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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
JOHN A. TIBBS and MARGARET B. TIBBS, Plaintiffs, v. 3M COMPANY *et al.*, Defendants.	C/A No. 2023-CP-40-01759 In Re: Asbestos Personal Injury Litigation Coordinated Docket
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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	**ORDER GRANTING THE RECEIVER FOR CAPE PLC'S MOTION FOR SANCTIONS AND MOTION FOR ADVERSE INFERENCE AS TO THE ALTRAD AND CHARTER THIRD-PARTY DEFENDANTS**

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SC Court of Appeals

DEBENTURE CORPORATION PLC; CAPE INDUSTRIAL SERVICES GROUP LTD.; MOHED ALTRAD; ALTRAD UK LTD.; CAPE UK HOLDINGS NEWCO LTD.; ALTRAD SERVICES LTD., f/k/a CAPE INDUSTRIAL SERVICES LTD.; ALTRAD INVESTMENT AUTHORITY S.A.S.; SPARROWS OFFSHORE GROUP LTD.; HAWK BIDCO US INC.; ARRANCO US, LLC; SPARROWS OFFSHORE, LLC; THE SPARROWS GROUP, LLC,

Third-Party Defendants.

This matter came before the Court on certain motions of Third-Party Plaintiff Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd., n/k/a Cape Intermediate Holdings Ltd. ("Cape"), by and through its duly appointed Receiver Peter D. Protopapas (the "Receiver"), specifically the Motion for Adverse Inference as to the Altrad and Charter Third-Party Defendants[1] filed on April 5, 2024 and Motion for Sanctions filed on April 12, 2024 (collectively, "Motions"). Having considered the Motions and record, along with the Third-Party Defendants' responses, and having conducted a hearing in which the Third-Party Defendants presented oral argument on the Motions, the Court grants the Motions for the reasons set forth below.[2]

[1] The Altrad Third-Party Defendants are Mohed Altrad and Altrad Investment Authority S.A.S. ("Altrad Owners Third-Party Defendants"), along with the U.S. subsidiaries of the Altrad Group that have responded to the Receiver's third-party action, *i.e.*, Arranco US LLC ("Arranco"), Hawk Bidco (US) Inc., and Sparrows Offshore, LLC ("Altrad Sparrows Third-Party Defendants"). The Charter Third-Party Defendants are Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation.

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

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FACTUAL AND PROCEDURAL BACKGROUND

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

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

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

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

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

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

III. <u>The Receiver Asserts Claims Against the Third-Party Defendants.</u>

On June 30, 2023, the Receiver filed the Third-Party Complaint, asserting claims against the Third-Party Defendants for (i) unjust enrichment (first cause of action), (ii) constructive trust (second cause of action), (iii) alter ego and veil-piercing liability (third cause of action), and (iv) accounting (fourth cause of action). Each of the Third-Party Defendants named in the Third-Party Complaint is alleged to have facilitated, caused, or directed Cape's U.S.-based asbestos sales and liability-avoidance scheme, or otherwise acted as successors in interest to or beneficiaries of entities involved in that scheme, and are therefore responsible for the bodily injury underlying the claims against Cape, including specifically those claims asserted by South Carolinians.

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

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

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

A. **Cape.**

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

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

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

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

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

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

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

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

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

B. The Altrad Third-Party Defendants.

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

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

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

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

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

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

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C. <u>The Charter Third-Party Defendants.</u>

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

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

IV. <u>The Ongoing Refusals to Participate by These Third-Party Defendants.</u>

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

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

On January 12, 2024, the Receiver filed motions to compel these Third-Party Defendants' basic compliance with their discovery obligations, which the Court granted on March 12 (the "March 12 Order."). Pursuant to the March 12 Order, the Court directed all Third-Party Defendants "(i) to provide responsive, substantive, and complete answers to the Receiver's Discovery Requests with 14 days of entry of this Order and (ii) to begin producing documents in response to the Receiver's Requests for Production the same day," and (iii) as to Arranco and Central Mining, "to designate witnesses for . . . Rule 30(b)(6) depositions" by March 19 and "produce those witnesses" by April 2. (Order at 13).

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

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

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

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

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

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

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

LEGAL STANDARD FOR SANCTIONS

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

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

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

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

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

DECISION ON ADVERSE INFERENCES

It has long been the law of South Carolina that "the failure or refusal of a party to produce evidence may create an adverse inference where such evidence is within his knowledge, and within his power to produce, is not equally accessible to his opponent, and is such as he would naturally produce if it were favorable to him." *Davis v. Sparks*, 235 S.C. 326, 333, 111 S.E.2d 545, 549 (1959). Here, more than six months after being served discovery, and more than a month since the Court imposed deadlines to comply with their discovery obligations, the Altrad and Charter Third-Party Defendants continue to refuse any effort at compliance with the Court's orders and the discovery rules of this State. Despite multiple warnings by this Court and directives to **proceed with discovery**, these Third-Party Defendants have continued their misconduct, while filing multiple frivolous appeals that, based on clearly applicable appellate precedent, will inevitably be dismissed.

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

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

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

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

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

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

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Inferences as to Central Mining & Investment Corporation Ltd.

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

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

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

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

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

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38. Charter Consolidated Ltd. and Central Mining were both part of a scheme to facilitate Cape's escape from legal or financial responsibility for people harmed by Cape asbestos in the United States, including in South Carolina.

39. Charter Consolidated Ltd. and Central Mining were both part of a corporate arrangement to eliminate or reduce as much as possible their exposure in the United States to lawsuits brought against them for the sale of asbestos in the United States.

