter jurisdiction over a suit filed against a receiver for acts committed in his official capacity, the plaintiff must obtain leave of the court that appointed the receiver”).

12. Subsequent to his appointment, the Receiver has worked vigorously to carry out his duties, including by filing this third-party action on June 30, 2023, asserting claims against the Third-Party Defendants for: (i) unjust enrichment (first cause of action), (ii) constructive trust (second cause of action), (iii) alter ego and veil-piercing liability (third cause of action), and (iv) accounting (fourth cause of action). Unfortunately, this action has been repeatedly waylaid by Third-Party Defendants’ numerous attempts to use procedural gamesmanship, requiring the Receiver to expend extensive resources just to obtain discovery from the non-defaulted Third-Party Defendants, while fighting off repeat frivolous appeals.

THE UK ACTION

13. Continuing their history of brazen obstructionism, on August 30, 2024, Cape PLC (Jersey) and Cape Intermediate Holdings Ltd. informed the Receiver that, unless he agreed to effectively disclaim the duties and powers vested with him by this Court, the two Cape entities would commence proceedings against him in the UK. They have now filed a claim in the High Court of Justice of England and Wales seeking to enjoin the Receiver from, among other things:

- a. “acting or purporting to act as a receiver of [Cape PLC and Cape Intermediate Holdings Ltd.] pursuant to the Receivership Order,” entered by this Court;
- b. “appropriating, interfering with or usurping (in any way whatsoever) the lawful exercise of the rights and duties of the directors of the Claimants,”
- c. “acting or purporting to act as a receiver of the Claimants in the” *Park* or *Tibbs* actions; and

- d. “litigating as ‘Cape plc’ or [Cape Intermediate Holdings Ltd.] in any legal proceedings in the State of South Carolina, USA or elsewhere.”⁵

14. The Receiver understands that a hearing was held before the High Court of Justice of England and Wales on October 9, 2024, regarding the claims asserted there by Cape PLC (Jersey) and Cape Intermediate Holdings Ltd.

RELIEF REQUESTED

15. Through this Expedited Motion, the Receiver requests the entry of an Order directing the Altrad Owners Third-Party Defendants, *i.e.*, the current owners of Cape PLC (n/k/a Cape Intermediate Holdings Ltd.), to immediately terminate their improper action in the UK directed against the Receiver. To ensure compliance, the Court should further direct the Altrad Owners Third-Party Defendants to cease any further attempts to undermine this Court’s power by seeking to manufacture a conflict with the courts of any other jurisdiction.

BASIS FOR RELIEF REQUESTED

16. Per controlling statutes and case law, as invoked by the Appointment Order, this Court has exclusive jurisdiction over Third-Party Defendants, including the Altrad Owners Third-Party Defendants, in relation to the Receivership. Accordingly, the action in the UK is improper, constitutes a direct challenge to the fundamental authority of this Court, and so must be terminated.

17. Any claim by or against the Receiver falls squarely within the exclusive jurisdiction of this Court under the doctrine articulated in *Barton v. Barbour*, 104 U.S. 126 (1881). Under the “*Barton* doctrine,” the state court that appoints a receiver maintains exclusive jurisdiction over all claims filed by and against that receiver—subject only to the state court’s own waiver of that

⁵ See Notice of Filing of Attempt to Enjoin the Receiver in the High Court of Justice of England and Wales, Exhibit H.

exclusive jurisdiction. *See McDaniel*, 668 F.3d at 156–57. In elaborating on the doctrine in *Porter v. Sabin*, 149 U.S. 473 (1893), the Supreme Court emphasized that state receivership courts have *exclusive* jurisdiction over matters involving court-appointed receivers. The Supreme Court explained that “[w]hen a court exercising jurisdiction in equity appoints a receiver of all the property of a corporation, the court assumes the administration of the estate,” and “[t]he possession of the receiver is the possession of the court.” *Id.* at 479. The Receivership Court exercises exclusive *in rem* jurisdiction over all the property in its possession, including the Receiver’s claims on behalf of the estate. *See Penn Gen. Cas. Co. v. Commonwealth of Pennsylvania ex rel. Schnader*, 294 U.S. 189, 195 (1935) (“[T]he principle, applicable to both federal and state courts, is established that the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction to the exclusion of the other. This is the settled rule with respect to suits in equity for the control by receivership of the assets of an insolvent corporation.”). And “[i]t is for *that court*, in its discretion, to decide whether it will determine for itself all claims of or against the receiver, or will allow them to be litigated elsewhere.” *Porter*, 149 U.S. at 479 (emphasis added).

18. The United States Court of Appeals for the Fourth Circuit in *Protopapas v. Travelers Casualty & Surety Co.*, 94 F.4th 351 (4th Cir. 2024), applying *Barton*, confirmed that the state court appointing a receiver has exclusive jurisdiction over it:

Exercising federal jurisdiction over a suit by or against a state-appointed receiver, who functions as an “arm” or “executive” of the state-receivership court, would infringe on the state court’s control over the receivership assets—its exclusive jurisdiction. Thus, as a matter of comity, as well as custom, the *Barton* doctrine rests on this exclusivity of the state receivership over the assets before it as a matter of jurisdiction, and indeed we have confirmed as much. *See, e.g., Conway v. Smith Dev., Inc.*, 64 F.4th [540,] 545 [4th Cir. 2023] (noting that “Barton concerns subject-matter jurisdiction”); *McDaniel v. Blust*, 668 F.3d [153,] 156 [4th Cir. 2012] (noting that “[t]he Supreme Court established in *Barton* that before another court may obtain subject-matter jurisdiction over a suit filed against a receiver for acts committed in his official capacity, the plaintiff must obtain leave of the court that appointed the receiver”).

Id. at 358.

19. This Court implicitly recognized the above doctrine in the Appointment Order itself, stating that “the Receiver or Cape may not be sued outside this Court without obtaining the Receiver’s consent or an order of this Court prior to doing so.”

20. The pending action before the High Court of Justice of England and Wales is inconsistent with this Court’s exclusive jurisdiction over the Receivership, as confirmed by the Supreme Court and the Fourth Circuit Court of Appeals. In direct contravention of the Appointment Order, the UK proceedings have been undertaken without obtaining the “Receiver’s consent or an order of this Court” to permit it. Thus, in order to guard this Court’s authority, the UK action must be withdrawn at once.

CONCLUSION

21. The Receiver would be seriously hampered in exercising his duties to marshal Cape assets if he is simultaneously subject to the inconsistent dictates of two courts, one in South Carolina and the other in England. That outcome is inconsistent with law and must be avoided. Accordingly, this Court should guard its powers and enforce the Receivership by ordering the Altrad Owners Third-Party Defendants to immediately withdraw their case against the Receiver, purportedly brought on behalf of Cape PLC (Jersey) and Cape Intermediate Holdings Ltd., pending before the High Court of Justice of England and Wales.

22. Pursuant to Rule 11, SCRCP, the undersigned counsel certifies that consultation on this matter would serve no useful purpose given these Altrad Owners Third-Party Defendants’ recalcitrance in seeking to disrupt the legitimate proceedings of this Court and the work of the Receiver.

GALLIVAN, WHITE & BOYD, P.A.

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Attorneys for Third-Party Plaintiff

October 11, 2024
Columbia, South Carolina

BILLY WILKINS LAW, LLC

Expert Report of Hon. William W. Wilkins
October 30, 2024

A. Introduction

I have been instructed by Signature Litigation LLP ("**Signature**"), acting for the Claimants, to provide an expert report on matters relating to South Carolina and US Law.

This report is for the High Court of Justice of England and Wales in the proceedings between the Claimants (1) Cape Intermediate Holdings Limited (2) Cape Plc and the Defendant, Peter D. Protopapas.

I have been asked to provide a report addressing the following questions on South Carolina law (the "**Questions**");

1. What is the status of a receiver under South Carolina ("SC") Law, namely:
 - (a) The legal basis on which a receiver over a company can be appointed by the SC Court (including a foreign company not present in the jurisdiction of SC).
 - (b) The distinction between the receiver and the Court.
 - (c) The different types of receivership.
2. Is the legal authority of a receiver limited to the scope of the receivership order?
3. What duties are owed under SC law by a receiver to the company he represents where there is no judgment for a creditor?

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4. Under SC law, are receivership orders limited to the territory of South Carolina, or can they have extra-territorial effect?
5. What is the Barton Doctrine and how does it operate?
6. What are the legal doctrines which could relate to a party bringing a case in the SC Court which is inconsistent with a case which that party has successfully argued and been determined by the English Court in its favour after a trial and full appeal process?
7. What is the approach of SC law as to whether the pursuit of proceedings ought to be prohibited as abusive, vexatious and unconscionable?

B. Qualifications and experience

I have appended my biography and resume to this Report. I have five decades of experience in the legal, judicial and military fields in South Carolina. I am the Former Chief Judge of the U.S Court of Appeals for the Fourth Circuit, Former U.S District Judge and former Chair of the U.S Sentencing Commission.

I am a native of Greenville, South Carolina and have served my state and profession my entire career. Upon my retirement from the federal bench in 2008, I joined Maynard Nexsen and retired from that Firm on July 1, 2024. I then formed a separate law firm, Billy Wilkins Law, LLC.

C. Assistance

All work in this report has been carried out under my direct supervision and control and as such any opinions and views in this report are my own.

D. Answers to the Questions

1. **What is the status of a receiver under South Carolina ("SC") Law, namely:**
 - (a) **The legal basis on which a receiver over a company can be appointed by the SC Court (including a foreign company not present in the jurisdiction of SC).**
 - (b) **The distinction between the receiver and the Court.**

(c) The different types of receivership.¹

South Carolina law views a state court appointed receiver as, “an executive officer of the Court” appointed by the trial judge “to administer the assets of the estate under the direction of the Court.” *In re Fifty-Four First Mortg. Bonds*, 15 S.C. 304, 314 (1881); *see also Protopapas v. Travelers Cas. & Sur. Co.*, 94 F.4th 351, 354 (4th Cir. 2024). In this regard, the South Carolina Supreme Court has held:

A receiver represents the Court appointing him; he is an officer of the Court and is the agency through which the Court acts. As he has no power other than that given him by the Order of appointment, his authority is derived solely from the Court. He is subject only to the Court's direction.

Kirven v. Lawrence, 244 S.C. 572, 580, 137 S.E.2d 764, 768 (1964).

South Carolina decisional law has elsewhere described the role of a receiver as an “arm of the Court—appointed by the Court to receive and preserve the property or fund in litigation, together with the rents, issues and profits, and to apply or dispose of them at the direction of the Court.” *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 217, 118 S.E. 303, 304 (1923). Such treatment accords with various legal formulations describing the status of receivers in South Carolina’s sister jurisdictions. *See, e.g.*, 65 Am. Jur. 2d Receivers § 1 (describing receivers as agents, representatives, arms, fiduciaries, and officers of the appointing court). But, explained in simplest terms, the distinction between a receiver and an appointing Court is one of agent (receiver) and principal (appointing court).

Under South Carolina law, the appointment of a receiver is considered “a drastic remedy, and should be granted only with reluctance and caution.” *Richland Cnty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (citing *Vasiliades v. Vasiliades*, 231 S.C. 366, 98 S.E.2d 810 (1957)). “[A]s a rule, a receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined.” *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887) (internal quotation marks and citation omitted). Such “principles of law” have been noted by the South Carolina Supreme

¹ The answers to subparts (a) through (c) are provided collectively below to promote both efficiency and a cohesive answer.

Court as “firmly established by all of the decisions.” *S. Tr. Co. v. Cudd*, 166 S.C. 108, 114, 164 S.E. 428, 430 (1932).

When the circumstances so warrant, South Carolina law nonetheless allows for the appointment of receivers in various contexts. *See, e.g.*, S.C. Code § 6-17-200 (appointment of a receiver due to default upon municipal revenue bonds); *Id.* at § 34-36-60 (appointment of receiver for violating statutes applicable to loan brokers); *Id.* at § 34-3-630 (appointment of FDIC as receiver for failing insured banks). By contrast, South Carolina Code § 15-65-10 (Law. Co-op. 1976) *et seq.* (“Receivership Act”) is the statute fundamentally material to answering the question posed. It states:

A receiver may be appointed by a judge of the circuit court, either in or out of court:

- (1) Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired, except in cases when judgment upon failure to answer may be had without application to the court;
- (2) After judgment, to carry the judgment into effect;
- (3) After judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal or when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment;
- (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
- (5) In such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.

Id.

Under the Receivership Act, then, the statute’s plain and unambiguous language authorizes a South Carolina trial court to appoint a receiver in five enumerated categories. *Id.* The first only applies when a dispute over a specific asset exists prior to the issuance of a judgment in a lawsuit. *Id.* at ¶ 1. The second and third only apply after a judgment issues in a lawsuit. *Id.* at ¶¶ 2-3. The fourth only applies when a corporation has been dissolved or is imminently at risk of insolvency or losing

its corporate status. *Id.* at ¶ 5. Category 5, however, operates as a catchall receptacle embracing all of South Carolina law and existing practice unless specifically otherwise prohibited by statute.

Unfortunately, it is simply not possible to enumerate an exhaustive list of every situation when *law or practice* historically justified a receiver's appointment. That said, illustrative examples include:

- Allegations of fraudulent conveyances on the part of a debtor defendant. *See, e.g., First Carolinas Joint Stock Land Bank v. Knotts*, 191 S.C. 384, 1 S.E.2d 797 (1939); *Virginia-Carolina Chem. Co. v. Hunter*, 97 S.C. 31, 81 S.E. 190, 191 (1914).
- Alleged noncompliance with state environmental and regulatory provisions. *See, e.g., Midlands Utility, Inc. v. South Carolina Dep't of Health & Environmental Control*, 301 S.C. 224, 391 S.E.2d 535 (1989).
- Troubling conduct occurring during a partnership dissolution. *See, e.g., Wrenn v. Wrenn*, 228 S.C. 588, 91 S.E.2d 267 (1956).
- Alleged fraudulent deprivation of assets as between business partners. *See, e.g., Whilden v. Chapman*, 80 S.C. 84, 61 S.E. 249 (1908).
- Troubling conduct in a family court proceeding necessitating a receiver's appointment to assist in dividing marital property. *See, e.g., Whetstone v. Whetstone*, 309 S.C. 227, 420 S.E. 2d 877 (Ct. App. 1992).

