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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Civil Action No. 2023-CP-40-01759

Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs,

v.

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

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

Defendants,

and

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

Third-Party Plaintiff / Respondent

v.

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

Third-Party Defendants,

of which

Mohed Altrad, Altrad Investment Authority SAS, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the

Petitioners.

MOTION FOR SANCTIONS AS TO MOHED ALTRAD AND ALTRAD INVESTMENT AUTHORITY S.A.S.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
KEITH W. PARK, individually and as the Personal Representative of the Estate of **ISABELLA PARK**,	)	**C/A NO. 2021-CP-40-02727**
Plaintiffs,	)	*In Re:* Asbestos Personal Injury Litigation Coordinated Docket
v.	)	**ORDER**
ARMSTRONG INTERNATIONAL, INC., et al.	)	
Defendants.	)	

Plaintiffs have moved this Court to appoint a Receiver over Cape PLC, pursuant to S.C. Code §15-65-10(4)-(5). This Court finds that the application is meritorious under the applicable statute because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) ("Cape Asbestos") and its subsidiaries and global affiliates (collectively, "Cape" or the "Company") have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.

Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law with the power and authority fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be. This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape's insurance carriers.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Respondent's property, to: 1) collect all accounts receivable of Respondent and all rents due to the Respondent from any tenant; 2) to change locks to all premises at which any property is situated; 3) open any mail addressed to the defendant and addressed to any business owned by the Respondent; redirect the delivery of any mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver; 4) endorse and cash all checks and negotiable instruments payable to Respondent, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Respondents; 6) hire any person or company to move and store the property of Respondent; 7) to insure any property belonging to the Respondents (but not the obligation); 8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendants; 9) obtain from any landlord, building owner or building manager where the Respondent or the Respondent's business is a tenant, copies of the Respondent's lease, lease application, credit application, payment history and copies of Respondent's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; and 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Respondent may be situated, and to review and obtain copies of all documents related to same.

Based on the Court's experience in other receivership matters, and in an effort to streamline these proceedings, the Court expects the Receiver to investigate the existence of all insurance coverages potentially available to the company in receivership. The Receiver will provide potential insurers with lists of work sites, contractors, and insurance brokers and agents to facilitate

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the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of the company in receivership or any company for whom the company in receivership did work as an "additional insured" under coverage written to another entity). The Court expects all insurers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

The Court further orders that, as the Receiver Court, 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.

AND IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]

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Richland Common Pleas

Case Caption: Isabella Park , plaintiff, et al vs Armstrong International Inc , defendant, et al

Case Number: 2021CP4002727

Type: Order/Appointment of Receiver

So Ordered

Jean H. Toal

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
KEITH W. PARK, individually and as the Personal Representative of the Estate of ISABELLA PARK, Plaintiffs, v. ARMSTRONG INTERNATIONAL, INC., *et al.*, Defendants.	C/A No. 2021-CP-40-02727 In Re: Asbestos Personal Injury Litigation Coordinated Docket **ORDER GRANTING RECEIVER'S MOTION TO CLARIFY ORDER APPOINTING A RECEIVER FOR CAPE PLC**

This matter comes before the Court by way of 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") Motion to Clarify Order Appointing a Receiver for Cape, issued by this court on March 17, 2023. The Receiver's Motion is hereby GRANTED.

On June 30, 2023, the Receiver initiated a third party action in the South Carolina Court of Common Pleas in *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (the "Third Party Action"), to adjudicate the parties responsible for Cape's historical liabilities and the duties owed by those entities to Cape. Certain Third Party Defendants moved to dissolve the receivership and/or dismiss the Third Party Action on the grounds that the Receiver was not authorized to initiate such actions, and that the Receiver's attempts to marshal assets outside of South Caroline exceeded the scope of his authority. This Court denied those motions in an order dated December 6, 2023. Certain Third Party Defendants continue to disagree with South Carolina and Federal court rulings confirming the application of the Barton Doctrine and the authority of the Receiver and Receivership Court. *See Protopapas v. Zurich Am. Ins. Co.*, 2023 WL 2206640, at *2 (D.S.C. Feb. 24, 2023) (Coggins, J.), *appeal dismissed sub nom., Protopapas v. Travelers Cas. & Sur. Co.*, 94 F.4th 351 (4th Cir. 2024). *See, e.g.*, *Pipe & Boiler Insulation, Inc. v. Cont'l Ins. Co. et al.*, No.

3:21-cv-03033-SAL, ECF No. 153, at 4–9 (D.S.C. Mar. 9, 2023) (remanding receivership matter because "the *Barton* doctrine prevents Defendants from removing this matter, filed *by* a Receiver, to federal court," while also considering judicial economy in light of the fact that any "settlement agreement is not final until the *Receivership Court* approves the settlement"); *Protopapas v. Zurich Am. Ins. Co. et al.*, No. 3:21-cv-04086-DCC, ECF No. 180, at 4–6, 10 (D.S.C. Feb. 24, 2023) (remanding receivership case because "*Barton*, and its subsequent application in *Porter*, act as a limitation on federal jurisdiction when a state court has previously exercised its authority by appointing a receiver," such that allowing removal "would directly interfere with the exclusive jurisdiction of the receivership court over this dispute"); *see also S. Insulation, Inc. v. OneBeacon Ins. Grp., Ltd.*, No. 3:22-cv-01308-MGL, ECF No. 46, at 4–6 (D.S.C. Nov. 8, 2022) (remanding receivership case on other basis). s*ee also, e.g.*, Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, and 2023-002011 (Orders, June 18, 2024 and July 1, 2024) (denying petition for rehearing from dismissal of initial appeals of order denying motion to dismiss and dissolve receivership); *Childers v. Davis Mechanical Contractors*, et al. No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024) (dismissing, in an order signed by all five justices, as not immediately appealable an order denying motions to dismiss and dissolve a receivership); *Welch v. Advance Auto Parts, et al.*, No. 2024-000337 (Ct. App. Order dated April 12, 2024) (dismissing as not immediately appealable an order denying appellants' motions to dissolve a receivership and to dismiss, including on personal jurisdiction grounds, and an order denying appellants' motions for protection from discovery); *Mitchell v. 3M Company, ABB Inc., et al.*, No. 2024-000341 (Ct. App. Order dated April 12, 2024) (same); *Link v. 3M Company, 4520 Corp., Inc., et al.*, No. 2024-000342 (Ct. App. Order dated April 12, 2024) (rejecting appellants' contention that the circuit court's order permitting the receiver to continue his duties during the pendency of the appeal is immediately appealable and dismissing the appeal), *Tibbs v. 3M Co.*, No. 3:24-cv-3771-MGL, ECF No. 75 (D.S.C. Aug. 13,

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2024) (remanding the case to the circuit court on August 13, 2024 based on the Barton Doctrine).

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.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]

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Richland Common Pleas

Case Caption: Isabella Park , plaintiff, et al vs Armstrong International Inc , defendant, et al

Case Number: 2021CP4002727

Type: Order/Other

So Ordered

Jean H. Toal

SIGNATURE

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3 February 2025

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

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

Our ref PB/JW/5346.1

Dear Sirs/Madams

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

Please find enclosed by way of service, pursuant to Mr Justice Mann's Order of the 17 January 2025:

1. The Claimant's Skeleton Argument;
2. Appendix;
3. The Claimant's Statement of Costs dated 3 February 2025;
4. The updated copy of the draft Order;
5. A redline showing the changes made to the Order; and
6. The Authorities Bundle.

Copies of these documents have been filed with the Court.

We should be grateful if you could acknowledge receipt of this letter.

Yours faithfully

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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)

Before Mr Justice Mann, sitting in retirement

31st March 2025

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 against the Defendant, Peter D Protopapas ("**Mr Protopapas**"), by Part 8 Claim Form on 6 September 2024

AND UPON judgment in the claim having been handed down by Mr Justice Mann, sitting in retirement, on 22 November 2024, following a hearing held from 12 to 14 November 2024 before Mr Justice Mann

AND UPON Mr Justice Mann having made declarations in relation to the Defendant's status and authority over CIHL, injunctions restraining the Defendant from taking certain specified actions in relation to (or purportedly in relation to) CIHL, granting the Claimants' costs to be

paid for by the Defendant on the standard basis and granting the Claimants liberty to apply for an interim payment on account, pursuant to an order dated 22 November 2024 (the "**Order**")

AND UPON the application of the Claimants dated 3 January 2025 pursuant to paragraph 12 and 13 of the Order and pursuant to CPR Part 44.2(8) (the "**Application**")

AND UPON READING the further evidence, being the Eighth witness statement of Paul Dominic Brehony dated 7th January 2025 ("**Brehony 8**")

AND UPON the defendant having received proper notice of this application

AND UPON the Court receiving written submissions and deciding that it is appropriate to deal with the application on paper.

IT IS ORDERED THAT

1. Mr Protopapas shall make an interim payment of £1,000,000 to the Claimants on account of the costs of this action within 28 days of service of this order on him, pending detailed assessment of the Claimants' costs, for which a detailed Bill of Costs will be prepared, if costs cannot be agreed with Mr Protopapas.

2. Mr Protopapas shall pay the costs of this application for a payment on account, assessed at £8,000 to be paid within 28 days of service of this order on him.

3. The Claimants shall have liberty to apply for further or related relief including (if it thinks fit) an application for summary assessment of the costs of this action in the event of non-payment of the sums ordered in this order.

Service of this Order

The Claimants shall serve a copy of this order and of the Application on Mr Protopapas.

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

Amendments where shown in red have been made pursuant to the slip rule (CPR 40.12) on 31 March 2025 by permission of Sir Anthony Mann.

Reasons

The total costs of this action are said to exceed £3.7m. I do not doubt that this was an expensive action to run, albeit that the non-participation of the defendant meant that a lot of the costs one expects to see in a fully fought action were not incurred. However, there are still serious concerns over the amount of the costs. Counsels' fees, and the number of counsel engaged, require the proper attention of a costs judge, because I am not at all convinced that the fees and number of counsel can be justified. While I consider that the complexities of this matter justify a departure from the guideline rates, I do not consider that any upward adjustment would get close to the hourly rates of Winston & Strawn.

Having taken into account all the matters urged on me in the supporting skeleton argument, I consider that the appropriate amount to award on account of costs is somewhat less than that proposed, and I consider that the sum of £1,000,000 is appropriate. 28 days, not 14 days, is the appropriate time for payment.

I am invited to award and then assess the costs of this application for a payment on account. The claimant has incurred costs of £74,000 in having the "workstreams" analysed and explained. I do not consider that it is appropriate to allow an application for a payment on account to become another costs centre with substantial costs incurred and recovered. Such applications are designed to save costs, not significantly increase costs, and they are normally dealt with on the basis of costs schedules produced at, or after, a consequentials hearing. In that way the application for payment on account will be wrapped up with the costs of the action and costs will be contained. In the present case they have not been wrapped up in that manner, so in this case I do consider an extra order for the costs of the application is appropriate, but the level of costs (and the activity involved) cannot be justified. I propose to allow a relatively modest sum in respect of the skeleton argument and witness statement which were of assistance to me and will have been of assistance to Mr Protopapas, and will order and assess the costs of this application at £8,000.

Last, I am invited to give liberty to apply not merely in general terms, but also in express terms allowing the claimant to apply for summary assessment if Mr Protopapas does not pay the "on account" sums. I will give that liberty, but would not wish to be seen to be encouraging such an application or indicating that it would be likely to be granted. My preliminary view is that, despite the extra cost involved, the attention of a costs judge is required in relation to the costs of this action. In saying that I do not, of course, pre-judge the fate of any application if one is made.

SIGNATURE

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31 March 2025

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

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

Our ref PB/JW/5346.1

Dear Sirs/Madams

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

We enclose by way of service the Sealed Order of Mr Justice Mann dated 31 March 2025 which requires that you:

1. Make payment to our clients of £1,000,000 on account of our client's costs in respect to the Proceedings within 28 days of service of this Order; and

2. Make payment to our clients of £8,000 in respect to their application dated 7 January 2025 for payment on account within 28 days of service of this Order.

The bank details for the above payments are set our below.

Account details:

Account name: Signature Litigation Client Account
Sort code: 50-21-16
Account number: 23089857
IBAN: GB55NWBK50211623089857
BIC: NWBKGB2L

We should be grateful for you to acknowledge receipt of this letter.

Yours faithfully

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Identité et adresse du destinataire
Identity and address of the addressee
Monsieur PROTOPAPAS Peter D.2110 N Beltline Boulevard Columbia,Richland County, SC 29204,(ETATS-UNIS D'AMERIQUE) (TEL 803-615-1975) (https://rplegalgroup.com/attorney/peter-protopapas/

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Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965 (Article 5, fourth paragraph).

Nom et adresse de l'autorité requérante : Name and address of the requesting authority:	SARL LEGRAIN CESCA ET ASSOCIES 66 AVENUE DES CHAMPS ELYSEES 75008 PARIS

Identité des parties* : Particulars of the parties*:	- DEMANDEURS: Société CAPE PIC,Société Cape intermédiate Holdings Limited 5(CIHL),**société ALTRAD INVESTMENT Authority,Monsieur ALTRAD MOHED** **- DEFENDEUR: Monsieur PROTOPAPAS Peter D.**

* S'il y a lieu, identité et adresse de la personne intéressée à la transmission de l'acte
If appropriate, identity and address of the person interested in the transmission of the document

☒ **ACTE JUDICIAIRE****
JUDICIAL DOCUMENT**

Nature et objet de l'acte : Nature and purpose of the document:	Signification d'un jugement rendu en premier ressort par le Tribunal Judiciaire de MONTPELLIER
Nature et objet de l'instance, le cas échéant, le montant du litige : Nature and purpose of the proceedings and, when appropriate, the amount in dispute:	EXEQUATUR DE L'ORDONNANCE DE LA HAUTE COUR DE JUSTICE D'ANGLETERRE ET DU PAYS DE GALLES EN DATE DU 22/11/2024
Date et lieu de la comparution :** Date and Place for entering appearance**:	7. Indiquez les date et lieu de la comparution
Juridiction qui a rendu la décision :** Court which has given judgment**:	TRIBUNAL JUDICIAIRE DE MONTPELLIER
Date de la décision ;** Date of judgment**:	8 AVRIL 2025
Indication des délais figurant dans l'acte :** Time limits stated in the document**:	1 MOIS + 2 MOIS

** s'il y a lieu / if appropriate

☐ **ACTE EXTRAJUDICIAIRE****
EXTRAJUDICIAL DOCUMENT**

Nature et objet de l'acte : Nature and purpose of the document:	11. Décrivez la nature et l'objet de l'acte
Indication des délais figurant dans l'acte :** Time limits stated in the document**:	12. Précisez les délais

** s'il y a lieu / if appropriate

SARL
LEGRAIN CESCA
et associés
Bailiffs

66, avenue des Champs Elysées
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REFERENCES TO BE REMINDED

Cor: 33016, MD: 68529 – DV

Case followed by:

DV

Cost of the document

Fees	51.58
Transport	9.40

Excl. taxes	60.98
Stamps	2.86

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SERVICE OF A JUDGMENT
(RENDERED IN FIRST INSTANCE)

THE YEAR TWO THOUSAND TWENTY-FIVE, on

We, the SARL LEGRAIN CESCA et Associés Bailiffs, 66 Avenue des Champs Elysées 75008 PARIS, by one of them, the undersigned,

TO:

Mr Peter D. PROTOPAPAS, Attorney, a US citizen, domiciled 2110 N Beltline Boulevard COLUMBI SC 29204 – UNITED STATES OF AMERICA

In person as specified in the report of service

AT THE REQUEST OF:

CAPE PLC, a company having its registered office located 1st Floor Osprey House 5-6 Old Street St Helier, JE2 3RG JERSEY, represented by its legal representative domiciled in this capacity at said registered office

Cape Intermediate Holdings Limited (CIHL), a company incorporated under the laws of England, having its registered office located 6-7 Lyncastle Way Barleycastle Lane Appleton Warrington WA4 4ST England, represented by its legal representative domiciled in this capacity at said registered office

Altrad Investment Authority (AIA), a simplified joint-stock company, having its registered office located 16 avenue de la Gardie, Florensac (34510), registered with the Registry of Trade and Commerce of BEZIERS under number 529 222 879, represented by its legal representative domiciled in this capacity at said registered office

Mr. ALTRAD MOHED, a French citizen, born on March 9, 1948 and domiciled 150 Rue Le Pérugin 34000 MONTPELLIER

I HEREBY SERVE YOU AND LEAVE YOU A COPY OF:

The final enforceable judgment handed down in first instance Docket No. 25/00122 on 8 April 2025 by the Civil Court of MONTPELLIER, Civil Division, Section 2, granting the exequatur and declaring enforceable in France the order of the High Court of Justice of England and Wales dated 22 November 2024 against Mr Peter PROTOPAPAS

VERY IMPORTANT

You may lodge an **APPEAL** against this decision with the **MONTPELLIER Court of Appeal** within **ONE MONTH** of

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the date appearing at the top of this document, with an additional two months for persons residing abroad.

If you intend to exercise this right of appeal, you must instruct a lawyer registered with one of the Bar associations of the said Court to carry out the necessary formalities on your behalf before the expiry of this mandatory time limit. You may, in this regard, seek the advice of a lawyer and ask him or her to assist you.

Article 643 of the French Code of Civil Procedure:
"*When the claim is brought before a court with jurisdiction in metropolitan France, the time limits for appearing in court, appealing, opposing, seeking review and appealing to the Court of Cassation are extended by ONE MONTH for persons residing in Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, Saint Barthélemy, Saint Martin, Saint Pierre and Miquelon, French Polynesia, Wallis and Futuna, New Caledonia and the French Southern and Antarctic Territories; by TWO MONTHS for persons residing abroad.*"

Article 644 of the French Code of Civil Procedure:
"*When the claim is brought before a court located in Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, Saint Barthélemy, Saint Martin, Saint Pierre and Miquelon, Wallis and Futuna, the time limits for appearing in court, appealing, opposing, and seeking review are extended by ONE month for persons who do not reside in the local authority area within which the court has its seat and by TWO MONTHS for persons residing abroad.*

You are hereby informed that the author of an abusive or dilatory appeal may be ordered to pay a civil fine and compensation to the other party.

MONTPELLIER COURT OF APPEAL

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COPY OF FILE+ A.J.	1

Docket no. 25/00122 – Portalis no. DBYB-W-B7J-PM3N
Civil Section 2

Extract from the minutes of the registry of the Montpellier Civil Court

FRENCH REPUBLIC

ON BEHALF OF THE PEOPLE OF FRANCE

The Montpellier Civil Court has issued the following judgement

Date: 08 April 2025

THE CIVIL COURT OF MONTPELLIER

CHAMBER: Civil section 2

issued the following judgment:

CLAIMANT

Cape Plc This is a company incorporated under the laws of Jersey, represented by its registered office at 1st Floor Osprey House, 5-6 Old Street, St. Helier, JE2 3RG - JERSEY.

Cape Intermediate Holdings Limited (CIHL) This is a company incorporated under English law, the person of its legal representative having its registered office 6-7 Lyncastle Way Barleycastle Lane, Appleton, Warrington, W - A4 4ST - ENGLAND

S.A.S. Altrad Investment Authority (AIA), a company registered in the Béziers Trade and Companies Register under number 529 222 879, represented by its legal representative residing at the said registered office, with its registered office 16 avenue de la Gardie - 34510 FLORENSAC.

Mr. Mohed Altrad, company director,
born on 09 March 1948, residing at 150 rue Le Pérugin - 34000 Montpellier

represented by Signature Litigation AARPI represented by Maître ROUHETTE and Maître BARDA, trial attorney registered at the Paris Bar, and Maître Frédéric DABIENS of AARPI DABIENS, KALCZYNSKI, attorney record registered at the MONTPELLIER Bar.

DEFENDANT

Mr. Peter D. Protopapas, American Attorney.

This act was served abroad on 30 December 2024, in the United States of America., domiciled at: 2110 N Beltline Boulevard, Columbia SC 29204 - 29204 United States of America

Not appearing before the court

COMPOSITION OF THE COURT during the debates and deliberations :

President : **Florence LE GAL**

Judges : Cécilia FINA-ARSON
Magali ESTEVE

During the debates, in accordance with Article 805 of the Code of Civil Procedure, the parties not having objected, the debates took place before Ms. Florence LE GAL and Ms. Cécilia FINA-ARSON, judges in charge of legal enquiry, who heard the parties and reported during the deliberations to the third judge of the panel, Ms. Magali ESTEVE, regularly unable to attend.

In accordance with Article 452 of the Code of Civil Procedure, the judgment was signed by Ms. Florence LE GAL, who took part in the debates and deliberations.

assisted by Françoise CHAZAL, court clerk, during the debates and Linda LEFRANC-BENAMMAR, court clerk, during the decision.

DEBATES: in open court on 11 February 2025 during which the presiding judge gave an oral report on the case

DELIBERATION on 08 April 2025

JUDGMENT: signed by the presiding judge and the court clerk and made available on 08 April 2025

FACTS AND PROCEDURE

"The Cape Asbestos Company Ltd" was created in 1893 and is now known as Cape Intermediate Holdings Limited (CIHL), with its registered office in Appleton, Warrington, England, and "Cape Pic" as its holding company. The Cape Group is a supplier of industrial services and equipment in the petrochemical and energy sectors, but it also distributed asbestos fibres, especially through one of its American subsidiaries, North American Asbestos Corporation (NAAC), which was dissolved in 1978.

The Altrad Group was founded in 1985 in Montpellier by Mr. Mohed Altrad, who is the majority shareholder. He is also Chairman of Altrad Investment Authority (hereinafter "AIA"), the parent company of the Altrad Group, registered in Béziers since 2010. The Altrad Group designs and develops solutions in the petrochemical, energy, power generation and construction sectors; in September 2017, it acquired the Cape Group.

In 2021 and 2023, American proceedings relating to a dispute brought by asbestos victims resulted in AIA and Mohed Altrad being summoned as "third party defendants" by Peter Protopapas, an American attorney, acting as receiver.

AIA and Mr. Mohed Altrad have brought various actions to defend their interests before the US courts.
On 9 September 2024, Cape Pic and CIHL brought an accelerated procedure before the High Court of Justice of England and Wales, with the purpose of obtaining an order stating that Peter Protopapas will cease acting or purporting to act as receiver of Cape Plc and of CIHL, in addition to assuming the role of legal representative of CIHL.

Mr. Peter Protopapas was regularly informed of the English proceedings.

On 22 November 2024, the High Court of Justice of England and Wales granted the claimants' requests in a combined judgment setting out the reasons given by the English court and an order setting out the dispositions of the judgment. On the same day, the decision of the High Court of England and Wales was notified to Peter Protopapas.

By order dated 20 December 2024, pursuant to Articles 31, 122 and 509 of the Code of Civil Procedure, Cape Pic, CIHL, AIA and Mohed Altrad were authorised to summon Peter Protopapas on a fixed date at a hearing on 11 February 2025, for enforcement of the judgment and order of 22 November 2024 handed down by the High Court of Justice of England and Wales, and they requested the Montpellier Civil Court to deem their action admissible and to enforce against Peter Protopapas the English decision of 22 November 2024 by the High Court of Justice of England and Wales, the dispositions of which are reproduced below:

"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".*

In the same writ of summons, the claimants asked the court to reject all of Mr. Protopapas' pleas and submissions and to order him to pay 50,000 euros pursuant to the provisions of Article 700 of the French Code of Civil Procedure in addition to all costs, which are awarded to Maître Frédéric Dabiens, an attorney at the Montpellier Bar, in accordance with the provisions of Article 699 of the Code of Civil Procedure.

No attorney has been appointed for Peter Protopapas, as the writ of summons was delivered to his address on 30 December 2024, in accordance with the provisions and formalities set out in the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in the Member States.

Pursuant to the provisions of Article 455 of the Code of Civil Procedure, it is expressly stated that he should refer to the writ of summons that is equivalent to the latest submissions of Cape Pic, CIHL, AIA and Mohed Altrad, duly notified by bulletin to the R.P.V.A., in order to learn more on the facts, their claims and arguments.

The closure of proceedings was issued on 11 February 2025, with a hearing scheduled for the same date. The decision was made available on 08 April 2025.

REASONS FOR THE DECISION

According to Article 472 of the Code of Civil Procedure, when the defendant does not appear before the court, a decision is nevertheless made on the merits of the case, and the court only grants the claim if it considers it to be in order, admissible and well-founded.

On the exequatur application

Under article 509 of the Civil Code, *judgments handed down by foreign courts and deeds received by foreign officers are enforceable in the territory of the Republic in the manner and in the cases provided for by law.* Cape Plc, CIHL, AIA and Mr. Mohed Altrad are asking the Court to declare that the order made on 22 November 2024 by the High Court of Justice of England and Wales - the dispositions part of which is reproduced above - is enforceable.

In the absence of any international convention applicable to exequatur of decisions handed down by foreign courts, which is the case in this matter between the French Republic and England, the French court seized by an application for exequatur must ensure that three cumulative conditions are met: the indirect jurisdiction of the English court that handed down the decision that is the subject of the application for exequatur, the compliance of the latter with international public policy in terms of substance and procedure, and the absence of any fraud to the law.

- <u>the indirect jurisdiction of the foreign court, based on the connection of the dispute with the judge</u>

According to the case file, an American litigation opposed, in 2021, an asbestos victim, Ms. Isabella Park, to Cape Plc and CIHL, defendants in the United States District Court for Richland County, South Carolina: the case was registered under number 2021-CP-40-02727 and heard by Judge Jean Hoefer Toal.
On 16 March 2023, an order was issued appointing Peter Protopapas, a physical injury attorney, as receiver of Cape PLC and as rightful owner of Cape Industries Ltd, formerly Cape Asbestos Company Ltd.
On April 5, 2023, a second U.S proceeding resulted in litigation this time initiated by Mr. and Ms. Tibbs against Cape Plc: these proceedings were registered under number 2023-CP-40-01759 and were also heard by Judge Jean Hoefer Toal. Despite the absence of an order in the latter case, and consequently the absence of the appointment of a receiver for Cape Plc or any other company in the Cape Group, Peter Protopapas nevertheless intervened in these proceedings in his capacity as receiver.
On 12 June 2023, under the terms of an agreement between Mr. and Ms. Tibbs and Peter Protopapas, Mr. and Ms. Tibbs withdrew their case and action against Cape Plc. The main action against Cape Plc was therefore dismissed from the Richland County Court of First Instance in South Carolina, USA.
However, on 30 June 2023, AIA and Mohed Altrad were summoned as "third-party defendants" in Mr. and Ms. Tibbs case by Peter Protopapas, in his capacity as receiver of Cape Plc; under the terms of the writ of summons issued on 30 June 2023 by Protopapas, AIA and Mohed Altrad, in their capacity as third-party defendants, were claimed to be liable for all the obligations of Cape Plc and CIHL with respect to alleged unjustified enrichment and fraudulent collusion to avoid conviction in the United States due to the distribution of asbestos fibres by NACC in the 60s and 70s. AIA and Mohed Altrad have taken all necessary steps to support their interests before the US courts, and a hearing on the merits has been scheduled for the week of 3 to 7 February 2025.

In the meantime, on 9 September 2024, Cape Pic and CIHL, both companies incorporated under English law, brought an accelerated procedure before the High Court of Justice of England and Wales seeking an order that Peter Protopapas cease acting or purporting to act as receiver of Cape Pic and CIHL, and assuming the status of legal representative of CIHL.
On 22 November 2024, the High Court of England and Wales issued an order, the main features of which are described above, granting the claims of Cape Pic and CIHL

Cape Pic and CIHL are two English companies, registered respectively in Jersey, a British island, and in Appleton, Warrington, England.
In order to defend their interests in the dispute with Peter Protopapas, who has been appointed as receiver in South Carolina in the United States in defiance of English law and of the applicable rules of jurisdiction, they turned to the English courts on the grounds that their principal place of business, their assets and their governing bodies are located in England.
The dispute is thus clearly connected with England: the indirect jurisdiction of the English Court must be established.

- the conformity of this order with international public policy

The aforementioned order does not involve any breach of French international public policy: it therefore complies in all respects with international public policy.

- the absence of fraud

With regard to the absence of fraud, it is necessary to ensure that the English Court was not seized by Cape Pic and CIHL, even though the dispute did not fall within its jurisdiction, with a view to circumventing the rules applicable in France, particularly with regard to the economic loss caused to these companies. It has to be said that in this case, no fraud has been identified.

All the conditions having been satisfied, the order of the High Court of Justice of England and Wales dated 22 November 2024 is hereby declared enforceable in France.

Ancillary requests

Under the terms of Article 696 of the Code of Civil Procedure, the losing party is ordered to pay the costs of proceedings, unless the court, by reasoned decision, require the other party to pay all or part of the costs.
Peter Protopapas ought to be ordered to pay all the costs of the proceedings, which should be awarded to Maître Frédéric Dabiens, a member of the Montpellier Bar, in accordance with the provisions Article 699 of the Code of Civil Procedure.

Under the terms of Article 700 of the Code of Civil Procedure, the court must order the party required to pay the costs or who loses the case to pay:
1° To the other party the defined amount, in respect of the fees incurred that are not included in the trial costs;
2° And, where applicable, to the attorney of the beneficiary of partial or total legal aid, an amount in respect of attorney's fees and costs, not included in the trial costs, that the beneficiary of the legal aid would have incurred if this aid was not granted to him. In this case, the procedure set out in paragraphs 3 and 4 of Article 37 of law no. 91-647 of 10 July 1991 shall apply.
In all cases, the judge takes into account the fairness or the economic situation of the convicted party. He may, even of his own motion, for reasons based on the same considerations, rule that there are no grounds for such awards.
The parties may provide evidence of the amount claimed. The amount awarded under 2° cannot be less than the State's contributory share, plus 50%.

In this case, and considering the elements of the file, as Peter Protopapas was not present during the proceedings, there is no reason to order to pay the attorney's fees.

It should be noted that provisional enforcement of the judgement is automatic.

FOR THESE REASONS

The Court shall rule publicly, by default, at first instance, by making the judgment available at the registry, the parties having been notified in advance in accordance with the conditions set out in the second paragraph of Article 450 of the Code of Civil Procedure,

PRONOUNCES exequatur and declares enforceable in France the order of the High Court of England and Wales dated 22 November 2024 against Peter Protopapas,

ORDERS Peter Protopapas to pay all the costs of the proceedings, which will be awarded to Maître Frédéric Dabiens, a member of the Montpellier Bar, in accordance with the provisions of Article 699 of the French Code of Civil Procedure,

DISMISSES Cape Pic, CIHL, AIA and Mohed Altrad's further claims,

RULES that there are no grounds for a condemnation against Peter Protopapas pursuant to the provisions of Article 700 of the French Code of Civil Procedure,

RECALLS that provisional enforcement is automatic.

Judgment was issued and made available at the civil registry on 8 April 2025.

The court clerk

[Signature]

Linda Lefranc-Benammar

The Judge

[Signature]

Florence Le Gal

[Court Stamp]
[Signature]

Consequently, the French Republic, summons and orders all court enforcement officer, X, to execute this court ruling; public prosecutors and Republic public prosecutors of civil courts to carry out their duties; all commanders and officers of the police force to offer their support when it is legally required.
In witness whereof, this judgment has been signed and stamped with the seal of the Court. The court clerk

Certified true copy of the original with the enforceable statement

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et associés
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ACTE DE COMMISSAIRE DE JUSTICE

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REFERENCES A RAPPELER
Cor : 33016, MD
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Dossier suivi par :
DV

Coût de l'acte	
Emol.	51,58
SCT	9,40

H.T.	60,98
Timbres	2,86

T.T.C	63,84

SIGNIFICATION D'UN JUGEMENT (RENDU EN PREMIER RESSORT)

L'AN DEUX MILLE VINGT-CINQ et le

Nous, SARL LEGRAIN CESCA et Associés Commissaires de Justice, 66 Avenue des Champs Elysées 75008 PARIS, par l'un d'eux soussigné

À :

Monsieur Peter D.PROTOPAPAS avocat, de nationalité américaine, domicilié 2110 N Beltline Boulevard COLUMBI SC 29204 -ETATS UNIS D'AMERIQUE

Où étant et parlant à comme il est dit au procès-verbal de signification

À LA DEMANDE DE :

Société CAPE PIC société de droit jersiais dont le siége social est situé 1st Floor Osprey House 5-6 Old Street St.Helier, JE2 3RG JERSEY pris en la personne de son représentant légal domicilié en cette qualité audit siége

Société Cape Intermediate Holdings Limited (CIHL) Société de droit anglais,dont le siége social est situé 6-7 Lyncastle Way Barleycastle Lane Appleton Warrington WA4 4ST Angleterre prise en la personne de son représentant légal domicilié en cette qualité audit siége

Société Altrad Investment Authority (AIA) société par actions simplifiée dont le siége social est situé au 16 avenue de la Gardie,Florensac (34510) immatriculée au registre du commerce et des sociétés de BEZIERS sous le numéro 529 222 879 prise en la personne de son représentant légal domicilié en cette qualité audit siége

Monsieur ALTRAD MOHED de nationalité française, né le 9 Mars 1948 domicilié 150 Rue Le Pérugin 34000 MONTPELLIER

JE VOUS SIGNIFIE ET EN TÊTE DES PRÉSENTES VOUS LAISSE COPIE :

- **De la grosse en due forme exécutoire d'un jugement rendu en premier ressort n° RG 25/00122 le 8 avril 2025 par le Tribunal Judiciaire de MONTPELLIER Pôle Civil section 2 prononçant l'exequatur et déclarant exécutoire en France l'ordonnance de la Haute Cour de Justice d'Angleterre et du Pays de Galles en date du 22 novembre 2024 rendue à l'encontre de Monsieur Peter PROTOPAPAS**

.