40. Charter Consolidated Ltd. and Central Mining intentionally designed complexity into their organization and corporate relationships in order to obfuscate those relationships and ownership interests while minimizing Cape's and their own liability risks, including for asbestos sold in the United States, including in South Carolina.

41. Charter Consolidated Ltd. and Central Mining refused to make adequate provisions or reserves of cash for Cape's and their own asbestos-related liabilities.

42. In 1996, Charter Consolidated Ltd. sold off its direct equity interests in Cape for approximately £48 million.

<u>Inferences as to South Carolina Presence,[8] Control by and Responsibility of ESAB Corporation</u>

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

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

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

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44. In 1994, ESAB Group was acquired by Charter PLC (a new holding company formed in 1993) and continued to operate primarily from Florence, South Carolina.[10]

45. In or around October 2008, ESAB Group "became an indirect subsidiary of Charter International plc."[11]

46. Through at least 2012, "ESAB Group has maintained its principal place of business in Florence, South Carolina, where it ha[d] a manufacturing plant, executive offices, and sales, engineering, and research development divisions."[12]

47. While operating in the United States, principally from Florence, South Carolina, ESAB Group initiated multiple lawsuits in South Carolina. *E.g.*, *ESAB Grp., Inc. v. Centricut, Inc.*, No. 4:96-cv-00168 (filed Jan. 19, 1996); *ESAB Grp. Inc. v. Centricut LLC*, No. 4:98-cv-01654 (filed Jun 8, 1998); *ESAB Grp. Inc. v. Arrowood Indem. Co. et al.*, No. 4:09-cv-01701 (filed on June 25, 2009).

48. As of 2011, ESAB Group employed "523 people at its Florence facilities, which include[d] a manufacturing plant, executive offices, the company's information technology department, and a substantial portion of the company's sales, engineering, and research and development divisions"; the company had "paid more than $6 million in taxes to the State of South Carolina and Florence County"; and the company "derive[d] a substantial portion of its total revenue from its operations and facilities in Florence, South Carolina,"

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

[11] *Id.*

[12] *Id.*

including "generat[ing] approximately $225 million in revenue from its Florence operations" from 2008 through the first half of 2009.[13]

49. In 2011, Colfax acquired Charter and ESAB Group, along with ESAB Group's "North American headquarters . . . located in Florence, South Carolina."[14]

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

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

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

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

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

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

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

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

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

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

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65. The Charter Third-Party Defendants have done nothing to address Cape's massive unpaid responsibility for the death and illness caused by Cape's asbestos products in South Carolina and elsewhere in the United States.

66. The Charter Third-Party Defendants have taken possession of property, including cash and other assets, which they should have not taken from Cape and should have remained available to bodily-injury claimants in the United States, including in South Carolina.

67. The Charter Third-Party Defendants have destroyed corporate records and publicly misrepresented the nature of Cape's business and liability-avoidance scheme in the United States.

68. The Charter Third-Party Defendants are responsible for the absence of corporate records with respect to Cape, with Charter Consolidated Ltd. and Central Mining responsible for the destruction of records referenced with respect to the Barlow World Rand Mines Archive. *See* https://researcharchives.wits.ac.za/5-3-14 (referencing "certain boxes [that] have been destroyed" or "negative material on miners' phthisis and asbestos [that] have been removed – perhaps even before the collection came to Barlows").

General Inferences as to Alter Ego Liability

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

70. The Charter Third-Party Defendants—with Cape prior to 1996—are part of a single business enterprise or single enterprise-in-fact, have an amalgamation of corporate

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

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

General Inferences as to Unjust Enrichment

72. The Charter Third-Party Defendants participated in, or otherwise directed or facilitated, Cape's liability-avoidance scheme.

73. The Charter Third-Party Defendants have financially benefited from Cape's liability-avoidance scheme, including receiving diverted funds directly or indirectly from Cape and retaining the benefits of Cape's asbestos business.

74. It would be inequitable for the Charter Third-Party Defendants to retain any financial benefit or monetary value from the liability-avoidance scheme without contributing to the compensation of persons harmed by Cape asbestos, including by returning the financial benefit or monetary value of the funds obtained from Cape.

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

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

Inferences as to AIA and Mohed Altrad

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

Inferences as to Altrad and Cape

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

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

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

<u>Inferences as to Altrad and Altrad Sparrows</u>

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

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

Inferences as to All Altrad Third-Party Defendants

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

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

General Inferences as to Alter Ego Liability

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

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

41. Mohed Altrad acts as the alter ego and "guiding spirit" of the Altrad Group.

42. Mohed Altrad controls decision-making within the Altrad Group, including for Cape.

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

General Inferences as to Unjust Enrichment

44. The Altrad Third-Party Defendants are part of the Cape liability-avoidance scheme, or have otherwise directed or facilitated the liability-avoidance scheme.

45. The Altrad Third Party Defendants have financially benefited from Cape's liability-avoidance scheme, including receiving diverted funds directly or indirectly from Cape and retaining the benefits of Cape's asbestos business.

46. It would be inequitable for the Altrad Third-Party Defendants to retain any financial benefit or monetary value from the liability-avoidance scheme without contributing to the compensation of persons harmed by Cape asbestos, including by returning the financial benefit or monetary value of the funds obtained from Cape.

DECISION ON REQUEST FOR ATTORNEYS' FEES

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

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

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

* * * * *

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

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]

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Richland Common Pleas

Case Caption: John A Tibbs , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2023CP4001759

Type: Order/Sanctions

So Ordered

Jean H. Toal

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