See also 21 S.C. Jur. Receivers § 7. A review of reported decisions, albeit a non-exhaustive one, could not readily find an example of a case where a South Carolina trial court appointed a receiver pursuant to category 5 of the Receivership Act, in advance of a judgment's issuance, against a foreign corporation, who had never conducted business, owned assets, or maintained any sort of presence in South Carolina.

In addition to the Receivership Act, South Carolina's Rules of Civil Procedure ("SCRCP") also address the appointment of a receiver. Rule 66, SCRCP, states:

(a) Action Where Receiver Appointed. An action in which a receiver has been appointed shall not be dismissed except by order of the court. The practice in the

administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the laws of this State. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

(b) Powers of Receiver. In addition to the powers conferred by law, every receiver of the property and effects of a debtor shall, unless restricted by order of the court, have general power and authority to sue for and collect the debts, demands and rents belonging to the debtor, and to compromise and settle such as are of a doubtful value. He may also sue and defend in the name of the debtor *where it is necessary or proper for him to do so.*

Rule 66, SCRCP (emphasis added).² It is noteworthy that when a receiver does take possession of property or undertakes action to protect the same, he or she does so “subject to all valid prior liens, such incumbrances are entitled to protection and to payment out of the property which they cover.” *In re Am. Slicing Mach. Co.*, 125 S.C. at 219, 118 S.E. at 305.

No readily apparent reason appears to exist as to why a receiver would not similarly take possession of property subject to the valid and final adjudications of a court of competent jurisdiction to the extent they impacted status of title to property. Accordingly, when commencing any action that would seemingly otherwise be authorized, a state court appointed receiver would need to undertake care to avoid pursuing legal actions where prior encumbrances or adjudications would render such filings as improper, as such conduct would exceed both his court appointed authority, as circumscribed by controlling precedent, as well as the plain language of Rule 66, SCRCP.

2. Is the legal authority of a receiver limited to the scope of the receivership order?

A receiver has no legal authority apart from that bestowed upon him or her by the Court’s order of appointment. The South Carolina Supreme Court has held: “It is axiomatic that a Receiver appointed by a Court has no power or authority other than that given him by the order of appointment.” *Int’l Shoe Co. v. U. S. Fid. & Guar. Co.*, 186 S.C. at 282, 195 S.E. at 550 ; *see also In re Fifty-Four First Mortg. Bonds*, 15 S.C. at 314 (“The authority of a receiver rests only in the orders of the Court by which he is appointed. By virtue of any general authority as receiver he has

² Such language could garner a variety of meanings depending on context and no South Carolina precedent interpreting the same. However, it is safe to say that a Receiver cannot act in a manner contrary to the order of appointment, which, in the first instance, must also fall within the Court’s jurisdictional authority to issue relative to its content and mandates.

no right to sue or be sued or defend.”) And, as noted above, the South Carolina Supreme Court restated such tenet in the decision of *Kirven v. Lawrence*, 244 S.C. at 580, 137 S.E.2d at 768 where it once again confirmed a receiver: “has no power other than that given him by the Order of appointment, his authority is derived solely from the Court. He is subject only to the Court’s direction.” *Id.*

Also, South Carolina Rule of Civil Procedure 66(b) states:

(b) Powers of Receiver. In addition to the powers conferred by law, every receiver of the property and effects of a debtor shall, *unless restricted by order of the court, have general power and authority to sue for and collect the debts, demands and rents belonging to the debtor, and to compromise and settle such as are of a doubtful value. He may also sue and defend in the name of the debtor where it is necessary or proper for him to do so.*

Id. (emphasis added). However, such authority is not viewed as antagonistic but rather incidental to the powers granted by the receivership order and obviously cannot contravene any mandate to the contrary.

3. What duties are owed under SC law by a receiver to the company he represents where there is no judgment for a creditor?

Prior to a judgment’s issuance, the appointment of a receiver by a South Carolina Court places a corporation’s property in the hands of the Court for the benefit of those ultimately found to be entitled to it. *Stone v. Mincey*, 180 S.C. 317, 185 S.E. 619, 622 (1936); 21 S.C. Jur. Receivers §15; *see also Powell v. Maryland Tr. Co.*, 125 F.2d 260, 271 (4th Cir. 1942) (result “is to put the property from that time into his custody as an officer of the court, for the benefit of the party ultimately proved to be entitled, but not to change the title, or even the right of possession in the property.”) The “[p]roperty in the hands of the receiver is in *custodia legis*,” although title remains in the name of the corporation. *Int’l. Shoe Co. v. U.S. Fid. & Guar. Co.*, 186 S.C. at 271, 195 S.E. at 550. The scope of the receiver’s “general powers, rights, and duties” are defined by the order appointing the receiver, the statutory authority under which such order issued, and the rules of court applicable to receivers. *Hannon v. Mechanics Bldg. & Loan Ass’n of Spartanburg*, 177 S.C. 153, 180 S.E. 873, 876 (1935).

The “general rule in reference” to the duties owed by receivers appointed by South Carolina Courts “is that they shall use such diligence in the management” of receivership assets “as a prudent man would do in relation to his own affairs....” *Id.* Of course, the receiver manages receivership assets as “the arm of the Court,” *In re Am. Slicing Mach. Co.*, 125 S.C. at 214, 118 S.E. at 304, and not as an “agent of the corporation,” or “of any party to the suit in which the receiver is appointed.” Representative capacity of receivers, 16 Fletcher Cyc. Corp. § 7810.

Despite a lack of agency therewith, a receiver must act to protect the corporation’s rights, along with those of “its stockholders and creditors.” *In re Am. Slicing Mach. Co.*, 125 S.C. at 214, 118 S.E. at 303; *see also* Representative capacity of receivers, 16 Fletcher Cyc. Corp. § 7810. It is the receiver’s duty “to assert and protect the rights of each of these several classes of persons,” as “he is regarded as a trustee for them.” *In re Am. Slicing Mach. Co.*, 125 S.C. at 214, 118 S.E. at 304. In this way, South Carolina Courts view receivers as representing “the interests of all of the parties, including the creditors, the shareholders and the corporation itself.” Representative capacity of receivers, 16 Fletcher Cyc. Corp. § 7810.

In summary, receivers, as officers of the Court, shoulder “the burden of standing impartially between all parties concerned, with the further obligation, in so far as they possibly can, to protect the rights of all parties.” *Clark Bros. & Co. v. Pou*, 20 F.2d 74, 78 (4th Cir. 1927); *see also* Powers and duties of receivers, 16 Fletcher Cyc. Corp. § 7813 (“As officers of the court, receivers are under the duty to act impartially toward, and protect the rights of, all parties.”) Receivers are, therefore, viewed, as occupying a “fiduciary relationship toward the parties in interest, including the creditors and shareholders of the corporation.” Representative capacity of receivers—Fiduciary relationship, 16 Fletcher Cyc. Corp. § 7811. And specific duties and powers appear in the receiver’s Order of appointment.

4. Under SC law, are receivership orders limited to the territory of South Carolina, or can they have extra-territorial effect?

Receivership orders issued pursuant to the South Carolina receivership statute, codified at S.C. Code §15-65-10 *et seq.* (designated above as, “Receivership Act”), should not garner extraterritorial application or effect.³ While sparse, if any, South Carolina precedent directly

³ For purposes of responding to Question 4, the term “extraterritorial” means assets beyond the borders of the State of

addresses the Receivership Act's extraterritorial impacts, by applying controlling precedent evaluating when South Carolina statutes operate extraterritorially, coupled with the statute's plain language, and other persuasive authority, the Receivership Act should not be found to operate extraterritorially. Fundamentally, this is true because the Receivership Act, a unique creature of South Carolina law, nowhere evinces the requisite legislative intent to operate beyond South Carolina's borders.

Both controlling and persuasive authority, in this regard, prove both straightforward and well-established:

Unless the intention to have a statute operate beyond the limits of the state or country is *clearly expressed or indicated by its language, purpose, subject matter, or history*, no legislation is presumed to be intended to operate outside the territorial jurisdiction of the state or country enacting it. To the contrary, the presumption is that the statute is intended to have no extraterritorial effect, but to apply only within the territorial jurisdiction of the state or country enacting it. Thus an extraterritorial effect is not to be given statutes by implication.

73 Am.Jur.2d *Statutes* § 250 (emphasis added). In the decision of *Ex Parte First Pennsylvania Banking and Trust Co.*, 247 S.C. 506, 148 S.E.2d 373, 374 (1966), the South Carolina Supreme Court adopted this exact principle (*i.e.*, "... no law has any effect, of its own force, beyond the territorial limits of the sovereignty from which its authority is derived.").⁴ Thus, if South Carolina's legislature (*i.e.*, the South Carolina General Assembly) intended for the Receivership Act to operate extraterritorially, it was required to express the same clearly (and would have), but did not. Of note, the South Carolina General Assembly is imputed knowledge of existing precedent when it enacted the Receivership Act (or any law), so the obligation to indicate any extraterritorial application in express terms was known to the legislature at the time of enactment, yet nowhere appears in the statute's language. See *Williams v. Gov't Emps. Ins. Co. (GEICO)*, 409 S.C. 586,

South Carolina and such attempts to take them under control of the receivership, whether by possession, litigation, or otherwise.

⁴ See also *Id.* at 508 (citing 50 Am.Jur., *Statutes*, Section 485 ("Thus, the general rule is that no state or nation can, by its laws, directly affect, bind or operate upon property or persons beyond its territorial jurisdiction. A statute which purports to have such operation is invalid."))

602, 762 S.E.2d 705, 714 (2014) (“The General Assembly is presumed to know the law enacting legislation.”)⁵

In *GECC v. Renew*, 122 Fed. Appx. 604, 605 (4th Cir. 2004), the 4th Circuit followed the *First Pennsylvania* Court’s reasoning, as discussed above, when concluding the South Carolina worker’s lien statute could not apply to workers from a South Carolina-based company working in an out-of-state manufacturing facility. The *GECC* Court specifically quoted the language from the *First Pennsylvania* decision holding: “no law has any effect, of its own force, beyond the territorial limits of the sovereignty from which its authority is derived.” *Id.* at 607 (emphasis added). The *GECC* Court concluded: “The reasons underlying such a rule are apparent. State legislation that attempts to have effect beyond its territorial limits raises, at the very least, numerous potential constitutional issues.” *Id.*

Here, the Receivership Act evinces no legislative intent on the part of the South Carolina General Assembly to operate extraterritorially. Indeed, the exact opposite proves true. The plain and unambiguous language of the Receivership Act limits its application to foreign corporations to “the property within this State.” S.C. Code § 15-65-10(4). Other statutory language confirming the same appears in S.C. Code §15-65-100, entitled, “Compensation of receivers of corporate property,” which states: “Receivers of the property within this State of foreign or other corporations shall be allowed such commissions as may be fixed by the court appointing them.” *Id.* As such, not only does the Receivership Act not expressly extend the statute’s application extraterritorially, the act’s plain language limits its application to property within South Carolina’s borders. And, under South Carolina law, “[w]here the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and [a South Carolina] court has no right to impose another meaning.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

As related to the above analysis about the Receivership Act’s extraterritorial application (or lack thereof), on May 31, 2024, District Judge Quraishi from the United States District Court in New

⁵ *Frink v. Nat’l Mut. Fire Ins. Co.*, 90 S.C. 544, 549, 74 S.E. 33, 35 (1912) (“That a receiver has no extraterritorial authority is too well settled to require the citation of authority.”); *Pollock v. Carolina Interstate Bldg. & Loan Ass’n*, 48 S.C. 65, 25 S.E. 977 (1896) (“The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.”)

Jersey adopted exactly the same reasoning aptly describing the same as “intuitive” and noting, “traditionally, a state court’s power is limited to its territorial boundaries.” *Protopapas v. Whittaker, Clark & Daniels, Inc.*, No. CV 23-4151 (ZNQ), 2024 WL 2796449, at *6 (D.N.J. May 31, 2024). When reaching the same conclusions as set forth herein, Judge Quraishi correctly observed established precedent constrained South Carolina’s court system in relation to both “territorial limits” and the coequal status of other state sovereigns in the United States’ federalized system. *Id.* (citing *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 128 (2023) (observing the history of the Anglo-American legal tradition’s recognition that “a tribunal’s competence was generally constrained only by the ‘territorial limits’ of the sovereign that created it”); *see also World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980) (noting states are limited “by their status as coequal sovereigns in a federal system”). Judge Quraishi also correctly pointed out, that mechanisms such as ancillary receiverships exist (and the domestication of judgments for that matter) from state to sister state due to the constraints foreclosing extraterritorial application. Otherwise, such mechanisms would be unnecessary.