TRÈS IMPORTANT

Vous pouvez interjeter **APPEL** de cette décision devant la **Cour d'Appel de MONTPELLIER** dans le **délai D'UN MOIS** à compter de la date figurant en tête du présent acte augmenté d'un délai de deux mois pour les personnes demeurant à l'étranger

Si vous entendez exercer ce recours, vous devez charger un avocat inscrit à l'un des barreaux de ladite Cour d'accomplir pour votre compte les formalités nécessaires avant l'expiration de ce délai qui est de rigueur. Vous pouvez, sur ce point, consulter un avocat et lui demander de vous assister.

Article 643 du Code de Procédure Civile :
"Lorsque la demande est portée devant une juridiction qui a son siège en France métropolitaine, les délais de comparution, d'appel, d'opposition, de recours en révision et de pourvoi en cassation sont augmentés d'UN MOIS pour les personnes qui demeurent en Guadeloupe, en Guyane, à la Martinique, à La Réunion, à Mayotte, à Saint-Barthélemy, à Saint-Martin, à Saint-Pierre-et-Miquelon, en Polynésie française, dans les îles Wallis et Futuna, en

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ACTE DE COMMISSAIRE DE JUSTICE

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REFERENCES A RAPPELER
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Dossier suivi par : DV

Coût de l'acte	
Emol.	51,58
SCT	9,40

H.T.	60,98
Timbres	2,86

T.T.C	63,84

Nouvelle-Calédonie et dans les Terres australes et antarctiques françaises ; de DEUX MOIS pour celles qui demeurent à l'étranger."

Article 644 du Code de Procédure Civile :
"Lorsque la demande est portée devant une juridiction qui a son siège en Guadeloupe, en Guyane, à la Martinique, à la Réunion, à Mayotte, à Saint Barthélémy, à Saint Martin, à Saint Pierre et Miquelon et dans les îles Wallis et Futuna, les délais de comparution, d'appel, d'opposition et de recours en révision, sont augmentés d'UN mois pour les personnes qui ne demeurent pas dans la collectivité territoriale dans le ressort de laquelle la juridiction a son siège et de DEUX MOIS pour les personnes qui demeurent à l'étranger."

Vous indiquant que l'auteur d'un recours abusif ou dilatoire peut être condamné à une amende civile et au paiement d'une indemnité à l'autre partie.

COUR D'APPEL DE MONTPELLIER

25/128

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N° RG 25/00122 - N° Portalis
DBYB-W-B7J-PM3N
Pôle Civil section 2

Date : 08 Avril 2025

LE TRIBUNAL JUDICIAIRE DE MONTPELLIER

CHAMBRE : Pôle Civil section 2

a rendu le jugement dont la teneur suit :

DEMANDEURS

Société Cape Plc Il s'agit d'une société de droit Jersiais, prise en la personne de son représentant légal domicilié es qualité audit siège, dont le siège social est sis 1st Floor Osprey House, 5-6 Old Street, St. Helier, JE2 3RG - JERSEY

Société Cape Intermediate Holdings Limited (CIHL) Il s'agit d'une société de droit anglais, prise en la personne de son représentant légal domicilié es qualité audit siège, dont le siège social est sis 6-7 Lyncastle Way Barleycastle Lane, Appleton, Warrington, W - A4 4ST - ANGLETERRE

S.A.S. Altrad Investment Authority (AIA) Société immatriculée au RCS de Béziers sous le numéro 529 222 879,prise en la personne de son représentant légal domicilié es qualité audit siège, dont le siège social est sis 16 avenue de la Gardie - 34510 FLORENSAC

Monsieur Mohed Altrad dirigeant de sociétés,
né le 09 Mars 1948, domicilié 150 rue Le Pérugin - 34000 Montpellier

représenté par le cabinet Signature Litigation AARPI représenté par Maîtres ROUHETTE et Me BARDA, avocat plaidant au barreau de Paris et Maître Frédéric DABIENS de l'AARPI DABIENS, KALCZYNSKI, avocat postulant au barreau de MONTPELLIER

DEFENDEUR

Monsieur Peter D. Protopapas Avocat, de nationalité américaine.

Cet acte a été délivré à l'étranger le 30 décembre 2024, aux Etats Unis., domicilié : chez , 2110 N Beltline Boulevard, Columbia SC 29204 - 29204 Etats-Unis d'Amérique

non comparant

COMPOSITION DU TRIBUNAL lors des débats et du délibéré :

Président : **Florence LE GAL**

Juges : Cécilia FINA-ARSON
Magali ESTEVE

Lors des débats, conformément à l'article 805 du code de procédure civile, les parties ne s'y étant pas opposées, les débats ont eu lieu devant Madame Florence LE GAL et Madame Cécilia FINA-ARSON, juges rapporteurs, qui ont entendu les parties et en ont rendu compte lors du délibéré au troisième magistrat de la formation, Madame Magali ESTEVE, régulièrement empêchée.

Conformément à l'article 452 du Code de procédure civile, le jugement a été signé par devant Madame Florence LE GAL, ayant participé aux débats et au délibéré

assistés de Françoise CHAZAL greffier, lors des débats et de Linda LEFRANC-BENAMMAR greffier, lors du prononcé.

DEBATS : en audience publique du 11 Février 2025 au cours de laquelle le président a fait un rapport oral de l'affaire

MIS EN DELIBERE au 08 Avril 2025

JUGEMENT : signé par le président et le greffier et mis à disposition le 08 Avril 2025

RAPPEL DES FAITS ET DE LA PROCÉDURE

En 1893, la société "The Cape Asbestos Company Ltd" a été créée ; elle est aujourd'hui dénommée Cape Intermediate Holdings Limited -plus loin "CIHL"-, son siège social se situe à Appleton, Warrington en Angleterre, et la société "Cape Pic" en est la holding. Le Groupe Cape est un fournisseur de services et d'équipements industriels dans les secteurs de la pétrochimie et de l'énergie, mais il a également distribué des fibres d'amiante notamment par le biais d'une de ses filiales américaines, la North American Asbestos Corporation -NAAC-, dissoute en 1978.

En 1985, à Montpellier, le Groupe Altrad a été fondé par M. Mohed Altrad qui en est l'actionnaire majoritaire ; ce dernier exerce également les fonctions de président de la société Altrad Investment Authority -plus loin "AIA"-, société mère du Groupe Altrad immatriculée à Béziers depuis 2010. Le Groupe Altrad conçoit et développe des solutions dans les secteurs de la pétrochimie, de l'énergie, de la production d'électricité et de la construction ; en septembre 2017, il a fait l'acquisition du Groupe Cape.

En 2021 et 2023, des procédures américaines liées à un contentieux élevé par des victimes de l'amiante ont abouti à ce que la société AIA et M. Mohed Altrad soient attraits en qualité de "tiers défendeurs" par M. Peter Protopapas, avocat américain, es qualité d'administrateur judiciaire.

La société AIA et M. Mohed Altrad ont engagé différents recours pour la défense de leurs intérêts auprès de la juridiction américaine.
Et le 9 septembre 2024, les sociétés Cape Pic et CIHL ont de leur côté introduit une procédure accélérée devant la "High Court of Justice of England and Wales" -plus loin : la Haute cour de justice d'Angleterre et du Pays de Galles- aux fins qu'il soit ordonné à M. Peter Protopapas de notamment cesser d'agir ou prétendre agir en

qualité d'administrateur judiciaire de Cape Pic et de la société CIHL outre de s'arroger la qualité de représentant légal de la société CIHL.

La procédure anglaise a été régulièrement dénoncée à M. Peter Protopapas.

Le 22 novembre 2024, par sa décision combinée d'un jugement portant motivation de la juridiction anglaise et d'une ordonnance portant le dispositif qui en découle, la Haute cour de justice d'Angleterre et du Pays de Galles a fait droit aux demandes des requérants.
Ce même 22 novembre 2024, la décision de la Haute Cour de justice d'Angleterre et du Pays de Galles a été signifiée à M. Peter Protopapas.

Par ordonnance du 20 décembre 2024, au visa des articles 31, 122 et 509 du code de procédure civile, la société Cape Pic, la société CIHL, la société AIA et M. Mohed Altrad ont été autorisés à assigner M. Peter Protopapas à jour fixe à l'audience du 11 février 2025, en exequatur des jugement et ordonnance du 22 novembre 2024 rendus par la Haute cour de justice d'Angleterre et du Pays de Galles et ils ont sollicité du tribunal judiciaire de Montpellier, de juger recevable leur action ainsi que de prononcer l'exequatur à l'encontre de M. Peter Protopapas de la décision anglaise du 22 novembre 2024 par la High Court of Justice of England and Wales, dont le dispositif traduit par un traducteur assermenté est reproduit comme suit:

« IL EST DÉCLARÉ CE QUI SUIT:

1. L'ordonnance de mise sous administration judiciaire de la Court of Common Pleas (Cour des plaids communs) pour le cinquième circuit judiciaire de l'État de Caroline du Sud, comté de Richland (le Tribunal de Caroline du Sud) en date du 16 mars 2023, nommant M. Peter Protopapas ("M. Protopapas") en qualité d'administrateur judiciaire de CIHL ("l'Ordonnance de mise sous administration judiciaire"), n'est pas reconnue et n'a aucun effet juridique en Angleterre et au Pays de Galles et dans le monde entier.
2. M. Protopapas n'a et n'avait aucun pouvoir ou capacité pour agir au nom de CIHL en Angleterre et au Pays de Galles ou dans le monde entier et n'a aucun pouvoir ou capacité à l'égard de CIHL en Angleterre et au Pays de Galles ou dans le monde entier pour accomplir les actes visés aux paragraphes 6 à 10 ci-dessous
3. Les droits et devoirs des administrateurs de CIHL ne sont pas affectés par la nomination de M. Protopapas en tant qu'administrateur judiciaire de CIHL en vertu de l'Ordonnance de mise sous administration judiciaire.
4. M. Protopapas n'a ni le pouvoir ni la capacité au nom de CIHL d'agir en tant qu'administrateur judiciaire de CIHL ou de l'engager devant le Tribunal de Caroline du Sud en ce qui concerne la Réclamation Park et la Réclamation Tibbs (telle que définie dans Oren 1) et n'a ni le pouvoir ni la capacité au nom de CIHL d'émettre ou de poursuivre des réclamations de tiers dans la Réclamation Tibbs contre l'une quelconque des tierces parties défenderesses dans cette procédure ("la Plainte 3P"), y compris (i) Mohed Altrad, (ii) Altrad Investment Authority SAS, (III) Altrad Un, (IV) Cape UN Holdings Newco Un, (v) Cape Industrial Services Group Un, (vi) Cape Holdco Un, (vii) Altrad Services Un.
5. M. Protopapas n'a et n'avait ni le pouvoir ni la capacité d'accepter une signification au nom de CIHL dans la réclamation introduite devant le Tribunal de Caroline du Sud par une assignation en date du 11 novembre 2024 portant le numéro de demande C/A NO. 2024-CP-40-06639 ou toute autre procédure judiciaire engagée contre CIHL devant le Tribunal de Caroline du Sud ou dans le monde entier.

ET IL EST ORDONNÉ CE QUI SUIT:

6. M. Protopapas se voit interdire, en Angleterre et au Pays de Galles et dans le monde entier, d'agir ou de prétendre agir en qualité d'agent ou autre au nom de CIHL en vertu de l'Ordonnance de mise sous administration judiciaire.
7. M. Protopapas se voit interdire, en Angleterre et au Pays de Galles et dans le monde entier, de s'approprier, d'interférer avec ou d'usurper (de

quelque manière que ce soit) l'exercice licite des droits et devoirs des administrateurs de CIHL.

8. M. Protopapas se voit interdire d'agir ou de prétendre agir au nom de CIHL dans la Réclamation Park et la Réclamation Tibbs (telles que définies dans Oren 1).
9. M. Protopapas se voit interdire de continuer à poursuivre la Plainte 3P (telle que définie dans Oren 1).
10. M. Protopapas se voit interdire de prétendre agir pour CIHL dans la réclamation introduite devant le Tribunal de Caroline du Sud par une assignation en date du 11 novembre 2024 portant le numéro de demande AIA NO. 2024-CP-40-06639 ou dans toute autre procédure judiciaire engagée contre CIHL devant le Tribunal de Caroline du Sud ou dans le monde entier.

Liberté de déposer une requête

11. Les Demanderesses seront libres de demander une réparation supplémentaire ou connexe.

Frais

12. Les frais des Demanderesses seront payés par le Défendeur sur une base standard, à titre d'évaluation détaillée en cas de désaccord.
13. Les Demanderesses auront la liberté de demander un acompte sur les frais.»

Aux termes de cette même assignation, les requérants ont sollicité du tribunal de rejeter tous moyens, fins et conclusions contraires de M. Protopapas et de le condamner à payer 50 000 euros en application des dispositions de l'article 700 du code de procédure civile outre les entiers dépens, dont distraction au profit de Maître Frédéric Dabiens, avocat au barreau de Montpellier, conformément aux dispositions de l'article 699 du code de procédure civile.

Aucun avocat ne s'est constitué pour M. Peter Protopapas, l'assignation ayant été délivrée à son adresse le 30 décembre 2024, selon les dispositions et formalités prévues par la Convention de la Haye du 15 novembre 1965, relatives à la signification et à la notification des actes judiciaires et extrajudiciaires dans les États membres.

En application des dispositions de l'article 455 du code de procédure civile, il est expressément renvoyé pour plus de précisions sur les faits, prétentions et arguments de la société Cape Pic, la société CIHL, la société AIA et M. Mohed Altrad à l'assignation valant leurs dernières conclusions régulièrement notifiées par bulletin au R.P.V.A.

L'ordonnance de clôture a été rendue le 11 février 2025 avec une audience de plaidoirie prévue à la même date du 11 février 2025, la décision ayant été mise en délibéré au 8 avril 2025.

MOTIFS DE LA DÉCISION

Selon l'article 472 du code de procédure civile, lorsque le défendeur ne comparaît pas, il est néanmoins statué sur le fond, le juge ne fait droit à la demande que s'il l'estime régulière, recevable et bien fondée.

Sur la demande d'exequatur

Selon l'article 509 du code civil, *les jugements rendus par les tribunaux étrangers et les actes reçus par les officiers étrangers sont exécutoires sur le territoire de la République de la manière et dans les cas prévus par la loi.*

La société Cape Pic, la société CIHL, la société AIA et M. Mohed Altrad sollicitent du tribunal le prononcé de l'exequatur de l'ordonnance, -son dispositif ayant été reproduit plus haut-, rendue le 22 novembre 2024 par la Haute cour de justice d'Angleterre et du Pays de Galles.

En-dehors de toute convention internationale applicable à l'exequatur des décisions prononcées par les juridictions étrangères, ce qui est le cas en l'espèce entre la République française et l'Angleterre, la juridiction française, saisie d'une demande d'exequatur doit s'assurer que trois conditions cumulatives sont remplies : la compétence indirecte du juge anglais ayant rendu la décision faisant l'objet de la demande d'exequatur, la conformité de cette dernières à l'ordre public international de fond et de procédure, puis l'absence de fraude à la loi.

● la compétence indirecte du juge étranger, fondée sur le rattachement du litige au juge

Il résulte des éléments du dossier qu'une procédure contentieuse américaine, en 2021, a opposé une victime de l'amiante, Mme Isabella Park, à la société Cape Pic et la société CIHL qui ont été attraites en qualité de défenderesses devant le tribunal de première instance du comté de Richland de Caroline du Sud au Etats-Unis : l'affaire a été enrôlée sous le numéro 2021-CP-40-02727 et instruite par la juge Mme Jean Hoefer Toal.
Le 16 mars 2023, une ordonnance a été prononcée ayant désigné M. Peter Protopapas, avocat spécialisé dans les dommages corporels, en qualité d'administrateur judiciaire de Cape PLC 3en tant qu'ayant droit de Cape Industries Lld, anciennement dénommée Cape Asbestos Company Lld.
Le 5 avril 2023, une seconde procédure américaine a donné lieu à un contentieux élevé cette fois à l'encontre de Cape Pic par les "époux Tibbs" : cette instance a été enrôlée sous le numéro 2023-CP-40-01759 et a été également instruite par la juge Mme Jean Hoefer Toal. Nonobstant l'absence d'ordonnance prononcée dans cette dernière affaire, et par conséquent l'absence de désignation d'administrateur judiciaire pour Cape Pic ou d'une autre société du Groupe Cape, M. Peter Protopapas est pourtant intervenu dans cette procédure en cette qualité d'administrateur judiciaire.
Le 12 juin 2023, aux termes d'un accord conclu entre les époux Tibbs et M. Peter Protopapas, les époux Tibbs se sont désistés de leur instance et action contre "Cape Pic" : le tribunal de première instance du comté de Richland de Caroline du Sud au Etats-Unis a été ainsi dessaisi de l'action principale dirigée contre la société Cape Pic.
Pourtant, le 30 juin 2023, la société AIA et M. Mohed Altrad ont été assignés en tant que "tiers-défendeurs" dans l'affaire Tibbs par M. Peter Protopapas, es qualité d'administrateur judiciaire de Cape Pic ; aux termes de l'assignation délivrée le 30 juin 2023 par ce dernier, il est réclamé que la société AIA et M. Mohed Altrad, en leur qualité de tiers-défendeurs, soient déclarés responsables de toutes les obligations des sociétés Cape Pic et de la société CIHL au titre d'un prétendu enrichissement injustifié et d'un concert frauduleux destiné à échapper à toute condamnation aux Etats-Unis en lien avec la distribution de fibres d'amiante par la société NACC dans les années 60 à 70 : la société AIA et M. Mohed Altrad ont exercé tout recours utile au soutien de leurs intérêts auprès de la juridiction américaine et une audience au fond était prévue sur la semaine du 3 au 7 février 2025.

Entre-temps, le 9 septembre 2024, les sociétés Cape Pic et CIHL, -sociétés de droit anglais-, ont de leur côté introduit une procédure accélérée devant la Haute cour de justice d'Angleterre et du Pays de Galles Pays de Galles aux fins qu'il soit ordonné à M. Peter Protopapas de notamment cesser d'agir ou prétendre agir en qualité d'administrateur judiciaire de Cape Pic et de CIHL outre de s'arroger la qualité de représentant légal de la société CIHL.
Le 22 novembre 2024 la Haute cour de justice d'Angleterre et du Pays de Galles a rendu une ordonnance dont l'essentiel du dispositif est rappelé plus haut, faisant droit aux demandes de la société Cape Pic et de la société CIHL.

La société Cape Pic et la société CIHL sont deux sociétés de droit anglais, respectivement enregistrées à Jersey, île britannique, pour la première, et pour la seconde à Appleton, Warrington en Angleterre.
Pour la défense de leurs intérêts dans le litige qui les oppose à M. Peter Protopapas, -désigné en Caroline du Sud aux Etats-Unis en qualité d'administrateur judiciaire, et ce au mépris du droit anglais et des règles de compétence applicables- elles se sont adressées au juge anglais au motif que leur principal établissement, leurs actifs et leurs organes de gouvernance sont localisés en Angleterre.
Le litige se rattache ainsi de manière caractérisée à l'Angleterre : il convient de constater la compétence indirecte du juge anglais.

● la conformité de cette ordonnance avec l'ordre international
L'ordonnance précitée ne comporte aucune violation de l'ordre public international français : elle est en conséquence en tous points conforme à l'ordre public international.

● l'absence de fraude
Au visa de l'absence de fraude à la loi, il convient de s'assurer que la juridiction anglaise n'a pas été saisie par la société Cape Pic et la société CIHL, alors que le litige ne relevait pas de celle-ci, en vue de contourner les règles applicables en France, en matière notamment de préjudice économique causé à ces sociétés. Force est de constater que dans le cas d'espèce, aucune fraude n'est caractérisée.

L'ensemble des conditions étant satisfaites, il est conféré l'exequatur de l'ordonnance de la Haute cour de justice d'Angleterre et du Pays de Galles en date du 22 novembre 2024, qui sera exécutoire en France.

Sur les demandes accessoires

Aux termes de l'article 696 du code de procédure civile, la partie perdante est condamnée aux dépens, à moins que le juge, par décision motivée, n'en mette la totalité ou une fraction à la charge de l'autre partie.
Il y a lieu de condamner M. Peter Protopapas succombant aux entiers dépens de l'instance, dont distraction au profit de Maître Frédéric Dabiens, avocat au barreau de Montpellier, conformément aux dispositions de l'article 699 du code de procédure civile.

Aux termes de l'article 700 du code de procédure civile, le juge condamne la partie tenue aux dépens ou qui perd son procès à payer :
1° A l'autre partie la somme qu'il détermine, au titre des frais exposés et non compris dans les dépens ;
2° Et, le cas échéant, à l'avocat du bénéficiaire de l'aide juridictionnelle partielle ou totale une somme au titre des honoraires et frais, non compris dans les dépens, que le bénéficiaire de l'aide aurait exposés s'il n'avait pas eu cette aide. Dans ce cas, il est procédé comme il est dit aux alinéas 3 et 4 de l'article 37 de la loi n° 91-647 du 10 juillet 1991 .
Dans tous les cas, le juge tient compte de l'équité ou de la situation économique de la partie condamnée. Il peut, même d'office, pour des raisons tirées des mêmes considérations, dire qu'il n'y a pas lieu à ces condamnations.
Les parties peuvent produire les justificatifs des sommes qu'elles demandent. La somme allouée au titre du 2° ne peut être inférieure à la part contributive de l'État majorée de 50 %.

En l'espèce, et au vu des éléments du dossier, M. Peter Protopapas n'ayant pas été présent lors de l'instance, il n'y a pas lieu à la condamner au paiement des frais irrépétibles.

Il est rappelé que l'exécution provisoire est de droit.

PAR CES MOTIFS

Le tribunal statuant publiquement, par défaut, en premier ressort, par mise à disposition du jugement au greffe, les parties ayant été préalablement avisées dans les conditions prévues au deuxième alinéa de l'article 450 du code de procédure civile,

PRONONCE l'exequatur et déclare exécutoire en France l'ordonnance de la Haute cour de justice d'Angleterre et du Pays de Galles en date du 22 novembre 2024 rendue à l'encontre de M. Peter Protopapas,

CONDAMNE M. Peter Protopapas aux entiers dépens de l'instance, dont distraction au profit de Maître Frédéric Dabiens, avocat au barreau de Montpellier, conformément aux dispositions de l'article 699 du code de procédure civile,

DÉBOUTE la société Cape Pic, la société CIHL, la société AIA et M. Mohed Altrad de leurs plus amples demandes,

DIT n'y avoir lieu à condamnation de M. Peter Protopapas en application des dispositions de l'article 700 du code de procédure civile,

RAPPELLE que l'exécution provisoire est de droit.

Ainsi jugé et mis à disposition au greffe civil le 8 avril 2025.

La greffière

Linda Lefranc-Benammar

La juge

Florence Le Gal

En conséquence, la République française, mande et ordonne à tous huissiers de justice, sur ce requis, de mettre la présente décision à exécution, aux procureurs généraux et aux procureurs de la République près les tribunaux judiciaires d'y tenir la main.
A tous commandants et officiers de la force publique de prêter main-forte lorsqu'ils en seront légalement requis.
En foi de quoi la présente a été signée et scellée du sceau du tribunal. Le greffier

Pour copie certifiée conforme à l'original
revêtue de la formule exécutoire
Le greffier

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19 May 2025

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

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

pdp@rplegalgroup.com

Our ref JW/PB/5346.1

Dear Mr Protopapas,

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

We write in relation to new proceedings that our clients have become aware of that were recently commenced against CIHL and/or Cape Plc by the Trustees of the Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust ("**PCT"**) against "*Cape Plc, individually and as successor in interest to Cape Asbestos Company, by and through its duly appointed receiver Peter D. Protopapas*" in the Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, South Carolina (the "**PCT Claim**").

We have previously made you aware, by our letters of 27 and 28 November 2024 and 10 December 2024 of the Judgment (the "**Judgment**") and Order of Mr Justice Mann of the High Court dated 22 November 2024 ("**Order**"). The Order makes it clear that you had and have no power or authority over CIHL and are restrained from acting or purporting to act on behalf of CIHL anywhere in the world (including in South Carolina).

Filings that you have made in the South Carolina courts demonstrate that you are fully aware of the terms of this Order. You will therefore be aware of paragraph 5 of the Order which specifically confirmed that you had and have no power to accept service of any legal proceedings on behalf of CIHL including in South Carolina. You will likewise be aware of paragraph 10 of the Order, which contained an injunction specifically restraining you from purporting to act for CIHL in any legal proceedings issued against CIHL.

In this regard, we note that Mr Justice Mann, at paragraph 89 of his Judgment, was clearly conscious of the risk of PCT bringing the PCT claim and the obvious risk that you would admit liability in the PCT Claim or otherwise purport to act but fail in fact to defend properly the PCT Claim. These concerns (which were set out in evidence) were part of the broader context /rationale upon which basis Mr Justice Mann made the Order.

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138 Fetter Lane, London, EC4A 1BT. The word "partner" denotes a member of the LLP, or an employee or consultant with equivalent standing and qualifications.

In the PCT Claim, PCT has issued the claim and proposes to serve proceedings against our client through you. Such a course is plainly invalid for the reasons set out above - and you have no authority on the part of CIHL (or its board) to purport to accept service or act on its behalf in this regard or at all.

Accordingly, we hereby put you on notice that, if and to the extent you take any steps in respect of the PCT Claim (including purporting to accept service on behalf of CIHL), that would represent a clear and deliberate breach of the Order.

In circumstances where you are fully aware of the Order and are not yet engaged in the proceedings (in relation to which no procedural orders have been made), it is incumbent upon you to confirm that you have no role to play in the PCT Claim. Rather, to the extent that PCT wishes to pursue any claim against our client then it should bring and serve any such claim against our client in the usual way.

It follows that any attempt by you to take any steps in the PCT Claim would not only be a breach of the Order but would constitute a clear and deliberate contempt of the Order of the English Court. As you will know, this is an offence that carries a criminal sanction.

Additionally, any breaches of the Order and unlawful acceptance or receipt of claims (such as the PCT Claim) would also constitute the carrying out of a tort by you against our client (as specifically acknowledged in the Judgment), involving you causing harm to our client and entitling our client to appropriate remedies from you which may include substantial damages and an indemnity by which you would be made liable to compensate our clients for all present and future losses caused by your conduct. Such orders could then be enforced against you and your assets in all available jurisdictions.

In the circumstances we ask that you confirm, within seven days of this letter, that you will not accept or purport to accept service of the PCT Claim on behalf of CIHL - and that you will not in fact or purport to take any role on behalf of our clients in the PCT Claim.

We look forward to you providing the confirmation as requested.

All of our clients' rights are reserved in the event that such confirmation is not received.

Yours faithfully

Signature Litigation LLP

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SIGNATURE

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27 November 2024

By email

Our ref 5346.1

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138 Fetter Lane, London, EC4A 1BT. The word "partner" denotes a member of the LLP, or an employee or consultant with equivalent standing and qualifications.

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 <u>no</u> 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@signaturelitigtion.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

SIGNATURE

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23 May 2025

By email

FAO: Khaled Khatoun, James Smithdale
Quinn Emanuel
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London
WC1V 6LJ

Our ref **JW/PB/5346.1**

Dear Sirs/Madams

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

Introduction

We refer to our previous correspondence and adopt the defined terms from that correspondence.

The purpose of this letter is to inform your clients MLUS and MLUK of our clients' position in respect of the PCT Claim (defined below) and to put you on notice that any acts taken by your clients for and on behalf of Mr Protopapas in respect of the PCT Claim may give rise to a cause of action against your clients under English law in relation to their role in supporting and assisting Mr Protopapas' conduct. Specifically, any steps taken by MLUS or MLUK (or by constituent partners or entities) to assist or facilitate in any participation by Mr Protopapas in the PCT Claim would constitute an interference with the Order and knowing assistance in Mr Protopapas' breaches of the Order.

The PCT Claim

The PCT Claim has recently been commenced against CIHL and/or Cape Plc by the Trustees of the Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust (**PCT**) against "*Cape Plc, individually and as successor in interest to Cape Asbestos Company, by and through its duly appointed receiver Peter D. Protopapas*" in the Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, South Carolina.

In the PCT Claim, PCT has sought to issue and serve proceedings against our clients through Mr Protopapas.

The English Judgment

We have already explained in our previous letters to you and to your clients the effect of the order of Mr Justice Mann dated 22 November 2024 (**Order**) – as well as the Judgment of the same date (**Judgment**) – and why Mr Protopapas had and has no power or authority over CIHL and is restrained from acting or purporting to act on behalf of CIHL anywhere in the world (including in South Carolina).

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In this regard, you will be aware of paragraph 5 of the Order which specifically confirmed that Mr Protopapas has no power to accept service of any legal proceedings on behalf of CIHL including in South Carolina; and you will likewise be aware of paragraph 10 of the Order which contained an injunction specifically restraining Mr Protopapas from purporting to act for CIHL in any legal proceedings issued against CIHL.

Further, we note that Mr Justice Mann, at paragraph 89 of the Judgment, was clearly conscious of the risk of PCT bringing the PCT Claim – and the risk of Mr Protopapas' admitting responsibility or purporting to act but failing to properly defend the claim.

The position of MLUS and MLUK

We understand from your letter dated 21 January 2025 that you act for MLUS and MLUK and in the same letter you also state that MLUS acts for Mr Protopapas in his purported capacity as "*as Receiver for Cape PLC individually and as a successor in interest to Cape Asbestos Company Limited*". Further, we note the suggestion in your letter that MLUS is advising Mr Protopapas only in relation to US law (and under which you assert that he is acting lawfully). Nevertheless, we note that partners of MLUK remain partners of MLUS.

On 19 May 2025 we wrote to Mr Protopapas on behalf of our clients explaining that if he participated in the PCT Claim in the name of or on behalf of our clients (including, but not limited to, by accepting service on behalf of our clients) he would be committing a contempt of court in relation to the Order and he would also be committing an actionable tort against our clients that would give rise to a claim in damages. We attach a copy of that letter for your information.

Accordingly, any participants within MLUS or MLUK with the relevant knowledge and intention would be liable for contempt of court and our clients would be bound to consider bringing contempt proceedings against MLUS, MLUK and/or any other relevant participants.

Our clients' position

In this regard, you will no doubt be aware that (and will no doubt advise your clients that) the English Courts have held that it is not a defence to properly brought contempt proceedings for a defendant to simply rely either on the fact that they acted as a solicitor or agent or on the fact that they were doing something in a foreign jurisdiction that was lawful in that foreign jurisdiction.

We therefore put your clients on notice that our clients intend to take any necessary steps to bring claims for injunctions and to recover any losses if Mr Protopapas tortiously continues to purport to act as and in the name of our clients, and in particular if he participates in the PCT Claim in this purported capacity.

Our clients intend to take all necessary steps to ensure that all third parties participating and supporting Mr Protopapas in any such tortious conduct—whether as joint tortfeasors, as parties to any conspiracy, or as participants on any equitable wrong—will be pursued to the fullest extent possible under English law.

In this regard, you will no doubt be aware that (and will no doubt advise your clients that) a party being an agent or solicitor does not provide a defence to such claims.

To the extent that MLUS or MLUK (or any constituent partners or entities) assist Mr Protopapas in unlawfully participating in the PCT Claim, our clients reserve the right to take such action as required to hold those parties accountable for that wrongful assistance (including through seeking injunctive relief and damages to compensate CIHL for any losses arising from Mr Protopapas' conduct of the PCT Claim).

We trust that you will advise your clients in relation to any potential English law liabilities, and we ask you to confirm, within seven days of this letter, that your clients will take no role in assisting Mr Protopapas in relation to the PCT Claim.

We look forward to hearing from you shortly and in any event by 30 May 2025. In the meantime, all of our clients' rights are reserved. For the avoidance of doubt, his correspondence shall not be construed as submission to the jurisdiction, personal or otherwise, of any United States Court, including those within South Carolina.

We look forward to hearing from you.

Yours faithfully

Signature Litigation LLP

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ATTENTION STEPHEN MILWID

THANKS FOR YOUR RECENT TELEX WHICH SHOULD CONFIRM PREVIOUS ADVICE THAT EGNEP STILL SAFE FROM SOUTH AFRICAN JUDGEMENT ENFORCEMENT IF WITHDRAWAL FROM TEXAS PROCEEDINGS DECIDED UPON AT THIS STAGE. COUNSEL MR FOX-ANDREWS IS KEEN TO CONFER WITH YOU BEFORE FINALLY CONFIRMING HIS ADVICE THAT CAPE WOULD BE SUBJECT TO UK ENFORCEABILITY IF WITHDRAWAL NOW. WE HERE, HAVING HEARD MORE DISTURBING INFORMATION RECENTLY ABOUT THE VALUE OF TEXAS AWARDS ARE RAPIDLY COMING TO THE CONCLUSION THAT CAPE AND CAPE FIBRES SHOULD TAKE A RISK ON THE UK ENFORCEABILITY AND WITHDRAW, AS IN PRACTICE WE CANNOT FORSEE ANY COURT OR GOVERNMENT HERE ENFORCING A JUDGEMENT WHICH WOULD HAVE ENORMOUS FINANCIAL AND EMPLOYMENT REPURCUSSIONS, WHEN WE REALLY CANNOT BE SAID TO HAVE A MORAL RESPONSIBILITY AND ARE SIMPLY VICTIMS OF THE US PRODUCT LIABILITY CULT.