In short, the Receivership Act should not apply extraterritorially. Any Court Order predicated upon authority derived from the Receivership Act is, therefore, necessarily also so constrained. *See also Powers and Duties of Receivers—Extraterritorial Powers*, 16 Fletcher Cyc. Corp. § 7824 (“The power of a receiver is coextensive with the jurisdiction of the appointing court. A receiver has no extraterritorial jurisdiction or power of official action.”).⁶

5. What is the Barton Doctrine and how does it operate?

The United States Supreme Court first enunciated what United States Courts now call the *Barton* Doctrine in the decision of *Barton v. Barbour*, 104 U.S. 126 (1881). The *Barton* Doctrine generally establishes the following legal tenet: before a Plaintiff can sue a court appointed receiver

⁶ Relatedly, for a court order appointing a receiver over a foreign corporation’s assets to have effect, a South Carolina Court must also possess personal jurisdiction over that corporation, whether by specific or general jurisdiction, in a manner comporting with Due Process under the Fourteenth Amendment of the United States Constitution. *See, e.g., Sheppard v. Jacksonville Marine Supply, Inc.*, 877 F. Supp. 260, 265 (D.S.C. 1995); *Triplett v. R. M. Wade & Co.*, 261 S.C. 419, 426, 200 S.E.2d 375, 378 (1973). For example, an order appointing a receiver over a foreign corporation that never had assets in South Carolina, never maintained a place of business in South Carolina, never transacted business in South Carolina, and never undertook any action purposefully directed at South Carolina—such that the entity “could reasonably anticipate being haled into court” in this State—would not adhere to the Due Process needed to support a proper exercise of personal jurisdiction by a South Carolina Court. *See Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 492, 611 S.E.2d 505, 508 (2005).

for acts committed in the receiver's *official capacity*, the suing party must first obtain leave from the court that appointed the receiver ("Appointing Court" or "Receivership Court"). *Id.*; see also *McDaniel v. Blust*, 668 F.3d 153, 156–58 (4th Cir. 2012). In turn, "To determine whether a complained-of act falls under the *Barton* Doctrine, courts consider the nature of the function" performed by the receiver "during commission of the [challenged] actions." *Lismore Vill. Homeowners' Ass'n, Inc. v. Eastwood Constr., LLC*, No. 6:14-CV-2185-BHH, 2016 WL 3385081, at *7 (D.S.C. June 20, 2016). Under federal law and generally speaking, leave must be obtained when the receiver acts within his or her role of recovering assets for the estate. *Id.*

A review of the facts underpinning the *Barton* decision is helpful. A Virginia state court appointed John Barbour ("Barbour") as receiver for the Washington City, Virginia Midland, and Great Southern Railroad Company ("Railroad"), a Virginia corporation maintaining its assets in Virginia. *Barton v. Barbour*, 104 U.S. at 126. Plaintiff Frances Barton ("Barton") thereafter sued Barbour in his capacity as receiver in the District Court of Columbia (federal) seeking money damages. *Id.* at 127. According to Barton, as receiver, Barbour negligently operated the Railroad causing Plaintiff to sustain grave personal injuries when she was thrown from a sleeping car down a nearby embankment. *Id.* Expressly limiting its holding to the facts of the case, see *id.* at 133, the *Barton* Court found the District Court of Columbia lacked subject matter jurisdiction to hear a lawsuit *seeking a money judgment* against a state court appointed receiver for acts undertaken in his official capacity since the result of such a lawsuit, if successful, threatened to diminish the Virginia property under the receiver's control. *Id.* at 128.

As such, the *Barton* Doctrine arose from a federal holding (*i.e.*, a decision of the United States Supreme Court). But, under a federalism schema such as exists in the United States, federal precedent, even if from the United States Supreme Court, does not necessarily operate as controlling precedent in South Carolina, itself a sovereign, unless certain federal constitutional guarantees (or some other jurisdictional nexus) are somehow implicated by the *Barton* Doctrine's application, which they are not (*e.g.*, certain federal constitutional guarantees, interstate commerce, etc.). See, *e.g.*, *State v. Austin*, 306 S.C. 9, 16, 409 S.E.2d 811, 815 (Ct. App. 1991) ("The principle of federalism envisions two separate and independent judicial systems: federal courts, which construe federal law, and state courts, which construe state law.") Thus, how the *Barton* Doctrine

operates as to a receiver appointed by a South Carolina Court, if at all, compels adherence to any controlling South Carolina decisional law, if any.

Only one South Carolina decision discusses the *Barton* Doctrine as applied to a state court appointed receiver.⁷ The South Carolina Supreme Court first analyzed the *Barton* Doctrine in the decision of *Sigwald v. City Bank*, 82 S.C. 382, 64 S.E. 398, 400 (1909). Reciting *Barton*'s holding, the *Sigwald* Court wrote:

In *Barton v. Barbour*, Receiver, 104 U. S. 126, 26 L. Ed. 672, the Court held that where the action was to recover specific property in the hands of the receiver, or a money judgment against the receiver, or generally where a judgment in the action would give the claimant some advantage over other claimants upon the assets in the receiver's hands, it was necessary to obtain leave to sue from the Court appointing the receiver, and that failure to obtain such leave was jurisdictional, the suit being in the District of Columbia upon a cause of action arising in Virginia where the receiver was appointed and the property situated. The distinction between that case and the one at bar is wide. There is considerable conflict among the authorities as to whether the failure to obtain leave to sue a receiver is jurisdictional.

Sigwald v. City Bank, 82 S.C. at 386-87 (emphasis added).

The *Sigwald* Court then proceeded to answer whether a plaintiff's failure to obtain the consent of the Appointing Court would create a "jurisdictional" impediment to the non-receivership court hearing a lawsuit against a receiver as per the *Barton* Doctrine as applied under South Carolina law. Answering in the negative, at least under the facts then at bar, the *Sigwald* Court concluded:

We do not think the failure to obtain leave to sue the receiver in this case can be regarded a jurisdictional defect, since no assault is made on the receiver's possession, and no attempt is made, which resulting in a judgment, would interfere with or embarrass the administration of the receiver's trust or give any advantage as among distributees.

Id. at 387. Within the holding of *Sigwald*, then, the South Carolina Supreme Court ruled that the existence of subject matter jurisdiction is not negated, under the *Barton* Doctrine, when a lawsuit

⁷ Six months after issuing the holding in *Sigwald*, the South Carolina Supreme Court released the decision of *Huguelet v. Warfield*, 84 S.C. 87, 65 S.E. 985 (1909). Like *Sigwald*, the *Huguelet* decision discusses the holding of *Barton v. Barbour*. However, *Huguelet* related to the appointment of a federal receiver under federal statute and was ultimately decided under the federal statute. As a result, *Huguelet* does not provide meaningful guidance about the application of South Carolina law.

against a receiver does not interfere with the administration of property in the receiver's possession or trust, notwithstanding the lack of authorization by the Receivership Court.

Unfortunately, South Carolina law does not provide any other guidance as to how the *Barton* Doctrine would operate as to a receiver appointed by a South Carolina court. That said, one final point merits discussion. United States Courts uniformly recognize two exceptions to the *Barton* Doctrine. The first exception arises under federal statute (*i.e.*, 28 U.S.C.A. § 959(a)), applies to federal receivers, and would not apply to receivers appointed by state courts. However, the second exception applies uniformly to state and federal appointed receivers alike. Actions brought against a receiver for *ultra vires* actions fall outside of the *Barton* Doctrine and do not compel prior authorization from the appointing court when suing a receiver.⁸ See, *e.g.*, *Satterfield v. Malloy*, 700 F.3d 1231 (10th Cir. 2012); *Rosetto v. Murphy*, 733 Fed. Appx. 517 (11th Cir. 2018), cert. denied, 139 S. Ct. 927, 202 L. Ed. 2d 647 (2019); *Ariel Preferred Retail Group, LLC v. CWC Capital Asset Management*, 883 F. Supp. 2d 797 (E.D. Mo. 2012). That is to say, a receiver loses the *Barton* Doctrine's protections for actions exceeding the scope of his duties as authorized by the receivership court. See, *e.g.*, *In re Cruz*, 562 B.R. 812 (Bankr. M.D. Fla. 2016); *In re DMW Marine, LLC*, 509 B.R. 497 (Bankr. E.D. Pa. 2014).

6. What are the legal doctrines which could relate to a party bringing a case in the SC Court which is inconsistent with a case which that party has successfully argued and been determined by the English Court in its favour after a trial and full appeal process?

Under South Carolina law, upon a proper showing, the doctrine of judicial estoppel *may* bar a party from adopting a position contrary to what that party asserted in previous litigation. As the South Carolina Supreme Court has approvingly quoted: "It may be laid down as a general proposition that, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position." *Zimmerman v. Cent. Union Bank*, 194 S.C. 518, 8 S.E.2d 359, 365 (1940) (citing *Davis v. Wakelee*, 156 U.S. 680, 689, 15 S. Ct. 555, 558, 39 L. Ed. 578 (1895)). Judicial estoppel notably

⁸ For purposes of the instant discussion, the term *ultra vires* means actions taken beyond the authority conferred upon the Receiver under the Appointing Order, in contravention of the Appointing Order's mandates, or taken in conformity with the Receivership Order to the extent the Appointing Court lacked jurisdiction to issue the Receivership Order in whole or in part.

does not operate “to protect litigants from allegedly improper or deceitful conduct by their adversaries” but rather “to protect the integrity of courts.” *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (2003).

For judicial estoppel to apply, five elements must exist. They include: (1) two inconsistent positions (as to issues of fact, not law) must be taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 598, 748 S.E.2d 781, 788 (2013); *see also Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). As an equitable doctrine, judicial estoppel requires “caution” with respect to its application. *See Allen v. Zurich Ins. Co.*, 667 F.2d 1162, 1167 (4th Cir. 1982). Separate and apart from the doctrine of judicial estoppel, South Carolina Courts have recognized principles of comity ordinarily should give rise to the recognition of judgments from other sovereigns. *See, e.g., Collins v. Collins*, 219 S.C. 1, 16, 63 S.E.2d 811, 817 (1951).

7. What is the approach of SC law as to whether the pursuit of proceedings ought to be prohibited as abusive, vexatious, and unconscionable?

South Carolina law provides procedural and substantive mechanisms to both deter and foreclose abusive, vexatious, and unconscionable lawsuits before, during, and after their pendency. As an initial matter, Rule 11(a), SCRPC (“Rule 11(a)”) states in pertinent part:

(a) Signature. Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated...*The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay....*

If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may

impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Id. (emphasis added); *see also Chewning v. Ford Motor Co.*, 354 S.C. 72, 86, 579 S.E.2d 605, 613 (2003) (Claims which are not made in good faith are subject to sanction pursuant to Rule 11, SCRPC). Under Rule 11(a), then, an attorney who files a complaint initiating a lawsuit certifies to the Court that *bona fide* grounds exist to support such filing. *Id.* If, notwithstanding this Rule 11(a) certification, the attorney nonetheless commences suit in bad faith, the attorney becomes subject to sanctions from the Court. *Id.* In this way, Rule 11(a) procedurally operates to “deter future litigation abuse” prior to the initiation of abusive, vexatious, and unconscionable lawsuits. *Kovach v. Whitley*, 437 S.C. 261, 265, 878 S.E.2d 863, 865 (2022) (citing *Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 151 (4th Cir. 2002)).⁹

Additional safeguards arise once litigation begins. If a party’s pleading fails to allege claims legally capable of supporting relief, Rule 12(b)(6), SCRPC, affords Defendants a procedural basis to challenge deficient pleadings even before filing an answer. *Id.*; *see, e.g., Flateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003) (“Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action.”) Once the lawsuit progresses, Rule 56, SCRPC, thereafter grants litigants an opportunity to seek summary adjudications when the discovery process confirms no disputed issues of material fact exist as to whole claims or defenses, discrete elements of claims or defenses, or other material issues in lawsuits. *Id.*; *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008) (“The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder.”) As such, Rules 12(b)(6) and 56 create mechanisms for litigants to expedite final disposition of pending lawsuits that are meritless (*e.g.*, abusive, vexatious, and unconscionable cases).

Once litigation ends, S.C. Code § 15-36-10 (the “Frivolous Proceedings Act”) furnishes yet another deterrent against lawsuits brought in bad faith in the form of various sanctions against attorneys who pressed such proceedings. The Frivolous Proceedings Act allows the award of

⁹ Generally speaking, the same analysis throughout also applies to *pro se* litigants.

sanctions in a variety of circumstances including where lawsuits are brought in bad faith; for purposes of harassment; for delay; or for purposes of asserting frivolous claims. *See* S.C. Code § 15-36-10(C)(1)(a)-(c). Sanctions available for violating the Frivolous Proceedings Act include an award of attorney's fees and costs, fines, and injunctive relief against future frivolous actions or actions in bad faith. *Id.* at § (G)(1)-(3). South Carolina law, therefore, also fashions a post-judgment deterrent and sanction for abusive, vexatious, and unconscionable lawsuits.

Finally, upon a proper evidentiary showing, South Carolina's trial courts can also invoke their equitable powers to "intervene to prevent continued and vexatious litigation." *Ramantanin v. Poulos*, 240 S.C. 13, 25, 124 S.E.2d 611, 617 (1962). Of course, as with the issuance of all injunctive relief, "the power to enjoin...should be exercised with caution and only in a clear case." *Id.*; *see also Thomas v. Fulton*, 260 F. App'x 594, 596 (4th Cir. 2008) (Injunctive relief available to stop, "a litigant's continuous abuse of the judicial process by filing meritless and repetitive actions.") Abusive, vexatious, and unconscionable lawsuits can, therefore, also be abated through resort to injunctive relief independent of the Frivolous Proceedings Act at such time as a litigant can make a proper showing to the presiding court.

E. Literature and other materials relied upon in drafting the Report

I have appended the authorities and statutes, legislation and jurisprudence cited in the Report and relied upon to reach my conclusions.

List of documents

In drafting this Report, I have been provided with the following documents by Signature:

UK Proceedings

The Claimant's Part 8 Claim Form and details of Claim dated 6 September 2024;

Extract of Transcript from Hearing dated 9 October 2024 (pages 36-39);

First Witness Statement of Ran Oren dated 6 September 2024 on behalf of the Claimants;

The Claimant's Skeleton Argument for the application seeking expedition on 9 October 2024;

Adams v Cape Industries Plc [1990] 1 Ch 433.

US Proceedings

Park Claim: The Motion to Appoint the Receiver dated 6 March 2023;

Park Claim: The Receivership Order granted by the Court of South Carolina dated 16 March 2023;

Park Claim: The Complaints dated 8 August 2023, 5 November 2023 and 17 December 2023.

Tibbs Claim: The Complaint dated 5 April 2023;

Tibbs Claim: The Order Denying Receivership Dissolution: 6 December 2023;

The 3P Complaint dated 30 June 2023.

Procedural documents

Civil Procedure Rules (“CPR”) of England & Wales Part 35 and supporting Practice Direction 35;

Civil Justice Council of England & Wales– Guidance for instructing experts in civil claims (“CJC Guidance”).

Declarations

I, Hon. William W. Wilkins, declare that:

I understand that my duty included in my providing written reports and giving evidence is to help the Court and that this duty overrides any obligation to the party who has engaged me. I am aware of the requirements of Part 35 of the Civil Procedure Rules and of Practice Direction 35, the protocol for the instruction of experts to give evidence in civil claims. I confirm that I have complied with my duty and shall continue to comply with it.

I have endeavoured to include in my Report those matters which I have knowledge of or of which I have been made aware that might adversely affect the validity of my opinion.

I have indicated the sources of all information I have used.

I have not without forming an independent view included or excluded anything which has been suggested to me by others (in particular my instructing lawyers).

I will notify those instructing me immediately and confirm in writing if for any reason my existing Report requires any correction or qualification.

I confirm that I have not entered into any arrangement where the amount of payment of my fees is in any way dependent on the outcome of the case.

Statement of truth

I confirm that I have made clear which facts and matters referred to in this Report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed



Hon. William W. Wilkins

October 30, 2024.

BILLY WILKINS LAW, LLC
212 East Park Avenue
Greenville, South Carolina 29601



BILLY WILKINS LAW, LLC

Expert Report of Hon. William W. Wilkins
October 30, 2024

A. Introduction

I have been instructed by Signature Litigation LLP ("**Signature**"), acting for the Claimants, to provide an expert report on matters relating to South Carolina and US Law.

This report is for the High Court of Justice of England and Wales in the proceedings between the Claimants (1) Cape Intermediate Holdings Limited (2) Cape Plc and the Defendant, Peter D. Protopapas.

I have been asked to provide a report addressing the following questions on South Carolina law (the "**Questions**"):

1. What is the status of a receiver under South Carolina ("SC") Law, namely:
 - (a) The legal basis on which a receiver over a company can be appointed by the SC Court (including a foreign company not present in the jurisdiction of SC).
 - (b) The distinction between the receiver and the Court.
 - (c) The different types of receivership.
2. Is the legal authority of a receiver limited to the scope of the receivership order?
3. What duties are owed under SC law by a receiver to the company he represents where there is no judgment for a creditor?

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4. Under SC law, are receivership orders limited to the territory of South Carolina, or can they have extra-territorial effect?
5. What is the Barton Doctrine and how does it operate?
6. What are the legal doctrines which could relate to a party bringing a case in the SC Court which is inconsistent with a case which that party has successfully argued and been determined by the English Court in its favour after a trial and full appeal process?
7. What is the approach of SC law as to whether the pursuit of proceedings ought to be prohibited as abusive, vexatious and unconscionable?

B. Qualifications and experience

I have appended my biography and resume to this Report. I have five decades of experience in the legal, judicial and military fields in South Carolina. I am the Former Chief Judge of the U.S Court of Appeals for the Fourth Circuit, Former U.S District Judge and former Chair of the U.S Sentencing Commission.

I am a native of Greenville, South Carolina and have served my state and profession my entire career. Upon my retirement from the federal bench in 2008, I joined Maynard Nexsen and retired from that Firm on July 1, 2024. I then formed a separate law firm, Billy Wilkins Law, LLC.

C. Assistance

All work in this report has been carried out under my direct supervision and control and as such any opinions and views in this report are my own.

D. Answers to the Questions

1. **What is the status of a receiver under South Carolina ("SC") Law, namely:**
 - (a) **The legal basis on which a receiver over a company can be appointed by the SC Court (including a foreign company not present in the jurisdiction of SC).**
 - (b) **The distinction between the receiver and the Court.**

(c) The different types of receivership.¹

South Carolina law views a state court appointed receiver as, “an executive officer of the Court” appointed by the trial judge “to administer the assets of the estate under the direction of the Court.” *In re Fifty-Four First Mortg. Bonds*, 15 S.C. 304, 314 (1881); *see also Protopapas v. Travelers Cas. & Sur. Co.*, 94 F.4th 351, 354 (4th Cir. 2024). In this regard, the South Carolina Supreme Court has held:

A receiver represents the Court appointing him; he is an officer of the Court and is the agency through which the Court acts. As he has no power other than that given him by the Order of appointment, his authority is derived solely from the Court. He is subject only to the Court's direction.

Kirven v. Lawrence, 244 S.C. 572, 580, 137 S.E.2d 764, 768 (1964).

South Carolina decisional law has elsewhere described the role of a receiver as an “arm of the Court—appointed by the Court to receive and preserve the property or fund in litigation, together with the rents, issues and profits, and to apply or dispose of them at the direction of the Court.” *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 217, 118 S.E. 303, 304 (1923). Such treatment accords with various legal formulations describing the status of receivers in South Carolina’s sister jurisdictions. *See, e.g.*, 65 Am. Jur. 2d Receivers § 1 (describing receivers as agents, representatives, arms, fiduciaries, and officers of the appointing court). But, explained in simplest terms, the distinction between a receiver and an appointing Court is one of agent (receiver) and principal (appointing court).

Under South Carolina law, the appointment of a receiver is considered “a drastic remedy, and should be granted only with reluctance and caution.” *Richland Cnty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (citing *Vasiliades v. Vasiliades*, 231 S.C. 366, 98 S.E.2d 810 (1957)). “[A]s a rule, a receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined.” *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887) (internal quotation marks and citation omitted). Such “principles of law” have been noted by the South Carolina Supreme

¹ The answers to subparts (a) through (c) are provided collectively below to promote both efficiency and a cohesive answer.

Court as “firmly established by all of the decisions.” *S. Tr. Co. v. Cudd*, 166 S.C. 108, 114, 164 S.E. 428, 430 (1932).

When the circumstances so warrant, South Carolina law nonetheless allows for the appointment of receivers in various contexts. *See, e.g.*, S.C. Code § 6-17-200 (appointment of a receiver due to default upon municipal revenue bonds); *Id.* at § 34-36-60 (appointment of receiver for violating statutes applicable to loan brokers); *Id.* at § 34-3-630 (appointment of FDIC as receiver for failing insured banks). By contrast, South Carolina Code § 15-65-10 (Law. Co-op. 1976) *et seq.* (“Receivership Act”) is the statute fundamentally material to answering the question posed. It states:

A receiver may be appointed by a judge of the circuit court, either in or out of court:

- (1) Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired, except in cases when judgment upon failure to answer may be had without application to the court;
- (2) After judgment, to carry the judgment into effect;
- (3) After judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal or when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment;
- (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
- (5) In such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.

Id.

Under the Receivership Act, then, the statute’s plain and unambiguous language authorizes a South Carolina trial court to appoint a receiver in five enumerated categories. *Id.* The first only applies when a dispute over a specific asset exists prior to the issuance of a judgment in a lawsuit. *Id.* at ¶ 1. The second and third only apply after a judgment issues in a lawsuit. *Id.* at ¶¶ 2-3. The fourth only applies when a corporation has been dissolved or is imminently at risk of insolvency or losing

its corporate status. *Id.* at ¶ 5. Category 5, however, operates as a catchall receptacle embracing all of South Carolina law and existing practice unless specifically otherwise prohibited by statute.

Unfortunately, it is simply not possible to enumerate an exhaustive list of every situation when *law or practice* historically justified a receiver's appointment. That said, illustrative examples include:

- Allegations of fraudulent conveyances on the part of a debtor defendant. *See, e.g., First Carolinas Joint Stock Land Bank v. Knotts*, 191 S.C. 384, 1 S.E.2d 797 (1939); *Virginia-Carolina Chem. Co. v. Hunter*, 97 S.C. 31, 81 S.E. 190, 191 (1914).
- Alleged noncompliance with state environmental and regulatory provisions. *See, e.g., Midlands Utility, Inc. v. South Carolina Dep't of Health & Environmental Control*, 301 S.C. 224, 391 S.E.2d 535 (1989).
- Troubling conduct occurring during a partnership dissolution. *See, e.g., Wrenn v. Wrenn*, 228 S.C. 588, 91 S.E.2d 267 (1956).
- Alleged fraudulent deprivation of assets as between business partners. *See, e.g., Whilden v. Chapman*, 80 S.C. 84, 61 S.E. 249 (1908).
- Troubling conduct in a family court proceeding necessitating a receiver's appointment to assist in dividing marital property. *See, e.g., Whetstone v. Whetstone*, 309 S.C. 227, 420 S.E. 2d 877 (Ct. App. 1992).

See also 21 S.C. Jur. Receivers § 7. A review of reported decisions, albeit a non-exhaustive one, could not readily find an example of a case where a South Carolina trial court appointed a receiver pursuant to category 5 of the Receivership Act, in advance of a judgment's issuance, against a foreign corporation, who had never conducted business, owned assets, or maintained any sort of presence in South Carolina.

In addition to the Receivership Act, South Carolina's Rules of Civil Procedure ("SCRCP") also address the appointment of a receiver. Rule 66, SCRCP, states:

(a) Action Where Receiver Appointed. An action in which a receiver has been appointed shall not be dismissed except by order of the court. The practice in the

administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the laws of this State. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

(b) Powers of Receiver. In addition to the powers conferred by law, every receiver of the property and effects of a debtor shall, unless restricted by order of the court, have general power and authority to sue for and collect the debts, demands and rents belonging to the debtor, and to compromise and settle such as are of a doubtful value. He may also sue and defend in the name of the debtor *where it is necessary or proper for him to do so.*

Rule 66, SCRCP (emphasis added).² It is noteworthy that when a receiver does take possession of property or undertakes action to protect the same, he or she does so “subject to all valid prior liens, such incumbrances are entitled to protection and to payment out of the property which they cover.” *In re Am. Slicing Mach. Co.*, 125 S.C. at 219, 118 S.E. at 305.

No readily apparent reason appears to exist as to why a receiver would not similarly take possession of property subject to the valid and final adjudications of a court of competent jurisdiction to the extent they impacted status of title to property. Accordingly, when commencing any action that would seemingly otherwise be authorized, a state court appointed receiver would need to undertake care to avoid pursuing legal actions where prior encumbrances or adjudications would render such filings as improper, as such conduct would exceed both his court appointed authority, as circumscribed by controlling precedent, as well as the plain language of Rule 66, SCRCP.

2. Is the legal authority of a receiver limited to the scope of the receivership order?

A receiver has no legal authority apart from that bestowed upon him or her by the Court’s order of appointment. The South Carolina Supreme Court has held: “It is axiomatic that a Receiver appointed by a Court has no power or authority other than that given him by the order of appointment.” *Int’l Shoe Co. v. U. S. Fid. & Guar. Co.*, 186 S.C. at 282, 195 S.E. at 550 ; *see also In re Fifty-Four First Mortg. Bonds*, 15 S.C. at 314 (“The authority of a receiver rests only in the orders of the Court by which he is appointed. By virtue of any general authority as receiver he has

² Such language could garner a variety of meanings depending on context and no South Carolina precedent interpreting the same. However, it is safe to say that a Receiver cannot act in a manner contrary to the order of appointment, which, in the first instance, must also fall within the Court’s jurisdictional authority to issue relative to its content and mandates.

no right to sue or be sued or defend.”) And, as noted above, the South Carolina Supreme Court restated such tenet in the decision of *Kirven v. Lawrence*, 244 S.C. at 580, 137 S.E.2d at 768 where it once again confirmed a receiver: “has no power other than that given him by the Order of appointment, his authority is derived solely from the Court. He is subject only to the Court’s direction.” *Id.*

Also, South Carolina Rule of Civil Procedure 66(b) states:

(b) Powers of Receiver. In addition to the powers conferred by law, every receiver of the property and effects of a debtor shall, *unless restricted by order of the court, have general power and authority to sue for and collect the debts, demands and rents belonging to the debtor, and to compromise and settle such as are of a doubtful value. He may also sue and defend in the name of the debtor where it is necessary or proper for him to do so.*

Id. (emphasis added). However, such authority is not viewed as antagonistic but rather incidental to the powers granted by the receivership order and obviously cannot contravene any mandate to the contrary.

3. What duties are owed under SC law by a receiver to the company he represents where there is no judgment for a creditor?

Prior to a judgment’s issuance, the appointment of a receiver by a South Carolina Court places a corporation’s property in the hands of the Court for the benefit of those ultimately found to be entitled to it. *Stone v. Mincey*, 180 S.C. 317, 185 S.E. 619, 622 (1936); 21 S.C. Jur. Receivers §15; *see also Powell v. Maryland Tr. Co.*, 125 F.2d 260, 271 (4th Cir. 1942) (result “is to put the property from that time into his custody as an officer of the court, for the benefit of the party ultimately proved to be entitled, but not to change the title, or even the right of possession in the property.”) The “[p]roperty in the hands of the receiver is in *custodia legis*,” although title remains in the name of the corporation. *Int’l. Shoe Co. v. U.S. Fid. & Guar. Co.*, 186 S.C. at 271, 195 S.E. at 550. The scope of the receiver’s “general powers, rights, and duties” are defined by the order appointing the receiver, the statutory authority under which such order issued, and the rules of court applicable to receivers. *Hannon v. Mechanics Bldg. & Loan Ass’n of Spartanburg*, 177 S.C. 153, 180 S.E. 873, 876 (1935).

The “general rule in reference” to the duties owed by receivers appointed by South Carolina Courts “is that they shall use such diligence in the management” of receivership assets “as a prudent man would do in relation to his own affairs....” *Id.* Of course, the receiver manages receivership assets as “the arm of the Court,” *In re Am. Slicing Mach. Co.*, 125 S.C. at 214, 118 S.E. at 304, and not as an “agent of the corporation,” or “of any party to the suit in which the receiver is appointed.” Representative capacity of receivers, 16 Fletcher Cyc. Corp. § 7810.