AN URGENT MEETING IS OBVIOUSLY ESSENTIAL AS CLEARLY YOU CANNOT INDEFINITELY CONTINUE MY INSTRUCTIONS OF TAKING NO FURTHER STEP IN THE PROCEEDINGS. SUGGEST 21ST AND 22ND JULY IN LONDON.

NOTE
;;;;

THIS IS URGENT - PLEASE CONTACT MR MILWID URGENTLY IN CALIFORNIA FOR REACTION.

A J PENNA
+
LOWIRCO CGO

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PLAINTIFF'S EXHIBIT
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ALTRAD AT A GLANCE

With the acquisition of the Hertel, Prezioso and Cape groups, respectively in 2015, 2016 and 2017, the Altrad Group has entered a new phase of evolution. Today it has become a world leader in services to industry. This strategic evolution constitutes the third stage of a history that began in 1985 with the founding of the group by Mohed Altrad. Originally specialized in manufacturing construction equipment, Altrad then migrated to equipment rental, upscaling in the process. After consolidating the French market, Altrad became the European leader in the rental of building and construction equipment. To achieve this, Altrad evolved its business model by becoming an equipment hirer before becoming a manufacturer. With the third major strategic move in its history, Altrad has become, first and foremost, a service company that has retained its manufacturing strength and rental availability. This specificity allows it to provide its major clients with high value-added services and recognized availability, while enhancing and creating added value in its business.

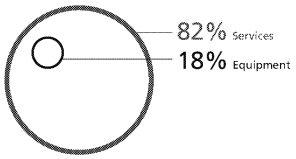
Continually focused on performance and profitability, constantly striving to offer better service to its customers, the Altrad Group has always been a market consolidator. This dynamic is the product of clear strategic choices that have not changed since the start of the group's activity: on the one hand, presence in several markets with different cycles; on the other hand, presence in markets that are not those of its competitors. These two combined characteristics have allowed Altrad to overcome the economic cycles inherent in its business better than its competitors, which in turn enabled it to take over a large number of them. The Altrad Group has thus become European leader in the manufacture, sale and rental of scaffolding, props and shoring, which it installs and dismantles, as well as in lightweight construction equipment. But it is now also a major global player in surface treatment in the nuclear and oil sectors, as well as in insulation and painting work on these installations.

The company retains its core business (scaffolding, props and shoring) and its own identity, while transforming itself considerably. Because the Group is attached to its history. And because the manufacturing activities have maintained strong profitability. This situation has made Altrad Group the only integrated group in its market, with prospects for horizontal integration of competitors and the broadening of its offer of extensive services while carrying out vertical integration if necessary.

TURNOVER PROFORMA BY REGION

€1.201 m Continental Europe
€925 m United Kingdom
€636 m Pacific
€284 m Middle East & Caspian
€223 m Asia
€137 m Africa

REVENUE BY ACTIVITY



The group has grown through internal and external growth for more than 30 years, reaching € 3.4 billion in sales and € 425 million in EBITDA (12%) as of August 31, 2016 (integrating Cape as proforma). Its rental stock in scaffolding, props and shoring is unmatched, estimated at more than 515,000 tons and € 1.2 billion in replacement value.

Headquartered in Montpellier (France), the Group employs 39,000 people and is present throughout the world in more than 100 countries in Europe, Asia, Africa, the Middle East and Australia.

Mohed Altrad, founder of the Group, holds 77.78% of the shares, the Public Investment Bank (BPI) 10.87% and financial shareholders 11.35%. All the shareholders of the company are established in France. The shareholder structure has remained stable over the last seven years.

SERVICES
Recurring multi-service and multi-technical offer to industry (new projects and maintenance to extend the life of existing assets).

The Altrad Group offers solutions for access, surface treatment, insulation, maintenance of mechanical systems, painting and coatings.

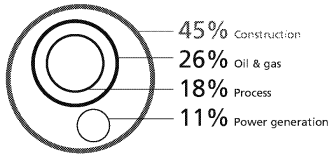
- Installation and dismantling of scaffolding;
- Access solutions (ropes, mobile platforms, lifts, etc.);
- Insulation;
- Anti-corrosion protection;
- Engineering, installation and maintenance of mechanical systems;
- Installation of formwork and watertight structures;
- Shoring;
- Specialized services (coating, stress-testing, inspections, etc.).

EQUIPMENT
Design, manufacture, sale and rental of structures for construction, industry and public authorities.

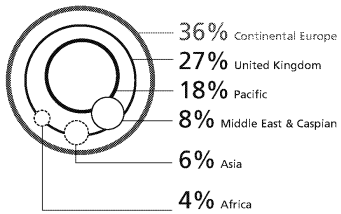
- Manufacturing, sales and rental;
- Scaffolding;
- Formwork, props and shoring;
- Equipment for events (stages, stands, etc.);
- Concrete mixers, wheelbarrows and compaction machines;
- Equipment for public authorities (play structures for children, multi-purpose sports structures, stands, etc.).

MAIN CLIENTS:
OIL & GAS MAJOR COMPANIES, CHEMICAL INDUSTRY, LARGE GROUPS IN POWER GENERATION, CONSTRUCTION GROUPS, ENGINEERING, PROCUREMENT & CONSTRUCTION COMPANIES (EPC), EQUIPMENT GOODS RETAILERS, LOCAL AUTHORITIES

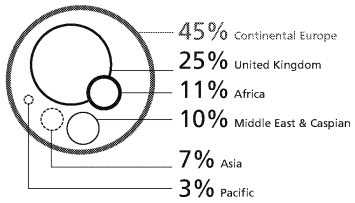
REVENUE BY MARKET



REVENUE BY REGION



SERVICES ORDER BOOK BY REGION



ACQUISITION OF CAPE, A MAJOR STRATEGIC REINFORCEMENT

ON JULY 7, THE ALTRAD GROUP ANNOUNCED A PUBLIC TENDER OFFER FOR THE CAPE GROUP, ONE OF THE WORLD'S LEADING PROVIDERS OF SERVICES TO INDUSTRY, PRIMARILY IN THE ENERGY SECTOR.

The Board of Directors of Cape unanimously recommended this offer.

After obtaining the authorization of the merger control authorities of the United Kingdom, the offer became unconditional and was closed on 8 September 2017. Today Altrad holds 100% of Cape.
Cape in 2016 had 16,000 employees operating in 23 countries for a turnover of £ 863.5 m.

Following the successful acquisition with the Hertel Group in June 2015 and the Prezioso Group in May 2016, this acquisition represents and exceptional opportunity, in line with the Group's strategy to become a world leader in services to industry.

A MULTI DISCIPLINARY PLAYER IN SERVICES TO INDUSTRY, **LEADER IN ITS MAIN MARKETS IN THE WORLD**

MOHED ALTRAD

In view of the complementarity of the Cape and Altrad groups, this operation should enable:

— The creation of a multi disciplinary player in services to industry, leader in its main markets in the world:
- Stronger presence in regions with high growth potential, notably in Asia-Pacific and the Middle East;
- A better balance between the different geographical areas: 66% of sales generated in Europe (including United Kingdom), 20% in Asia-Pacific and 14% in other regions.

— The creation of a homogeneous and balanced whole, with a reduced level of risk:
- An expanded customer portfolio;
- Presence in most economic sectors to reduce exposure to the volatility of certain cycles.

— Deployment of a wide and diversified range of services resolutely focused on our main industrial customers, greatly strengthening the area of expertise of both groups. The Group also benefits from its own industrial capacities.

— Achieving synergies:
- Rationalisation of operational costs;
- Development of intra-group services;
- Shared use of equipment, reducing the need for capital.

— Creation of a global leader:
- Proforma revenues and adjusted EBITDA of more than € 3 billion and € 400 million, respectively;
- Approximately 39,000 people worldwide;
- A financial position capable of supporting future external growth and other strategic investments, the level of indebtedness remaining very moderate at Group scale.

In summary, this acquisition will combine the respective strengths of the Altrad and Cape groups to create a global, competitive whole that is better able to meet the expectations of our customers.

ACQUISITION DE CAPE, UN RENFORCEMENT STRATÉGIQUE MAJEUR

LE GROUPE ALTRAD A ANNONCÉ, LE 7 JUILLET, LE DÉPOT D'UNE OFFRE PUBLIQUE D'ACHAT SUR LE GROUPE CAPE, UN DES LEADERS MONDIAUX DANS LA FOURNITURE DE SERVICES À L'INDUSTRIE INTERVENANT PRINCIPALEMENT DANS LE SECTEUR DE L'ÉNERGIE.

Cette offre a été recommandée à l'unanimité par le conseil d'administration de Cape. Après obtention de l'autorisation des autorités de contrôle des concentrations du Royaume-Uni, l'offre est devenue inconditionnelle et a été clôturée le 8 septembre 2017. A aujourd'hui Altrad détient 100% de Cape.

Cape compte en 2016 16 000 employés opérant sur 23 pays pour un chiffre d'affaires de £ 863,5 m. Suite aux rapprochements réussis avec les groupes Hertel en juin 2015 et Prezioso en mai 2016, cette acquisition représente une opportunité exceptionnelle, en ligne avec la stratégie du groupe dont l'objectif est de devenir leader mondial dans les services à l'industrie.

Au vu de la complémentarité des groupes Cape et Altrad, cette opération devrait permettre :

— la création d'un acteur multi disciplinaire dans les services à l'industrie, leader sur ses principaux marchés dans le monde :
- Une présence renforcée dans les régions à fort potentiel de croissance, notamment l'Asie-Pacifique et le Moyen-Orient ;
- Un meilleur équilibre entre les différentes zones géographiques : 66% du CA généré en Europe (y compris Royaume-Uni), 20% en Asie-Pacifique et 14% dans les autres régions.

— La constitution d'un ensemble homogène et équilibré, avec un niveau de risques réduit :
- Un portefeuille client élargi ;
- Une présence dans la plupart des secteurs économiques permettant de réduire l'exposition à la volatilité de certains cycles.

— Le déploiement d'une gamme de services large et diversifiée, résolument tournée vers nos principaux clients industriels, renforçant considérablement les zones d'expertise des deux groupes. Le Groupe bénéficie également de capacités industrielles propres.

UNE PRÉSENCE RENFORCÉE DANS LES RÉGIONS À FORT POTENTIEL DE CROISSANCE, L'ASIE-PACIFIQUE ET LE MOYEN-ORIENT

LOUIS HUETZ

— La réalisation de synergies :
- La rationalisation des coûts opérationnels ;
- Le développement des services intra groupe ;
- Une utilisation partagée des équipements, réduisant le besoin en capital.

— La création d'un leader mondial :
- Un chiffre d'affaires proforma et un EBITDA ajusté respectivement de plus de 3 milliards € et 400 millions € ;
- Un effectif d'environ 39 000 personnes à travers le monde ;
- Une situation financière capable de supporter les futures croissances externes et autres investissements stratégiques, le niveau d'endettement restant très modéré à l'échelle du groupe.

En résumé, cette acquisition permettra d'associer les points forts respectifs des groupes Altrad et Cape afin de créer un ensemble global, compétitif, plus à même de satisfaire les attentes de nos clients.

Cape_Receiver_00040529

PRESENTATION OF CAPE

Cape was founded in 1893, as an importer and manufacturer of insulation materials. The company experienced rapid growth for over 50 years in the United Kingdom and overseas.

In the 1950s, the group diversified in service activities in the UK then the Middle East and Asia. Access solutions were incorporated in the service offering in the 1970's.

The Group's service offer is now wide and diversified, mainly for the energy and oil & gas sectors:
— Access systems;
— Insulation;
— Refractory linings;
— Storage;
— Mechanical services;
— Environmental services;
— Maintenance of heat exchangers.

Cape achieved in 2016 a turnover of £ 863.5 m and an EBITDA of £ 73 m. It has 16,000 employees.

The Group is present in the United Kingdom (43% of turnover), the Middle East (22%), Asia and Pacific (35%).

The Group's turnover is composed of 61% maintenance work and 39% projects.

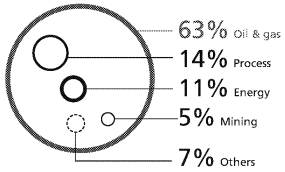
The Group's customers are from the oil & gas sector (63%), energy (11%), process industries (14%), mining (5%) and other sectors (7%).

Cape set up a compensation fund in 2006 for its employees who were exposed to asbestos until the complete cessation of this activity in the beginning of 1980's. This fund is administered independently.

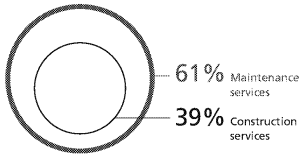
REVENUE BY REGION

£ 371 m United Kingdom
£ 302 m Asia Pacific
£ 190 m Middle East

ECONOMIC SECTORS



TYPE OF BUSINESS



STRUCTURE OF THE OPERATION

THE ACQUISITION OF CAPE PLC SHARES WAS CARRIED OUT THROUGH THE INTERMEDIARY HOLDING COMPANY ALTRAD UK, A WHOLLY OWNED SUBSIDIARY OF AIA AND FINANCED BY AIA THROUGH A CURRENT ACCOUNT. ALTRAD UK PROCEEDED TO REFINANCE CAPE'S DEBT. THE ACQUISITION OF CAPE SHARES WAS FINANCED BY AN ACQUISITION DEBT ARRANGED BY BNP PARIBAS SA.

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REVENUE BY REGION

ROYAUME-UNI

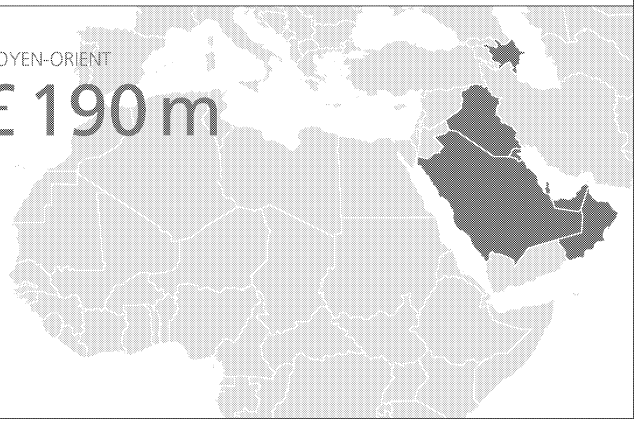
£371m

ASIE ET PACIFIQUE

£302m

MOYEN-ORIENT

£190m



ACTIVITÉ PAR ZONE GÉOGRAPHIQUE

PRÉSENTATION DE CAPE

Fondé en 1893, Cape était à l'origine un fabricant et un importateur de produits isolants. Il a connu une forte croissance durant plus de 50 ans au Royaume-Uni et à l'étranger.
Dans les années 50, le groupe s'est diversifié dans les activités de services, au Royaume-Uni, puis au Moyen-Orient et en Asie. Les solutions d'acces ont été intégrées à l'offre de services dans les années 70.

L'offre de service du groupe est aujourd'hui vaste et diversifiee, principalement destinée aux secteurs de l'énergie, du pétrole et du gaz :
— Systèmes d'acces ;
— Isolation ;
— Revêtements réfractaires ;
— Stockage ;
— Services mécaniques ;
— Services environnementaux ;
— Maintenance d'echangeurs de chaleur.

Cape a réalisé en 2016 un chiffre d'affaires de £863,5m et un EBITDA de £73m. Il compte 16000 employés.

Le groupe est présent au Royaume-Uni (43% du chiffre d'affaires), au Moyen-Orient (22%), en Asie et Pacifique (35%).

Le chiffre d'affaires du groupe est composé pour 61% de travaux de maintenance et pour 39% de projets.

Les clients du groupe proviennent des secteurs du pétrole et du gaz (63%), de l'énergie (11%), des industries de transformation (14%), des industries minières (5%) et des autres secteurs d'activité (7%).

Cape a mis en place en 2006 un fonds d'indemnisation au bénéfice de ses employés qui ont été exposés à l'amiante jusqu'à l'arrêt complet de cette activité au début des années 80. Ce fonds est administré de manière indépendante.

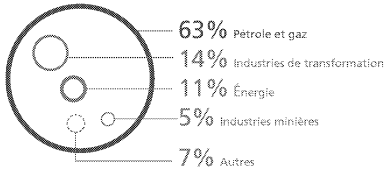
RÉPARTITION GÉOGRAPHIQUE DE L'ACTIVITÉ

£371m Royaume-Uni

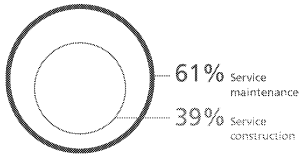
£302m Asie et Pacifique

£190m Moyen-Orient

LES SECTEURS D'ACTIVITÉ



LES TYPE D'ACTIVITÉS



STRUCTURE DE L'OPÉRATION

L'ACQUISITION DES TITRES DE CAPE PLC ET LE REMBOURSEMENT DE SA DETTE ONT ÉTÉ RÉALISÉS PAR LA HOLDING INTERMÉDIAIRE ALTRAD UK, FILIALE À 100% D'ALTRAD INVESTMENT AUTHORITY. CETTE OPERATION A ÉTÉ FINANCÉE PAR UNE DETTE D'ACQUISITION ARRANGÉE PAR BNP PARIBAS SA ET PAR UN COMPTE COURANT ALIMENTÉ AVEC LA TRÉSORERIE DU GROUPE ALTRAD.

Nous mesurons la fréquence de nos incidents pour notre branche de services industriels en utilisant la fréquence totale des incidents enregistrables (TRIF) de l'OSHA, reconnue internationalement. Au cours de l'exercice se terminant le 31 août 2017, notre TRIF était de 0,22. Bien que cela figure parmi les meilleurs résultats de notre secteur d'activité en matière de sécurité. Le groupe ne relâche pas ses efforts et continue d'investir dans la culture de sécurité.

Nos filiales poursuivent leur objectif *Beyond Zero*. Leur solide performance en matière de sécurité est reconnue par le respect des normes les plus élevées de l'industrie (OHSAS et ISO, entre autres) et par l'obtention de nombreux prix de sécurité très appréciés des clients.

WE ADHERE TO A PARTICIPATORY PHILOSOPHY IN WHICH MANAGEMENT IS ACTIVELY ENCOURAGED TO SHARE THE GROUP STRATEGY

LOUIS HUETZ

HUMAN RESOURCES

This year has seen another transformative event with the announcement of the acquisition of Cape plc. The total headcount of the Group will be around 39,000 employees working in over 100 countries. The integration of such numbers of employees, valuing their cultural differences whilst ensuring they become aligned to the Group's vision and philosophy is vital to our continued success.

Our people are our strongest assets in recognition of which the Human Resources policy is geared towards:
- respect for cultural differences and local specificities,
- continual enriching of the Group's culture through open and transparent social dialogue,
- appreciation of individual commitment and strengthening of the sense of belonging, in an environment where there is little hierarchy,
- development of motivation through a business project to unite all the staff around common values.

We adhere to a participatory philosophy in which management is actively encouraged to share the Group strategy, so that everyone can appropriate it and fully contribute to its implementation.

Effective implementation of a Human Resources strategy requires participation at every level of the organisation. Each subsidiary has its own Human Resources capacity with autonomy to adapt and react to local conditions. This provides a responsive and tailored Human Resources structure.

Whilst being mindful of the cultural diversity within the Group and the autonomy required by the subsidiaries, the Human Resources department, in turn, is responsible for:
- contributing to building the social culture of the Group,
- developing mobility and internal promotion favoured by the international operations of the Group,
- ensuring compliance with budgetary procedures and reporting, and more generally to managerial efficiency.

The role includes guiding company managers on priority topics such as:
- the remuneration policy: harmonization of pay increases and implementation of fixed and variable remuneration systems,
- vocational training policy geared to safety, quality and job enrichment,

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Company's Registered Number: 03337119

ALTRAD SERVICES LIMITED

ANNUAL REPORT AND FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 AUGUST 2022

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ALTRAD SERVICES LIMITED

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Company's Registered Number: 03337119

ALTRAD SERVICES LIMITED

OFFICERS AND PROFESSIONAL ADVISORS

DIRECTORS

John Walsh
Padraig Somers

REGISTERED OFFICE

Building 2
Fields End Business Park, Davey Road
Thurnscoe
Goldthorpe
Rotherham
S63 0JF

BANKERS

HSBC Bank PLC
8 Canada Square
Canary Wharf
London
E14 5HQ

INDEPENDENT AUDITORS

Ernst & Young LLP
2 St Peter's Square
Manchester
M2 3EY

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ALTRAD SERVICES LIMITED

STRATEGIC REPORT

FOR THE YEAR ENDED 31 AUGUST 2022

The directors present their Strategic Report for the year ended 31 August 2022.

Principal activities

Altrad Services Limited ("the Company") provides a wide range of critical industrial services including access solutions, refractory linings, environmental services, insulation, specialist coating, fire protection and associated services focused on the energy and natural resource sectors.

Review of the business and future developments

The Company's trading performance has improved over the year to 31 August 2022, turnover increasing to £219,481,000 (2021: £193,198,000), gross profit increased to £28,991,000 (2021: £27,159,000). Profit before tax excluding exceptional costs has increased to £22,671,000 (2021: £19,047,000). After exceptional items there is a profit before tax of £22,786,000 (2021: £13,271,000). The increase in profitability has primarily been caused by continued recovery from the Covid-19 pandemic.

The Company derives the majority of its revenue from maintenance activities much of which is generated from long term framework agreements. Working capital is closely managed with regular reviews of trade and other receivables. In the future, directors anticipate moderate but stable revenue growth across maintenance contracts which are in relatively mature markets, with growth opportunities arising from the nuclear new build sector and cross-selling initiatives across the Altrad Group.

Principal risks and uncertainties

The Board of Altrad Investment Authority SAS (the ultimate parent company) manages risk at a Group level and is committed to enhancing the Group's risk management capability. Risk is assessed formally at business segment level through risk workshops and via the maintenance of risk registers. The updating of the risk registers is a continuous process involving the identification, evaluation and management of risks by individual managers. This enables the early identification of key risks and the taking of action to mitigate the likelihood of loss.

The principal risks and uncertainties facing the Group are broadly grouped as: external, competitive, operational and commercial, and financial. The risks and uncertainties facing the Company are considered to be consistent with the Group. While these risks are summarised below, further details and the Group's mitigating actions can be found in Altrad Investment Authority SAS's Annual Report, which does not form part of these financial statements.

External
The Company's business is diverse and operations in certain locations may be affected by factors outside the Company's control. These include changes to political, economic and environmental conditions in existing and new territories.

Global Environment
We have continued to see considerable instability in the global environment over the past year, however, the Company is reporting a strong financial performance and remains resilient in the light of these challenges.

COVID-19
In the early days of the pandemic, the Company developed and implemented a plan of safety measures, designed with the aim of mitigating the impact of Covid 19 by ensuring both the safety of our employees and the continued provision of essential services for our customers, who mainly operate in the critical infrastructure sector.

This planning has enabled us to maintain our people's safety, retain workforce confidence and to minimise the impact of Covid-19 on our business.

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Principal risks and uncertainties (continued)

Whilst these safety measures have now, to a large extent, been demobilised during the latter part of the period, we remain vigilant of the residual risk of Covid-19, particularly the fact that it continues to have unpredictable impacts in some countries . The Directors are confident that should the external environment necessitate, the Company would be able to respond appropriately and rapidly to any resurgence of Covid-19 to minimise any future impact on the business.

Ukraine Conflict
The Company's immediate direct financial exposure to the impact from the conflict in Ukraine is limited as the Company has no trading relationships with either Ukraine, Russia or Belarus.

Inflation
Towards the latter part of the period, the Company has been exposed to the rapidly rising inflation rates that have been seen globally as a result of Geopolitical factors, including but not limited to the conflict in Ukraine. The Company is largely protected from rising inflation rates with strong indexation arrangements in most contracts. The timing of such clauses becoming effective may cause a lag between the impact of rising costs being experienced and any increase in revenue. However, the Directors believe that these contractual provisions limit the impact of this risk.

The Company is conscious of the financial pressures its people are facing and has implemented a cost-of-living plan to assist employees during these turbulent times.

Competitive
Altrad Investment Authority SAS operates mainly in the energy and natural resources sectors and the Group's earnings depend on a stable long-term demand for oil, gas and electricity. In addition, losing certain key clients with which the Group has several contracts could have an adverse effect on the Company's revenues.

Operational and commercial
Health and safety
Many of Altrad Investment Authority SAS's operating environments have associated health and safety risks and failure to maintain the highest safety standards on site could result in injury to our employees, damage to the environment and a loss of clients, as well as damage to the Company's reputation. The Company is maintaining a provision in respect of lodged and future industrial disease claims for which the Board of Directors of Cape plc believes the Group to be liable, arising on alleged exposure to previously manufactured asbestos products (see note 19).

Contract and project performance
The terms and conditions of the Company's contracts, as well as the actual project performance by Altrad Investment Authority SAS's subsidiaries, could expose it to cost overruns resulting in adverse financial performance.

Financial
The Company has exposure to foreign exchange and interest rate risks which are managed centrally by the local finance team with oversight at Altrad Group level by the Group finance, tax and treasury team of Altrad Investment Authority SAS.

Credit risk, the risk of financial loss to the Company if a customer fails to meet its contractual obligations, is managed centrally and arises principally from the Company's receivables from customers. The Company's exposure to credit risk is influenced mainly by the individual characteristics of each customer. Any customer requiring credit above twice the limit recommended by Coface or equivalent external rating agency must be approved by Altrad Investment Authority SAS.

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Section 172(1) statement

The Company is a subsidiary of the Altrad Group and its board operates as part of the Altrad Group. As part of the wider Altrad Group, the directors have acted in a way they consider, in good faith, promotes the success of the Company for the benefit of its members as a whole, and in doing so have given regard (amongst other matters) to:

Business relationships
We work with some of the world's most respected companies and we pride ourselves on our commitment to understand their needs, working collaboratively to deliver value-enhancing solutions. We build strong, sustainable relationships with our clients and with our suppliers, which is essential to the long-term success of our business. We manage our key relationships via a structured key account management (KAM) process which encourages regular communication and promotes continuous improvement activities.

Our people
We provide an inclusive environment where our people can bring their whole self to work, feel connected and have the space they need to grow – giving everyone an opportunity to reach their full potential. We celebrate the importance of having a diverse workforce and our rich diversity helps build the skills, ideas and behaviours which characterise our people. We provide our people with the opportunity to build progressive careers, within an environment that values ingenuity, creativity and ambition.

Apprentices and graduates
Our Apprentice and Graduate programme, provides our people with opportunities to make a real impact within a company who truly cares. Our apprentice and graduate intake provides our next generation of people who can take on complex challenges and make a difference in the world through innovation, creativity and teamwork.

Military and Veterans
The skills and experience gained in uniform are highly valued at the Company – they are key assets in facing our client's toughest challenges. Former members of the military, provide skills that are highly valued by the Company. From a strong work ethic, to strong leadership skills and a focus on teamwork, the Company has roles that fit these desirable qualities.

Ex-offenders
The Company treats all of its people with respect, regardless of their past experiences - we want our people to learn from their past and create a better future. Through a programme of learning and development, which is structured to meet their needs, we offer the support and guidance ex-offenders need to thrive.

Disabled employees
The Company encourages the employment of disabled people and provides a fair and encouraging approach to any such employment applications. In the event any of our people become disabled whilst in the service of the Company – we strive to support their needs and every effort is made to continue their employment. This may include adapting their work environments, transferring them to alternative duties, or if required, retraining them to undertake new roles.

People engagement
The true value of the Company resides within our people – as such, we communicate regularly and via various media. We maintain an intranet site that provides employees with the latest company information and utilise the Altrad App to allow them to see updates and news instantaneously. We utilise a structured schedule of internal communication, which includes regular one-to-one meetings, townhall meetings, operational and management meetings facilitating two-way conversations and the sharing of ideas throughout our teams.

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Section 172(1) statement (continued)

Culture and values

Our values define who we are, they drive us to succeed and underpin our approach to business. They are at the forefront of every decision we make, and they define the behaviours of our people. Our values of Respect, Solidarity, Courage, Humility and Conviviality, drive us to be the best we can be. In the collective, our people and our values form our corporate culture, which serve the best interests of our shareholders, our clients, our people, our suppliers and other stakeholders – ensuring the long-term success of our business.

Sustainability and Community

We understand the importance of creating a sustainable future; it runs throughout our strategy, it's part of our culture and it's central to our day to day operations. We are committed to making positive impacts for our people, our clients and our wider business. As we continue to evolve our sustainability strategy, we set challenges for our business, our people and our clients to improve, working together to create a better tomorrow for everyone. The Company has committed to a range of corporate social responsibility (CSR) and environmental performance targets, which includes becoming carbon neutral by 2030 or sooner. We contribute to the development of the communities we work in through a number of initiatives ranging from job creation and volunteering opportunities through to sourcing materials from local suppliers where possible and we also take pride in supporting a number of community and charitable based projects to make sure we make a positive contribution to our local communities.

Shareholders

The management team are committed to and openly engage with the Company's shareholders through regular meetings and effective dialogue. The shareholders are actively engaged in understanding our strategy, culture, people and the performance of our shared objectives for the short, mid and longer terms.

On behalf of the Board

John Walsh
Director

Date: 10 March 2023

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Company's Registered Number: 03337119

ALTRAD SERVICES LIMITED

CORPORATE GOVERNANCE REPORT

FOR THE YEAR ENDED 31 AUGUST 2022

Introduction

The Wates Corporate Governance Principles for Large Private Companies serves as the framework to demonstrate how Directors have had regard for the matters set out in section 172(1)(a) to (f) of the Companies Act 2006 when performing their duties, including how Directors have engaged with and considered the interests of stakeholders including UK employees, suppliers, customers and those in a principal business relationship with the Company. Reporting against the Wates Principles is included in the Corporate Governance Statement below.

Corporate Governance Statement

For the year ended 31 August 2022, under The Companies (Miscellaneous Reporting) Regulations 2018, the Company has applied the Wates Corporate Governance Principles for Large Private Companies. The Directors have set out below an explanation of how the Wates Principles have been applied during the year.

Principle 1 - Purpose and Leadership

The Directors of the Company together with a wider management team ("the Executive Committee") sets the Company's purpose and strategy, and are accountable to the Altrad Group ("Altrad") based in Montpellier, France.

Altrad is a world leader in the provision of Industrial Services, and is made up of 42,000 people distributed across 50 countries operating across Europe, the Middle East, Africa, Asia and the Pacific. Altrad's strategy is to bring value to its customers by providing diversified, high-quality services, with high ethical and safety standards, in several sectors, and a long-term vision of the market and its prospects. Altrad's activities range from project engineering to plant maintenance in sectors as varied as oil and gas (28% of sales), electrical energy (11%), process industries (25%) and construction (36%), including the manufacture of wheelbarrows and concrete mixers as well as scaffolding, for both sale and rental.

The Company together with its Altrad affiliates are the UK's leading provider of support services. It enhances the lives of millions by supporting some the nation's most vital energy generating assets. It uses its ingenuity to get ahead, solving the nation's infrastructure challenges through innovation, creativity and teamwork.

Principle 2 - Leadership composition

Although the parent company is not listed on a stock exchange, Altrad's commitment to the principles of good governance to guarantee economic performance, exemplary administration and management, trust and transparency has led it to opt for a governance model that respects the principles of the *Autorité des Marchés Financiers* (French financial markets authority). The foundations of this governance system are transparency of financial information, risk management in accordance with the highest standards, and ethical rules, strengthening the independence of directors in relation to the President and providing shareholders with the best information and the greatest possible visibility.

The Company's Executive Committee comprises of a Chief Executive Officer (CEO), EVP Finance, EVP Business Development & Strategy, EVP Commercial, 2 EVP Operations and an EVP Human Resources. The Executive Committee has a diverse range of skills, expertise with over 175 combined years of experience in the oil & gas, petrochemical, nuclear and conventional and renewable power generation markets. The Executive Committee's size and composition is regarded as appropriate to the business' large yet focused operations.

The members of the Executive Committee have equal voting rights when making decisions, except the CEO, who has a casting vote. All members have access to the advice and services of Altrad's Legal Counsel and may, if they wish, take professional advice at the Company's expense.

The Company is committed to creating an ever-more inclusive environment, thereby fostering a more diverse workforce with a greater breadth of experience and perspective including at the most senior levels. The Company has demonstrated its commitment to this area by establishing a UK Diversity and Inclusiveness committee in 2020 who set the strategy in this area, and who report to the Executive Committee throughout the year.

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Principle 3 – Leadership responsibilities

Each member of the Executive Committee understands what they are accountable and responsible for and reports on a monthly basis. The Executive Committee is further supported by an Operating Committee that meets monthly. The Executive Committee, whilst ultimately retaining responsibility for UK decision making, ensures delegated decision makers are individuals with the most experience and relevant knowledge.

All members of the Executive Committee are required to consider any conflicts or potential conflicts and declare them via an ethics and integrity portal, as a minimum, annually. Altrad Services operates a zero-tolerance approach to unethical business conduct and as a leading global organisation has a responsibility in the global fight against bribery and corruption. Altrad's business ethics and integrity framework provide a structured and effective means of managing ethical risks through controls, systems, training and audit programmes.

Principle 4 - Opportunity and Risk

To ensure Altrad achieves its purpose, the Executive Committee team actively pursues opportunities, both reinvestment and development to fuel organic growth, and acquiring carefully selected businesses to bolster the Company's core operations or expand into complementary sectors. Altrad's mergers & acquisitions team identify acquisition targets and the potential synergies available and, in tandem with the Executive Committee team, performs comprehensive commercial, financial and legal due diligence.

The Company published it's five year plan, "Altrad 2026 Strategy" in the year which is available to download on its website https://www.altradservices.com/our-approach/?section=strategy . By 2026, the Company and its affiliates will have grown by 75% in size and will continue to be the leading provider of support services in the UK. The growth journey will be driven by three strategic elements; ***Retain*** via client satisfaction and key account management; ***Develop*** by strategic bid management, organic growth and new skills & capabilities; ***Acquire*** through strategic partnerships and acquisitions.

Risk management involves an acceptance of a reasonable degree of risk, which no entrepreneurial business is without, within a governance framework that manages the risks to reduce the potential impact. Key business risks are monitored through the Company's matrix organisational structure with several levels of control and management. While Altrad maintains a global risk governance framework, the Company also has its individual risk management plan. This duplication enables a holistic, Group approach in combination with localised, country or market-specific assessments.

The Company monitors and acts to mitigate risks on a weekly basis as required, whilst working within the Group formal risk framework. Within the Company, there is both a responsibility towards and a dependency on the people within the business. Their safety and wellbeing are the number one focus. The business is unequivocally committed to achieving excellence in safety, including supporting an environment and culture where this remains the number one priority throughout our operations. The Company defines safety as a condition of being; an output of performance which is driven through senior leadership responsibility and accountability. The Company's leaders commit to inspire, enable and challenge in order to ensure complete dedication to the people within the business. This has been continually demonstrated during the current Covid-19 pandemic, and these beliefs, behaviours and attitudes are integral to the Company's safety model and intrinsically linked to accomplishing optimal safety performance.

Principle 5 - Remuneration

Altrad oversees the remuneration of the Executive Committee, with market rate salaries to ensure retention coupled with short and long term incentive plans which are aligned to Altrad's purpose and the interests of stakeholders at both a UK and Group level.

The Executive Committee oversees the remuneration of the Company's people with certain changes requiring oversight and sign off by Altrad. A large proportion of the Company's people are paid in line with industry standards.

The Company is committed to creating a culture of excellence that not only enables employees to reach their full potential but also enables the Group to live up to its ambitions.

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Principle 6 - Stakeholder Relationships and Engagement

Business relationships: The Company works with some of the world's most respected companies and prides itself on its commitment to understand their needs, working collaboratively to deliver value-enhancing solutions. The Company builds strong, sustainable relationships with its clients and suppliers, which are essential to the long-term success of the business. Key relationships are managed via a structured key account management (KAM) process which encourages regular communication and promotes continuous improvement activities.

People: The Company provides an inclusive environment where its people can bring their whole self to work, feel connected and have the space they need to grow; giving everyone an opportunity to reach their full potential. The Company celebrates the importance of having a diverse workforce, and its rich diversity helps build the skills, ideas and behaviours which characterise its people. The Company provides its people with the opportunity to build progressive careers, within an environment that values ingenuity, creativity and ambition.

Apprentices and graduates: The Apprentice and Graduate programmes provide opportunities to make a real impact within a Company that truly cares. The intake from these programmes provides the next generation of people who can take on complex challenges and make a difference in the world through innovation, creativity, and teamwork.

Military and Veterans: The Company values highly the skills and experience gained in uniform – the capabilities that result are key assets in addressing client's toughest challenges. From a strong work ethic to strong leadership skills, and a focus on teamwork, the Company has many roles that fit these desirable qualities.

Ex-offenders: The Company treats all of its people with respect, regardless of their past experiences. The business wants its people to learn from their past and create a better future. Through a programme of learning and development, structured to meet their needs, the Company offers the support and guidance ex-offenders need to thrive.

Disabled employees: The Company encourages the employment of disabled people and provides a fair and encouraging approach to any such employment applications. In the event that any of the people within the Company become disabled whilst in service, the business strives to support their needs with every effort being made to continue their employment. This may include adapting work environments, transfers to alternative duties, or if required, retraining to undertake new roles.

People engagement: The true value of the business resides within its people – as such, there are regular and various means and media used for communication. An intranet site is maintained that provides the Company's people with the latest information, using applications that provide instantaneous news updates. There is a structured schedule of internal communication, which includes regular one-to-one meetings, townhall meetings, operational and management meetings facilitating two-way conversations and the sharing of ideas throughout the business's teams.

Culture and values: The Company is defined by its values; they drive the business to succeed and underpin its conduct and approach. The values are at the forefront of every decision that is made, and define the behaviours of the Company's people. Values of Respect, Solidarity, Courage, Humility and Conviviality, drive the business to be the best it can. In the collective, the Company's people and values form its corporate culture, which serve the best interests of its shareholders, its clients, its people, its suppliers and other stakeholders – ensuring the long-term success of the business.

Sustainability and Community: The Company understands the importance of creating a sustainable future; it runs throughout the strategy, it's part of the business's culture and it's central to its day to day operations. The Company is committed to making positive impacts for its people, its clients and the wider business. As the Company continues to evolve its sustainability strategy, challenges are set for the business, its people and its clients to improve, working together to create a better tomorrow for everyone. The Company has committed to a range of corporate social responsibility (CSR) and environmental performance targets, which includes becoming carbon neutral by 2030 or sooner. The Company contributes to the development of the

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Principle 6 - Stakeholder Relationships and Engagement (Continued)

communities in which it works through a number of initiatives ranging from job creation and volunteering opportunities through to sourcing materials from local suppliers where possible. The Company takes pride in supporting a number of community and charitable based projects to make sure it makes a positive contribution to its local communities.

Shareholders: The Executive Committee are committed to and openly engage with Altrad through regular meetings and effective dialogue. The shareholders are actively engaged in understanding the Company's strategy, culture, and people, together with the delivery of shared objectives for the short, mid and longer terms.

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Company's Registered Number: 03337119

ALTRAD SERVICES LIMITED

DIRECTORS' REPORT

FOR THE YEAR ENDED 31 AUGUST 2022

The Directors present their report and the audited financial statements of the Company for the year ended 31 August 2022.

Principal activities
The Company provides a wide range of critical industrial services focused on the energy and natural resource sectors.

Results for the year
Revenue for the period was £219,481,000 (2021: £193,198,000). The profit for the year of £20,365,000 (2021: £13,239,000) has been transferred to reserves.

Dividends
£4,418,000 of dividends were paid during 2022 (2021: £nil).

Directors
The following persons served as Directors during the year and up to the date of signing the financial statements:
- P Somers
- J A M Walsh

The directors had no beneficial interests in the shares of the company.

Going concern

The directors have a reasonable expectation that the Company will continue in operational existence for the going concern period assessed until 31 March 2024, having received a letter of support from Altrad Investment Authority SAS. The directors have reviewed the resources of Altrad Investment Authority SAS and have concluded there is sufficient scope and headroom in its resources to adequately support the Company until 31 March 2024. This has enabled the Company's continued adoption of the going concern basis in preparing its financial statements.

The directors therefore consider it appropriate to adopt the going concern basis of accounting in preparing the financial statements.

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Coronavirus

At the date of signing these financial statements, the directors have considered the effect of the Coronavirus pandemic on the company with the information available to it, and do not believe it will affect the company's ability to continue for the foreseeable future. As with most businesses there will be short term practical difficulties which we have addressed and are managing. However, a number of our clients operate in 'essential' industries and as a result we have continued to generate turnover from a significant number of contracts. See note 1a for further details.

Qualifying third party indemnity provisions

As permitted by the Companies Act 2006, all directors are covered by indemnities from the parent undertaking. The directors are indemnified in respect of proceedings which may be brought by third parties and such indemnification was in place throughout the year and up to the date of approval of these Financial Statements. Neither these indemnifications nor insurance provides cover in the event that a director or officer is proved to have acted fraudulently or dishonestly.
The Company has not made any qualifying indemnity provisions.

Streamlined Energy and Carbon Reporting

The below table shows the Company's UK energy usage and greenhouse emissions as follows:

UK Green house gas emissions and energy use data for the period 1 September 2021 to 31 August 2022	2021/22
Energy consumption used to calculate emissions (kWh)	6,261,724
Energy consumption break down (kWh):	
* gas	127,645
* electricity	613,970
* transport fuel	5,520,109
Scope 1 emissions in metric tonnes CO2e	
Gas consumption	23.5
Owned transport	1,409.8
Total Scope 1	1,433.3
Scope 2 emissions in metric tonnes CO2e	
Purchased electricity	143.1
Scope 3 emissions in metric tonnes CO2e	
Business travel in employee owned vehicles	-
Total gross emissions in metric tonnes CO2e	1,576.4
Intensity ratio Tonnes CO2e per £1,000 of revenue	0.007

Company's Registered Number: 03337119

ALTRAD SERVICES LIMITED

DIRECTORS' REPORT (continued)

FOR THE YEAR ENDED 31 AUGUST 2022

Streamlined Energy and Carbon Reporting (continued)

Quantification and reporting methodology
We have followed the 2020 HM Government Environmental Reporting Guidelines. We have also used the GHG Reporting Protocol - Corporate Standard and have used the 2022 UK Government's Conversion Factors for Company Reporting.

Intensity measurement
The chosen intensity measurement ratio is total gross emissions in metric tonnes CO2e per employee and also gross emissions in metric tonnes CO2e per £1,000 of revenue

Measures taken to improve energy efficiency
We are in the process of installing smart meters across our biggest consuming sites and we continue to use great video conferencing technology to prevent travel to sites. Whilst this has been driven by the Covid pandemic we are reviewing where we can continue this working practice post lock event

Auditors
The auditors, Ernst & Young LLP, have indicated their willingness to continue in office, and a resolution concerning their reappointment will be proposed at the Annual General Meeting.

So far as each director is aware:

- there is no relevant audit information of which the Company's auditor is unaware. Relevant information is defined as information needed by the Company's auditors in connection with preparing their report.

- each director has taken all the steps he/she ought to have taken as a director (taking account of their individual capacity) in order to make himself/herself aware of any relevant audit information and to establish that the Company's auditor is aware of that information.

Directors' responsibilities

The directors are responsible for preparing the annual report and the financial statements in accordance with applicable United Kingdom law and regulations.

Company law requires the directors to prepare financial statements for each financial year. Under that law the directors have elected to prepare the financial statements in accordance with United Kingdom Generally Accepted Accounting Practice (United Kingdom Accounting Standards and applicable law), including Financial Reporting Standard 101 Reduced Disclosure Framework ("FRS 101"). Under company law the directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the state of affairs of the Company and of the profit or loss of the Company for that period.

In preparing these financial statements the directors are required to:

- select suitable accounting policies in accordance with IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors* and then apply them consistently;
- make judgements and accounting estimates that are reasonable and prudent;
- present information, including accounting policies, in a manner that provides relevant, reliable, comparable and understandable information;
- provide additional disclosures when compliance with the specific requirements in FRS 101 is insufficient to enable users to understand the impact of particular transactions, other events and conditions on the Company financial position and financial performance;
- in respect of the financial statements, state whether applicable UK Accounting Standards, including FRS 101 have been followed, subject to any material departures disclosed and explained in the financial statements;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the Company will continue in business.

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ALTRAD SERVICES LIMITED

DIRECTORS' REPORT (Continued)

FOR THE YEAR ENDED 31 AUGUST 2022

Directors' responsibilities (continued)

The directors are responsible for keeping adequate accounting records that are sufficient to show and explain the Company's transactions and disclose with reasonable accuracy at any time the financial position of the Company and enable them to ensure that the Company financial statements comply with the Companies Act 2006. They are also responsible for safeguarding the assets of the Company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

Under applicable law and regulations, the directors are also responsible for preparing a strategic report and directors' report, that comply with that law and those regulations. The directors are responsible for the maintenance and integrity of the corporate and financial information included on the Company's website.

For and on behalf of the Board of Directors

John Walsh
Director

Date: March 2023

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INDEPENDENT AUDITOR'S REPORT

TO THE MEMBERS OF ALTRAD SERVICES LIMITED

FOR THE YEAR ENDED 31 AUGUST 2022

Opinion

We have audited the financial statements of Altrad Services Limited for the year ended 31 August 2022 which comprise the Statement of comprehensive income, the Statement of financial position, the Statement of changes in equity and the related notes 1 to 28, including a summary of significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards including FRS 101 "Reduced Disclosure Framework" (United Kingdom Generally Accepted Accounting Practice).

In our opinion, the financial statements:

- give a true and fair view of the Company's affairs as at 31 August 2022 and of its profit for the year then ended;
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice; and
- have been prepared in accordance with the requirements of the Companies Act 2006.

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of our report. We are independent of the Company in accordance with the ethical requirements that are relevant to our audit of the financial statements in the UK, including the FRC's Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Conclusions relating to going concern

In auditing the financial statements, we have concluded that the directors' use of the going concern basis of accounting in the preparation of the financial statements is appropriate.

Based on the work we have performed, we have not identified any material uncertainties relating to events or conditions that, individually or collectively, may cast significant doubt on the Company's ability to continue as a going concern for a period from when the financial statements are authorised for issue until 31 March 2024.

Our responsibilities and the responsibilities of the directors with respect to going concern are described in the relevant sections of this report. However, because not all future events or conditions can be predicted, this statement is not a guarantee as to the Company's ability to continue as a going concern.

Other information

The other information comprises the information included in the annual report, other than the financial statements and our auditor's report thereon. The directors are responsible for the other information contained within the annual report.

Our opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in this report, we do not express any form of assurance conclusion thereon.

INDEPENDENT AUDITOR'S REPORT

TO THE MEMBERS OF ALTRAD SERVICES LIMITED

FOR THE YEAR ENDED 31 AUGUST 2022 (continued)

Other information (continued)

Our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the course of the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether this gives rise to a material misstatement in the financial statements themselves. If, based on the work we have performed, we conclude that there is a material misstatement of the other information, we are required to report that fact.

We have nothing to report in this regard.

Opinions on other matters prescribed by the Companies Act 2006

In our opinion, based on the work undertaken in the course of the audit:

- the information given in the strategic report and the directors' report for the financial year for which the financial statements are prepared is consistent with the financial statements; and
- the strategic report and directors' report have been prepared in accordance with applicable legal requirements.

Matters on which we are required to report by exception

In the light of the knowledge and understanding of the Company and its environment obtained in the course of the audit, we have not identified material misstatements in the strategic report or directors' report.

We have nothing to report in respect of the following matters in relation to which the Companies Act 2006 requires us to report to you if, in our opinion:

- adequate accounting records have not been kept or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of directors' remuneration specified by law are not made; or
- we have not received all the information and explanations we require for our audit.

Responsibilities of directors

As explained more fully in the directors' responsibilities statement set out on page 13, the directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view, and for such internal control as the directors determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the directors are responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the Company or to cease operations, or have no realistic alternative but to do so.

Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

INDEPENDENT AUDITOR'S REPORT

TO THE MEMBERS OF ALTRAD SERVICES LIMITED

FOR THE YEAR ENDED 31 AUGUST 2022 (continued)

Explanation as to what extent the audit was considered capable of detecting irregularities, including fraud

Irregularities, including fraud, are instances of non-compliance with laws and regulations. We design procedures in line with our responsibilities, outlined above, to detect irregularities, including fraud. The risk of not detecting a material misstatement due to fraud is higher than the risk of not detecting one resulting from error, as fraud may involve deliberate concealment by, for example, forgery or intentional misrepresentations, or through collusion. The extent to which our procedures are capable of detecting irregularities, including fraud is detailed below. However, the primary responsibility for the prevention and detection of fraud rests with both those charged with governance of the entity and management.

- We obtained an understanding of the legal and regulatory frameworks that are applicable to the Company and determined that the most significant are those that relate to the reporting framework (FRS 101 and the Companies Act 2006) and the relevant direct and indirect tax compliance regulations in the United Kingdom. In addition, the Company has to comply with laws and regulations relating to the operations including General Data Protection Regulation.
- We understood how Altrad Services Limited is complying with those frameworks by making enquiries of management to understand how the Company maintains and communicates its policies and procedures in these areas. We corroborated our enquiries by reviewing supporting documents, including board meeting minutes.
- We considered there to be a fraud risk around revenue recognition, particularly, in respect of contracts with existing or potential commercial disputes and risks around recoverability of revenue recognised. We used data analytics tools to perform a correlation analysis between revenue, amount recoverable on contract, receivables and cash. Using the correlation, we tested that the flow of transactions is in line with our expectations and identified and tested unusual and unexpected journals which could be evidence of management override of controls. We verified the underlying data driving our correlation analysis by tracing a sample of cash transactions, selected at random throughout the year, to bank statements to verify the cash entries represent real cash receipts. We tested the post year end billing of amount recoverable on contract and performed ageing analysis of the balance as at year end. Further, in respect of material contracts, we have obtained an understanding of the terms of contract and performed month wise gross margin analysis to identify any potential upside or downside to revenue recognised. We have also reviewed the project cost report to identify any potential loss-making contracts.
- In addition, we considered the risk of management override, specifically as a result of manual journals posted at the yearend. We incorporated data analytics into our audit approach to assist into our targeted review of manual journals including segregation of duties, and journals indicating large or unusual transactions based on our understanding of the business. We have tested specific transactions back to source documentation.
- Based on this understanding we designed our audit procedures to identify noncompliance with such laws and regulations. Our procedures involved understanding of entity level controls and inquiry with management and those charged with governance.

A further description of our responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website at https://www.frc.org.uk/auditorsresponsibilities. This description forms part of our auditor's report.

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Use of our report

This report is made solely to the company's members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.

DocuSigned by:
Ernst & Young LLP
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Tehseen Ali (Senior Statutory Auditor)
for and on behalf of Ernst & Young LLP, Statutory Auditor
Manchester
Date: 10 March 2023

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Company's Registered Number: 03337119

ALTRAD SERVICES LIMITED

INCOME STATEMENT

FOR THE YEAR ENDED 31 AUGUST 2022

		2022			2021		
	Notes	Business Performance £'000	Exceptional Items £'000	Total £'000	Business Performance £'000	Exceptional Items £'000	Total £'000
Turnover	3	**219,481**	-	**219,481**	193,198	-	193,198
Cost of sales		**(190,490)**	-	**(190,490)**	(166,039)	-	(166,039)
Gross profit		**28,991**	-	**28,991**	27,159	-	27,159
Administrative expenses		**(9,286)**	-	**(9,286)**	(11,137)	-	(11,137)
Other income	5	-	-	-	845	-	845
Other operating (expenses)/income	4,26	**(556)**	**1,375**	**819**	(3,919)	(4,278)	(8,197)
Profit /(loss) on ordinary activities before Interest and Taxation	2	**19,149**	**1,375**	**20,524**	12,948	(4,278)	8,670
Income from other fixed asset investments		**1,274**	-	**1,274**	4,245	-	4,245
Interest receivable and similar Income	9	**5,078**	-	**5,078**	4,612	-	4,612
Interest payable and similar charges	9,26	**(2,830)**	**(1,260)**	**(4,090)**	(2,758)	(1,498)	(4,256)
Profit / (loss) before tax		**22,671**	**115**	**22,786**	19,047	(5,776)	13,271
Tax	10	**(2,443)**	**22**	**(2,421)**	(1,129)	1,097	(32)
Profit / (loss) for the period		**20,228**	**137**	**20,365**	17,918	(4,679)	13,239

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ALTRAD SERVICES LIMITED

STATEMENT OF COMPREHENSIVE INCOME

FOR THE YEAR ENDED 31 AUGUST 2022

	Notes	2022 £'000	2021 £'000
Profit for the period		**20,365**	13,239
Other comprehensive expense			
Currency translation differences		**-**	(63)
Net other comprehensive expense to be reclassified to profit or loss in subsequent periods		**-**	(63)
Other comprehensive income not to be reclassified to profit or loss in subsequent periods:			
Re-measurement of defined benefit pension plan	22	**189**	332
Tax effect of movements in retirement benefit asset	22	**(36)**	(73)
Net other comprehensive income not to be reclassified to profit or loss in subsequent periods		**153**	259
Other comprehensive income for the period, net of tax		**153**	196
Total comprehensive income for the period		**20,518**	13,435

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ALTRAD SERVICES LIMITED

STATEMENT OF CHANGES IN EQUITY

FOR THE YEAR ENDED 31 AUGUST 2022

	Issued share capital £'000	Retained earnings £'000	Total equity £'000
At 1 September 2020	10,000	(13,920)	(3,920)
Profit for the year	-	13,239	13,239
Other comprehensive expense	-	196	196
Total comprehensive income for the year	-	13,435	13,435
At 31 August 2021	10,000	(485)	9,515
Profit for the period	-	20,365	20,365
Other comprehensive income	-	153	153
Total comprehensive income for the year	-	20,518	20,518
Dividends	-	(4,418)	(4,418)
At 31 August 2022	10,000	15,615	25,615

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ALTRAD SERVICES LIMITED

STATEMENT OF FINANCIAL POSITION

AT 31 AUGUST 2022

	Notes	2022 £'000	2021 £'000
Non-current assets			
Tangible assets	11	**13,256**	8,685
Right of use assets	13	**1,033**	1,017
Intangible assets	12	**3,815**	4,031
Investments	14	**6,004**	5,995
Deferred tax assets	20	**14,169**	14,883
Amounts owed by Group undertakings	18	**94,518**	86,643
Total non-current assets		**132,795**	121,254
Current assets			
Inventories	15	**644**	560
Trade and other receivables	16	**70,871**	67,954
Cash and cash equivalents		**21,620**	15,248
Total current assets		**93,135**	83,762
Total assets		**225,930**	205,016
Current liabilities			
Creditors: Amounts falling due within one year	17	**(76,415)**	(62,370)
Lease liabilities	13	**(363)**	(408)
Provision for industrial disease claims	19, 23	**(10,332)**	(11,901)
Other provisions	19	**(1,175)**	(1,175)
Total current liabilities		**(88,285)**	(75,854)
Net current assets		**4,850**	7,908
Total assets less current liabilities		**137,645**	129,162
Non-current liabilities			
Creditors: Amounts falling due after more than one year			
Retirement benefit obligation	22	**(2,805)**	(3,745)
Lease liabilities	13	**(682)**	(621)
Provision for industrial disease claims	19, 23	**(107,735)**	(115,115)
Other provisions	19	**(808)**	(166)
Total non-current liabilities		**(112,030)**	(119,647)
Net assets /(liabilities)		**25,615**	9,515
Capital and reserves			
Called up share capital	21	**10,000**	10,000
Profit and loss account		**15,615**	(485)
Total shareholders' funds		**25,615**	9,515

These Financial Statements on pages 19 to 53 were approved by the board of directors and signed on its behalf by:

John Walsh
Director

Date: 10 March 2023

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1. Accounting policies

Authorisation of financial statements and statement of compliance with FRS 101

The financial statements of the Company for the year ended 31 August 2022 were authorised for issue by the board of directors on 10 March 2023 and the balance sheet was signed by the director on behalf of the board of Altrad Services Limited, a Company incorporated and domiciled in England and Wales.

These financial statements were prepared in accordance with Financial Reporting Standard 101 Reduced Disclosure Framework (FRS 101) and in accordance with applicable accounting standards.

The Company's financial statements are presented in Sterling and all values are rounded to the nearest thousand pounds (£000) except when otherwise indicated.

The financial statements contain information about the Company as an individual company and do not contain consolidated financial information as the parent of a group. The Company is exempt under section 401 of the Companies Act 2006 from the requirement to prepare consolidated financial statements as it is included with its subsidiary undertakings in the consolidated financial statements of Altrad Investment Authority SAS. The financial statements of Altrad Investment Authority SAS can be obtained as outlined in note 28.

The principal accounting policies adopted by the Company are set out below.

a) Basis of preparation

The financial statements are prepared on a going concern basis, under the historical cost convention as modified by the revaluation of financial assets and financial liabilities at fair value through profit or loss, and in accordance with the Companies Act 2006 and applicable accounting standards in the United Kingdom.

The Company has taken advantage of the following disclosure exemptions under FRS 101.

- IFRS 7 'Financial Instruments: Disclosures;
- The requirements of paragraphs 91 to 99 of IFRS 13 'Fair value measurement' (disclosure of valuation techniques and inputs used for fair value measurement of assets and liabilities);
- The requirements of paragraph 38 of IAS 1 'Presentation of financial statements' regarding comparative information requirements in respect of:
  - Paragraph 79 (a) (iv) of IAS 1;
  - Paragraph 73 (e) of IAS 16 'Property, plant and equipment;
  - Paragraph 118 (e) of IAS 38 'Intangible assets' (reconciliations between the carrying amount at the beginning and end of the period).
- The following paragraphs of IAS 1 'Presentation of financial statements';
  - 10 (d) statement of cash flows;
  - 10 (f) a statement of financial position as at the beginning of the preceding period when an entity applies an accounting policy retrospectively or makes a retrospective restatement of items in its financial statements, or when it reclassifies items in its financial statements);
  - 16 (statement of compliance with all IFRS);
  - 38A (requirement for minimum of two primary statements, including cash flow statements);
  - 38B-D (additional comparative information);

1. Accounting policies (continued)

a) Basis of preparation (continued)

- 40A-D (requirements for a third statement of financial position);
- 111 (cash flow statement information); and
- 134-136 (capital management disclosures).

- IAS 7 'Statement of cash flow';
- The requirements of paragraph 30 and 31 of IAS 8 'Accounting policies, changes in accounting estimates and errors' (requirement for the disclosure of information when an entity has not applied a new IFRS that has been issued but is not yet effective)
- The requirements of paragraph 17 of IAS 24 'Related party disclosures' (key management compensation)
- The requirements in IAS 24 'Related party disclosures' to disclose related party transactions entered into between two or more members of a group.
- The disclosure of related party transactions with other wholly owned members of the group headed by Cape plc.

Going Concern

The directors have a reasonable expectation that the Company will continue in operational existence for the going concern period assessed until 31 March 2024, having received a letter of support from Altrad Investment Authority SAS. This letter confirms continuing support for the going concern period until 31 March 2024. The directors have reviewed the resources of Altrad Investment Authority SAS and have concluded there is sufficient scope and headroom in its resources to adequately support the Company until 31 March 2024. This has enabled the Company's continued adoption of the going concern basis in preparing its financial statements.

The directors therefore consider it appropriate to adopt the going concern basis of accounting in preparing the financial statements.

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1. Accounting policies (continued)

a) Basis of preparation (continued)

Changes to accounting policies and disclosures

The Company has applied the following standards for the first time for reporting periods commencing on or after 1 September 2021:

- Interest Rate Benchmark Reform – Phase 2 – Amendments to IFRS 9, IAS 39, IFRS 7, IFRS 4 and IFRS 16

Their adoption has not had any material impact on the disclosure or on the amounts reported in the financial statements.

New and amended standards and interpretations not yet adopted
The following standards and interpretations in issue which may have an effect for the Company, have not yet been adopted by the Company:

	Effective dates
Classification of Liabilities as Current or Non-current - Amendments to IAS 1	1 January 2022
Reference to the Conceptual Framework – Amendments to IFRS 3	1 January 2022
Property, Plant & Equipment: Proceeds before Intended Use – Amendments to IAS	1 January 2022
Onerous Contracts – Costs of Fulfilling a Contract – Amendments to IAS 37	1 January 2022
Deferred Tax related Assets and Liabilities arising from a Single Transaction (Amendments to IAS 12)	1 January 2023
Definition of Accounting Estimates (Amendments to IAS 8)	1 January 2023
Disclosure of Accounting Policies (Amendments to IAS 1 and IFRS Practice Statement 2)	1 January 2023

The Company is currently assessing the impact of these standards and plans to adopt the new standards on the required effective date.

b) Significant accounting policies

The principal accounting policies applied in the preparation of these financial statements are set out below. These policies have been consistently applied to all the years presented unless otherwise stated.

Investments
Investments in subsidiaries and joint ventures are held at historical cost less any provision for impairment.

1. Accounting policies (continued)

b) Significant accounting policies (continued)

Foreign currencies
a) Functional and presentational currency
Items included in the financial statements of each of the Company's entities are measured using the currency of the primary economic environment in which the entity operates (functional currency).

b) Transactions and balances
Foreign currency transactions are translated into the functional currency using exchange rates prevailing at the date of the transactions. Foreign exchange gains and losses resulting from the settlement of such transactions and from the translation at period end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognised in the income statement.

Foreign exchange gains and losses that relate to borrowings and cash and cash equivalents are presented in the income statement within operating profit.

Non-monetary items that are measured in terms of their historic cost in a foreign currency are translated using the exchange rates at the date of their initial transaction.

Tangible assets
Property, plant and machinery and fixtures and fittings are stated at cost net of accumulated depreciation and any provision for impairment. Cost comprises purchase cost together with any incidental costs of acquisition. Interest is capitalised on qualifying assets as defined by IAS 23 'Borrowing Costs'.

Depreciation is provided to write off the cost less the estimated residual value of tangible fixed assets by equal instalments over their estimated useful economic lives with the exception that no depreciation is provided on freehold land. The assets' residual values and useful economic lives are reviewed, and adjusted as appropriate, at the date of each statement of financial position. The following useful economic life is applied:

- freehold buildings – 50 years
- leasehold land and buildings – the shorter of 50 years and the period of the lease
- plant and machinery – 3 to 15 years
- fixtures and fittings – 3 to 10 years.
- right of use assets – the shorter of the assets useful economic life and the lease period on a straight line basis

Gains and losses on disposals are determined by comparing the proceeds with the carrying amount and are recognised within operating profit before other items in the consolidated income statement. When re-valued assets are sold, the amounts included in other reserves are transferred to retained earnings.

The Company assesses at each reporting date whether its property, plant and equipment may be impaired. If any such indication exists, the Company makes an estimate of the asset's recoverable amount. An asset's recoverable amount is the higher of an asset's fair value less costs to sell and its value in use. In assessing value in use, the estimated future cash flows attributable to the asset are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset.

Intangible assets
Intangible assets relate to software, are valued initially at cost and are amortised over their useful economic life, which is generally three years.

1. Accounting policies (continued)

b) Significant accounting policies (continued)

Assets held for sale
Assets classified as held for sale are measured at the lower of carrying amount and fair value less costs to sell. Disposal groups are classified as held for sale if their carrying amount will be recovered through a sale transaction rather than through continuing use. This condition is regarded as met only when the sale is highly probable and the disposal group is available for sale in its present condition. Management must be committed to the sale which should be expected to qualify for recognition as a completed sale within one year from the date of classification.

Leases held under IFRS 16
The Company recognises right-of-use assets at the commencement date of the lease (i.e. the date the underlying asset is available for use). Right-of-use assets are measured at cost, less any accumulated depreciation and impairment losses, and adjusted for any re-measurement of lease liabilities. The cost of right-of-use assets includes the amount of lease liabilities recognised, initial direct costs incurred, and lease payments made at or before the commencement date less any lease incentives received. Unless the Company is reasonably certain to obtain ownership of the leased asset at the end of the lease term, the recognised right-of-use assets are depreciated on a straight-line basis over the shorter of its estimated useful life and the lease term. Right-of-use assets are subject to impairment.

At the commencement date of the lease, the Company recognises lease liabilities measured at the present value of lease payments to be made over the lease term. The lease payments include fixed payments (including in substance fixed payments) less any lease incentives receivable, variable lease payments that depend on an index rate, and amounts expected to be paid on residual value guarantees. The lease payments also include the exercise price of a purchase option reasonably certain to be exercised by the Company and payments of penalties for terminating a lease, if the lease term reflects the Company exercising the option to terminate. The variable lease payments that do not depend on an index or a rate are recognised as an expense in the period on which the event or condition that triggers the payment occurs.

In calculating the present value of lease payments, the Company uses the incremental borrowing rate at the lease commencement date if the interest rate implicit in the lease is not readily determinable. After the commencement date, the amount of lease payments is increased to reflect the accretion of interest and reduced for the lease payments made. In addition, the carrying amount of lease liabilities is remeasured if there is a modification, a change in the lease term, a change in the in-substance fixed lease payments or a change in the assessment to purchase the underlying asset.

The Company applies the short-term lease recognition exemption to its short-term leases of machinery and equipment (i.e., those leases that have a lease term of 12 months or less from the commencement date and do not contain a purchase option). It also applies the lease of low value assets recognition exemption to leases that are considered low value (i.e. below £5,000). Lease payments on short term leases and leases of low value assets are recognised as expense on a straight-line basis over the lease term.

Leases previously held under IAS 17
The determination of whether an arrangement is (or contains) a lease is based on the substance of the arrangement at the inception of the lease. The arrangement is (or contains) a lease if fulfilment of the arrangement is dependent on the use of a specific asset or assets; and the arrangement conveys a right to use the asset or assets, even if that right is not explicitly specified in an arrangement. Leases in which a significant portion of the risks and rewards of ownership are retained by the lessor are classified as operating leases. Payments made under operating leases (net of any incentives received from the lessor) are charged to the consolidated income statement on a straight line basis over the period of the lease.

The Company leases certain property, plant and equipment. Leases of property, plant and equipment where the Company has substantially all of the risks and rewards of ownership are classified as finance leases.

1. Accounting policies (continued)

b) Significant accounting policies (continued)

Finance leases are capitalised at the lease's commencement at the lower of the fair value of the leased asset and the present value of the minimum lease payments.