Despite a lack of agency therewith, a receiver must act to protect the corporation’s rights, along with those of “its stockholders and creditors.” *In re Am. Slicing Mach. Co.*, 125 S.C. at 214, 118 S.E. at 303; *see also* Representative capacity of receivers, 16 Fletcher Cyc. Corp. § 7810. It is the receiver’s duty “to assert and protect the rights of each of these several classes of persons,” as “he is regarded as a trustee for them.” *In re Am. Slicing Mach. Co.*, 125 S.C. at 214, 118 S.E. at 304. In this way, South Carolina Courts view receivers as representing “the interests of all of the parties, including the creditors, the shareholders and the corporation itself.” Representative capacity of receivers, 16 Fletcher Cyc. Corp. § 7810.

In summary, receivers, as officers of the Court, shoulder “the burden of standing impartially between all parties concerned, with the further obligation, in so far as they possibly can, to protect the rights of all parties.” *Clark Bros. & Co. v. Pou*, 20 F.2d 74, 78 (4th Cir. 1927); *see also* Powers and duties of receivers, 16 Fletcher Cyc. Corp. § 7813 (“As officers of the court, receivers are under the duty to act impartially toward, and protect the rights of, all parties.”) Receivers are, therefore, viewed, as occupying a “fiduciary relationship toward the parties in interest, including the creditors and shareholders of the corporation.” Representative capacity of receivers—Fiduciary relationship, 16 Fletcher Cyc. Corp. § 7811. And specific duties and powers appear in the receiver’s Order of appointment.

4. Under SC law, are receivership orders limited to the territory of South Carolina, or can they have extra-territorial effect?

Receivership orders issued pursuant to the South Carolina receivership statute, codified at S.C. Code §15-65-10 *et seq.* (designated above as, “Receivership Act”), should not garner extraterritorial application or effect.³ While sparse, if any, South Carolina precedent directly

³ For purposes of responding to Question 4, the term “extraterritorial” means assets beyond the borders of the State of

addresses the Receivership Act's extraterritorial impacts, by applying controlling precedent evaluating when South Carolina statutes operate extraterritorially, coupled with the statute's plain language, and other persuasive authority, the Receivership Act should not be found to operate extraterritorially. Fundamentally, this is true because the Receivership Act, a unique creature of South Carolina law, nowhere evinces the requisite legislative intent to operate beyond South Carolina's borders.

Both controlling and persuasive authority, in this regard, prove both straightforward and well-established:

Unless the intention to have a statute operate beyond the limits of the state or country is *clearly expressed or indicated by its language, purpose, subject matter, or history*, no legislation is presumed to be intended to operate outside the territorial jurisdiction of the state or country enacting it. To the contrary, the presumption is that the statute is intended to have no extraterritorial effect, but to apply only within the territorial jurisdiction of the state or country enacting it. Thus an extraterritorial effect is not to be given statutes by implication.

73 Am.Jur.2d *Statutes* § 250 (emphasis added). In the decision of *Ex Parte First Pennsylvania Banking and Trust Co.*, 247 S.C. 506, 148 S.E.2d 373, 374 (1966), the South Carolina Supreme Court adopted this exact principle (*i.e.*, "... no law has any effect, of its own force, beyond the territorial limits of the sovereignty from which its authority is derived.").⁴ Thus, if South Carolina's legislature (*i.e.*, the South Carolina General Assembly) intended for the Receivership Act to operate extraterritorially, it was required to express the same clearly (and would have), but did not. Of note, the South Carolina General Assembly is imputed knowledge of existing precedent when it enacted the Receivership Act (or any law), so the obligation to indicate any extraterritorial application in express terms was known to the legislature at the time of enactment, yet nowhere appears in the statute's language. See *Williams v. Gov't Emps. Ins. Co. (GEICO)*, 409 S.C. 586,

South Carolina and such attempts to take them under control of the receivership, whether by possession, litigation, or otherwise.

⁴ See also *Id.* at 508 (citing 50 Am.Jur., *Statutes*, Section 485 ("Thus, the general rule is that no state or nation can, by its laws, directly affect, bind or operate upon property or persons beyond its territorial jurisdiction. A statute which purports to have such operation is invalid."))

602, 762 S.E.2d 705, 714 (2014) (“The General Assembly is presumed to know the law enacting legislation.”)⁵

In *GECC v. Renew*, 122 Fed. Appx. 604, 605 (4th Cir. 2004), the 4th Circuit followed the *First Pennsylvania* Court’s reasoning, as discussed above, when concluding the South Carolina worker’s lien statute could not apply to workers from a South Carolina-based company working in an out-of-state manufacturing facility. The *GECC* Court specifically quoted the language from the *First Pennsylvania* decision holding: “no law has any effect, of its own force, beyond the territorial limits of the sovereignty from which its authority is derived.” *Id.* at 607 (emphasis added). The *GECC* Court concluded: “The reasons underlying such a rule are apparent. State legislation that attempts to have effect beyond its territorial limits raises, at the very least, numerous potential constitutional issues.” *Id.*

Here, the Receivership Act evinces no legislative intent on the part of the South Carolina General Assembly to operate extraterritorially. Indeed, the exact opposite proves true. The plain and unambiguous language of the Receivership Act limits its application to foreign corporations to “the property within this State.” S.C. Code § 15-65-10(4). Other statutory language confirming the same appears in S.C. Code §15-65-100, entitled, “Compensation of receivers of corporate property,” which states: “Receivers of the property within this State of foreign or other corporations shall be allowed such commissions as may be fixed by the court appointing them.” *Id.* As such, not only does the Receivership Act not expressly extend the statute’s application extraterritorially, the act’s plain language limits its application to property within South Carolina’s borders. And, under South Carolina law, “[w]here the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and [a South Carolina] court has no right to impose another meaning.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

As related to the above analysis about the Receivership Act’s extraterritorial application (or lack thereof), on May 31, 2024, District Judge Quraishi from the United States District Court in New

⁵ *Frink v. Nat’l Mut. Fire Ins. Co.*, 90 S.C. 544, 549, 74 S.E. 33, 35 (1912) “That a receiver has no extraterritorial authority is too well settled to require the citation of authority.”); *Pollock v. Carolina Interstate Bldg. & Loan Ass’n*, 48 S.C. 65, 25 S.E. 977 (1896) (“The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.”)

Jersey adopted exactly the same reasoning aptly describing the same as “intuitive” and noting, “traditionally, a state court’s power is limited to its territorial boundaries.” *Protopapas v. Whittaker, Clark & Daniels, Inc.*, No. CV 23-4151 (ZNQ), 2024 WL 2796449, at *6 (D.N.J. May 31, 2024). When reaching the same conclusions as set forth herein, Judge Quraishi correctly observed established precedent constrained South Carolina’s court system in relation to both “territorial limits” and the coequal status of other state sovereigns in the United States’ federalized system. *Id.* (citing *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 128 (2023) (observing the history of the Anglo-American legal tradition’s recognition that “a tribunal’s competence was generally constrained only by the ‘territorial limits’ of the sovereign that created it”); *see also World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980) (noting states are limited “by their status as coequal sovereigns in a federal system”). Judge Quraishi also correctly pointed out, that mechanisms such as ancillary receiverships exist (and the domestication of judgments for that matter) from state to sister state due to the constraints foreclosing extraterritorial application. Otherwise, such mechanisms would be unnecessary.

In short, the Receivership Act should not apply extraterritorially. Any Court Order predicated upon authority derived from the Receivership Act is, therefore, necessarily also so constrained. *See also Powers and Duties of Receivers—Extraterritorial Powers*, 16 Fletcher Cyc. Corp. § 7824 (“The power of a receiver is coextensive with the jurisdiction of the appointing court. A receiver has no extraterritorial jurisdiction or power of official action.”).⁶

5. What is the Barton Doctrine and how does it operate?

The United States Supreme Court first enunciated what United States Courts now call the *Barton* Doctrine in the decision of *Barton v. Barbour*, 104 U.S. 126 (1881). The *Barton* Doctrine generally establishes the following legal tenet: before a Plaintiff can sue a court appointed receiver

⁶ Relatedly, for a court order appointing a receiver over a foreign corporation’s assets to have effect, a South Carolina Court must also possess personal jurisdiction over that corporation, whether by specific or general jurisdiction, in a manner comporting with Due Process under the Fourteenth Amendment of the United States Constitution. *See, e.g., Sheppard v. Jacksonville Marine Supply, Inc.*, 877 F. Supp. 260, 265 (D.S.C. 1995); *Triplett v. R. M. Wade & Co.*, 261 S.C. 419, 426, 200 S.E.2d 375, 378 (1973). For example, an order appointing a receiver over a foreign corporation that never had assets in South Carolina, never maintained a place of business in South Carolina, never transacted business in South Carolina, and never undertook any action purposefully directed at South Carolina--such that the entity “could reasonably anticipate being haled into court” in this State--would not adhere to the Due Process needed to support a proper exercise of personal jurisdiction by a South Carolina Court. *See Cockrell v. Hillerich & Bradshy Co.*, 363 S.C. 485, 492, 611 S.E.2d 505, 508 (2005).

for acts committed in the receiver's *official capacity*, the suing party must first obtain leave from the court that appointed the receiver ("Appointing Court" or "Receivership Court"). *Id.*; see also *McDaniel v. Blust*, 668 F.3d 153, 156–58 (4th Cir. 2012). In turn, "To determine whether a complained-of act falls under the *Barton* Doctrine, courts consider the nature of the function" performed by the receiver "during commission of the [challenged] actions." *Lismore Vill. Homeowners' Ass'n, Inc. v. Eastwood Constr., LLC*, No. 6:14-CV-2185-BHH, 2016 WL 3385081, at *7 (D.S.C. June 20, 2016). Under federal law and generally speaking, leave must be obtained when the receiver acts within his or her role of recovering assets for the estate. *Id.*

A review of the facts underpinning the *Barton* decision is helpful. A Virginia state court appointed John Barbour ("Barbour") as receiver for the Washington City, Virginia Midland, and Great Southern Railroad Company ("Railroad"), a Virginia corporation maintaining its assets in Virginia. *Barton v. Barbour*, 104 U.S. at 126. Plaintiff Frances Barton ("Barton") thereafter sued Barbour in his capacity as receiver in the District Court of Columbia (federal) seeking money damages. *Id.* at 127. According to Barton, as receiver, Barbour negligently operated the Railroad causing Plaintiff to sustain grave personal injuries when she was thrown from a sleeping car down a nearby embankment. *Id.* Expressly limiting its holding to the facts of the case, see *id.* at 133, the *Barton* Court found the District Court of Columbia lacked subject matter jurisdiction to hear a lawsuit *seeking a money judgment* against a state court appointed receiver for acts undertaken in his official capacity since the result of such a lawsuit, if successful, threatened to diminish the Virginia property under the receiver's control. *Id.* at 128.

As such, the *Barton* Doctrine arose from a federal holding (*i.e.*, a decision of the United States Supreme Court). But, under a federalism schema such as exists in the United States, federal precedent, even if from the United States Supreme Court, does not necessarily operate as controlling precedent in South Carolina, itself a sovereign, unless certain federal constitutional guarantees (or some other jurisdictional nexus) are somehow implicated by the *Barton* Doctrine's application, which they are not (*e.g.*, certain federal constitutional guarantees, interstate commerce, etc.). See, *e.g.*, *State v. Austin*, 306 S.C. 9, 16, 409 S.E.2d 811, 815 (Ct. App. 1991) ("The principle of federalism envisions two separate and independent judicial systems: federal courts, which construe federal law, and state courts, which construe state law.") Thus, how the *Barton* Doctrine

operates as to a receiver appointed by a South Carolina Court, if at all, compels adherence to any controlling South Carolina decisional law, if any.

Only one South Carolina decision discusses the *Barton* Doctrine as applied to a state court appointed receiver.⁷ The South Carolina Supreme Court first analyzed the *Barton* Doctrine in the decision of *Sigwald v. City Bank*, 82 S.C. 382, 64 S.E. 398, 400 (1909). Reciting *Barton*'s holding, the *Sigwald* Court wrote:

In *Barton v. Barbour*, Receiver, 104 U. S. 126, 26 L. Ed. 672, the Court held that *where the action was to recover specific property in the hands of the receiver, or a money judgment against the receiver, or generally where a judgment in the action would give the claimant some advantage over other claimants upon the assets in the receiver's hands, it was necessary to obtain leave to sue from the Court appointing the receiver, and that failure to obtain such leave was jurisdictional, the suit being in the District of Columbia upon a cause of action arising in Virginia where the receiver was appointed and the property situated.* The distinction between that case and the one at bar is wide. There is considerable conflict among the authorities as to whether the failure to obtain leave to sue a receiver is jurisdictional.

Sigwald v. City Bank, 82 S.C. at 386-87 (emphasis added).

The *Sigwald* Court then proceeded to answer whether a plaintiff's failure to obtain the consent of the Appointing Court would create a "jurisdictional" impediment to the non-receivership court hearing a lawsuit against a receiver as per the *Barton* Doctrine as applied under South Carolina law. Answering in the negative, at least under the facts then at bar, the *Sigwald* Court concluded:

We do not think the failure to obtain leave to sue the receiver in this case can be regarded a jurisdictional defect, since no assault is made on the receiver's possession, and no attempt is made, which resulting in a judgment, would interfere with or embarrass the administration of the receiver's trust or give any advantage as among distributees.