Each finance lease payment is allocated between the liability and finance charges. The corresponding rental obligations, net of finance charges, are included in borrowings. The interest element of the finance cost is charged to the consolidated income statement over the lease period so as to produce a constant periodic rate of interest on the remaining balance of the liability for each period. Property, plant and equipment acquired under finance leases is depreciated over the term of the lease or the useful economic life, if shorter.

Provisions
Provisions are recognised when the Company has a present obligation, either legal or constructive, as a result of a past event, it is probable that an outflow of resources will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation.

Provisions are measured at the present value of the expenditure expected to be required to settle the obligation applying a pre-tax discount rate that reflects current risks specific to the liability. Where there is appropriate insurance in place, the benefit of any insurance reimbursement is recognised only when virtually certain.

There is a history of claims being made against the Company for compensation arising from alleged exposure to products previously manufactured which contained asbestos. Where the Company has deemed that it is appropriate to do so, settlement has been made. Provision has been made for the costs which the Company is expected to incur in respect of lodged and future industrial disease claims to the extent that such costs can be reliably estimated.

The provision includes the cost of claims that are made under the Scheme of Arrangement (see note 23) and other industrial disease claims (see note 19 for details of the industrial disease claims provision).

Inventories
Inventories which include raw materials and consumables are stated at the lower of cost and net realisable value. Cost is determined using the first-in first-out method. Net realisable value is the estimated selling price in the ordinary course of business less selling expenses. Allowance is made for obsolete and slow moving items based on annual usage.

Revenue recognition
Revenue is recognised in accordance with IFRS 15 – Revenue from Contracts with Customers. Revenue is shown net of value added tax, returns, rebates and discounts and after eliminating sales within the Group. Claims on customers are claims made for work outside of contractual terms and, as such, are only recognised in revenue once accepted by the customer.

Construction contracts
The Company has adopted IFRS 15 using a modified retrospective approach of adoption with the date of initial application being 1 January 2018.

The Company's revenue streams are not considered particularly complex in nature. IFRS 15 requires the identification of separate performance obligations within the contract. For those contracts where the Company provides a single discipline within a maintenance contract, the identification of the performance obligations has not had an impact on the revenue recognition, as maintenance contracts are accounted for on an earned value basis.

For multi-disciplinary construction contracts, under IFRS 15, revenue must be recognised separately for each performance obligation identified. The nature of the multi-disciplinary construction contracts is such that each discipline provided is highly interdependent upon the others and, as a result, could be classed as one performance obligation, therefore there has been no material impact on the recognition of IFRS 15.

1. Accounting policies (continued)

b) Significant accounting policies (continued)

Taxation
Current tax is provided at amounts expected to be paid (or recovered) using the tax rates and laws that have been enacted or substantively enacted and are expected to apply to the accounting period in accordance with IAS 12 – Taxation, and IFRIC 23 – Uncertainty over Income Tax treatments.

Deferred income tax is recognised, using the liability method, on temporary differences arising between the tax bases of assets and liabilities and their carrying amounts in the consolidated financial statements. However, deferred tax liabilities are not recognised if they arise from the initial recognition of goodwill; deferred income tax is not accounted for if it arises from initial recognition of an asset or liability in a transaction other than a business combination that at the time of the transaction affects neither accounting nor taxable profit or loss. Deferred income tax is determined using tax rates (and laws) that have been enacted or substantively enacted by the date of the statement of financial position and are expected to apply when the related deferred income tax asset is realised, or the deferred income tax liability is settled.

Deferred tax assets are recognised only to the extent that it is probable that future taxable profits will be available against which the temporary differences can be utilised.

Deferred income tax is provided on temporary differences arising on investments in subsidiaries and associates, except where the timing of the reversal of the temporary difference is controlled by the Group and it is probable that the temporary difference will not be reversed in the foreseeable future.

Deferred income tax assets and liabilities are offset when there is a legally enforceable right to offset current tax assets against current tax liabilities and when the deferred income tax assets and liabilities relate to income taxes levied by the same taxation authority on either the same taxable entity or different taxable entities where there is an intention to settle the balances on a net basis.

Employee benefits
The Company operates both defined benefit and defined contribution pension schemes.

Defined contribution pension schemes
A defined contribution pension scheme is a scheme to which the Company makes fixed contributions with no legal or constructive obligation to pay further contributions if the fund does not hold sufficient assets to settle its post-employment benefits. The pension expense for defined contribution schemes represents contributions payable in the year.

Defined benefit pension schemes
The liability recognised in the consolidated statement of financial position in respect of the defined benefit scheme is the present value of the defined benefit obligation at the period end date less the fair value of the plan assets. The defined benefit scheme is closed to new participants. The defined benefit obligation is calculated tri-annually by independent actuaries using the projected unit method and this valuation is updated at the date of the statement of financial position. The present value of the defined benefit obligation is determined by discounting the estimated future cash outflows using interest rates of high quality corporate bonds that are denominated in the currency in which the benefits will be paid and that have terms to maturity approximating to the terms of the related pension liability.

Current and past service costs and finance costs are charged to operating profit. In addition, interest on the net defined benefit pension obligation is recognised in profit or loss calculated using the discount rate used to measure the pension obligation. Actuarial gains and losses arising from new valuations and from updating the latest actuarial valuation to reflect conditions at the date of the statement of financial position are recognised in full in the consolidated statement of comprehensive income.

The pension schemes' deficits or surpluses (to the extent that any surpluses are considered recoverable) are recognised in full and presented on the face of the consolidated statement of financial position.

1. **Accounting policies (continued)**

b) Significant accounting policies (continued)

Under IFRIC 14 the recoverability of a surplus must be assessed against the minimum funding requirements of the pension scheme.

Borrowings
Borrowings are recognised initially at fair value, net of transaction costs incurred. Borrowings are subsequently carried at amortised cost; any difference between the proceeds (net of transaction costs) and the redemption value is recognised in the consolidated income statement over the period of the borrowings using the effective interest method. Issue costs together with finance costs are charged to the consolidated income statement over the term of the borrowings and represent a constant proportion of the balance of capital repayments outstanding.

Borrowings are classified as current liabilities unless the Company has an unconditional right to defer settlement of the liability for at least twelve months after the date of the statement of financial position.

General and specific borrowing costs directly attributable to the acquisition, construction or production of qualifying assets, which are assets that necessarily take a substantial period of time to get ready for their intended use or sale, are added to the cost of those assets, until such time as the assets are substantially ready for their intended use or sale.

Investment income earned on the temporary investment of specific borrowings pending their expenditure on qualifying assets is deducted from the borrowing costs eligible for capitalisation.

All other borrowing costs are recognised in profit or loss in the period in which they are incurred.

Loans and receivables
Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. They are included in current assets, except for maturities greater than twelve months after the date of the statement of financial position date. These are classified as non-current assets. The Company's loans and receivables comprise of 'trade and other receivables' in the consolidated statement of financial position.

Trade debtors
Trade receivables are initially recognised and carried at fair value and subsequently measured at amortised cost, less any provision for impairment. The amount of the provision is the difference between the asset's carrying amount and the present value of estimated future cash flows.

Trade creditors
Trade payables are recognised initially at fair value and subsequently measured at amortised cost.

Cash and cash equivalents
Cash and cash equivalents include cash in hand and deposits held on call with banks.

Share capital
Ordinary shares are classified as equity.

Financial risk factors
The Company has exposure to foreign exchange and interest rate risks which are managed centrally by the local finance teams with oversight at Altrad Group level by the Group finance, tax and treasury team in Altrad Investment Authority SAS.

Credit risk, the risk of financial loss to the Company if a customer fails to meet its contractual obligations, is managed centrally and arises principally from the Company's receivables from customers. The Company's exposure to credit risk is influenced mainly by the individual characteristics of each customer. Any customer requiring credit above twice the limit recommended by Coface or equivalent external rating agency must be approved by Altrad Investment Authority SAS.

ALTRAD SERVICES LIMITED

NOTES TO THE FINANCIAL STATEMENTS (continued)

FOR THE YEAR ENDED 31 AUGUST 2022

1. Accounting policies (continued)

b) Significant accounting policies (continued)

Exceptional Items
Exceptional items are those items which are of a non-recurring nature or, in the judgement of the directors, need to be disclosed separately by virtue of their nature, size or incidence. Items which may be considered exceptional in nature include significant write-downs of goodwill and other assets, significant changes in asset values as a result of changes in accounting estimates, business acquisition costs and restructuring costs.

Foreign exchange
The Company is exposed to foreign currency risk in two key currencies. The movements in exchange rates against Sterling for these two currencies are detailed below:

	2022		2021	
	Closing	**Average**	Closing	Average
USD	**1.20**	**1.30**	1.38	1.36
EUR	**1.18**	**1.18**	1.16	1.14

c) Significant judgements and estimates

Certain of the Company's accounting policies described in note 1 section b require critical accounting estimates that involve subjective judgements and the use of assumptions, some of which may relate to matters that are inherently uncertain and susceptible to change.

Judgements
Areas of judgement that have the most significant effect on the amounts recognised in the financial statements are:

(i) Revenue recognition of maintenance contracts and assessment of long-term contract performance
The Company generally accounts for maintenance contracts on a time and material basis, this method requires accurate estimates of materials consumed and other judgements.

(ii) Carrying value of property, plant and equipment
Assessing whether property, plant and equipment may be impaired requires a review for indicators of impairment and, where such indicators exist, an estimate of the asset's recoverable amount by reference to value in use. Management are required to exercise significant judgement in reviewing for and identifying asset indicators of impairment and subsequently calculating value in use.

(iii) Trade and other receivables
The Company provides for likely non-recovery of receivables to the extent that the carrying value is more than the present value of expected future cash flows. Assessing the value of the provision requires significant management judgement and review of individual receivables based upon individual customer creditworthiness, current economic trends and analysis of historical bad debts.

(iv) Deferred tax assets
The Company recognises deferred tax assets on all applicable temporary differences where it is probable that future taxable profits will be available for utilisation. This requires management to make judgements and assumptions regarding the amount of deferred tax that can be recognised based on the magnitude and likelihood of future taxable profits.

(v) Defined benefit pension plans
The cost and the obligation of the Company's defined benefit pension plan is based on a number of selection assumptions. These include the discount rate, inflation rate, salary growth, longevity and expected return on the assets of the plan.

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1. Accounting policies (continued)

c) Significant judgements and estimates (continued)

Differences arising from actual experience or future changes in assumptions will be reflected in future periods. The effect of changing these assumptions is described in note 22.

Estimates
The key assumptions affected by future uncertainty that have a significant risk of causing material adjustment to the carrying value of assets and liabilities within the next financial year are:

(i) Onerous contracts
Provision is made for future losses on long-term contracts where it is considered that the contract costs are likely to exceed revenues in future years. Estimating future losses involves assumptions of contract performance targets and likely levels of future cost escalation over time.

(ii) Income tax
The Company can be subject to routine tax audits and also a process whereby tax computations are discussed and agreed with the appropriate authorities. Whilst the ultimate outcome of such tax audits and discussions cannot be determined with certainty, management estimates the level of required tax provisions on the basis of professional advice and the nature of current discussions with the tax authority concerned.

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2. Profit / (loss) on ordinary activities before investment income, interest and taxation

	2022 £000	2021 £000
Profit / (loss) on ordinary activities before investment income, interest and taxation is stated after charging:		
Services provided by the company's auditors		
- Fees payable for audit of the company's Financial Statements	**125**	127
Cost of inventories recognised as expenses	**22,070**	15,685
Depreciation on tangible fixed assets:		
- owned assets	**4,607**	4,983
- right of use assets	**728**	900
Amortisation of intangible assets	**1,171**	922
*Payroll recharge from the group undertaking	**152,833**	34,553

* All of the previous employees of the Company were transferred to Altrad Employment Services Limited, another group company, in June 2021. Consequently, the Company received a recharge cost of £152.8m during the year towards these payroll services. The corresponding year's employee costs have been disclosed in note 8.

3. Revenue

a) Disaggregation of revenue

Revenue from external customers is derived from maintenance and construction support services. These are not split out as multi-discipline services are provided to all customers. Disaggregation of revenue below is therefore shown by location of the revenue-generating entity:

	2022 £000	2021 £000
UK	**219,481**	193,198
Total Revenue from continuing operations	**219,481**	193,198
Timing of revenue recognition:		
At a point in time	**219,481**	193,198
Over time	**-**	-
	219,481	193,198

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3. Revenue (continued)

b) Assets and Liabilities related to contracts with customers

The group has recognised the following assets and liabilities related to contracts with customers:

	2022 £000	2021 £000
Amounts recoverable on contracts	**19,426**	16,130
Loss Allowance	**-**	-
Total Contract Assets	**19,426**	16,130
Payments received on account	**7,249**	6,114
Total Contract Liabilities	**7,249**	6,114

Amounts recoverable on contracts represents the gross amounts due from customers for contract work. Payments received on account represents gross amounts due to customers for contract work.

(i) Significant changes in contract assets and liabilities:
During the accounting period there have not been any significant changes to contract assets and liabilities.

(ii) Revenue recognised in relation to contract liabilities
The following table shows how much of the revenue recognised in the current reporting period related to carried-forward contract liabilities and how much relates to performance obligations that were satisfied in a prior year:

	2022 £000	2021 £000
Revenue recognised that was included in payments received on account at the beginning of the period	**6,114**	8,132

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ALTRAD SERVICES LIMITED

NOTES TO THE FINANCIAL STATEMENTS (continued)

FOR THE YEAR ENDED 31 AUGUST 2022

4. Other operating income / (expenses)

	2022 £000	2021 £000
IDC provision released/(charged) to the Income Statement	**1,714**	(4,668)
IDC - other expenses	**(556)**	-
Pension past service costs	**-**	(206)
Restructuring costs	**(339)**	(1,173)
Scaffolding depreciation	**-**	(1,335)
Other expenses	**-**	(815)
Other operating income/(expense) included in profit from ordinary activities	**819**	(8,197)

5. Other income

	2022 £000	2021 £000
Government grants	**-**	623
Research and development expenditure credit	**-**	222
Other income	**-**	845

During the prior year the Company received Government grants under the Job Retention Scheme as a result of the Covid-19 pandemic for operations in the United Kingdom as part of a Government initiative to provide immediate financial support to businesses.

Other income from Government grants in the prior year is presented below the gross profit line. However the majority of the associated payroll cost is within Cost of Sales, above the gross profit line. To aid comparison with the prior year, we have shown below the net position of the grant and associated payroll cost:

	2022 £000	2021 £000
Turnover	**219,481**	193,198
Cost of sales	**(190,490)**	(165,860)
Other income related to cost of sales	**-**	623
Total	**28,991**	27,961
%	**13.2%**	14.5%

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6. Directors' emoluments

	2022 £000	2021 £000
The emoluments of the directors of the company were:		
Aggregate emoluments	-	537
Contributions to defined contribution pension schemes (included in the above)	-	12

No directors were remunerated by the immediate parent company, Cape Intermediate Holdings Limited, during the year (2021: nil).

No directors (2021: nil) accrued retirement benefits under the Group's defined benefit pension scheme during the year.

Highest paid director

	2022 £000	2021 £000
Aggregate emoluments	-	280
Contributions to defined contribution pension schemes (included in the above)	-	12

7. Employees

	2022 No.	2021 No.
The average monthly number of persons employed by the company (including directors) during the period was as follows:		
Female	-	164
Male	-	2,145
	-	2,309

All of the previous employees of the Company were transferred to Altrad Employment Services Limited, another group company, in June 2021.

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8. Employee costs

	2022 £000	2021 £000
The aggregate payroll costs of these persons were as follows:		
Wages and salaries	-	116,854
Social security costs	-	12,992
Other pension costs	-	3,079
	-	132,925

All of the previous employees of the Company were transferred to Altrad Employment Services Limited, another group company, in June 2021. Consequently, the Company received a recharge cost of £152.8m (2021: £34.6m) during the year towards these payroll services, which has been disclosed in note 2.

9. Interest

	2022 £000	2021 £000
Interest receivable and similar income		
Interest receivable from Group companies	**2,231**	2,033
Pension scheme interest receivable	**2,847**	2,579
Interest receivable from third parties	-	-
Interest receivable and similar income	**5,078**	4,612
Interest payable and similar charges		
Interest payable to third parties	**(81)**	(81)
Unwind of discount on IDC provision	**(1,260)**	(1,498)
Pension scheme interest payable	**(2,730)**	(2,650)
Lease interest	**(19)**	(27)
Interest payable and similar charges	**(4,090)**	(4,256)

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10. Tax on profit / (loss) on ordinary activities

	2022 £000	2021 £000
Current tax:		
United Kingdom		
- Corporation tax at 19% (2021: 19%)	**1,879**	300
- Adjustment in respect of previous years	**(136)**	85
Total current tax charge /(credit)	**1,743**	385
Deferred tax – United Kingdom		
- Origination and reversal of timing differences	**2,270**	1,655
- Adjustment in respect of previous years	**(221)**	298
- Impact of change in law and rate	**(1,371)**	(2,306)
Total deferred tax credit	**678**	(353)
Tax charge /(credit) in the income statement	**2,421**	32

Included in the tax charge of £2,421,000 (2021: charge of £32,000) is a tax credit of £22,000 (2021: credit of £1,097,000) relating to exceptional and other items. The local tax rate is applied to the underlying costs or income, however certain exceptional costs due to their very nature will not have an associated tax charge or credit. The overall effective rate applied to these costs will vary year upon year depending on the nature of the cost.

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10. Tax on profit / (loss) on ordinary activities (continued)

The tax assessed for the year differs from that resulting from applying the standard rate of corporation tax in the UK of 19% (2021: 19%). The differences are explained below.

	2022 £000	2021 £000
Profit on ordinary activities before tax	**22,786**	13,271
Profit on ordinary activities multiplied by the standard rate of corporation tax in the UK of 19% (2021: 19%)	**4,329**	2,521
Effects of:		
Adjustment to tax in respect of previous years	**(357)**	383
Expenses not deductible for tax purposes	**217**	201
Movement in deferred tax not recognised	**(155)**	(187)
Income not taxable	**(242)**	(806)
Change in tax rates	**(1,371)**	(2,080)
Total tax charge reported in the income statement	**2,421**	32

Legislation has been enacted to increase the UK corporation tax rate to 25% from 1 April 2023. Deferred tax balances have been recognised at the rate at which they are expected to unwind.

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11. Tangible assets

	Land and buildings £000	Plant, machinery, fixtures and Fittings £000	Assets under Construction £'000	Total £000
Cost or valuation:				
At 1 September 2021	5,554	39,299	948	45,801
Additions at cost	-	2,729	1,615	4,344
Transfers in from other asset classes	-	5,384	-	5,384
Disposals	-	(8,234)	(1,236)	(9,470)
At 31 August 2022	**5,554**	**39,178**	**1,327**	**46,059**
Accumulated depreciation:				
At 1 September 2021	(2,699)	(34,417)	-	(37,116)
Charged during the year	(141)	(3,765)	-	(3,906)
Transfers out to other assets classes	-	-	-	-
Disposals	-	8,219	-	8,219
At 31 August 2022	**(2,840)**	**(29,963)**	**-**	**(32,803)**
Net book values:				
At 31 August 2022	**2,714**	**9,215**	**1,327**	**13,256**
At 31 August 2021	2,855	4,882	948	8,685

Notes:
The net book value of land and buildings comprises:

	2022 £000	2021 £000
Freehold	**2,169**	2,290
Short leasehold	**545**	565
	2,714	2,855

The net book value of land and buildings includes £2,714,000 (2021: £2,855,000) of depreciable assets.

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12. Intangible assets

	Total software £000
Cost or valuation:	
At 1 September 2021	6,161
Additions at cost	955
At 31 August 2022	**7,116**
Accumulated depreciation:	
At 1 September 2021	(2,130)
Charged during the year	(1,171)
At 31 August 2022	**(3,301)**
Net book values:	
At 31 August 2022	**3,815**
At 31 August 2021	4,031

13. Leases

Right-of-use assets	Land & Buildings £'000	Plant & Machinery £'000	Total £'000
At 31 August 2021	**697**	**320**	**1,017**
Additions	**413**	**351**	**764**
Disposals	**(3)**	**(17)**	**(20)**
Depreciation charge in the year	**(327)**	**(401)**	**(728)**
At 31 August 2022	**780**	**253**	**1,033**

The Company leases a number of assets, principally office and site properties, vehicles and other equipment which are utilised in the provision of the Company's operations. The leases of property are typically between 1 and 20 years in length, whilst leases of vehicles and equipment are typically between 1 and 4 years in length. In some cases the Company has options to purchase the assets at the end of the lease term.

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13. Leases (continued)

Lease Liabilities	2022 £'000	2021 £'000
Current	363	408
Non-current	682	621
Total Lease Liabilities	1,045	1,029

	2022 £'000	2021 £'000
Lease liabilities as at 1 September	1,029	1,624
Additions	754	118
Disposals	(10)	(26)
Payments	(746)	(883)
Interest expense	18	27
Revaluation	-	169
Lease liabilities as at 31 August	1,045	1,029

Some of the Company's leases contain extension or termination options exercisable by the Company up to one year before the end of the contract period. Where practicable, the Company seeks to include extension and termination options in new leases to provide operational flexibility. These extension and termination options are typically only exercisable by the Company and not by the lessors.

The Company assesses at lease commencement whether it is reasonably certain to exercise the extension or termination option. The Company reassesses whether it is reasonably certain to exercise the options if there is a significant event or there is a significant change in circumstances.

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14. Investments

Shares in subsidiary undertakings	2022 £000	2021 £000
Cost	5,995	5,995
Aggregate amounts provided	9	-
Disposals	-	-
Net book value	6,004	5,995

The company's principal investments are:

Subsidiary/associate/joint venture	Nature of the business	Country of registration
Altrad York Linings Limited (formerly York Linings International Limited) (100%)	Industrial Services	United Kingdom
Socar Cape LLC (49%)	Industrial Services	Azerbaijan
Cape International Holdings Pte Limited (10%)	Holding company	Singapore

The shareholdings in the subsidiary undertakings are in ordinary shares and are held directly by the company. The shareholdings in the subsidiary undertakings are indicated in brackets after the company name above.

In respect of the subsidiary companies in which the company holds shares or has advanced loans, in the opinion of the directors the fair value of the total net assets of these companies is not less than the net amount at which they are stated in its balance sheet.

15. Inventories

	2022 £000	2021 £000
Raw materials and consumables	644	560

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16. Debtors

	2022 £000	2021 £000
Trade debtors	**18,203**	19,840
Amounts recoverable on contracts	**19,426**	16,130
Amounts owed by Group undertakings	**28,356**	27,164
Other debtors	**1,490**	2,280
Prepayments	**3,396**	2,540
	70,871	67,954

The amounts owed by Group undertakings are unsecured and will be repaid as and when agreed between the applicable parties.

17. Creditors: Amounts falling due within one year

	2022 £000	2021 £000
Trade creditors	**(14,009)**	(12,843)
Amounts owed to Group undertakings	**(37,099)**	(26,383)
UK corporation tax payable	**(1,140)**	(1,200)
Taxation and social security costs	**(4,102)**	(7,100)
Payments received on account	**(7,249)**	(6,114)
Other creditors	**(226)**	(162)
Accruals and deferred income	**(12,590)**	(8,568)
Total current liabilities	**(76,415)**	(62,370)

The amounts owed to Group undertakings are unsecured and will be repaid as and when agreed between the applicable parties.

18. Amounts owed by group undertakings

	2022 £000	2021 £000
Amount owed by group undertakings	**94,518**	86,643

The amounts owed by and to Group undertakings are unsecured. Interest is paid at a rate of 2.95%.

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19. Provisions for liabilities

	At 1 September 2021 £000	Provision Charged £000	Unwind of provision discount £000	Provision Utilised £000	Provision Released £000	At 31 August 2022 £000
IDC	127,016	1,897	1,260	(8,499)	(3,606)	**118,068**
Other	1,341	642	-	-	-	**1,983**
	128,357	**2,539**	**1,260**	**(8,499)**	**(3,606)**	**120,051**

Ageing of provisions

	2022			2021		
	Current £000	**Non-current £000**	**Total £000**	Current £000	Non-current £000	Total £000
IDC	**10,332**	**107,736**	**118,068**	11,901	115,115	127,016
Other	**1,175**	**808**	**1,983**	166	1,175	1,341
	11,507	**107,544**	**120,051**	12,067	116,290	128,357

Industrial disease claim provision

To the extent that such costs can be reliably estimated as at 31 August 2022, a provision has been made for the costs which the Group is expected to incur in respect of lodged and future industrial disease claims for which the Board believes the Group to be liable arising from alleged exposure to previously manufactured asbestos products, notwithstanding the matters disclosed under note 22 'Industrial disease claims provision and contingent liabilities'. The most recent full actuarial valuation was completed in August 2022 and the next full valuation is scheduled to be completed in respect of the period up to 31 August 2025. The amount of the provision is based on historic patterns of claim numbers and monetary settlements as well as published tables of projected disease incidence. Key assumptions made in assessing the appropriate level of provision include the period over which future claims can be expected, the nature of claims received, the rate at which claims will be filed, the rate of successful resolution as well as future trends in both compensation payments and legal costs. Management monitors claims received on an ongoing basis as well as any other factors which would require a change to the assumptions or trigger a full actuarial review in the current year. When determining the appropriate level of provision, the Board has considered various potential, threatened and actual claim types and has relied on appropriate legal and other professional advice.

The total industrial disease claims provision at 31 August 2022 was £118.1 million (31 August 2021: £127.0 million).

The provision for industrial disease claims is discounted at a rate of 1.07% (2021: 1.06%) being the appropriate risk-free rate as at the balance sheet date, over the term of the liabilities, being approximately 30 years.

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20. Deferred tax assets

	2022 £000	2021 £000
Provided		
Accelerated capital allowances	**3,604**	3,810
Other timing differences	**890**	1,010
Losses	**9,675**	10,063
Net deferred tax asset	**14,169**	14,883

Net deferred taxation asset	2022 £000	2021 £000
At 1 September	**14,883**	14,604
Amount credited to profit and loss account	**(678)**	352
Amount (debited) /credited to other comprehensive income	**(36)**	(73)
At 31 August	**14,169**	14,883

At 31 August 2022 the company had £2.1m unrecognised tax losses (31 August 2021: £2.5m).

21. Called up share capital

	2022 £000	2021 £000
Allotted and fully paid:		
10,000,000 (2021: 10,000,000) ordinary shares of £1 each	**10,000**	10,000

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22. Pensions

The Company operates defined benefit schemes for the employees. The assets of the defined benefit schemes are held in trustee administered funds. The Board of Trustees is responsible for the administration of the plan assets and for the definition of the investment strategy. The Company operates one final salary defined benefit scheme, the Cape plc Staff Pension and Life Assurance Scheme. The latest full valuation of the defined benefit scheme was assessed by independent qualified actuaries as at 6 April 2019 using the projected unit method. The valuation showed that the assets of the main defined benefit scheme had a market value of £113.5 million and was 97% funded. Included within the assets balance is an amount of £62.9 million in respect of insurance policies covering pensioner liabilities. The next full valuation is due to be prepared as at 6 April 2022.

Pension benefits

The amounts recognised in the statement of financial position are determined as follows:

	2022 £000	2021 £000
Present value of funded obligations	**(94,233)**	(137,527)
Fair value of plan assets	**113,456**	159,246
	19,223	21,719
Restriction of surplus	**(22,028)**	(25,464)
Net liability in the statement of financial position before any adjustment for deferred tax	**(2,805)**	(3,745)

In accordance with IFRIC 14, the Group must consider the minimum funding requirements of the pension scheme. This has resulted in the recognised surplus on the main scheme being reduced to £nil at 31 August 2022 (31 August 2021: £nil). This has also resulted in the interest income being restricted to £nil. The net liability at 31 August 2022 comprises the net present value of committed payments under the 2019 triennial valuation.

	2022 £000	2021 £000
The amounts recognised in the income statement are as follows:		
Service cost:		
Administrative expenses	**337**	389
Interest expenses	**2,282**	2,260
Interest income on plan assets	**(2,658)**	(2,579)
Restriction of interest income in accordance with IFRIC 14	**433**	390
Past service costs	**-**	206
Total	**394**	666
The amount recognised in the statement of comprehensive income:		
Re-measurement of net defined benefit obligation	**(3,679)**	2,437
Adjustment for restriction on the assets recognised	**3,868**	(2,105)
Movement in deferred tax	**(36)**	(73)
Total	**153**	259

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22. Pensions (continued)

The movement in the fair value of plan assets over the year is as follows:

	2022 £000	2021 £000
Beginning of year	**159,246**	154,278
Interest income on plan assets	**2,658**	2,579
Re-measurement of plan assets	**(42,593)**	7,511
Employer contributions	**1,144**	1,116
Administrative expenses	**(337)**	(389)
Benefits paid	**(6,662)**	(5,849)
End of year	**113,456**	159,246

The movement in the defined benefit obligation over the year is as follows:

	2022 £000	2021 £000
Beginning of year	**137,527**	135,836
Interest expense	**2,282**	2,260
Actuarial gain – experience adjustments	**-**	-
Actuarial losses – changes in financial assumptions	**(38,914)**	5,074
Benefits paid	**(6,662)**	(5,849)
Past service costs	**-**	206
End of year	**94,233**	137,527

The principal actuarial assumptions used were as follows:

	2022	2021
Discount rate	**4.15%**	1.70%
Future salary increases	**4.00%**	3.90%
Future pension increases	**3.50%**	3.30%
CPI Inflation rate	**2.85%**	2.70%
RPI Inflation rate	**3.40%**	3.40%
Post retirement mortality rate	**1.00%**	1.00%

A quantitative sensitivity analysis for these significant assumptions as at 31 August 2022 is as shown below:

Assumption	Discount rate		Future salary increases		Future pension increases		Inflation rate	
Sensitivity level	1% increase £m	1% decrease £m	1% increase £m	1% decrease £m	1% increase £m	1% decrease £m	1% increase £m	1% decrease £m
Impact on defined benefit obligation	**13.8**	**(16.3)**	**(0.5)**	**0.1**	**(9.1)**	**8.0**	**(2.7)**	**2.4**
Impact on plan assets	**(7.7)**	**8.6**	**-**	**-**	**6.0**	**(5.4)**	**0.5**	**(0.5)**
Impact on net pension asset	**6.1**	**(7.7)**	**(0.5)**	**0.1**	**(3.1)**	**2.6**	**(2.2)**	**1.9**

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22. Pensions (continued)

The sensitivity analyses above have been determined based on a method that extrapolates the impact on defined benefit obligation and the plan assets as a result of reasonable changes in key assumptions occurring at the end of the reporting period. The sensitivities of changes in any of the principal actuarial assumptions are calculated in isolation holding all other assumptions constant. Limitations of the methods and assumptions used include using a roll forward approach, by using the results of the last full triennial revalutation prepared to 6 April 2019, rather than a full valuation of all assets and liabilities at the end of the current financial period.

A quantitative sensitivity analysis for these significant assumptions as at 31 August 2021 is as shown below:

Assumption	Discount rate		Future salary increases		Future pension increases		Inflation rate	
Sensitivity level	1% increase £m	1% decrease £m	1% increase £m	1% decrease £m	1% increase £m	1% decrease £m	1% increase £m	1% decrease £m
Impact on defined benefit obligation	20.2	(23.8)	(0.6)	0.5	(13.3)	11.7	(4.9)	4.4
Impact on plan assets	(9.9)	11.3	–	–	8.1	(6.9)	0.8	(0.7)
Impact on net pension asset	10.3	(12.5)	(0.6)	0.5	(5.2)	4.8	(4.1)	3.7

Mortality rate

Assumptions regarding future mortality experience are based on advice in accordance with published statistics and scheme experience.

The average remaining life expectancy in years of a pensioner retiring at age 65 on the balance sheet date is as follows:

	2022	2021
Male	**22.9**	23.1
Female	**24.6**	24.7

The average remaining life expectancy in years of a pensioner retiring at age 65, 20 years after the balance sheet date for the main scheme is as follows:

	2022	2021
Male	**23.9**	24.1
Female	**25.7**	25.9

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22. Pensions (continued)

Plan assets are comprised as follows:

	2022 £000	2021 £000
Quoted		
Corporate debt/bonds	**6,248**	18,974
Multi-asset credit	**11,265**	12,032
Index-linked gilts	**13,252**	24,084
Fixed interest gilts	**2,394**	3,345
Bonds	**10,991**	12,083
Equities	**-**	-
	44,150	70,518
Unquoted		
Insurance annuities	**62,939**	81,775
Property	**4,918**	4,522
Cash	**1,449**	2,431
	69,306	88,728
Total	**113,456**	159,246

Risk exposure to the Company

Since the pension liability is adjusted to inflation rate, the pension plan is exposed to UK inflation, interest rate risks and changes in the life expectancy for pensioners. As the plan assets relating to the main scheme include investments in quoted equity shares of entities in the manufacturing and consumer products sector, the Company is also exposed to equity market risk. More than 50% of the plans assets are invested in insurance annuities. Insurance annuities effectively mitigate the risk from changing inflation rates. Any asset investment carries a counter party risk.

23. Industrial disease claim provision and contingent liabilities

The Board considers that the provision of £118.1 million for industrial disease claims as at 31 August 2022 (31 August 2021: £127.0 million) captures all expected material industrial disease scheme liabilities for which the Board believes the Group may become liable at the balance sheet date.

The Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. Where claims are determined to have merit, the costs are provided for and claims are settled in the ordinary course, otherwise claims are defended. As legal precedent in the area of industrial disease claims continues to evolve, new developments and new types of claims give rise to inherent uncertainty in both the future level of asbestos-related disease claims and of the legal and other costs arising from such claims. If any such claims were to be successful, it might lead to future claims against the Group which may result in significant additional liability over and above that recognised under the current provision.

24. The Scheme of Arrangement

On 14 June 2006, the Scheme became effective and binding upon the following 13 companies:

Cape Intermediate Holdings Limited (formerly Cape Intermediate Holdings plc)
Cape Building Products Limited
Cape Calsil Systems Limited
Cape Contracts International Limited
Cape Durasteel Limited
Cape East Limited
Altrad Services Limited (formerly Cape Industrial Services Limited)
Cape Industries Limited
Cape Insulation Limited
Cape Specialist Coatings Limited
Predart Limited
Somewatch Limited
Somewin Limited

The Cape Scheme is a court-sanctioned scheme established to provide recompense for individual claimants in respect of asbestos-related industrial diseases contracted as a result of Cape's historic use of asbestos in manufacturing processes and who are unable to recover under insurance policies. The cape Scheme also provides a structural protection for the Group's trading stakeholders.

The detailed terms of the Scheme are set out in the Scheme itself, a copy of which has been filed with the Registrar of Companies, which is also available from the scheme managers, Crestbridge Limited, 47 Esplanade, St. Helier, Jersey, Je1 0BD, as are the Articles of Association of Cape Intermediate Holdings Limited (CIH), Cape Claims Services Limited (CCS) and Cape plc and a number of other ancillary agreements. The effect of the Scheme as a whole can be summarised as follows:

(a) While Scheme creditors retain their rights against Scheme companies, and may bring proceedings against Scheme companies for declaratory relief to determine whether they have a claim and, if so, of what amount, their rights, subject as provided in sub paragraphs (k) and (m) below are only enforceable against CCS under the terms of the Scheme guarantee;

(b) CCS was funded in the first instance with a sum of £40 million which represented what was considered to be a sufficient sum to discharge CCS's liabilities to Scheme creditors payable over at least eight years from 1 January 2006. The use of these funds is restricted to the payment of established Scheme claims and Scheme creditor costs;

(c) The sum of £40 million was not calculated by reference to an estimate of the likely amount of Scheme claims. It simply represented the aggregate of the amount that Cape was able to raise from its shareholders and the level of debt which Cape could reasonably maintain for the purposes of the Scheme. Of fundamental importance to the Scheme are the provisions as to topping up of that sum described below;

(d) Every three years an assessment of the projected Scheme claims against Scheme companies payable by CCS over the following nine years is undertaken, by reference to which there will be established the Funding Requirement;

(e) In the event that an assessment reveals a shortfall between the Scheme assets and the Funding Requirement, Cape will top up CCS's funding over the following three years provided that sufficient cash is available, Cape's obligation being limited to 70 per cent of the Cape Group's consolidated adjusted operational cash flow (including, for example, adjustments to take account of acquisitions, an element of capital expenditure and repayment of borrowing facilities). During 2022 a top up of £2.0 million was made to the Scheme (2021: £2.0 million).

24 . The Scheme of Arrangement (continued)

(f) Should Cape not be able to meet its top up obligation in any one year, it will be required to make good the shortfall in the next year, again subject to sufficient cash being available;

(g) Alongside the Funding Requirement there is the Scheme Funding Requirement which will be assessed every year by reference to projected Scheme claims against Scheme companies payable by CCS over the next six years;

(h) If at any time the ratio of the Scheme assets to the Scheme Funding Requirement (the Scheme Funding Percentage) falls below 60 per cent, CCS will have the ability to reduce the percentage (the Payment Percentage) of each established claim which it pays to Scheme creditors until such time as the Scheme Funding Percentage is restored to 60 per cent;

(i) Cape plc is permitted to pay dividends provided that at the time of payment (i) the Scheme Funding Percentage in relation to the last preceding financial year was certified to be not less than 110 per cent, (ii) the Directors of Cape plc certify that they anticipate that the Scheme Funding Percentage for the current and following financial year will be not less than 110 per cent and (iii) the Payment Percentage has not at any time within the previous 40 business days been below 100 per cent. Any distribution which Cape plc proposes to make to its shareholders may not, without the consent of the Scheme Shareholder, exceed the greater of (i) 50 per cent of the consolidated adjusted operating profit of the Cape Group for the last preceding Financial Year and (ii) the aggregate of any permitted dividends made in the preceding financial year. This restriction therefore places a cap on the amount of dividends that Cape plc may pay in any one year;

(j) There have been established special voting shares (the "Scheme Shares") in CCS, CIH and Cape plc which are held by an independent third party (the "Scheme Shareholder") on trust for Scheme creditors. The Scheme Shares have special rights which are designed to enable the Scheme Shareholder to protect the interests of Scheme creditors;

(k) In the case of certain Scheme creditors (Recourse Scheme Creditors), who are those Scheme creditors whose claims are in whole or in part the subject of a contract of insurance (Recourse Scheme Claims) their rights to enforce their Recourse Scheme Claims against a relevant Scheme Company will revive in certain circumstances. These circumstances are where the relevant Scheme Company is insolvent or where there has been a specified reduction in the Payment Percentage and if the Scheme creditor was able to bring about the insolvency of the relevant Scheme Company he would be able to recover greater compensation from the FSCS ("Financial Services Compensation Scheme") or, in certain circumstances, from a solvent insurer than is available from CCS at that time under the Scheme. There will be a specified reduction if either (i) the Payment Percentage has been reduced below 100 per cent but above 50 per cent and the Scheme creditor has not been paid in full after 12 months or (ii) the Payment Percentage is reduced to 50 per cent or below;

(l) Each Scheme Company will agree to hold on trust for any Scheme creditor concerned the proceeds of any policy of insurance (or any compensation received from the FSCS) referable to that Scheme claim;

(m) The restriction described in sub paragraph (a) above will not apply to proceedings to enforce the right to confer under sub-paragraph (l) above; and

(n) There are provisions contained in two reimbursement agreements which preserve certain rights of proof by CCS and Cape plc respectively in any insolvency of Cape plc or any of the other Scheme companies.

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24. The Scheme of Arrangement (continued)

(o) In support of the above, on 6 May 2011 CIH, Cape plc and CCS entered into a new Guarantee and Funding Agreement whereby Cape plc agreed to make to make certain additional funding available to CIH in connection with CIH's commitments under the Funding Agreement, as well as to guarantee all present and future payment obligations of Cape plc and CCS under the Funding Agreement. In addition, a Scheme Share in Cape plc (referred to in paragraph (j) above) was issued to the Scheme Shareholder which has similar rights to the Scheme Shares in CIH and CCS and which will afford the Scheme Shareholder substantially the same rights to those provided by the Scheme Shares in CIH and CCS.

25. Related Party Transactions

As at the year-end there was a net balance of £nil owed by joint ventures (2021: £nil owed to joint ventures). These amounts are unsecured, have no fixed date of repayment and are repayable on demand. Sales to joint ventures during the year amount to £nil (2021: £nil).

26. Exceptional Items

	2022 £000	2021 £000
IDC provision credited / (charged) to the Income Statement	**1,714**	(3,250)
Pension past service cost	**-**	(206)
Restructuring costs	**(339)**	(400)
IDC unwind of provision	**(1,260)**	(1,498)
Covid-19 related redundancy costs	**-**	(422)
	115	(5,776)

27. Post balance sheet events

The company has no significant post balance sheet events.

28. Ultimate parent undertaking

The immediate parent undertaking is Cape Intermediate Holdings Limited, a company registered in England and Wales.

The ultimate parent undertaking of Altrad Services Limited is Altrad Investment Authority SAS, a company registered in France. Copies of the financial statements of Altrad Investment Authority SAS can be obtained from the Company Secretary, 16 Avenue de la Gardie, 34510 Florensac, France.

Claim No. []

Witness Statement

Claimants

6 September 2024

Exhibit RO1

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (CHD)

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

WITNESS STATEMENT OF RAN OREN

I, Ran Oren, company director, of Units 6 & 7 Lyncastle Way, Appleton Thorne Trading Estate, Warrington, WA4 4ST, make this statement and shall say as follows:

A. INTRODUCTION

1. I am a director of the first claimant, Cape Intermediate Holdings Limited ("**CIHL**") and a director of the second claimant, Cape plc ("**Cape plc**") (CIHL and Cape plc together "**the Claimants**"). I have care and conduct of this matter on behalf of the Claimants. As set out below, I am also a director of several other associated entities within the Cape group of companies (which I refer to variously as "**the Cape Group**" or "**Cape**"). I have been the Group CEO of the Altrad group of companies ("**the**

Altrad Group") since 2020, and, before that, was Group General Counsel and Chief Compliance Officer from 2016-2020.

2. This witness statement is made in support of the Claimants' claim made pursuant to Part 8 of the Civil Procedure Rules ("**the Claim**") against Peter D. Protopapas ("**Mr Protopapas**", also "**the Defendant**"), who, following the issue of proceedings in the Court of Common Pleas, State of South Carolina, County of Richland ("**the US Proceedings**") has been appointed as the receiver over "Cape plc" and "*its subsidiaries, affiliates and successors (collectively "Cape" or "the Company")*" (with broad power and authority, *inter alia*, to administer "*all assets of Cape*").

3. The Claimants seek the following relief (as set out in the Draft Order enclosed with the Claim Form of 6 September 2024):

(1) A declaration 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 Protopapas as a Receiver over the Claimants ("**the Receivership Order**") [RO-1604-1607] 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 as a receiver in relation to the Claimants in England and Wales or worldwide and has at no time had power or authority in respect of the Claimants in England and Wales or worldwide to carry out the acts referred to in sub-paragraph 2 below; and his acts cannot be attributed to the Claimants, and/or the Claimants are not liable to accept his mandate/authority over them (or otherwise indemnify him for their failure/refusal to do so; and he has and had no power or authority to issue a motion against Winston & Strawn LLP (**W&S**") in those proceedings seeking, inter alia, declaratory relief that W&S cannot act for or represent the Claimants.

(3) The rights and duties of the directors of the Claimants remain unaffected by the appointment of Mr Protopapas as receiver of the Claimants pursuant to the Receivership Order.

(4) Mr Protopapas has and had no power or authority to act as the receiver of the Claimants in the South Carolina Court in respect of the Park Claim and the Tibbs Claim (as defined below) and has and had no power or authority in the Tibbs Claim to issue third party claims against any of the third party defendants to those proceedings, 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 (viii) Hawk Bidco (US) Inc (ix) ArranCo US LLC (x) Sparrows Offshore LLC.

(2) A prohibitive injunction pursuant to which:

(1) Mr Protopapas be injuncted in England and Wales and worldwide from acting or purporting to act as a receiver of the Claimants pursuant to the Receivership Order.

(2) Mr Protopapas be injuncted 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 the Claimants.

(3) Mr Protopapas be injuncted from acting or purporting to act as a receiver of the Claimants in the Park Claim and the Tibbs Claim (as defined below).

(4) Mr Protopapas be injuncted from litigating as "Cape plc" or CIHL in any legal proceedings in the State of South Carolina, US or elsewhere.

4. Save where the contrary appears, the facts and matters contained in this witness statement are within my own knowledge and derived from my conduct of these proceedings as well as from my role as director and CEO of Altrad Investment Authority SAS ("**AIA SAS**") in relation to the US Proceedings that are referenced below. It will be apparent that various topics such as the historical operations of the Cape Group and the terms of its Scheme of Arrangement in 2006 ("**the Cape Scheme**")

are not areas in which I would have a detailed knowledge given my involvement only started in 2017 with my role in conducting the acquisition of the Cape Group by the Altrad Group (as referred to below). In order to provide the Court with the clearest and most accurate view of these matters, I have, with the assistance of my legal advisors (in relation to which no privilege is waived), reviewed numerous documents concerning all the material issues. I include references from many documents supplied to me or drawn to my attention during the course of compiling this evidence (in relation to which privilege is not waived) and where that is the case those are true to the best of my knowledge, information and belief. Where the facts are not directly within my knowledge, I have identified my sources of information or belief. Finally, where I refer to the US Proceedings (including to the relevant provisions of the local law in those proceedings), I do so on the basis of information provided to me by AIA SAS' US lawyers (in relation to which no privilege is waived).

5. In addition, I have shared this witness statement in draft with my co-director of Cape plc, Mr John Walsh ("**Mr Walsh**"). I confirm that he has read it and that he agrees with its contents insofar as he has direct knowledge of them (in particular, I refer to Section I below, which addresses the current concerns of the directors of the Claimants arising out of the US Proceedings as defined below).

6. The documents which I will refer to throughout this witness statement are now produced and shown to me in RO1. References to page numbers are to page numbers in RO1.

7. For the avoidance of doubt, in making this witness statement, and in referring to particular legal proceedings in other jurisdictions, I do not intend to waive privilege or submit to those jurisdictions.

B. OVERVIEW

8. The factual background to the Claim requires setting out matters in considerable detail so that the Court is fully appraised of the matter. This Overview is therefore intended to provide the framework for the Court against which the detailed account of these matters (which is set out hereafter) can be properly understood. The terms used in this Overview are defined subsequently in the detailed sections that follow.

9. The Claim arises in the context of (and relates to) the US Proceedings commenced against "Cape plc" and CIHL. The US Proceedings involve two separate actions in the State of South Carolina against various defendants for the alleged exposure of the respective plaintiffs to asbestos. The actions are: (1) the Park Claim (as defined below) (which was initiated in June 2021 by Ms Park, and subsequently taken over by her son) and (2) the Tibbs Claim (as defined below) (which was brought in April 2023 by Mr and Mrs Tibbs).

10. In the Park Claim, the Summons [RO-1311] and Complaint [RO-1315] named "Cape plc" as a defendant – the First Amended Summons and Complaint [RO-1381-1450] added CIHL as a defendant. In the Tibbs Claim, "Cape plc" is the named defendant [RO-1674-1769] (but CIHL is not a named defendant). It is the conduct of Mr Protopapas in the Park Claim and the Tibbs Claim – which action he is apparently pursuing in the name of the Claimants – that forms the core background to the Claim – and the declaratory and injunctive relief that is being sought. In particular, this relates to:

(1) The Receivership Order (as defined above). This provided sweeping powers to Mr Protopapas, including "***the power and authority [to] fully administer all assets of Cape**, accept service on behalf of Cape, engage counsel on behalf of Cape and **take any and all steps necessary to protect the interests of Cape whatever they may be***" (emphasis added) [RO-1604-1607], (page 1). The Receivership Motion stated that "Cape plc": (1) had been dissolved; (2) was insolvent or in imminent danger of insolvency, or (3) had forfeited its corporate rights. However, neither Cape plc nor CIHL have been dissolved, nor are they insolvent, nor are they in imminent danger of insolvency and they have never been subject to proceedings for a forfeiture of corporate rights in any jurisdiction. On the contrary, at all material times the directors of Cape plc and CIHL have been managing those companies in the ordinary course of business. This includes ensuring that the funding requirements under the Cape Scheme continue to be met and to place funds into Cape Claims Services Limited ("**CCS**"), which administers the Cape Scheme.

(2) The 3P Complaint (as defined below) [RO-1993-2059]. By this action, the Receiver has procured Cape plc to sue/pursue litigation against (a) the Claimants'

direct subsidiaries (b) the Claimants' parent companies (c) the Claimants' other associated/affiliated companies (past and present) for an indeterminate amount – such that the US Proceedings are manifestly harmful to the interests of the Claimants.

(3) Taking various steps in the name of Cape plc in pursuit of the 3P Complaint. Amongst other things, this has included: (a) seeking and obtaining the 3P Complaint Default Judgement (defined below) against certain Third-Party Defendants including the Claimants' direct parent and subsidiaries (which include companies in the Altrad Group, and upon which the Cape Group relies for funding/financing and business cross-opportunities); (b) making motions for disclosure, adverse inferences and sanctions for adverse inferences against certain Third-Party Defendants.

11. While it is only Cape plc that is named in the Receivership Order, Mr Protopapas has subsequently stated that CIHL was the only company over which the Receivership Order was intended to be made, the Claim has been issued in the name of both the Claimants (i.e. CIHL and Cape plc). Both CIHL and Cape Plc need the clarity and protection that the orders sought will provide.

12. However, and for the avoidance of doubt:

(1) The steps taken by Mr Protopapas in the US Proceedings have not been authorised by the directors of the Claimants.

(2) The Claimants have no connection to South Carolina and have not submitted to the jurisdiction of the South Carolina Court (such that the South Carolina Court has no jurisdiction over them).

13. In these extraordinary circumstances, the directors of the Claimants seek the assistance of this Court as the duly appointed *de jure* directors of the Claimants (pursuant to the Claimants' articles of association as well as the English Companies Act 2006 ("**CA2006**") and the Jersey Companies Law 1991) in order:

(1) To enable them to administer, manage and run the Claimants efficaciously in accordance with their legal duties and in the best interests of the Claimants; and

(2) To prevent and contain the manifest prejudice to both them and the wider Cape group of companies by the conduct of Mr Protopapas, whose appointment as receiver over "Cape plc" (for the reasons set out below), and whose conduct in the US Proceedings is directly contrary to the interests of the Claimants and is abusive, vexatious and unconscionable (for the reasons set out below).

14. In the course of considering the Claim, the Court will need to understand the corporate structure of the various Cape entities and their business operations, both past and present, and how Cape has set up the Cape Scheme to deal with its responsibilities in this jurisdiction to its former employees in respect of their asbestos-based claims.

15. The starting point is that CIHL is a holding company incorporated in England and Wales and is the successor to "Cape Asbestos Company Ltd" (which mined asbestos in South Africa until 1948). Thereafter, asbestos mining was conducted by a South African company, Egnep Pty Ltd (which in turn was owned by a second South African company, Cape Asbestos South Africa Pty – "Casap").

16. In the UK the Cape Group processed and manufactured asbestos products at a few UK factories until the 1960s and 1970s, when the Cape Group introduced alternative non-asbestos products. The Cape Group ceased manufacturing asbestos products altogether in the 1980s.

17. In the UK, there remained exposures for asbestos related illness to former employees of the UK companies, and neighbours of the UK factories and contractors who came into contact with asbestos. In 2006 CIHL and 12 other UK companies entered into the Cape Scheme with those actual and potential claimants to compensate them in respect of asbestos-related industrial diseases contracted as a result of Cape Group's historic use of asbestos. Unlike other companies facing asbestos related claims, CIHL was solvent, and it was intended that Scheme creditors should be able to establish their claims and be paid in full. The Cape Scheme continues to be operative. Between 2006 and 31 December 2023 payouts to Scheme Creditors totalled c£60m.

18. In the United States, in October 1953 North American Asbestos Corporation ("**NAAC**") was established as a subsidiary of CIHL. It acted at all times as an intermediary (rather than a principal). The business of NAAC was to market asbestos in the US and to act as a liaison between Egnep and Casap, the South African

companies, and US purchasers (in addition, it re-sold asbestos into the US market on its own account). NAAC was a defendant in a number of actions arising out of exposure to asbestos products. NAAC was wound up in November 1977 and from 31 January 1978 NAAC ceased to act on behalf of any of the Cape entities or to carry on business on its own account. The South African asbestos business was sold in 1979, and asbestos products were not sold into the US after that.

19. Cape plc is a company incorporated in Jersey in 2011 (over 30 years after the Cape Group had stopped mining asbestos-based products). It is the ultimate parent company of the Cape Group.

20. In 2017 Altrad UK Ltd ("**Altrad UK**") acquired Cape plc. During 2021-2022 Altrad UK acquired the Sparrows Group (as defined below), which had 12 subsidiaries (including Hawk Bidco (US) Inc, Arranco US LLC and Sparrows Offshore LLC). Prior to that acquisition there was no connection between the Cape Group and the Sparrows Group.

21. None of Cape plc, Altrad UK or the companies in the Sparrows Group has ever mined, manufactured or sold asbestos or products containing asbestos.

22. In the light of the above, neither CIHL nor Cape plc have any connection with the State of South Carolina. As set out in further detail below:

    (1) CIHL is incorporated in England, which is where its management and control are based, it does not carry on any business activities in the US or the State of South Carolina (and never has) and its management and control is not, and never has been, in the US or the State of South Carolina. It also has no, and never has had any, assets in the US or the State of South Carolina.

    (2) Cape plc is incorporated in Jersey, its management and control is not in the US or the State of South Carolina, it does not carry on business in the US or the State of South Carolina and it has no, and never has had any, assets in the US or the State of South Carolina.

23. In terms of the Park Claim and the Tibbs Claim, the position is that at no stage have CIHL or Cape plc submitted to the jurisdiction of the South Carolina Court Nor has

there been any judgment made in the Park Claim or the Tibbs Claim against CIHL or Cape plc in the State of South Carolina.

24. In this regard, it is to be noted that in 1990 the English Court of Appeal held in Adams v Cape Industries Plc [1990] 1 Ch 433 ("**Adams v Cape**") that neither CIHL nor Capasco (as defined below) were present in the US and/or that they had not submitted to the jurisdiction of the US courts through the presence of NAAC in the US (and, for that reason, held that default judgements obtained against CIHL and Capasco in 205 consolidated actions in the United States District Court for the Eastern District of Texas were not enforceable in England under the principles of English private international law). The decision in Adams v Cape is the legal bedrock upon which the Cape Group has built its business in the years that have followed. Its significance to this application is self-evident (in circumstances where the Court of Appeal has already determined, some 35 years ago, the issue of whether CIHL is present in and/or has submitted to the jurisdiction of the US Courts, and whether, as a matter of English private international law, the US Courts are competent to exercise jurisdiction over CIHL). It was the basis on which the Cape Scheme was incepted.

25. Given Adams v Cape, it follows that no judgment of the South Carolina Court relating to the historic involvement in the asbestos industry can be enforced against the Claimants in this jurisdiction, and it also therefore follows that no recognisable order against CIHL or Cape plc appointing a receiver on an interim or final basis could have been made by the South Carolina Court.

26. Accordingly, given that as a matter of English law the South Carolina Court was not jurisdictionally competent to make the Receivership Order, Mr Protopapas has had no legitimate basis for acting as he has done, and he has been acting without the Claimants' authority and/or any mandate from the Claimants.

27. In those circumstances, CIHL and Cape plc seek the assistance of the Court to obtain clarification that Mr Protopapas has no legal authority to act on behalf of the Claimant companies, that authority remains vested in the directors, and also to seek injunctions restraining Mr Protopapas from taking any further steps in the name of Cape.

28. In the 3P Complaint, the third-party defendants include various Cape subsidiaries or affiliates based in the UK; various Cape parent companies based in the UK and France,

including AIA SAS, Altrad UK Ltd, and the majority shareholder and founder Mohed Altrad; and other Altrad Group affiliates in the US, namely the Sparrow Group companies. The 3P Complaint alleges that each of these entities are either successors in interest to "Cape plc" and its subsidiaries and affiliated entities, or beneficiaries from – and continuing participants in – Cape's alleged "*liability avoidance scheme*". [RO-1993-2059]

29. The causes of action alleged by Mr Protopapas (made in the name of Cape plc) include claims that Cape is entitled to pierce its own corporate veil and also claims that the Third-Party Defendants constitute Cape's *alter ego*. The amounts claimed are for an indeterminate amount and are not referable to the quantum sought in the Park Claim or the Tibbs Claim.

30. The claims are made against the Altrad Group companies even though they did not acquire Cape plc until 2017, and even though the Sparrow Group companies are not within the Cape Group and had no connection to the Altrad Group (or the Cape Group) until the Sparrow Group companies were acquired by the Altrad Group in 2021-2022.

31. As such, the 3P Complaint opens up the prospect of expanding and maximising the liability of Cape to third parties. In reality, it operates as a proxy claim for the benefit of potential asbestos plaintiffs in the US. It plainly does not seek to protect Cape – in fact it involves the very antithesis of protecting Cape. It is not authorised by the directors of Cape plc and CIHL to be pursued in the name of those companies.

32. Further, although there is no trial pending against either Cape entity in either the Park Claim or the Tibbs Claim, on 20 June 2024 Mr Protopapas obtained an order from the South Carolina Court for the trial of the 3P Complaint against the Third-Party Defendants to commence on 9 December 2024. [RO-4259-4261]

33. Whilst a Notice of Removal application to transfer the 3P Complaint to a Federal Court was made by various Third-Party Defendants (the effect of which was to remove temporarily the 3P Complaint from the South Carolina Court until that application was determined), Mr Protopapas applied on an expedited basis for the case to be remanded back to the South Carolina Court. By an order dated 13 August 2024 the Federal Court acceded to the motion of Mr Protopapas to remand the 3P Complaint back to the South Carolina Court [RO-4365-4395].

34. The present position therefore is that the 3P Complaint, brought in the name of Cape, against the Altrad Group and Sparrows Group companies will now be heard on 9 December 2024. As set out in more detail below, the trial of the 3P Complaint obviously has the potential of being highly damaging to the interests of Cape.

35. As set out below, the pursuit of the 3P Complaint and the forthcoming trial of the 3P Complaint are highly damaging to the interests of Cape. This has become an intolerable situation and the need for such relief from this Court has become necessary and urgent.

36. In respect of the harm to the Claimants caused by the actions of Mr Protopapas, this is also addressed below (specifically, in Section I). In summary, the prejudice is wide-ranging. It goes to the heart of the ability of the directors to run the Claimants in the best interests of those companies. In outline, this includes:

(1) The Negative Impact on Directors/Management: The continuance of the US Proceedings – and the Receivership Order – is highly prejudicial to the directors of the Claimants (as well as their subsidiaries) and the proper management of the Cape Group. In short, there are currently two conflicting centres of authority, which leaves the directors of the Claimants in a state of uncertainty as to the nature and extent of their authority to act on behalf of and bind the companies in respect of which they are the *de jure* directors. This is highly destabilising, both internally and externally, for obvious reasons.

(2) Negative Impact on Operations/Business/Reputation. The Receivership Order has the potential to cause serious prejudice to the operations/business of the Claimants. Customers and/or suppliers of the Cape Group (who will carry out regular credit checks and adverse media checks through their online reporting databases) will be concerned as to the extent to which authority is apparently vested in Mr Protopapas and this could adversely impact their willingness to do business with the companies within the Cape Group which are the operational subsidiaries of the Claimants. Suppliers may form the view that the Claimants and/or the wider Cape Group is either insolvent, alternatively at risk of insolvency, which may (in turn) lead to them taking various counter measures.

(3) Dealing with assets. Mr Protopapas purports to claim the authority to deal with all of the assets of the Claimants on a worldwide basis. Whilst the Cape Group does not have any insurance assets in the US – indeed, these were all exhausted at the time of the dissolution of NAAC – Mr Protopapas may seek to take control of other assets of the Claimants (including by coming to Europe and seeking to enforce the terms of the Receivership Order against the Claimants' shares in their directly owned subsidiaries).

(4) Reputational damage. The current position risks causing significant reputational damage to the Cape Group. In this regard, the Cape Group is now the leading UK and international asbestos removal and insulation specialist. It has a valuable brand, both in the UK and abroad, which it has sought to protect and secure through addressing its exposure to historic liabilities via the Cape Scheme. Mr Protopapas' conduct stands to undo decades of work by the Cape Group to re-establish the group's post-asbestos credentials and to impact the reputation of the Cape Group negatively (which could, in turn, lead to further claims in the future).

(5) Negative Impact on the Cape Scheme. As well as participating in the Park Claim and the Tibbs Claim Mr Protopapas is mandated to take steps in relation to the assets of "Cape plc" (and, he claims, the assets of CIHL). CIHL's assets are shares in companies that are subject to the Cape Scheme that was sanctioned by this Court in 2006 following approval by 97% of Scheme Creditors (including shares in CCS, which administers the Cape Scheme, and which pays the claims of compromised Scheme Creditors). There should be no interference in the operation of the Cape Scheme, which in turn means that there should be no interference in Cape plc's or CIHL's assets wherever situated. The current situation – including a Receivership Order which purports to extend to all of the entities in the Cape Group, and to affect all of the assets of the Claimants – potentially threatens the viability of the Cape Scheme (which is premised on the decision in Adams v Cape and has been carefully calibrated to balance the relative interests of the Cape Group, on the one hand, and potential claimants, on the other, which scheme has been sanctioned by the High Court, and

continues to be subject to that court's supervisory jurisdiction of schemes pursuant to Part 26 of the CA2006).

(6) Funding arrangements. In addition to the direct negative effect on the Cape Group, the current situation is having a negative effect on both the current financing and future funding of the Altrad Group, on which the Cape Group is reliant. This is addressed below in more detail. It is of considerable concern. Without the confidence of lenders, the Cape Group's access to funds is liable to be seriously compromised for obvious reasons.

37. Furthermore:

(1) On 30 August 2024, the Claimants' legal representatives wrote a letter before action ("**the LBA**") to the Defendant in which they asked him to consent to the terms of the Draft Order attached thereto on an urgent basis; and to accept service of the claim form either at Morgan, Lewis & Bockius LLP in London, alternatively at his professional address in South Carolina [RO-4831-4841].

(2) On 30 August 2024, Mr Protopapas made a filing at the South Carolina Court entitled "Notice of Filing of Attempt to Enjoin the Receiver in the High Court of Justice of England and Wales" (and to which he attached the LBA) [RO-4928-RO-4939].

(3) On 5 September 2024, Mr Protopapas responded to the LBA ("**the LBA Response**"). In his response, he refused to consent to the terms of the Draft Order and refused to accept service either personally or via Morgan, Lewis & Bockius LLP in London.

(4) On 5 September 2024, Mr Protopapas also issued a motion in the South Carolina Court against Winston & Strawn LLP (**"W&S"**) – who are the UK legal representatives of the Claimants (with offices in London). In the motion, Mr Protopapas sought declaratory relief, amongst other things, that W&S are not the proper legal representatives of "Cape plc" and are "*no longer acting as attorneys*" of "Cape plc" ("**the W&S Motion**").

(5) At the end of the LBA Response – having refused to accept service of the Claim – Mr Protopapas contended that he would withdraw the W&S Motion on condition that the Claimants withdrew the LBA (and undertook not to seek any relief from the English Courts).

38. It is against that backdrop – including their non-acceptance of Mr Protopapas' unreasonable/abusive offer – that the Claimants have issued the Claim. The Court is therefore asked to hold that the Receivership Order gives no recognisable jurisdiction over CIHL, Cape plc or any other Cape company and to grant the declaratory relief and injunctions sought.

39. As a matter of English law the South Carolina Court was not jurisdictionally competent to make the Receivership Order, Mr Protopapas has had no legitimate basis for acting as he has done, and he has been acting without the Claimants' authority and/or any mandate from the Claimants.

40. This will provide clarity to the Cape companies as well as to their internal management and allow them to continue to operate in the ordinary course of business and to fulfil their ongoing obligations under the Cape Scheme. It will prevent Mr Protopapas from pursuing the 3P Complaint – the consequences of which are potentially deleterious for the Cape Group and the Altrad Group of which it forms a part.

41. The rest of this witness statement is structured as follows:

(C) The historical corporate background of the Cape Group.

(D) The Cape Scheme of 2006.

(E) The incorporation of Cape plc (Jersey).

(F) The acquisition of the Cape Group by the Altrad Group.

(G) The current status of the Cape Group.

(H) The US Proceedings.

(I) The impact of the US Proceedings on the Cape Group.

(J) The letter before action, the claim and the relief sought.

(K) Conclusions.

C. HISTORICAL CORPORATE BACKGROUND OF THE CAPE GROUP

The Claimants: introduction

42. The first claimant, CIHL (company number 00040203), is an English-registered non-trading intermediate holding company within the Cape Group.

43. As set out below, CIHL was formerly the parent company of the Cape Group. It is currently the immediate holding company for several of the main UK trading entities within the Cape Group.

44. I am the sole director of CIHL. The immediate parent undertaking of CIHL is Cape Holdco Limited ("**Cape Holdco**") – however, as set out in Section D below, one share in CIHL is held by The Law Debenture Trust Corporation Plc ("**LDTC**"). The registered office of CIHL is at Units 6&7 Lyncastle Way, Appleton Thorne Trading Estate, Warrington WA4 4ST.

45. The second claimant, Cape plc (company number 108031), is Jersey-registered, and is (and has been since 2011) the ultimate holding company of the Cape Group.

46. As explained in further detail below, despite the intended target in the US Proceedings allegedly being CIHL (as opposed to Cape plc) Cape plc remains a named defendant in the US Proceedings, and in these circumstances, it is also necessary for it to be a claimant in these proceedings in order to protect its position.

47. Cape plc was incorporated under the laws of Jersey in 2011 as the new parent entity within the Cape Group as part of a major corporate reorganisation; and in 2017 100% of its share capital was acquired in cash by Altrad UK Ltd (a holding company which is part of the wider Altrad Group) as part of a tender offer under the UK Takeover Code and Part 18 of the Jersey Companies Law 1991. I refer to the original and amended articles of association at [RO-1-112 and RO-113].

48. The current directors of Cape plc are me and Mr Walsh. The current shareholder is Altrad UK Ltd (other than in respect of one share that is held by LDTC – "**the Cape**

Scheme plc Share"). The registered office of Cape plc is at *47 Esplanade St Helier Jersey JE1 0BD.*

49. I refer to the current structure of the Cape Group (and its ownership by the Altrad Group, which in turn owns the Sparrows Group) [RO-114 and RO-115].