Id. at 387. Within the holding of *Sigwald*, then, the South Carolina Supreme Court ruled that the existence of subject matter jurisdiction is not negated, under the *Barton* Doctrine, when a lawsuit

⁷ Six months after issuing the holding in *Sigwald*, the South Carolina Supreme Court released the decision of *Huguelet v. Warfield*, 84 S.C. 87, 65 S.E. 985 (1909). Like *Sigwald*, the *Huguelet* decision discusses the holding of *Barton v. Barbour*. However, *Huguelet* related to the appointment of a federal receiver under federal statute and was ultimately decided under the federal statute. As a result, *Huguelet* does not provide meaningful guidance about the application of South Carolina law.

against a receiver does not interfere with the administration of property in the receiver's possession or trust, notwithstanding the lack of authorization by the Receivership Court.

Unfortunately, South Carolina law does not provide any other guidance as to how the *Barton* Doctrine would operate as to a receiver appointed by a South Carolina court. That said, one final point merits discussion. United States Courts uniformly recognize two exceptions to the *Barton* Doctrine. The first exception arises under federal statute (*i.e.*, 28 U.S.C.A. § 959(a)), applies to federal receivers, and would not apply to receivers appointed by state courts. However, the second exception applies uniformly to state and federal appointed receivers alike. Actions brought against a receiver for *ultra vires* actions fall outside of the *Barton* Doctrine and do not compel prior authorization from the appointing court when suing a receiver.⁸ See, *e.g.*, *Satterfield v. Malloy*, 700 F.3d 1231 (10th Cir. 2012); *Rosetto v. Murphy*, 733 Fed. Appx. 517 (11th Cir. 2018), cert. denied, 139 S. Ct. 927, 202 L. Ed. 2d 647 (2019); *Ariel Preferred Retail Group, LLC v. CWC Capital Asset Management*, 883 F. Supp. 2d 797 (E.D. Mo. 2012). That is to say, a receiver loses the *Barton* Doctrine's protections for actions exceeding the scope of his duties as authorized by the receivership court. See, *e.g.*, *In re Cruz*, 562 B.R. 812 (Bankr. M.D. Fla. 2016); *In re DMW Marine, LLC*, 509 B.R. 497 (Bankr. E.D. Pa. 2014).

6. What are the legal doctrines which could relate to a party bringing a case in the SC Court which is inconsistent with a case which that party has successfully argued and been determined by the English Court in its favour after a trial and full appeal process?

Under South Carolina law, upon a proper showing, the doctrine of judicial estoppel *may* bar a party from adopting a position contrary to what that party asserted in previous litigation. As the South Carolina Supreme Court has approvingly quoted: "It may be laid down as a general proposition that, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position." *Zimmerman v. Cent. Union Bank*, 194 S.C. 518, 8 S.E.2d 359, 365 (1940) (citing *Davis v. Wakelee*, 156 U.S. 680, 689, 15 S. Ct. 555, 558, 39 L. Ed. 578 (1895)). Judicial estoppel notably

⁸ For purposes of the instant discussion, the term *ultra vires* means actions taken beyond the authority conferred upon the Receiver under the Appointing Order, in contravention of the Appointing Order's mandates, or taken in conformity with the Receivership Order to the extent the Appointing Court lacked jurisdiction to issue the Receivership Order in whole or in part.

does not operate “to protect litigants from allegedly improper or deceitful conduct by their adversaries” but rather “to protect the integrity of courts.” *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (2003).

For judicial estoppel to apply, five elements must exist. They include: (1) two inconsistent positions (as to issues of fact, not law) must be taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 598, 748 S.E.2d 781, 788 (2013); *see also Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). As an equitable doctrine, judicial estoppel requires “caution” with respect to its application. *See Allen v. Zurich Ins. Co.*, 667 F.2d 1162, 1167 (4th Cir. 1982). Separate and apart from the doctrine of judicial estoppel, South Carolina Courts have recognized principles of comity ordinarily should give rise to the recognition of judgments from other sovereigns. *See, e.g., Collins v. Collins*, 219 S.C. 1, 16, 63 S.E.2d 811, 817 (1951).

7. What is the approach of SC law as to whether the pursuit of proceedings ought to be prohibited as abusive, vexatious, and unconscionable?

South Carolina law provides procedural and substantive mechanisms to both deter and foreclose abusive, vexatious, and unconscionable lawsuits before, during, and after their pendency. As an initial matter, Rule 11(a), SCRPC (“Rule 11(a)”) states in pertinent part:

(a) Signature. Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated...*The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay....*

If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may

impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Id. (emphasis added); *see also Chewning v. Ford Motor Co.*, 354 S.C. 72, 86, 579 S.E.2d 605, 613 (2003) (Claims which are not made in good faith are subject to sanction pursuant to Rule 11, SCRPC). Under Rule 11(a), then, an attorney who files a complaint initiating a lawsuit certifies to the Court that *bona fide* grounds exist to support such filing. *Id.* If, notwithstanding this Rule 11(a) certification, the attorney nonetheless commences suit in bad faith, the attorney becomes subject to sanctions from the Court. *Id.* In this way, Rule 11(a) procedurally operates to “deter future litigation abuse” prior to the initiation of abusive, vexatious, and unconscionable lawsuits. *Kovach v. Whitley*, 437 S.C. 261, 265, 878 S.E.2d 863, 865 (2022) (citing *Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 151 (4th Cir. 2002)).⁹

Additional safeguards arise once litigation begins. If a party’s pleading fails to allege claims legally capable of supporting relief, Rule 12(b)(6), SCRPC, affords Defendants a procedural basis to challenge deficient pleadings even before filing an answer. *Id.*; *see, e.g., Flateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003) (“Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action.”) Once the lawsuit progresses, Rule 56, SCRPC, thereafter grants litigants an opportunity to seek summary adjudications when the discovery process confirms no disputed issues of material fact exist as to whole claims or defenses, discrete elements of claims or defenses, or other material issues in lawsuits. *Id.*; *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008) (“The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder.”) As such, Rules 12(b)(6) and 56 create mechanisms for litigants to expedite final disposition of pending lawsuits that are meritless (*e.g.*, abusive, vexatious, and unconscionable cases).

Once litigation ends, S.C. Code § 15-36-10 (the “Frivolous Proceedings Act”) furnishes yet another deterrent against lawsuits brought in bad faith in the form of various sanctions against attorneys who pressed such proceedings. The Frivolous Proceedings Act allows the award of

⁹ Generally speaking, the same analysis throughout also applies to *pro se* litigants.

sanctions in a variety of circumstances including where lawsuits are brought in bad faith; for purposes of harassment; for delay; or for purposes of asserting frivolous claims. See S.C. Code § 15-36-10(C)(1)(a)-(c). Sanctions available for violating the Frivolous Proceedings Act include an award of attorney's fees and costs, fines, and injunctive relief against future frivolous actions or actions in bad faith. *Id.* at § (G)(1)-(3). South Carolina law, therefore, also fashions a post-judgment deterrent and sanction for abusive, vexatious, and unconscionable lawsuits.

Finally, upon a proper evidentiary showing, South Carolina's trial courts can also invoke their equitable powers to "intervene to prevent continued and vexatious litigation." *Ramantanin v. Poulos*, 240 S.C. 13, 25, 124 S.E.2d 611, 617 (1962). Of course, as with the issuance of all injunctive relief, "the power to enjoin...should be exercised with caution and only in a clear case." *Id.*; see also *Thomas v. Fulton*, 260 F. App'x 594, 596 (4th Cir. 2008) (Injunctive relief available to stop, "a litigant's continuous abuse of the judicial process by filing meritless and repetitive actions.") Abusive, vexatious, and unconscionable lawsuits can, therefore, also be abated through resort to injunctive relief independent of the Frivolous Proceedings Act at such time as a litigant can make a proper showing to the presiding court.

E. Literature and other materials relied upon in drafting the Report

I have appended the authorities and statutes, legislation and jurisprudence cited in the Report and relied upon to reach my conclusions.

List of documents

In drafting this Report, I have been provided with the following documents by Signature:

UK Proceedings

The Claimant's Part 8 Claim Form and details of Claim dated 6 September 2024;

Extract of Transcript from Hearing dated 9 October 2024 (pages 36-39);

First Witness Statement of Ran Oren dated 6 September 2024 on behalf of the Claimants;

The Claimant's Skeleton Argument for the application seeking expedition on 9 October 2024;

Adams v Cape Industries Plc [1990] 1 Ch 433.

US Proceedings

Park Claim: The Motion to Appoint the Receiver dated 6 March 2023;

Park Claim: The Receivership Order granted by the Court of South Carolina dated 16 March 2023;

Park Claim: The Complaints dated 8 August 2023, 5 November 2023 and 17 December 2023.

Tibbs Claim: The Complaint dated 5 April 2023;

Tibbs Claim: The Order Denying Receivership Dissolution: 6 December 2023;

The 3P Complaint dated 30 June 2023.

Procedural documents

Civil Procedure Rules (“CPR”) of England & Wales Part 35 and supporting Practice Direction 35;

Civil Justice Council of England & Wales– Guidance for instructing experts in civil claims (“CJC Guidance”).

Declarations

I, Hon. William W. Wilkins, declare that:

I understand that my duty included in my providing written reports and giving evidence is to help the Court and that this duty overrides any obligation to the party who has engaged me. I am aware of the requirements of Part 35 of the Civil Procedure Rules and of Practice Direction 35, the protocol for the instruction of experts to give evidence in civil claims. I confirm that I have complied with my duty and shall continue to comply with it.

I have endeavoured to include in my Report those matters which I have knowledge of or of which I have been made aware that might adversely affect the validity of my opinion.

I have indicated the sources of all information I have used.

I have not without forming an independent view included or excluded anything which has been suggested to me by others (in particular my instructing lawyers).

I will notify those instructing me immediately and confirm in writing if for any reason my existing Report requires any correction or qualification.

I confirm that I have not entered into any arrangement where the amount of payment of my fees is in any way dependent on the outcome of the case.

Statement of truth

I confirm that I have made clear which facts and matters referred to in this Report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed



Hon. William W. Wilkins

October 30, 2024.

BILLY WILKINS LAW, LLC
212 East Park Avenue
Greenville, South Carolina 29601

BILLY WILKINS LAW, LLC

Supplement to Expert Report November 11, 2024

This is submitted to supplement my Expert Report dated October 30, 2024 ("Initial Report"). On November 5, 2024, the Honorable Jean H. Toal issued an Order captioned, "*Order Granting Receiver's Motion to Clarify Order Appointing a Receiver for Cape PLC*" ("The Order"). The Order states in pertinent part:

Recent events, including an expert report by retired jurist William W. Wilkins, warrant further clarification of the Appointment Order. This Order hereby clarifies that the Receiver's Order of Appointment entered on March 17, 2023, which is incorporated herein by reference, including all of the Receiver's duties and protections, extends to the right and obligation to administer any claims related to the actions or failure to act of any entity related to or responsible for Cape. This Order also clarifies that the Receiver's litigation activity to date has been conducted within the scope of this Court's Appointment Order.

The Order, p. 3.

The Order has prompted me to supplement my Initial Report by way of clarification. The Initial Report solely endeavored to furnish legal opinions about South Carolina law relative to specific questions posed. Such legal opinions were not intended and should not be construed as applicable or inapplicable to the facts of any given case anywhere in the world. They were only intended to operate as a mini-treatise of the law as to the questions posed. Any other interpretation of the Initial Report and the legal opinions contained therein would be in error.

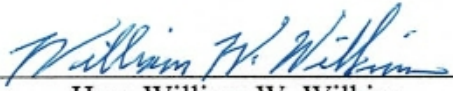
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As to the litigation matter referenced in The Order and the referenced Receiver's Order of Appointment dated March 17, 2023, apparently a rich history of facts exists in relation to such litigation—facts of which I remain unaware. The legal opinions expressed in the Initial Report should not be construed as somehow implying that the South Carolina Court exceeded its authority or that the South Carolina Court's Receiver has done anything outside the scope of the Court's Appointment Order. The Initial Report was never intended to make such ultimate determinations applying law to any particular set of facts. Nor could that occur as I am unaware of those facts to draw any such conclusions, one way or another.

Having made the foregoing clarifications about the Initial Report, my involvement with such matters is now hereby concluded.

Statement of Truth

I confirm that I have made clear which facts and matters referred to in this Supplement are within my own knowledge and which are not. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed 
Hon. William W. Wilkins

November 11, 2024.

BILLY WILKINS LAW, LLC
212 East Park Avenue
Greenville, South Carolina 29601



Claim No. BL-2024 - 001337

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (CHD)

BL-2024-001337

Before Mr Justice Mann, sitting in retirement

B E T W E E N:

(1) CAPE INTERMEDIATE HOLDINGS LIMITED

(2) CAPE PLC (a company incorporated under the laws of Jersey)

Claimants

- and -

PETER D. PROTOPAPAS

Defendant

ORDER

UPON THE CLAIM of Cape Intermediate Holdings Limited (“**CIHL**”) and Cape plc (“**the Claimants**”) issued by Part 8 Claim Form on 6 September 2024

AND UPON HEARING Counsel for the Claimants, Mark Phillips KC, Derrick Dale KC, William Willson, Angus Groom and Louise Merrett

AND UPON READING the evidence, being the first witness statement of Ran Oren dated 6 September 2024 (“**Oren 1**”), the second witness statement of Ran Oren dated 8 November 2024 (“**Oren 2**”), the expert report of the Hon William W Wilkins dated 30 October 2024 (“**the Wilkins Report**”), the further expert report of the Hon William W Wilkins dated 11 November 2024 (“**the Supplemental Wilkins Report**”), the fifth witness statement of Paul Brehony dated 11 November 2024 (“**Brehony 5**”), the sixth witness statement of Paul Brehony dated 13 November 2024 (“**Brehony 6**”), and the seventh witness statement of Paul Brehony dated 21 November 2024 (“**Brehony 7**”)

AND UPON finding that the appointment of the Defendant as purported receiver of CIHL is not recognised by the laws of England and Wales (where CIHL is incorporated), because CIHL was not present in the state South Carolina at the date upon which the application for the appointment or the appointment was made and because CIHL has not submitted to the jurisdiction of that state

IT IS DECLARED THAT

1. The receivership order of the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richland (“**the South Carolina Court**”) dated 16 March 2023 appointing Mr Peter Protopapas (“**Mr Protopapas**”) as a receiver over CIHL (“**the Receivership Order**”) is not recognised and has no legal effect in England and Wales and worldwide.
2. Mr Protopapas has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide to carry out the acts referred to in paragraph 6-10 below.
3. The rights and duties of the directors of CIHL remain unaffected by the appointment of Mr Protopapas as receiver of CIHL pursuant to the Receivership Order.
4. Mr Protopapas has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and the Tibbs Claim (as defined in Oren 1) and has and had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs Claim against any of the third party defendants in those proceedings (“**the 3P Complaint**”), including (i) Mohed Altrad (ii) Altrad Investment Authority SAS (iii) Altrad UK Ltd (iv) Cape UK Holdings Newco Ltd (v) Cape Industrial Services Group Ltd (vi) Cape Holdco Ltd (vii) Altrad Services Ltd.
5. Mr Protopapas has and had no power or authority to accept service on behalf of CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 with claim number C/A NO. 2024-CP-40-06639 or any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.