50. As set out further below, the Cape Group provides critical industrial services to customers throughout the world, focused on the energy and natural resources sectors, and employs approximately 12,800 employees across 17 countries. It has an annual revenue of approximately £850 million.

The establishment and evolution of the Cape Group

51. CIHIL was incorporated on 28 December 1893 under the name "The Cape Asbestos Company". I refer to the original memorandum of incorporation and the original articles of association [RO-116-166]. According to the memorandum, the core object for which the company was established was to acquire and commercialise asbestos mines in South Africa and, in particular, "*to acquire, take over and work and turn to account the Farms Koegas, Hounslow, Schalkdrift, and certain mining rights over the Farm Schalkputs, all situate in the district of Hay, Griqualand West, in the Colony of the Cape of Good Hope, in South Africa*" (which in turn explains the provenance of CIHL's name) [RO-121]. In addition, CIHL was incorporated to carry out manufacturing operations at a factory that it had acquired in Italy.

52. As well as mining and manufacturing asbestos in South Africa, from 1913 onwards CIHL operated factories in the UK which processed and manufactured asbestos products. These included factories in Barking (Essex) (operated from 1913-1960), Acre Mill (West Yorkshire) (operated from 1939-1960), Kentmere (Cumbria) (operated from 1942-1960) and Stirling (Scotland) (operated from 1954-1960).

53. During the 1930s, the focus of CIHL's business turned to the supply and installation of insulation, which led to the development of an industrial contracting business that evolved into a multi-disciplinary industrial services business.

54. CIHL conducted all group business until 1948, when mining and other activities in South Africa were devolved to a local subsidiary management company, Cape

Asbestos South Africa Pty ("**Casap**"). Casap owned a company called Egnep Pty Ltd ("**Egnep**") which became the principal asbestos-mining company within the Cape Group.

55. Through a mixture of acquisition and organic growth, the Cape Group increased its production of fire protection boards, brake linings and insulation in the UK.

56. On 28 November 1960, Capasco Limited ("**Capasco**"), an English company (company number 00676215), was incorporated. It was a wholly owned subsidiary of CIHL. Capasco was responsible for the supply, marketing and sales promotion worldwide of CIHL's asbestos and asbestos products.

57. In 1961, there was a major corporate reorganisation of CIHL's activities. The operation of the Barking, Acre Mill, Kentmere and Stirling factories was transferred to Cape Insulation and Asbestos Products Limited (company number 676216), and the remaining CIHL business was transferred into operational and management subsidiaries that divided the UK and overseas businesses into different corporate entities.

58. As the health risks associated with asbestos became more widely known, the Cape Group started to close its UK factories in the 1960s and the 1970s, at the same time as developing asbestos-free insulation products.

59. On 14 May 1974, CIHL changed its name to "Cape Industries Limited" (in relation to which I refer to a special resolution. [RO-167-168]. By this time (as shown by the 1974 accounts) [RO-175-177] the Cape Group was divided into <u>three</u> main divisions, being (1) the "Building and Insulation Products Division" (which included Cape Universal Claddings Limited, Cape Boards and Panels Limited, Cape Insulation Limited, Cape Contracts Limited, Cape Insulation (Ireland) Limited and Cape Asbestos Insulations (Pty) Limited) (2) the "Automative and Engineering Products Division" (which included Small and Parkes Limited, Trist, Draper Limited, Don International s.a. and Kismet Limited) and (3) the "Mining Division" (which included Casap, Cape Asbestos Fibres Limited and NAAC). In addition, CIHL owned several non-UK associated companies (in New Zealand, Sweden and India).

60. In 1979, the Cape Group sold its mining operations in South Africa to a South African company, Transvaal Consolidated Exploration Limited. Cape ceased manufacturing asbestos products in the 1980s.

61. On 12 November 1981, CIHL re-registered as a public limited company and changed its name to "Cape Industries PLC" (in relation to which I refer to a certificate of re-registration) [RO-194]. Its shares were listed on the London Stock Exchange ("**LSE**").

62. On 25 July 1989, CIHL changed its name to "Cape plc" (in relation to which I refer to a special resolution) [RO-195-197]. In its annual report for 1989, the company described itself as follows [RO-199]:

> "*Cape Industries is a British company which is engaged in the manufacture of high-performance fire protection and insulation materials, and external claddings for the construction industry worldwide. It is also a market leader in the UK for the supply of thermal insulation and scaffolding contracting services to the power, petrochemical and other areas of the mechanical construction industry. Cape's objectives are to build on these strengths and to achieve a real increase in earnings each year*".

63. On 27 June 2011 (and as part of the reorganisation of the Cape Group referred to in Section E, below) CIHL changed its name to "Cape Intermediate Holdings PLC" (in relation to which I refer to a "notice of change of name by resolution" document [RO-201]; and it was transferred back from AIM to a full listing on the LSE.

64. On 19 December 2013, it de-registered as a public company, and changed its name to "Cape Intermediate Holdings Limited" (in relation to which I refer to the re-registration of a public company as a private company) [RO-202]. On the same date, CIHL adopted new Articles of Association [RO-203-295].

65. As set out in more detail below in Section G, today the Cape Group operates a profitable business providing a wide range of critical industrial services (including environmental services, insulation, fire protection and services focused on the energy and natural resources sector).

<u>The Cape Group in the United States</u>

66. In October 1953, CIHL established NAAC as a direct and wholly owned subsidiary in Chicago.

67. On the basis that NAAC was a subsidiary entity, CIHL had an element of control over NAAC's corporate activities, such as the total amount of NAAC's dividend declarations. CIHL did not, however, control NAAC's commercial activities (which were dealt with by NAAC itself). NAAC employed four employees.

68. The function of NAAC was (a) to assist in the marketing of asbestos in the US (b) to act as a liaison between Egnep or Casap and US purchasers of asbestos (in relation to which NAAC received a commission) and (c) to purchase asbestos on its own account and sell the asbestos to the US market. NAAC was the only Cape entity in the US. In relation to (b):

(1) The contracts for the supply of asbestos to US customers were made by Egnep or Casap (and not by NAAC).

(2) Instead, the role of NAAC was that of an intermediary – in relation to which the customer would notify NAAC, who would, in turn, notify Casap or Egnep of the quantity of asbestos required and when it was required by.

(3) In addition, it would be Casap or Egnap (and not NAAC) that would make shipping arrangements, and a delivery date would be provided by Casap or Egnap to NAAC who would, in turn, provide the delivery date to the customer.

(4) Finally, if Egnep could not provide the full amount of asbestos ordered itself, NAAC would, where possible, purchase asbestos from US Government stocks and supply the customer accordingly.

69. From the early 1970s, NAAC was the defendant in numerous product liability class actions in the US arising out of exposure to NAAC's asbestos-manufactured products. By the second half of the 1970s NAAC had exhausted its insurance. In this context:

(1) On 1 November 1977, CIHL resolved to liquidate NAAC.

(2) On 31 January 1978, a liquidating trust agreement for NAAC was signed and, from that date, NAAC ceased to act on behalf of any of the Cape entities or to carry on any business on its own account. The only work undertaken related to liquidating its assets.

(3) NAAC executed articles of dissolution on 18 May 1978. A certificate of dissolution was issued on 19 May 1978.

70. After (and despite) its dissolution, NAAC continued to be sued in the US in asbestos and mesothelioma related litigation. However:

(1) NAAC has never been restored to the register of companies in Illinois.

(2) Neither CIHL nor Cape plc is the successor in interest to NAAC.

71. As referred to above, in Adams v Cape the English Court of Appeal held that neither CIHL nor Capasco were present in the US and/or had submitted to the jurisdiction of the US courts through the presence of NAAC in the US (and, for that reason, held that default judgements obtained against CIHL and Capasco in 205 consolidated actions in the United States District Court for the Eastern District of Texas were not enforceable in England under the principles of English private international law).

D. THE 2006 CAPE SCHEME

Background

72. In June 2006 CIHL (along with twelve other UK companies within the Cape Group) entered a scheme of arrangement pursuant to section 425 of the Companies Act 1985 ("**CA1985**") ("**the Cape Scheme**") [RO-296-620].

73. The background to the Cape Scheme is described in the introductory section of the document[1] entitled "Proposals for a Scheme of Arrangement" ("**the Scheme Proposals**") [RO-627].

> "*Each of the Scheme Companies is a company in the Group. In the past, the Scheme Companies' industrial activities in the UK often involved the use of asbestos. This has meant that a number of people both inside and outside our premises may have been exposed to asbestos and its associated health risks. Whilst the large majority of the Scheme Companies' UK employees have not been affected, unfortunately a number of employees, contractors and others who have come into contact with the Scheme Companies' asbestos related activities have been and will be diagnosed with asbestos-related conditions. Such persons may in the future bring a claim for compensation against one or more Scheme Companies. Whilst the Scheme Companies have certain*

[1] This was the equivalent under the CA1985 of what is today called the "Explanatory Memorandum" under Part 26 and Part 26A of the CA2006.

periods of insurance cover, there remains significant financial exposure where there is either no or only partial insurance cover or the insurer is insolvent".

74. In broad terms, the Cape Scheme was established to provide recompense for individual claimants in respect of asbestos-related industrial diseases contracted as a result of Cape Group's historic use of asbestos in manufacturing processes and industrial services; and its purpose was to protect the present and future businesses of the Scheme Companies to the mutual benefit of both those companies and their asbestos-related claimants.

75. Significantly, the Cape Scheme (1) was Court-sanctioned and (2) continues to be under the supervision of the English High Court.

76. As explained in the Scheme Proposals, the need for a scheme of arrangement under section 425 of CA1985 arose from several particular features of the Cape Group's exposure to asbestos-related claims. These included:

(1) The long latency periods of the more serious asbestos-related conditions. At the time of the Scheme, the evidence was that there would be a significant volume of claims in the future, and that the claims might continue to be made for anything up to 40 to 50 years [RO-631].

(2) The great uncertainty as to the likely cost of the future claims. At the time of the Cape Scheme, there were inherent difficulties in forecasting asbestos-related claims over a long period. The actuarial reviews commissioned in support of the Scheme produced a best estimate of £119.4 million (but in a range from £70.2 million to £240.3 million) over the course of 46 years.[2]

77. The chairman of the Cape Group described the problems faced in the following terms [RO-628]:

"*Claims against the Scheme Companies will continue for the foreseeable future. It remains very difficult to predict with any certainty what the levels of these claims will be, when they will arise and the financial consequences of these claims on the*

[2] See Part 2 of the Proposals: "*As referred to below, an independent actuarial review of the Scheme Companies' UK asbestos-related claims projects that claims will be received for not less than 46 years with an anticipated peak in the value of claims arising between 2025 and 2030. The aggregate projected discounted value of all the Group's UK asbestos-related unpaid claims over the next 46 years, is, on the basis described under "Projected future asbestos-related claims against the Scheme Companies" in paragraph 4 below, estimated by the independent actuary, Tillinghurst, to amount to approximately £119.4 million*". [RO-647]

continued solvency of the Scheme Companies. It is therefore important that the Group remains in a position to generate the resources needed to meet these claims as and when they fall due. A number of other companies faced with the same issues have been forced into insolvency, often leaving claimants, where there is no insurance cover, with little prospect, if any, of receiving compensation. [...]

As a result of the uncertainty, it is likely that the Group has lost a number of business opportunities, and absent the Scheme may continue to do so, as the Group has, at times, been unable to obtain funding at commercially acceptable rates. There are also certain significant organisations in the Group's fields of activity which have limited or placed conditions on their dealings with the Group, for example, by demanding guarantees or bonds in circumstances in which they would not do so of the Group's competitors. The Cape Directors believe that such restraints on the Group's ability to expand should be alleviated to a significant extent if the Scheme were in place".

78. In these circumstances, the uncertainty of the future asbestos claims raised a real and unquantifiable risk that at some point the Scheme Companies would become insolvent. As there was insufficient insurance coverage, potential claimants would be dependent on the future success of the Cape Group to meet their claims.

The Key Elements of the Scheme

79. The mechanics of the Scheme were summarised at paragraph 7 of the Letter from the Chairman of CIHL, Mr Martin Keith May, contained in Part 1 of the Scheme Proposals [RO-630]. In relation to this:

(1) The central feature of the Scheme was the establishment of the long-term funding of the Scheme Claims.

(2) This long-term funding was ring fenced in a newly-formed subsidiary of the Company – Cape Claims Services Limited ("**CCS**") (company number 5445427) – and was under the control of CSS (which would include two independent Scheme Directors). The funding would be invested by CCS in accordance with investment criteria which would be determined by, and only altered with the consent of, the independent Scheme Directors.

(3) The initial level of funding – at £40 million – represented the estimate of the Scheme actuary, Tillinghurst[3], of the amounts payable by the Scheme

[3] In the Scheme Proposals, Tillinghurst was described as bring "*part of Towers Perrin, the global professional services firm, and provides global actuarial and management consulting services to companies advising on risk financing and insurance-related matters*".

Companies in respect of the Scheme Claim not met by insurance recoveries (including recoveries from the Financial Services Compensation Scheme) over the first eight years of the Scheme (together with the running costs of CCS for the first three years).

(4) The initial funding of £40 million ("**the Initial Funding**") was provided as to £22 million from the proceeds of a fundraising in July 2005 from CIHL's shareholders and as to £3 million from the Cape Group's existing resources and as to £15 million from a new bank facility from Barclays [RO-630].

(5) The initial funding was provided pursuant to a funding agreement dated 14 March 2006 between the Company and CCS ("**the Funding Agreement**") [RO-846-878].

(6) Under the terms of the Funding Agreement:

i) Commencing in 2008, there would be an assessment every three years of the projected Scheme Claims payable by CCS over the following nine years. By reference to each assessment there would be established the continuing funding requirement under the Scheme ("**the Funding Requirement**"). [RO-895, note 18(d)]

ii) The requirement would be broken down into assessments of Scheme Claims payable by CCS in each of the nine years to which the assessment related. [RO-895, note 18(d)]

iii) In the event that the assessment revealed a shortfall between the available assets of the Scheme ("**the Scheme Assets**") and the Funding Requirement, CIHL would be under an obligation to top-up the Scheme Assets over the following three years (provided it had sufficient cash to do so) ("**the Top-Up Requirement**"). [RO-895, note 18(e)]

iv) The obligation of CIHL in each year would be limited to 70 per cent of the Cape Group's available cash resources. [RO-895, note 18(e)]

v) If CIHL was not able to meet the Top-Up Requirement in any one year, it would be required to make good the shortfall in the next year (again subject to sufficient cash being available). [RO-895, note 18(f)]

vi) As well as the Funding Requirement, there would be a Scheme Funding Requirement which would be assessed every year by reference to the Scheme Claims payable by CCS over the next six years as projected in the assessment by the Scheme Actuary. [RO-895, note 18(g)]

vii) If at any time the ratio of the Scheme Assets to the Scheme Funding Requirement ("**the Scheme Funding Percentage**") fell below 60 per cent, CCS would have the ability to reduce the percentage of each established claim which it paid to Scheme Creditors ("**the Payment Percentage**") until such time as the Scheme Percentage was restored to 60 per cent. [RO-896, note 18(h)]

(7) In return for the setting up of the initial funding and the ongoing top-up obligations, the Scheme Creditors would be bound, except in certain limited circumstances, only to recover the payment of their settled or agreed Scheme Claims (including damages and costs) from CCS and not the relevant Scheme Company. This was provided for under the scheme guarantee dated 14 March 2006 between (a) CCS and (b) the Scheme Companies, under the which CCS undertook, subject to the Scheme becoming effective, to make payment to the Scheme Creditors of their Scheme Claims ("**the Scheme Guarantee**"). [RO-898-923]

(8) The Scheme, if approved by the Court, would be binding on both present and future Scheme Creditors.

(9) In order to protect the interests of the Scheme Creditors, a special voting share would be created in each of CCS and CIHL ("**the Scheme Shares**"). [RO-896, note 18(j); RO-902] The rights attaching to Scheme Shares were designed to ensure that the Scheme Assets were only used to settle the Scheme Claims (and ancillary costs) and to impose restrictions on dividends and other distributions by the Company. The Scheme Shares were issued in the name of and held by LDTC ("**the Scheme Shareholder**"). [RO-631, third paragraph]

(10) From 2008:

i) CIHL would be permitted to pay dividends provided that at the time of payment (a) the Scheme Funding Percentage in relation to the last preceding year was certified as being not less than 110 per cent and (b) the Payment Percentage had at no time in the previous 40 days been below 100 per cent. [RO-651, Part 3, paragraph 4(i)]

ii) The dividend payable in a particular financial year could not without the consent of the Scheme Shareholder exceed the greater of (a) 50 percent of the consolidated operating profits of the Cape Group for the financial year by reference to which the dividend was proposed and (b) the aggregate of permitted dividends in the last preceding financial years [RO-651, Part 3, paragraph 4(i)]

80. Fundamental to the inception of the Scheme were the following:

(1) The Cape Group was solvent.

(2) The Company was not affected by claims made against it in the US, following the decision of the Court of Appeal in Adams v Cape. As explained above, that decision provided clarity and certainty that the potential liabilities of the Scheme Companies did not include claims made against any US Companies, without which the Cape Scheme to compensate claimants in the UK would not have been viable.

81. In addition, and for the purposes of the Scheme:

(1) The Scheme Creditors included any person or organisation which had or may have, either presently or in the future, any claim against any of the Scheme Companies. [RO-632] In very broad terms, this meant persons who may or may in the future have personal injury claims or claims under the Fatal Accidents Act 1976 against the Scheme Companies arising out of asbestos exposure (though they may also include asbestos related derivative claims, such as claims by other employees for indemnity or contribution).

(2) The Scheme would not involve all creditors with any such claim. It would instead be limited to such claims as were governed by the laws of England, Scotland or Northern Ireland (and, in the case of individuals, would be limited to claims either of individuals resident in the UK, or, if not resident in the UK, of those individuals whose claims against a Scheme Company were based upon exposure to asbestos in the UK. [RO-632]

(3) In the case of certain Scheme Creditors ("**Recourse Scheme Creditors**") – being those creditors whose claims were in whole or in part covered by insurance ("**Recourse Scheme Claims**") [RO-633] – their rights to enforce against the relevant Scheme Company would revive in certain circumstances. These circumstances were where the relevant Scheme Company was insolvent or where there was a specified reduction in the Payment Percentage and if the Scheme Creditor was able to bring about the insolvency of the relevant Scheme Company, they would be able to recover greater compensation from the FSCS or in certain circumstances from a solvent insurer than was available from CCS at the time of the Scheme.

(4) Finally, each Scheme Company would hold on trust for any Scheme Creditor concerned the proceeds of any policy of insurance (or any compensation from the FSCS) referable to their Scheme Claim. [RO-651, paragraph 4(l)]

The Court Hearings

82. On 28 February, 1 March, 2 March and 3 March 2006 there was a 4-day convening hearing before David Richards J (as he then was). In his convening judgement dated 7 June 2006 [RO-924-947] ("**the Convening Judgment**"), the judge directed the convening of scheme meetings (with the meetings in relation to each Scheme Company being split into two classes, one for general scheme creditors, and one for recourse creditors). He summarised the terms of the Scheme at paragraph 20; and described the protective measures put in place by the issuance of the Scheme Shares (and the role of LDTC in its capacity as independent trustee) at paragraphs 56-57. [RO-927-928 and RO-935-936]

83. The Scheme meetings were subsequently held, and the majorities in number were never less than 93.75% and the majorities in value were never less than 93.12%.

Taking all the votes cast at all the meetings, the majorities in value and number were over 97%. [RO-950, paragraph 7]

84. There was a further hearing to sanction the Scheme on 9 June 2006. In his sanction judgment of 16 June 2006 [RO-948-956] ("**the Sanction Judgment**"), David Richards J sanctioned the Scheme in relation to all the Scheme Companies (save with one exception – being Altitude Scaffolding Limited) [RO-955, paragraph 35].

85. He found that:

(1) "*In my judgment, the solution provided by the scheme is in principle such as intelligent and honest members of the classes of creditors of all the relevant companies might reasonably approve*". [RO-950-951, at paragraph 10]

(2) "*I am satisfied that the detailed terms of the arrangements strike a balance between the various interests involved which could reasonably be approved by the general and recourse scheme creditors of the companies*". [RO-953, at paragraph 18]

86. Finally, I refer (at [RO-296-620]) to the order sanctioning the Cape Scheme in relation to CIHL[4] dated 9 June 2006 ("**the Scheme Order**") (and which includes the Scheme document itself).

The Cape Scheme post-2006

The triennial reviews

87. Under the Scheme, CCS is obliged to provide an actuarial valuation of the liabilities arising out of Scheme Claims once every three[5] years [RO-634]. Specifically, under Clause 5.1 of the Funding Agreement, CCS is obliged, following every "Funding Review Date" and until the termination of the Scheme, to procure that an "Actuarial Report" as at the relevant "Funding Review Date" is produced within 120 days of the Funding Review Date; and that, within 120 Business Days of the date of the relevant

[4] The High Court made 11 other equivalent orders in relation to the other Scheme Companies.
[5] Further, a roll-forward exercise is carried out by the Scheme Actuary every other year.

Funding Review Date, to deliver a duly signed Funding Statement. [RO-856-857] In this regard:

(1) The definition of a "Funding Review Year" is "the Financial Years ending 31 December 2007 and each third Accounts Date thereafter". [RO-851]

(2) A Funding Statement is defined as being in the form of Schedule 3 to the Funding Agreement, signed by the director and certifying the Scheme Assets, the Funding Requirement, the Top-Up Requirement, the Scheme Funding Requirement and the Scheme Funding Percentage at the relevant Funding Review Date. [RO-851]

88. On this basis, the Scheme Actuary has to date performed Funding Reviews of the Scheme – and the Scheme Companies' exposure to unpaid claims – on a triennial basis after 2007.

89. As set out in the notes to the most recent accounts of Cape plc referred to below (and as has been confirmed to me by the team within the Cape Group responsible for administering the Cape Scheme) the provision for claims arising out of asbestos-related diseases is £100.4 million (estimated over a term of 30 years).

The claims history and "top-ups"

90. After the Cape Scheme was sanctioned in June 2006, the claims history (which can be seen in the annual accounts of CCS) shows that[6] up to the year end of 31 December 2023:

(1) The pay-outs to Scheme Creditors under the Scheme were c£60 million.

(2) The top-ups to the Scheme Assets pursuant to the Top-Up Requirement were c£45 million.

[6] In this regard, at [RO-957], there is a table which illustrates the amount of the claims paid out by CCS on a year-by-year basis (and the top-up to the Scheme paid in the corresponding period).

E. THE INCORPORATION OF CAPE PLC JERSEY IN 2011

Cape plc

91. Cape plc was incorporated in Jersey as a public company on 19 April 2011 (with company number 108031). [RO-3]

92. The authorised share capital was £50,000,001 divided into 200,000,000 ordinary shares of 25 pence each - and one Scheme Share of £1. [RO-12-15]

The Shareholder Scheme

93. On 28 April 2011 CIHL issued a claim form under Part 8 of the CPR [RO-958-971] in relation to a scheme of arrangement under Part 26 of CA2006 between the company and its shareholders ("**the Shareholder Scheme**").

94. The purpose and effect of the Shareholder Scheme was to achieve the reduction of capital of CIHL. Under the Scheme:

    (1) The issued capital of CIHL would be reduced by cancelling and extinguishing all the scheme shares (being all the shares in issue at the date of the scheme).

    (2) The Scheme Shareholders received one Cape plc share for each ordinary share in the CIHL

    (3) Cape plc became the ultimate holding company of the Cape Group.

95. The consent of LTDC was provided as the holder of the Scheme Share under the Voting Trust Deed dated 14 March 2006.

96. The Shareholder Scheme was sanctioned by the High Court (Chancery Division) by the order of Mr Justice Vos dated 16 June 2011. [RO-958-971]

97. On 16 June 2011, the Regulatory News Service reported that [RO-973-974]

    "On 9 May 2011, Cape plc ("Old Cape") announced details of the proposed change to the corporate structure of the Cape Group ("the Group"). The restructuring proposals ("the Proposals") will put in place a new parent company for the Group, which will be Jersey-incorporated and UK-listed, with its tax residence in Singapore and Jersey ("New Cape"). The Proposals are being implemented by means of a scheme of arrangement of Old Cape under Part 26 of the Companies Act 2006 ("the

Scheme") involving the reduction of capital of Old Cape under section 641 of the Companies Act 2006 ("the Reduction of Capital").

……

The Group will have the same business and operations after the date on which the Scheme becomes effective ("the Scheme Effective Date") as the Group had before the Scheme Effective Date. The Proposals will not result in any immediate changes in the day-to-day operations of the business of the Group or its strategy".

Under the terms of the Scheme, Scheme Shareholders will receive one New Cape Share for each ordinary share in Old Cape that they held on 6.00 pm on Wednesday 15 June 2011.

The New Cape Shares are expected to be admitted to the premium listing segment of the Official List of the UK Listing Authority and to trading on the London Stock Exchange's main market for listed securities at 8.00 am on 17 June 2011".

98. Thereafter:

(1) On 17 June 2011 the Old Cape Shares were cancelled. [RO-963]

(2) On 17 June 2011 the New Cape Shares were admitted for trading on the LSE. [RO-983]

Support for the Cape Scheme

99. In support of the Cape Scheme, on 6 May 2011, CIHL, Cape plc and CCS entered a new Scheme Guarantee ("**the New Scheme Guarantee**") and new Funding Agreement ("**the New Funding Agreement**").

100. Under these new arrangements, Cape plc agreed to make certain additional funding available to CIHL in connection with its obligations under the Funding Agreement, as well as to guarantee all present and future payments obligations of CIHL under the Funding Agreement (see, in this regard, the notes to the CCS accounts for the year ended 31 December 2013). [RO-896]

101. In addition, and as set out above, a Scheme Share in Cape plc was issued to LDTC in its capacity as the Scheme Shareholder. This had similar rights to the Scheme Share in CIHL and CCS and afforded the Scheme Shareholder the same rights as the Scheme

Shares in CIHL and CCS. These arrangements are recorded in a Voting Trust Deed between Cape plc and LDTC dated 6 May 2011. [RO-1001]

F. THE ALTRAD ACQUISITION OF CAPE PLC IN 2017

102. In 2017, Altrad UK Limited ("**Altrad UK**"), an English-law incorporated, wholly owned subsidiary of Altrad Investment Authority SAS ("**AIA SAS**"), acquired Cape plc through a public tender offer, which resulted in Cape plc becoming a wholly owned subsidiary of Altrad UK.

The Altrad Group

103. The Altrad group of companies ("**the Altrad Group**") is a world leader in the provision of industrial services, generating high-added value solutions principally for the Oil & Gas, Energy, Power Generation, Process, Environment and Construction sectors. It is also a world leader in the manufacture and distribution of scaffolding and light construction equipment.

104. It is led by its founder and President, Mohed Altrad ("**Mr Altrad**"), and is headquartered in France.

105. In terms of the main entities within the Altrad Group for current purposes:

(1) AIA SAS (company number 529 222 879) is incorporated in France. Its majority ultimate shareholder is Mr Altrad. Its officers are Mr Altrad (Chairman), me (Director), Richard Alcock (Director) and Jean-Jacques Bonnud (Director), Jean-Pierre Denis (Director), Thierry Deville (Director), Sean Fitzpatrick (Director), Alain Juillet (Director), Isabelle Montfort Garcia (Director) and Christian Parente (Director).

(2) Altrad UK (company number 10799083) is incorporated in England. Its shareholder is AIA SAS. Its directors are Mr Alcock, me, Mr Walsh and Jonathan Paul Gilmore.

106. The Altrad Group was founded in Montpelier in France in 1985.

107. Today Altrad has over 60,000 employees, operating on every continent in more than 60 countries and turns over in the region of £5 billion per year.

The acquisition of Cape plc

108. In late 2016 the Altrad Group entered discussions with the board of directors of Cape plc about a potential acquisition of the Cape Group.

109. The strategic rationale for the acquisition was clear – there was a significant overlap of clients and geographical footprint. At the time the Altrad Group was turning over around c. £2.1 billion per year, and the acquisition would propel it to a business with a turnover of c. £3 billion per year.

110. The acquisition process, including due diligence, began in early 2017, ending in mid-2017 when a public tender offer ("**PTO**") was made – reflecting the fact that Cape plc was a publicly listed company on the LSE. The terms of the PTO are set out in a Bid Conduct Agreement dated 7 July 2017. [RO-1014-1118] In this regard, the PTO stated that:

(1) The cash offer for each share in Cape plc was 265 pence, which valued the entire issued share capital at £332.3 million. [RO-1031]

(2) The cash consideration would be financed by acquisition debt provided by BNP Paribas SA ("**BNP Paribas**"). [RO-1031]

(3) The board of Altrad UK "*strongly believe that the strategic and financial rationale or the Acquisition is compelling and that it would deliver attractive near and long-term benefit for Cape and Altrad and their respective stakeholders, including the IDC Scheme*". [RO-1031]

111. In relation to the Cape Scheme, clause 6.4 of the Bid Conduct Agreement stated that: [RO-1023]

"*Altrad has undertaken to the IDC Scheme Directors and the IDC Scheme Shareholder that, whilst it intends to explore collaboratively with the IDC Scheme Directors and the IDC Scheme Shareholder (subject always to the appropriate consent of the IDC Scheme Directors and the IDC Scheme Shareholders) certain administrative revisions or clarifications to Cape's constitutional documents to facilitate intra-group transactions between members of the Enlarged Group post-Acquisition and to assist financial reporting following the Acquisition, it intends to procure that each member of the Cape Group honours its obligations under, or in connection with, the Cape Scheme (including with respect to the funding commitments for future liabilities of the IDC Scheme, the current IDC Scheme administrative arrangements and all related contractual obligations to which members of the Cape Group are subject) following completion of the Offer*".

112. The offer was conditional upon, among other matters, obtaining the required number of votes cast in favour of the acquisition. Subsequently over 90% of the votes were cast in favour of the acquisition and Altrad UK was able to proceed to purchase 100% of the issued share capital of Cape plc (the 90% trigger entitled Altrad to complete a "squeeze out" of the minority who either did not consent or did not respond).

The subsequent acquisition of Sparrows

113. During 2021-2022, Altrad Group acquired 12 companies to add a further £1.5 billion in turnover to the Altrad Group.

114. The Sparrows Group was one such acquisition ("**the Sparrows Acquisition**"). It was owned by a private equity fund, with a small interest held by its management team. The Sparrows Group services primarily offshore oil and gas installations, providing crane operators for lifting and rigging services (as well as a wind services business).

115. The Sparrows Group is headquartered in Aberdeen and has subsidiaries in the US (Texas), Middle East, Africa and Asia-Pacific regions. The client base and geographic spread is similar to the Altrad Group's, though the services differ (thus generating synergies while also expanding our offering to clients).

116. I understand that the following entities which have purportedly been served with third party proceedings in the Tibbs Claim (as defined below) ("**the Sparrows Defendants**") are based in the US:

(1) Hawk Bidco (US) Inc. (Delaware registered; file number: 5208123).

(2) Arranco US, LLC (Delaware registered; file number: 4521594).

(3) Sparrows Offshore, LLC (Delaware registered; file number: 3680898).

117. However, the only connection of the Sparrow Defendants to the Cape Group of companies is that they are also owned by Altrad UK, having been acquired by Altrad UK in July 2022 as part of the Sparrows Acquisition.

118. As such, there is not, and never has been, any other connection between these companies and the Cape Group.

119. With regard to Sparrows Offshore Group Ltd (company number SC431036), other than the fact that this company shares a registered office with another similarly named company, Sparrows Offshore Services Ltd (which is under the ultimate ownership of Altrad UK), it has no links to Altrad UK, or any other Altrad Group company, and, according to Companies House, appears to be in liquidation. I understand this company was not included in the sale to Altrad UK.

120. The Sparrows Group LLC also has no links to Altrad UK, or any other Altrad Group company.

G. THE CAPE GROUP TODAY

121. Some 7 years after the acquisition by Altrad UK, the Cape Group is fully integrated into the Altrad Group's global industrial services business.

CIHL

122. At the current time, I am the sole director of CIHL, which has its registered office at 6-7 Lyncastle Way, Barleycastle Lane, Appleton, Warrington, England WA4 4ST.

123. The Cape Group structure chart shows that: [RO-114]

(1) The immediate parent undertaking of CIHL is Cape Holdco Limited ("**Cape Holdco**"), a company registered in England and Wales. In turn, the parent of Cape Holdco is Cape Industrial Services Group Limited ("**CISG**")[7]; and the parent of CISG is Cape UK Holdings Newco Limited ("**CUKHN**").

(2) The ultimate parent undertaking and controlling party of CIHL is AIA SAS.

124. The most recent annual report and financial statements for CIHL are for the year ended 31 August 2023. These show that: [RO-1119-1135]

(1) CIHL does not trade but has material investments in subsidiaries and intercompany receivables from fellow subsidiary undertakings. [RO-1121]

(2) The profit for the year was £15.04 million. [RO-1126]

[7] This entity owns Altrad Engineering Services Limited (which in 2023 had a turnover of £32 million) and Altrad York Linings Limited (which in 2023 had a turnover of £8.5 million).

(3) CIHL had shareholders' funds of £149.39 million. [RO-1128]

(4) CIHL paid a dividend of £15.904 million to its shareholders. [RO-1128]

125. Further, the annual report and financial statements for CISG and CUKHN for the year ended 31 August 2023 show that: [RO-1139 and RO-1154]

(1) CISG paid a dividend of £30 million to CUKHN.