AND IT IS ORDERED THAT:

6. Mr Protopapas be restrained in England and Wales and worldwide from acting or purporting to act as agent or otherwise on behalf of CIHL pursuant to the Receivership Order.
7. Mr Protopapas be restrained in England and Wales and worldwide from appropriating, interfering with or usurping (in any way whatsoever) the lawful exercise of the rights and duties of the directors of CIHL.
8. Mr Protopapas be restrained from acting or purporting to act on behalf of CIHL in the Park Claim and the Tibbs Claim (as defined in Oren 1).
9. Mr Protopapas be restrained from continuing to prosecute the 3P Complaint (as defined in Oren 1).
10. Mr Protopapas be restrained from purporting to act for CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 and with claim number C/A NO. 2024-CP-40-06639 or in any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.

Liberty to Apply

11. The Claimants shall have liberty to apply for further or related relief.

Costs

12. The Claimants' costs be paid by the Defendant on the standard basis, to be a matter of detailed assessment if not agreed.
13. The Claimants shall have liberty to apply for an interim payment on account of costs.

Service of this Order

This order shall be served by the Claimants on the Defendant.

The court has provided a sealed copy of this order to the serving party, Signature Litigation LL, 138 Fetter Lane, London, EC4A 1BT.

22 November 2024

Signature Litigation LLP
138 Fetter Lane
London, EC4A 1BT

T: +44 (0)20 3818 3500
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27 November 2024

**By email, International Tracked & Signed and International
Traced and International Post**

Mr Peter D. Protopapas
2110N Beltline Blvd,
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South Carolina 29204,
United States of America

Our ref 5346.1

pdp@rplegalgroup.com

Dear Mr Protopapas

**BL-2024-001337: Cape Intermediate Holdings Limited and Cape Plc v Peter D. Protopapas (the
“Proceedings”)**

As you were made aware from our letter of 22 November 2024, Mr Justice Mann handed down Judgment in the Proceedings in the Business and Property Courts of the High Court of Justice in England & Wales (“**Judgment**”). By the same letter, you also received the sealed Order of Mr Justice Mann supporting the Court’s Judgment (“**Order**”). This Judgment and Order followed the Pre-Action Letter regarding declaratory and injunctive relief contemplated before the English court dated 30 August 2024 which requested you consent to an order and otherwise cease the activity you have now been ordered to cease.

In accordance with the Judgment and Order, you are again hereby instructed to cease and desist from all conduct related to our clients, Cape Intermediate Holdings Limited and Cape Plc (collectively referred to in this letter as “**CIHL**”)¹; including but not limited to any and all proceedings currently pending in the courts of South Carolina. Please treat this letter as a formal Cease and Desist Notice.

The Judgment confirms, *inter alia*, that “...*the receivership is not capable of recognition in this jurisdiction with the consequence that the receiver’s acts should not be recognised for English law purposes...*” (paragraph 100) and “*the company [CIHL] should have injunctions to restrain the receiver from holding himself out as having general authority to act on behalf of CIHL*” (paragraph 126).

The Order confirms, *inter alia*, that:

1. The orders dated 16 March 2023 and 6 December 2023 appointing Mr Protopapas as a receiver over CIHL are not recognised and have no legal effect in England and Wales and worldwide.

¹ This is on the basis that in the proceedings in South Carolina you are using both entities to refer to the relevant successor entity of Cape Asbestos Industries Ltd, which is CIHL.



2. Mr Protopapas has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide; and
3. Mr Protopapas has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of the Park Claim and the Tibbs Claim and has and had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs Claim against any of the third party defendants in those proceedings.

In summary, your appointment as receiver has been declared to have no legal effect worldwide, including in South Carolina, by the High Court of Justice. Accordingly, as a matter of English law, you have no lawful authority:

1. to act on behalf of Cape or any of its affiliates; or
2. to seek any further relief from any South Carolina Court.

Should you choose to violate the Order and this Cease and Desist Notice, action may be taken against you without further notice.

You will be further aware that the Order makes an award in favour of our clients for its costs in respect to the Proceedings, to be assessed if not agreed. This means you are obliged to pay our clients' costs, and we expect those costs to be paid when ordered.

Please direct any queries and responses to Paul Brehony and Josh Wong at this office (Paul.Brehony@signaturelitigation.com/ Josh.Wong@signaturelitigation.com).

This correspondence shall not be construed as submission to the jurisdiction, personal or otherwise, of any United States Court, including those within South Carolina. All our clients' other rights are reserved.

Yours faithfully

Signature Litigation LLP

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27 November 2024

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5346.1

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Robert W. Jacques (robert.jacques@morganlewis.com)
Lauren Semlinger (lauren.semlinger@morganlewis.com)
David Waldron (david.waldron@morganlewis.com)



Dear Sirs/Madams,

BL-2024-001337: Cape Intermediate Holdings Limited and Cape Plc v Peter D. Protopapas (the “Proceedings”)

We write on behalf of the claimants in the above Proceedings issued in the Business and Property Courts of the High Court of Justice in England & Wales.

We write to you in your capacity as attorneys acting for Mr Peter D. Protopapas in his purported capacity as Receiver over Cape International Holdings Limited and Cape Plc (both names being used to describe the successor in interest to Cape Asbestos Industries Ltd) (“**CIHL**”) in the Court of Common Pleas for the Fifth Judicial Circuit in Richland County, State of South Carolina (case no. 2023-CP-40-01759) (the “**Tibbs Claim**”).

We understand your offices in Philadelphia, New York, Washington & Houston are on the record in the Tibbs Claim and your London office has provided support including by attempting to serve papers in respect to the Tibbs Claim on behalf of Mr Protopapas.

This letter is notice that on 22 November 2024, Mr Justice Mann of the High Court of Justice in London handed down Judgment in the Proceedings (“**Judgment**”). Mr Justice Mann also made the enclosed order supporting the court’s Judgment (“**Order**”). This Judgment and Order followed the Pre-Action Letter regarding declaratory and injunctive relief contemplated before the English court dated 30 August 2024 which requested Mr Protopapas consent to an order and otherwise cease the activity he has now been ordered to cease.

The Judgment confirms, *inter alia*, that “...the receivership is not capable of recognition in this jurisdiction with the consequence that the receiver’s acts should not be recognised for English law purposes...” (paragraph 100) and “the company [CIHL] should have injunctions to restrain the receiver from holding himself out as having general authority to act on behalf of CIHL” (paragraph 126).

The Order, *inter alia*, confirms that:

1. The orders dated 16 March 2023 and 6 December 2023 appointing Mr Protopapas as a receiver over CIHL are not recognised and have no legal effect in England and Wales and worldwide.
2. Mr Protopapas has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide; and
3. Mr Protopapas has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of the Park Claim and the Tibbs Claim and has and had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs Claim against any of the third party defendants in those proceedings.

In summary, your client’s appointment as receiver has been declared to have no legal effect worldwide, including in South Carolina, by the High Court of Justice. Accordingly, as a matter of English law, your client has no lawful authority:

1. to act on behalf of Cape or any of its affiliates; or
2. to seek any further relief from any South Carolina Court.

In accordance with the Judgment and Order, we request that you advise your client that he is hereby instructed to cease and desist from all conduct related to CIHL worldwide, including but not limited to any and all proceedings currently pending in the courts of South Carolina. We expect you and your client will thereafter take all necessary steps to ensure compliance with the Order. A Cease and Desist Notice has been sent to your client separately.



Please confirm that you will, within seven days, advise your client of the above, take all necessary steps to ensure compliance with the Order, and please confirm receipt of this letter. Please direct any queries and responses to Paul Brehony and Josh Wong at this office (Paul.Brehony@signaturelitigation.com/Josh.Wong@signaturelitigation.com).

In the meantime, all our clients' rights are reserved. This correspondence shall not be construed as submission to the jurisdiction, personal or otherwise, of any United States Court, including those within South Carolina.

Yours faithfully

A handwritten signature in black ink that reads "Signature Litigation LLP". The script is cursive and stylized.

Signature Litigation LLP

Signature Litigation LLP
138 Fetter Lane
London, EC4A 1BT

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F: +44 (0)20 3818 3501

28 November 2024

By email

FAO: Sir Anthony Mann
Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Our ref

5346.1

Dear Judge

BL-2024-001337: Cape Intermediate Holdings Limited and Cape Plc v Peter D. Protopapas [2024] EWHC 2999 (Ch) (the “Judgment”)

Civil Action No. 2023-CP-40-01759 in the Court of Common Pleas in the State of South Carolina (the “South Carolina Proceedings”).

We write to provide an update to the Court on the steps that have been taken following the above Judgment and accompanying order (the “**Order**”) dated 22 November 2024.

1. On 22 November 2024, this firm, on behalf of the Claimants, served the Defendant with the Judgment and Order shortly after these were issued.
2. On 22 November 2024, Mohed Altrad and the Altrad Investment Authority SAS (the “**Altrad Defendants**”) filed two documents in the South Carolina proceedings:
 - (a) A “Notice of Judgment and Order”, confirmed the findings made in the Judgment and the terms of the Order; and
 - (b) A “Memorandum in Opposition to Motion for Summary Judgment”. That Memorandum stated, amongst other things, that based on the Judgment and accompanying Order, the Third Party Complaint must be dismissed and the Motion should be denied.
3. On 24 November 2024, the Altrad Defendants filed a “Supplement to the Altrad Defendants’ Petitions for a Writ of Certiorari”, which, amongst other things, provided the Supreme Court of South Carolina with an update in relation to the Judgment and Order.
4. On 27 November 2024 this firm wrote to Mr Protopapas formally instructing him to cease and desist all conduct relating to CIHL in accordance with the Judgment and terms of the Order.
5. On 27 November 2024 Mr Protopapas (purporting to continuing acting as “*the Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd., n/k/a Cape Intermediate Holdings Ltd*”), filed various documents with Court of Common Pleas under cover of a letter from his attorneys Gallivan, White & Boyd, P.A., comprising:
 - (a) two expert reports of Dr Castleman and Dr Press (the “**Expert Reports**”);

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- (b) Expert Witness Disclosure;
- (c) CV of James Buxton, Esq;
- (d) Amended and Supplemental Responses to Third-Party Defendant De Beers Consolidated Mines Proprietary Limited's First Set of Interrogatories;
- (e) Supplemental Responses to Third-Party Defendant De Beers Consolidated Mines Proprietary Limited's First Set of Requests for Production; and
- (f) Certificate of Service.

There have been no other steps taken by Mr Protopapas or communications from the South Carolina Court.

Yours faithfully

A handwritten signature in black ink that reads "Signature Litigation LLP". The signature is written in a cursive, flowing style.

Signature Litigation LLP

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29 November 2024

By email

FAO: Johnathan M. Robinson
Smith Robinson LLC
3200 Devine Street
Columbia, SC 29205

Our ref

5346.1

jon@smithrobinsonlaw.com

Dear Sirs/Madams

BL-2024-001337: Cape Intermediate Holdings Limited and Cape Plc v Peter D. Protopapas (the "Proceedings")

We write on behalf of the Claimants in the above Proceedings issued in the Business and Property Courts of the High Court of Justice in England & Wales.

We write to you in your capacity as attorneys acting for Mr Peter D. Protopapas in his purported capacity as Receiver over Cape International Holdings Limited and Cape Plc (both names being used to describe the successor in interest to Cape Asbestos Industries Ltd) ("**CIHL**") in the Court of Common Pleas for the Fifth Judicial Circuit in Richland County, State of South Carolina (case no. 2023-CP-40-01759) (the "**Tibbs Claim**"), whereby Mr Peter D. Protopapas has taken steps of issuing third party proceedings against (a) the Claimants' parent companies (b) the Claimants' direct subsidiaries and (c) the Claimants' other associated companies on 30 June 2023 ("**the 3P Complaint**").

In addition, we understand that Smith Robinson LLC filed the "*Motion to clarify order appointment a receiver for Cape Plc*" on behalf of Mr Peter D. Protopapas in his purported capacity as Receiver on 1 November 2024 in the Court of Common Pleas for the Fifth Judicial Circuit in Richland County, State of South Carolina (case no. 2021-CP-40-02727) (the "**Park Claim**").

This letter is notice that on 22 November 2024, Mr Justice Mann of the High Court of Justice in London handed down Judgment in the Proceedings ("**Judgment**"). Mr Justice Mann also made the enclosed order supporting the court's Judgment ("**Order**"). This Judgment and Order followed the Pre-Action Letter regarding declaratory and injunctive relief contemplated before the English court dated 30 August 2024 which requested Mr Protopapas consent to an order and otherwise cease the activity he has now been ordered to cease.

The Judgment confirms, *inter alia*, that "...the receivership is not capable of recognition in this jurisdiction with the consequence that the receiver's acts should not be recognised for English law purposes..." (paragraph 100) and "*the company [CIHL] should have injunctions to restrain the receiver from holding himself out as having general authority to act on behalf of CIHL*" (paragraph 126).



The Order, *inter alia*, confirms that:

1. The orders dated 16 March 2023 and 6 December 2023 appointing Mr Protopapas as a receiver over CIHL are not recognised and have no legal effect in England and Wales and worldwide.
2. Mr Protopapas has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide; and
3. Mr Protopapas has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of the Park Claim and the Tibbs Claim and has and had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs Claim against any of the third party defendants in those proceedings.

We further draw your attention to the Penal Notice at the front of the Order.

In summary, your client's appointment as receiver has been declared to have no legal effect worldwide, including in South Carolina, by the High Court of Justice. Accordingly, as a matter of English law, your client has no lawful authority:

1. to act on behalf of Cape or any of its affiliates; or
2. to seek any further relief from any South Carolina Court.

In accordance with the Judgment and Order, we request that you advise your client that he is hereby instructed to cease and desist from all conduct related to CIHL worldwide, including but not limited to any and all proceedings currently pending in the courts of South Carolina. We expect you and your client will thereafter take all necessary steps to ensure compliance with the Order. A Cease and Desist Notice has been sent to your client separately.

Please confirm that you will, within seven days, advise your client of the above, take all necessary steps to ensure compliance with the Order, and please confirm receipt of this letter. Please direct any queries and responses to Paul Brehony and Josh Wong at this office (Paul.Brehony@signaturelitigation.com/Josh.Wong@signaturelitigation.com).

In the meantime, all our clients' rights are reserved. This correspondence shall not be construed as submission to the jurisdiction, personal or otherwise, of any United States Court, including those within South Carolina.

Yours faithfully

Signature Litigation LLP

enc

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (CHD)

Before Mr Justice Mann, sitting in retirement

B E T W E E N:

- (1) CAPE INTERMEDIATE HOLDINGS LIMITED
(2) CAPE PLC (a company incorporated under the laws of Jersey)

Claimants

- and -

PETER D. PROTOPAPAS

Defendant

PENAL NOTICE

IF YOU THE DEFENDANT DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY PERSON WHO KNOWS OF THIS ORDER AND DISOBEYS THIS ORDER OR DOES ANYTHING WHICH HELPS OR PERMITS ANY PERSON TO WHOM THIS ORDER APPLIES TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED



Claim No. BL-2024 - 001337

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (CHD)

BL-2024-001337

Before Mr Justice Mann, sitting in retirement

B E T W E E N:

(1) CAPE INTERMEDIATE HOLDINGS LIMITED

(2) CAPE PLC (a company incorporated under the laws of Jersey)

Claimants

- and -

PETER D. PROTOPAPAS

Defendant

ORDER

UPON THE CLAIM of Cape Intermediate Holdings Limited (“**CIHL**”) and Cape plc (“**the Claimants**”) issued by Part 8 Claim Form on 6 September 2024

AND UPON HEARING Counsel for the Claimants, Mark Phillips KC, Derrick Dale KC, William Willson, Angus Groom and Louise Merrett

AND UPON READING the evidence, being the first witness statement of Ran Oren dated 6 September 2024 (“**Oren 1**”), the second witness statement of Ran Oren dated 8 November 2024 (“**Oren 2**”), the expert report of the Hon William W Wilkins dated 30 October 2024 (“**the Wilkins Report**”), the further expert report of the Hon William W Wilkins dated 11 November 2024 (“**the Supplemental Wilkins Report**”), the fifth witness statement of Paul Brehony dated 11 November 2024 (“**Brehony 5**”), the sixth witness statement of Paul Brehony dated 13 November 2024 (“**Brehony 6**”), and the seventh witness statement of Paul Brehony dated 21 November 2024 (“**Brehony 7**”)

AND UPON finding that the appointment of the Defendant as purported receiver of CIHL is not recognised by the laws of England and Wales (where CIHL is incorporated), because CIHL was not present in the state South Carolina at the date upon which the application for the appointment or the appointment was made and because CIHL has not submitted to the jurisdiction of that state

IT IS DECLARED THAT

1. The receivership order of the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richland (“**the South Carolina Court**”) dated 16 March 2023 appointing Mr Peter Protopapas (“**Mr Protopapas**”) as a receiver over CIHL (“**the Receivership Order**”) is not recognised and has no legal effect in England and Wales and worldwide.
2. Mr Protopapas has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide to carry out the acts referred to in paragraph 6-10 below.
3. The rights and duties of the directors of CIHL remain unaffected by the appointment of Mr Protopapas as receiver of CIHL pursuant to the Receivership Order.
4. Mr Protopapas has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and the Tibbs Claim (as defined in Oren 1) and has and had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs Claim against any of the third party defendants in those proceedings (“**the 3P Complaint**”), including (i) Mohed Altrad (ii) Altrad Investment Authority SAS (iii) Altrad UK Ltd (iv) Cape UK Holdings Newco Ltd (v) Cape Industrial Services Group Ltd (vi) Cape Holdco Ltd (vii) Altrad Services Ltd.
5. Mr Protopapas has and had no power or authority to accept service on behalf of CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 with claim number C/A NO. 2024-CP-40-06639 or any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.

AND IT IS ORDERED THAT:

6. Mr Protopapas be restrained in England and Wales and worldwide from acting or purporting to act as agent or otherwise on behalf of CIHL pursuant to the Receivership Order.
7. Mr Protopapas be restrained in England and Wales and worldwide from appropriating, interfering with or usurping (in any way whatsoever) the lawful exercise of the rights and duties of the directors of CIHL.
8. Mr Protopapas be restrained from acting or purporting to act on behalf of CIHL in the Park Claim and the Tibbs Claim (as defined in Oren 1).
9. Mr Protopapas be restrained from continuing to prosecute the 3P Complaint (as defined in Oren 1).
10. Mr Protopapas be restrained from purporting to act for CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 and with claim number C/A NO. 2024-CP-40-06639 or in any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.

Liberty to Apply

11. The Claimants shall have liberty to apply for further or related relief.

Costs

12. The Claimants' costs be paid by the Defendant on the standard basis, to be a matter of detailed assessment if not agreed.
13. The Claimants shall have liberty to apply for an interim payment on account of costs.

Service of this Order

This order shall be served by the Claimants on the Defendant.

The court has provided a sealed copy of this order to the serving party, Signature Litigation LL, 138 Fetter Lane, London, EC4A 1BT.

22 November 2024

Signature Litigation LLP
138 Fetter Lane
London, EC4A 1BT

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29 November 2024

By email

FAO: John T. Lay Jr & C. William McGee
Gallivan, White & Boyd, P.A.
Main Street
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Columbia, SC 29201

Our ref

5346.1

jlay@gwblawfirm.com
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Dear Sirs/Madams

BL-2024-001337: Cape Intermediate Holdings Limited and Cape Plc v Peter D. Protopapas (the "Proceedings")

We write on behalf of the Claimants in the above Proceedings issued in the Business and Property Courts of the High Court of Justice in England & Wales.

We write to you in your capacity as attorneys acting for Mr Peter D. Protopapas in his purported capacity as Receiver over Cape International Holdings Limited and Cape Plc (both names being used to describe the successor in interest to Cape Asbestos Industries Ltd) ("**CIHL**") in the Court of Common Pleas for the Fifth Judicial Circuit in Richland County, State of South Carolina (case no. 2023-CP-40-01759) (the "**Tibbs Claim**"), whereby Mr Peter D. Protopapas has taken steps of issuing third party proceedings against (a) the Claimants' parent companies (b) the Claimants' direct subsidiaries and (c) the Claimants' other associated companies on 30 June 2023 ("**the 3P Complaint**").

This letter is notice that on 22 November 2024, Mr Justice Mann of the High Court of Justice in London handed down Judgment in the Proceedings ("**Judgment**"). Mr Justice Mann also made the enclosed order supporting the court's Judgment ("**Order**"). This Judgment and Order followed the Pre-Action Letter regarding declaratory and injunctive relief contemplated before the English court dated 30 August 2024 which requested Mr Protopapas consent to an order and otherwise cease the activity he has now been ordered to cease.

The Judgment confirms, *inter alia*, that "...the receivership is not capable of recognition in this jurisdiction with the consequence that the receiver's acts should not be recognised for English law purposes..." (paragraph 100) and "*the company [CIHL] should have injunctions to restrain the receiver from holding himself out as having general authority to act on behalf of CIHL*" (paragraph 126).



The Order, *inter alia*, confirms that:

1. The orders dated 16 March 2023 and 6 December 2023 appointing Mr Protopapas as a receiver over CIHL are not recognised and have no legal effect in England and Wales and worldwide.
2. Mr Protopapas has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide; and
3. Mr Protopapas has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of the Park Claim and the Tibbs Claim and has and had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs Claim against any of the third party defendants in those proceedings.

We further draw your attention to the Penal Notice at the front of the Order.

In summary, your client's appointment as receiver has been declared to have no legal effect worldwide, including in South Carolina, by the High Court of Justice. Accordingly, as a matter of English law, your client has no lawful authority:

1. to act on behalf of Cape or any of its affiliates; or
2. to seek any further relief from any South Carolina Court.

In accordance with the Judgment and Order, we request that you advise your client that he is hereby instructed to cease and desist from all conduct related to CIHL worldwide, including but not limited to any and all proceedings currently pending in the courts of South Carolina. We expect you and your client will thereafter take all necessary steps to ensure compliance with the Order. A Cease and Desist Notice has been sent to your client separately.

Please confirm that you will, within seven days, advise your client of the above, take all necessary steps to ensure compliance with the Order, and please confirm receipt of this letter. Please direct any queries and responses to Paul Brehony and Josh Wong at this office (Paul.Brehony@signaturelitigation.com/Josh.Wong@signaturelitigation.com).

In the meantime, all our clients' rights are reserved. This correspondence shall not be construed as submission to the jurisdiction, personal or otherwise, of any United States Court, including those within South Carolina.

Yours faithfully

Signature Litigation LLP

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (CHD)

Before Mr Justice Mann, sitting in retirement

B E T W E E N:

- (1) CAPE INTERMEDIATE HOLDINGS LIMITED
(2) CAPE PLC (a company incorporated under the laws of Jersey)

Claimants

- and -

PETER D. PROTOPAPAS

Defendant

PENAL NOTICE

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Claim No. BL-2024 - 001337

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (CHD)

BL-2024-001337

Before Mr Justice Mann, sitting in retirement

B E T W E E N:

- (1) CAPE INTERMEDIATE HOLDINGS LIMITED**
(2) CAPE PLC (a company incorporated under the laws of Jersey)

Claimants

- and -

PETER D. PROTOPAPAS

Defendant

ORDER

UPON THE CLAIM of Cape Intermediate Holdings Limited (“**CIHL**”) and Cape plc (“**the Claimants**”) issued by Part 8 Claim Form on 6 September 2024

AND UPON HEARING Counsel for the Claimants, Mark Phillips KC, Derrick Dale KC, William Willson, Angus Groom and Louise Merrett

AND UPON READING the evidence, being the first witness statement of Ran Oren dated 6 September 2024 (“**Oren 1**”), the second witness statement of Ran Oren dated 8 November 2024 (“**Oren 2**”), the expert report of the Hon William W Wilkins dated 30 October 2024 (“**the Wilkins Report**”), the further expert report of the Hon William W Wilkins dated 11 November 2024 (“**the Supplemental Wilkins Report**”), the fifth witness statement of Paul Brehony dated 11 November 2024 (“**Brehony 5**”), the sixth witness statement of Paul Brehony dated 13 November 2024 (“**Brehony 6**”), and the seventh witness statement of Paul Brehony dated 21 November 2024 (“**Brehony 7**”)

AND UPON finding that the appointment of the Defendant as purported receiver of CIHL is not recognised by the laws of England and Wales (where CIHL is incorporated), because CIHL was not present in the state South Carolina at the date upon which the application for the appointment or the appointment was made and because CIHL has not submitted to the jurisdiction of that state

IT IS DECLARED THAT

1. The receivership order of the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richland (“**the South Carolina Court**”) dated 16 March 2023 appointing Mr Peter Protopapas (“**Mr Protopapas**”) as a receiver over CIHL (“**the Receivership Order**”) is not recognised and has no legal effect in England and Wales and worldwide.
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4. Mr Protopapas has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and the Tibbs Claim (as defined in Oren 1) and has and had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs Claim against any of the third party defendants in those proceedings (“**the 3P Complaint**”), including (i) Mohed Altrad (ii) Altrad Investment Authority SAS (iii) Altrad UK Ltd (iv) Cape UK Holdings Newco Ltd (v) Cape Industrial Services Group Ltd (vi) Cape Holdco Ltd (vii) Altrad Services Ltd.
5. Mr Protopapas has and had no power or authority to accept service on behalf of CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 with claim number C/A NO. 2024-CP-40-06639 or any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.

AND IT IS ORDERED THAT:

6. Mr Protopapas be restrained in England and Wales and worldwide from acting or purporting to act as agent or otherwise on behalf of CIHL pursuant to the Receivership Order.
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9. Mr Protopapas be restrained from continuing to prosecute the 3P Complaint (as defined in Oren 1).
10. Mr Protopapas be restrained from purporting to act for CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 and with claim number C/A NO. 2024-CP-40-06639 or in any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.

Liberty to Apply

11. The Claimants shall have liberty to apply for further or related relief.

Costs

12. The Claimants' costs be paid by the Defendant on the standard basis, to be a matter of detailed assessment if not agreed.
13. The Claimants shall have liberty to apply for an interim payment on account of costs.

Service of this Order

This order shall be served by the Claimants on the Defendant.

The court has provided a sealed copy of this order to the serving party, Signature Litigation LL, 138 Fetter Lane, London, EC4A 1BT.

22 November 2024