(2) CUKHN paid a dividend of £30 million to Cape plc.

126. CIHL holds 100% of the ordinary share capital of its principal subsidiaries. Its principal investments include:

(1) Altrad Services Limited (formerly Cape Industrial Services Limited). According to its most recent accounts, this company made profits of £25.039 million in the year ended 31 August 2023, with shareholders' funds of £34.841 million. [RO-1173 and 1179]

(2) Altrad Environmental Onshore Services Limited. According to its most recent accounts, this company had revenues of £13.687 million in the year ended 31 August 2023, with shareholders' funds of £8.743 million. [RO-1203 and 1208]

(3) Altrad Environmental Offshore Services Limited. According to its most recent accounts, this company had turnover of £7.062 million in the year ended 31 August 2023, with shareholders' funds of £5.597 million. [RO-1223 and 1229]

(4) CCS. According to its most recent accounts, this company made profits of £1.181 million in the year ended 31 August 2023, with shareholders' funds of £12.378 million. [RO-1241 and 1245]

127. However, along with these four active companies, CIHL also directly owns a further 12 dormant subsidiaries (which are referred to on the internal CIHL structure chart). [RO-115]

128. The financial statements of CIHL and its active direct subsidiaries show that they are going concerns, with substantial turnover and profit – and that substantial amounts of dividends are being paid up to the corporate chain to the ultimate parent company.

129. Accordingly, CIHL has not dissolved or forfeited its charter.

Cape plc

130. At the current time, the directors of Cape plc are me and Mr Walsh. The registered office is at *47 Esplanade St Helier Jersey JE1 0BD.*

131. The most recent annual report and financial statements for Cape plc are for the year ended 31 August 2023. [RO-1252-1310] These show that:

(1) The Cape Group is principally engaged in the provision of critical industrial services focused on the energy and natural resources sectors. [RO-1254]

(2) For the relevant accounting year, the Cape Group recorded revenue of £848.4 million (as compared with £745.4 million the previous year) and a profit of £62.6 million (as compared to £42.1 million in the previous year). [RO-1254]

(3) During the year, the Cape Group paid a dividend of £30 million to its parent, Altrad UK (as compared with £30 million in the previous year). [RO-1254]

(4) In addition, the Cape Group does not have external debt. At the time of the Acquisition, Altrad UK loaned Cape plc £160 million to pay its bank loans. This is treated as an inter-company debt (in relation to which the current balance is £160.6 million). [RO-1295]

132. The financial statements of Cape plc and its direct subsidiaries show that they are going concerns, with substantial turnover and profit.

133. Accordingly, Cape plc has not dissolved or forfeited its charter.

H. THE US PROCEEDINGS

134. I now address in detail the background and substance of the US Proceedings.

135. First, at [141] to [207] below, this section sets out the background to the Park Claim, and in particular the various iterations of the Summonses and Complaint, the Receivership Motion in the Park Claim, the Receivership Order made in the Park Claim, the selection of Mr Protopapas as the Receiver and the steps taken by Mr Protopapas as Receiver in the Park Claim.

136. Second, at [208] to [220] below, this section outlines the background to the Tibbs Claim and the Dismissal Agreement entered into by Mr Protopapas.

137. Thirdly, at [221] to [242] below, this section includes an analysis of the 3P Complaint and the allegations it makes directly against Cape.

138. Fourthly, at [243] to [289] below, there then follows a detailed account of the motions filed by the Third-Party Defendants; the position taken by Mr Protopapas in respect of those motions (including in respect of the Receivership Order and his stance on its terms, scope and effect); the findings and orders of the South Carolina Court in this regard; and the appeals filed by the Third-Party Defendants.

139. Fifthly, at [290] to [306] below, this section sets out a detailed account of the motions issued by Mr Protopapas against the various Third-Party Defendants. These include disclosure/interrogatory requests, and motions for adverse inferences.

140. Sixthly, at [307] to [326] below, this section addresses the position in terms of the timetabling of the trial of the 3P Complaint; the Motion to Remove brought by the Third-Party Defendants to move the 3P Complaint to the Federal Court; Mr Protopapas' Expedited Motion to Remand back to the South Carolina Court and the order dated 13 August 2024 of the Federal Court remanding the 3P Complaint back to the South Carolina Court, which means that the trial of the 3P Complaint is now expected to take place on 9 December 2024.

(1) Background to the Park Claim

The Initial Park Claim

141. On 4 June 2021, a claim was brought in the South Carolina Court by Isabella Park ("**Ms Park**") under claim number 2021-CP-40-02727 in respect of personal injury arising from alleged exposure to asbestos ("**the Park Claim**") [RO-1311-1380]. Ms Park died on 9 June 2021.

142. The Park Claim divided the defendants into (amongst others):

(1) Premises Defendants (who owned property and approved the use of asbestos-containing materials on their premises); [RO-1327-1328, 1342]

(2) Product Defendants (who served directly or indirectly the market for their asbestos and/or asbestos-containing products either through direct sales or utilising established distribution channels with the expectation that their products would be purchased or used within South Carolina). [RO-1324-1342]

143. The Park Claim claimed that:

(1) The defendants (at paragraph 5) were corporations who purposefully availed themselves of the privilege of doing business in the State of South Carolina and whose substantial and/or systematic business in South Carolina exposed the plaintiff to asbestos in South Carolina, subjecting them to the jurisdiction of the South Carolina Court pursuant to the South Carolina Long-Arm Statute and the US Constitution. [RO-1319]

(2) Each defendant (at paragraph 10) was liable for damages stemming from its own tortious conduct or the conduct of an "*alternate entity*". [RO-1320-1322]

144. In addition, the Park Claim included (at paragraph 10) a claim against Cape plc, on the basis that Cape plc was an "*alternate entity*" as it was a successor in interest to the "Cape Asbestos Company". [RO-1320-1321]

145. Further, it stated that Cape plc was a private limited company organised and existing under the laws of the United Kingdom of Great Britain and Northern Ireland, with its principal place of business in England. However, this is not correct.

146. Given that Cape plc is not a successor in interest to "Cape Asbestos Company Ltd" (as has subsequently been accepted by Mr Protopapas in the Opposition Memorandum at [252] to [264] below) the Park Claim against Cape plc was brought on a misconceived basis.

147. Following Adams v Cape, my understanding is that as a matter of English law the English Court will not recognise any judgment made by the South Carolina Court as Cape plc does not have the required minimum contacts with South Carolina for the exercise of personal jurisdiction.

148. The initial Park Claim was not served on Cape plc. Cape plc did not respond to the initial Park Claim.

The First Amended Summons and Complaint

149. The Summons for the Park Claim was amended on 17 November 2021 ("**the First Amended Summons and Complaint**") [RO-1381-1450] Ms Park's son, Keith, amended the complaint appearing individually and as a representative to Ms Park's estate: "*Keith W. Park as the Personal Representative of the Estate of Isabella Park*" as the plaintiff (together with Ms Park, "**the Park Plaintiffs**") [RO-1381-1450].

150. The First Amended Summons and Complaint added CIHL as a defendant [RO-1381-1450]. It referred to CIHL as a private limited company organised and existing under the laws of the United Kingdom of Great Britain and Northern Ireland, with its principal place of business in England [RO-1398]. It stated that CIHL was sued as a Product Defendant [RO-1398]. It was alleged that CIHL was also an entity that was a "*successor-in-interest to Cape Asbestos Company*" and that each of these entities was a presently operating company organised under the laws of the UK with its principal place of business in England. Further, it said that the claims against CIHL arose out of its business activities in the State of South Carolina [RO-1398]. However, this is not correct.

151. Again, following Adams v Cape, it is my understanding that as a matter of English law the English Court should not recognise any judgment made by the South Carolina Court as CIHL does not have the required minimum contacts with South Carolina for the exercise of personal jurisdiction.

152. The Park Plaintiffs contended that the First Amended Summons and Complaint was served on Cape plc and CIHL on 14 December 2021.[8] This is disputed. Neither Cape

8 Rules 4 and 4.1 of the South Carolina Rules of Civil Procedure govern the service of process for cases in South Carolina state courts. [RO-4801-4812 and RO-4813-4814] They require both the summons and complaint to be served together and further require plaintiffs to file proof of service so the court can evaluate if it has jurisdiction over a defendant (4(b), 4(g), 4.1(c), SCRCP). However, the First Amended Summons and Complaint were not served on Cape plc in Jersey as required for a company incorporated in Jersey. The position appears to be that postal service of the First Amended Summons was sought to be made on Cape plc and CHIL at a UK address: see Mr Park's Notice of Filing dated 28 August 2023 [RO-4815-4819]. No mention was made of the accompanying Complaint. In an affidavit dated 8 March 2022 [RO-1454-1456], it was stated that the English process server mailed a copy of only the First Amended Summons (and not also the First Amended Complaint) to Cape plc and CIHL identifying both "individually and as successors to Cape Asbestos Company Ltd". In any event, as stated above, it was not served on Cape plc in Jersey.

plc nor CIHL responded to the First Amended Summons and Complaint. [RO-1451-1472]

The Second Amended Summons and Complaint

153. Before CIHL's deadline to respond to the First Amended Summons and Complaint, it was amended on 23 December 2021 ("**the Second Amended Summons and Complaint**"). The Second Amended Summons and Complaint added allegations and defendants (which did not relate to Cape). [RO-1473-1543]

154. The Second Amended Summons and Complaint was not served on either CIHL or Cape plc (as has subsequently been acknowledged on behalf of Mr Protopapas as explained further at [263] below). Neither Cape plc nor CIHL responded to the Second Amended Summons.

The Park Claim is "fully resolved"

155. By an order of the South Carolina Court dated 1 December 2021, it was ordered that the trial of the Park Claim trial was to commence on 20 June 2022. [RO-1544-1547]

156. Prior to that, in an email update to the Court on 3 June 2022, Counsel for the Park Plaintiffs reported to the Court that the Park Claim was "*fully resolved*". No more is known as to the terms of any of the settlements in the Park Claim. [RO-1552]

157. Whatever the terms of the settlements in the Park Claim, none involved Cape plc or CIHL. Whilst the terms of the settlements in the Park Claim have not been disclosed, the use of the phrase "*fully resolved*" indicates that the total loss and damage claimed by the Park Plaintiffs has been agreed and paid by the settling parties. Given that these proceedings had been "*fully resolved*", perhaps unsurprisingly no trial commenced on 20 June 2022.

158. Subsequently, it has been contended by Counsel on behalf of Mr Protopapas (and not the Park Plaintiffs) that the email dated 3 June 2022 applied only to "*defendants who had appeared in the litigation and were scheduled for trial*" (see the Opposition Memorandum dated 18 October 2023). [RO-1567] It was stated that the docket

reflected that the Park Plaintiffs had filed stipulations for dismissal for those appearing defendants to effectuate their resolutions. It did not seek to expand upon how, if the Park Claim was "*fully resolved*", the claim against Cape plc and CIHL remained extant.

159. In any event, no further steps have been taken by the Park Plaintiffs in the Park Proceedings. No trial has been fixed in the Park Claim against Cape plc and CIHL. No motion for default was filed against Cape plc and CIHL. Accordingly, there is no judgment of any kind made by the South Carolina Court against Cape plc or CIHL.

The Receivership Motion

160. Notwithstanding the above, a full nine months after having informed the Court that the Park Claim was "*fully resolved*", out of the blue on 6 March 2023 Counsel for the Park Plaintiffs issued an interlocutory application in those proceedings styled as a motion to appoint a receiver over:

"*Cape plc (and its subsidiaries, affiliates, successors)*" as "*the successor in interest to Cape Industries Ltd. f/k/a Cape Asbestos Company Ltd.) ("Cape Asbestos") and its subsidiaries and global affiliates (collectively, "Cape" or the "Company"), which were and are private companies organized and existing under the laws of the United Kingdom, with its principal place of business in England.*" ("**the Receivership Motion**"). [RO-1594-1602]

161. The Receivership Motion sought to appoint Mr Protopapas as the proposed receiver of Cape plc.

162. In terms of the named entities over which the Receivership Motion sought to appoint a receiver, this was stated to be Cape plc. It was the only named entity. In the Receivership Motion no named reference was made to CIHL.

163. As indicated above, prior to the Receivership Motion, the Park Plaintiffs had not sought to enter a default judgment against Cape plc or enter judgment reflecting a liquidated sum of damages due to the Park Plaintiffs based on establishing the facts and loss. The Receivership Motion was interlocutory in proceedings against a named company that had not been served.

164. The Receivership Motion set out the following rationale for appointing Mr Protopapas as the receiver over Cape plc in the Park Claim: [RO-1594-1595]

> "*Cape plc is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.') ("Cape Asbestos") and its subsidiaries and global affiliates (collectively, "Cape" or the "Company"), which were and are private companies organized and existing under the laws of the United Kingdom, with its principal place of business in England. At all times relevant, Cape was involved in all elements of the global asbestos industry, but in particular mining many thousands of tons of raw asbestos fiber in South Africa and then selling it to the most dominant manufacturers of asbestos-containing products in the United States-substantial quantities of which were used in South Carolina. Cape also concocted a scheme to avoid its legal responsibilities to persons injured from using those end products because, startlingly, Cape deemed itself as having-in its own words-no "moral responsibility" to those end users. Rather than defending its conduct in front of juries in the United States, Cape decided to simply accept default judgments in asbestos lawsuits and ultimately flee the country, knowing that nearly all the Company's assets were in jurisdictions (namely, the U.K., South Africa, and Lichtenstein) where judgments in those lawsuits could not be enforced. Although Cape stiff-armed its creditors in the United States- namely, workers exposed to asbestos mined by Cape-and absconded to London and South Africa,* ***certain of its insurance assets presumably remain. The appointment of a receiver to marshal Cape's assets and satisfy claims is therefore the appropriate remedy, as explained below.***" (emphasis added).

165. In the Receivership Motion over Cape plc, the Park Plaintiffs sought to rely amongst other things on both (1) the establishment of the subsidiary NAAC in the US in 1954; and (2) the liquidation of NAAC on 31 January 1978, as being central to the presence of Cape plc within the jurisdiction of the South Carolina Court and as part of the alleged "*scheme*" on the part of Cape plc to avoid its alleged legal responsibilities. [RO-1598]

166. Further, the Receivership Motion contended that Cape plc had initiated a longstanding litigation strategy– starting in the 1970s – by which Cape (its subsidiaries, affiliates, successors and assigns) had "*decided to simply accept default judgments in asbestos lawsuits [that] could not be enforced*". [RO-1595] It claimed that the existing debts of NAAC were paid, with the remaining assets transferred to NAAC's direct parent company at the time, Cape Industries Overseas Ltd (a UK entity wholly owned by Cape Industries Ltd, which was the name of CIHL at that time) [RO-1598]. It contended that NAAC's liquidation was central to Cape's litigation-avoidance strategy. [RO-1598]

167. Specifically, it was put as follows: [RO-1597-1599]

> *"After the onset of asbestos-related product liability litigation in the 1970s, Cape became especially concerned with its own liability. Thus, Cape Asbestos went through tortured machinations to make it appear it was reducing oversight over NAAC, but in reality, NAAC continued to operate as a mere division or instrumentality under Cape's domination and control.*
>
> *In addition, Cape began to engage in a campaign of litigation avoidance by refusing to accept process or appear in any proceedings in the United States, including failing to respond to the Second Amended Summons in this action, as properly served pursuant to Article 10 of the Hague Convention on March 8, 2022 See Exhibit A." According to Cape executives, this strategy was warranted because they "really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of [a] US product liability cult." Piercing the Corporate Veil: Cape Industries and Multinational Corporate Liability for a Toxic Hazard, 1950-2004; Tweedale and Flynn, Enterprise & Society, June 2007, Vol.8 No. 2 pp.268-296 (1977 letter from Cape's counsel) attached as Ex. 25.*
>
> *Ultimately, to avoid paying damages to workers whom were made sick or killed by using its asbestos, Cape resolved to liquidate NAAC, effective January 31, 1978. See, e.g., Ex. 26, CAPEOO 1035 (April 1978 letter noting liquidation and requesting Cape Asbestos official to stop sending accounting memoranda to former NAAC officials, "for safety's sake"). Existing debts of NAAC were paid, with remaining assets transferred upstream to NAAC's direct parent company at the time, Cape Industries Overseas Ltd. (a U.K. entity wholly owned by Cape Industries Ltd.). See Ex. 27, CAPE000593 (noting conveyance of assets). NAAC's liquidation was central to Cape's litigation-avoidance strategy, based on legal advice that no British or South African court would enforce a judgment against a Cape entity if it never appeared again in the United States.*
>
> *Yet, Cape continued to contemplate schemes to facilitate the sale of asbestos to U.S. customers while minimizing its product-liability risk. For example, Continental Products Corporation (using the same physical address as NAAC in Chicago, Illinois) was formed to "act as a commission agent for the future sales of asbestos from South Africa" in the United States, with South African mines selling to a new Lichtenstein subsidiary called Associated Mines Company, which in turn sold asbestos to the United States under its own invoices. Ex. 32, CAPE0003 86; see also Ex. 33, CAPE00053 l (announcement of Continental Products Corporation as "Agent to handle the North American requirements for Amosite and Crocidolite asbestos fibre"). The express "purpose of this corporate arrangement [was] to eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to lawsuits brought against it under theories of strict liability concerning products liability on the sale of asbestos in the United States." Ex. 34, CAPE000377 79."*

168. In terms of the proposed function of such a receiver, the Park Plaintiffs stated in the Receivership Motion that (emphasis added): [RO-1599-1600]

> "*Asbestos claimants have been generally unsuccessful in recovering against Cape entities (except for a single instance in which Cape contributed to the settlement of certain asbestos claims brought in Texas). Indeed, due to its complex scheme to liquidate NAAC and not respond to litigation, Cape left its creditors-namely, the thousands of people it exposed to asbestos-without any meaningful entity to proceed against and, apparently, disposed of its United States-based assets without regard to those creditors.* ***Now, apparently, all that potentially remains of Cape in the United States is its historical insurance coverage****.*
>
> *Plaintiffs request that this Court appoint a receiver to marshal Cape's assets, including insurance coverage, and that the receiver be granted such further and other powers as may be appropriate, including, but not limited to, the acceptance of service of claims, retaining counsel, making claims against insurance policies that may exist, and otherwise wholly administer all of the assets and attendant business of Cape.*"

169. In other words, the proposed focus of the Receivership Motion appeared to be directed towards the marshalling of Cape's assets, including insurance coverage, and the administering those assets and the business of Cape plc.

170. By way of background, I understand that the South Carolina Code – specifically the provision dealing with the appointment of a receiver at S.C Code 15-65-10 [RO-1603] – does not provide for the appointment of a receiver over a solvent foreign entity that has no assets in the State of South Carolina and against which no judgment has been entered in South Carolina.

171. Further, I understand that the South Carolina Code does contain provisions specifically in respect of the appointment of receivers which arise "*after judgment*" - S.C. Code 15-65-10(2) or 15-65-10(3). [RO-4823] In accordance with South Carolina procedural requirements, receiverships which arise "*after judgment*" are explicitly granted the authority to pursue derivative claims.[9]

172. Given that there is no judgment against Cape plc or CIHL, the Park Plaintiffs were not able to apply for a receivership under S.C. Code 15-65-10(2) or 15-65-10(3) (and did not seek to do so).

[9] Rule 14(a) at [RO-4820].

173. Rather, the Receivership Motion sought to rely on the following provisions of the South Carolina Code for the appointment of a receiver: [RO-1600-1601]

> "*South Carolina Code § 15-65-10(4) states that:*
>
> *A receiver may be appointed by a judge of the circuit court, either in or out of court: ... (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 ....*
>
> *It is undisputed that Cape, through its complex scheme and 1978 liquidation of its American subsidiary, NAAC, has intentionally fled the United States to avoid its liabilities and obligations to its creditors and to the extent it ever properly qualified itself to do business in South Carolina has forfeited those rights. See, e.g., Black's Law Dictionary (11th ed. 2019), forfeiture ("loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty") Thus, appointment of a receiver over Cape and its affiliates is appropriate under subsection (4).*
>
> *South Carolina Code §15-65-10(5), moreover, states that:*
>
> *A receiver may be appointed by a judge of the circuit court, either in or out of court: ... (5) In such other cases as are provided by law or may be in accordance with the existing practice ....*
>
> *Section 15-65-10(5) reflects an "old practice" of equity and "important principle of law" to correct injustice, particularly "when a debtor is trying to defeat his creditors by an act or course of conduct which indicates moral fraud- a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts." Va.-Carolina Chem. Co. v. Hunter, 66 S.E. 177, 179 (S.C. 1909). Thus, if a business "disposes of large resources" but "leaves . . . debts unpaid" while "set[ting] creditors at arm's length by refusing ... to take any interest in the satisfaction of their claims" then there is a prima facie case of fraud warranting appointment of a receiver. Id. at 180 (citing Miller v. Hughes, 12 S.E. 419 (S.C. 1890)). It is respectfully submitted that the appointment of a receiver over Cape and its affiliates is appropriate under subsection (5) because Cape engaged in an intentional scheme to defraud its creditors by refusing to appear or accept service in the United States after being faced with substantial asbestos-related liabilities."*
>
> *Section 15-65-20 requires that notice of this application be provided to the party to the action whose property is sought to be put in the hands of the receiver. Plaintiffs, concurrently herewith, have provided copies of this motion to Cape plc."*

174. As stated in the provision, the rationale for 15-65-10(4) is that a receivership order in these circumstances can be made when a company (1) has been dissolved; (2) is

insolvent or in imminent danger of insolvency, or (3) has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations.

175. These are obviously limited and highly prescribed situations where a receiver is required to conduct the affairs of the company. Neither Cape plc or CIHL have been dissolved, or are insolvent, or are in imminent danger of insolvency (and it is not understood how this has been represented to the appointing court to be the case).

176. Further, the basis on which it was contended that Cape plc (or CIHL for that matter) had "*forfeited*" their corporate rights is far from clear. The Receivership Order appears to be based on the allegation made in the Receivership Motion that Cape had "*intentionally fled the United States to avoid its liabilities and obligations to its creditors and to the extent it [was] ever properly qualified to do business in South Carolina ha[d] forfeited those rights*". [RO-1600] However, neither Cape plc or CIHL are incorporated in the State of South Carolina, nor have they ever operated in the State of South Carolina and they have no assets there.[10]

177. In respect of § 15-65-10(5), although neither Cape plc or CIHL have any debts in the State of South Carolina and none were referred to in the Receivership Motion, the basis on which § 15-65-10(5) was sought to be relied upon was that it reflected a practice and important principle of law to correct injustice "*when a debtor is trying to defeat his creditors by an act or course of conduct which indicates moral fraud – a conscious intent to defeat, delay, or hinder his creditors in the collection of its debts*".

178. In this regard, the Receivership Motion stated that the appointment of a receiver over Cape plc was appropriate because Cape plc had engaged in an intentional scheme to defraud creditors by "*refusing to appear or accept service in the United States after being faced with substantial asbestos-related liabilities*". [RO-1601] This is incorrect. All that the Cape Group has sought to do is avail itself of the decision in Adams v Cape which, as set out in the Overview section, has formed the bedrock upon which they have conducted their business in the years since that decision.

[10] In this regard, it is to be noted that "*forfeiture*" of corporate rights is a specific term of art that refers to a forfeiture action resulting in final forfeiture judgment by a South Carolina court pursuant to established South Carolina law (eg. SC Code. Ann. § 39-3-20) [RO-4822]. There has been no final judgment of "*forfeiture*". It is also to be noted that no evidence was adduced in support of the Receivership Motion that Cape plc (or CIHL) is dissolved, is insolvent or in imminent danger of insolvency or that it has forfeited its corporate rights.

179. In relation to service, the Receivership Motion noted that § 15-65-20 required that notice of the application be provided to a party to the action whose property was sought to be put in the hands of the receiver and that the Plaintiffs had provided copies of the motion to Cape plc. [RO-1601] At footnote 13 of the Receivership Motion, it was stated that the Park Plaintiffs had placed into the hands of DHL a copy of the motion and its exhibits to the same address at which service was perfected (in other words to an address in England). This was not to the registered address of Cape plc, the entity over which the Receivership Motion stated the application related to (and which is based in Jersey).[11]

The Receivership Order

180. On 16 March 2023, a receivership order was granted over Cape plc in favour of Mr Protopapas by The Honourable Jean H. Toal ("**Toal J**") (the "**the Receivership Order**"). [RO-1604-1607] The Court granted the Receivership Motion without a hearing. The draft order provided by Counsel for the Park Claimants was adopted in full. There was no judgment setting out the reasons for the Receivership Order or setting out its scope.

181. On its face, the Receivership Order stated that the Court found the application meritorious under the applicable statute because Cape plc and its subsidiaries and global affiliates (collectively "Cape" or "the Company") "*have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case*

[11] The South Carolina Code § 15-65-20 [RO-4823] provides that a company that is subject to a motion to appoint a receiver is required to receive at least four days' notice of the application for receiver appointment. Rule 5(b)(1), SCRCP, provides that [RO-4824-4825] "*[s]ervice by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.*" and there is no rule / requirement mandating proof of service. In the Receivership Motion it was represented that Cape plc had "*fail[ed] to respond to the Second Amended Summons in this action, as properly served pursuant to Article 10 of the Hague Convention on March 8, 2022.*" [RO-1594-1602] This was incorrect. In fact, the document filed by Mr Park did not refer to the service of the Second Amended Summons on 8 March 2022, rather it referred to postal service of the First Amended Summons on 14 December 2022 (as referred above). It therefore erroneously stated that a UK company named Cape plc was served with the Second Amended Summons on 8 March 2022, when in fact there was no UK company named Cape plc currently in existence. Whilst proof of service is not required, it is noted that the Park Plaintiffs did not in fact adduce a proof of service, or a delivery confirmation, showing that the Receivership Motion was served via DHL on CIHL. The Public Index for the Park Claim does not contain an indication that Cape plc or any other entity potentially within the scope of "Cape Industries Ltd (f/k/a Cape Asbestos Company Ltd) and its subsidiaries and global affiliates" was ever served with process, or with notice of Mr Park's motion to appoint a receiver.

and therefore, the Plaintiffs request for an expedited ruling on this motion is appropriate and granted." [RO-1604]

182. In terms of which company/corporate entity the Receivership Order was granted over, it carried forward the same issues identified in respect of the Receivership Motion. In particular:

(1) As can be clearly seen, Cape plc is the only company identified by name in the Receivership Order.

(2) Even though CIHL had been named as a separate defendant, the Receivership Order did not refer to or state that it created a receivership over CIHL.

183. Accordingly, the Receivership Order was made against Cape plc, a Jersey company that was first incorporated in 2011 which is not a successor to "Cape Asbestos Company Limited" (i.e. CIHL), a UK company first incorporated in 1893.

184. As set out below, it has subsequently been acknowledged by Mr Protopapas in his Opposition Memorandum that Cape plc is not a successor to "Cape Asbestos Company Limited" and that it is not the company against whom that claim can be made. [RO-1557-1593]

185. The Receivership Order provided Mr Protopapas with a range of powers in his role as receiver over "Cape plc".

186. It granted "*the power and authority [to] fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be*". [RO-1604]

187. Further, it provided that this was inclusive of, but not limited to, the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape's insurance carriers. As set out below, Cape does not have any insurance in the US (and has not had any for nearly 50 years).

188. The Receivership Order also confirmed in terms of the steps that Mr Protopapas was required to take, namely that:

"*the Court expects the Receiver to investigate the existence of all insurance coverages potentially available to the company in receivership. The Receiver will provide potential insurers with lists of work sites, contractors, and insurance brokers and agents to facilitate the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of the company in receivership or any company for whom the company in receivership did work as an "additional insured" under coverage written to another entity). The Court expects all insurers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.*" [RO-1605-1606]

189. The terms of the Receivership Order also provided Mr Protopapas with the following rights, authority and powers with respect to the property of Cape plc as the referenced "Respondent", namely to: [RO-1605]

(1) collect all accounts receivable of Respondent and all rents due to the Respondent from any tenant;

(2) to change locks to all premises at which any property is situated;

(3) open any mail addressed to the Respondent and addressed to any business owned by the Respondent; redirect the delivery of any mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver;

(4) endorse and cash all checks and negotiable instruments payable to Respondent, except pay checks for current wages;

(5) hire a real estate broker to sell any real property and mineral interest belonging to the Respondent;

(6) hire any person or company to move and store the property of Respondent;

(7) to insure any property belonging to the Respondent (but not the obligation);

(8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Respondent;

(9) obtain from any landlord, building owner or building manager where the Respondent or the Respondent's business is a tenant, copies of the Respondent's lease, lease application, credit application, payment history and copies of

Respondent's checks for rent or other payments;

(10) hire any person or company necessary to accomplish any right or power under this Order; and

(11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Respondent may be situated, and to review and obtain copies of all documents related to same.

190. In terms of whether the Receivership Order authorised Mr Protopapas to initiate derivative third-party proceedings, as noted above my understanding is that a receiver appointed under SC Code § 15-65-10(2) or 15-65-10(3) i.e., "*after judgment*" has the express authority to pursue derivative claims. However, no such provision is provided for in respect of a receiver appointed under SC Code § 15-65-10(4) or 15-65-10(5). [RO-1603]

191. So, whilst the Receivership Motion sought the appointment of a receiver for Cape for all purposes, it did not expressly seek permission to file a derivative third-party complaint, and the Receivership Order did not specifically authorise the Receiver to initiate any such derivative third-party complaints. On its face, the Receivership Order expressly included an "*in this case*" limitation. [RO-1604-1607]

192. In terms of the territorial effect, the Receivership Motion did not directly address whether the Receivership Order should be limited in its effect to the State of Carolina and the basis on which an all-encompassing order over all the assets and business activities of Cape plc could be made. As set out below, the stance subsequently taken by Mr Protopapas in the Opposition Memorandum is that the Receivership Order does have extra-territorial effect and is worldwide over all the assets and business activities of the company covered by the Receivership Order.[12] [RO-1589]

[12] In this regard, it is to be noted that the South Carolina receivership statute acknowledges an "in-state-only" reach for receiverships (SC Code Ann § 15-65-10(4)). SC Code § 15-65-10(4) limits a South Carolina receivership "in like cases, of the property within this State of foreign corporations". [RO-1603] Further, it is the Commerce Clause which gives Congress the power to regulate interstate and international commerce and so such remedies are only available through the federal law and federal courts. The Receivership Motion did not address how such an order can be squared with the principles of international comity, given that it purports to interfere with the pre-existing exclusive jurisdiction of a foreign court in respect of matters concerning the corporate status of a company incorporated and operating in that jurisdiction. Further, no mention was made in the Receivership Motion of the

193. In addition, the Court added a further order as follows: [RO-1606]

"*The Court further orders that, as the Receiver Court, 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.*"

194. Finally, it is to be noted that the Receivership Order appointing Mr Protopapas made no finding that the court had personal jurisdiction over Cape plc (or any other entity).

195. The Claimants' position is that the South Carolina Court did not have jurisdictional competence, as a matter of English private international law, to appoint Mr Protopapas as receiver over them or their assets (and that he does not have legal authority to act or purport to act on their behalf).

The Selection of Mr Protopapas as the Receiver

196. As stated above, in the Receivership Motion the Park Plaintiffs' Counsel proposed to appoint Mr Protopapas as the receiver of Cape plc.

197. Mr Protopapas is a South Carolina based attorney with a firm named Rikard & Protopapas. I understand that he was previously a judge's associate to Toal J. According to his website biography his practice includes "*representing clients who have suffered catastrophic personal injury in automobile and trucking accidents, insurance bad faith cases and complex insurance coverage issues.*"[13]

198. Given his background as a plaintiffs' attorney representing personal injury clients, Mr Protopapas was arguably an unsuitable nominee for the Park Plaintiffs to act as the receiver in this case.

199. However, as set out below, his subsequent conduct has demonstrated that this is undoubtedly the case.

200. In this regard, it is to be noted that Mr Protopapas has claimed that documents between himself and plaintiffs' counsel in these proceedings are protected by attorney-client,

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2006 Scheme of Arrangement and the jurisdiction previously exercised by the English Court over the assets of the true successor in interest to Cape Asbestos Company Limited in 2006.

[13] This is referred to in his CV at https://rplegalgroup.com/attorney/peter-protopapas/: [RO-4826-4828]

common interest, and work product privileges, such is the proximity of the relationship between the Park Plaintiffs and Mr Protopapas.[14]

201. Moreover, it appears that Mr Protopapas is already a receiver over multiple corporate entities involved in the asbestos litigation docket in South Carolina, US. It is to be noted that Mr Protopapas is also acting as a receiver over at least a further 23[15] companies (in addition to Cape plc) in asbestos litigation cases, having been appointed by Toal J in all cases on the application of the same counsel who applied for the receivership over Cape plc: [RO-1662-1663]

202. Each of the above-mentioned receiverships have been ordered by Toal J, the judge presiding over both the Park Claim, the Tibbs Claim (as referred to below) and the 3P Complaint (as referred to below)

The Locke Lord Summons

203. On 12 April 2023 Mr Protopapas, issued a third-party summons in the Park Claim as the Receiver for "Cape, PLC", against Locke Lord LLP ("**the Locke Lord Summons**") in its capacity as the former attorney for NAAC. [RO-1666-1673]

204. The summons stated that Mr Protopapas was the court-appointed officer of Cape plc "*and its affiliate North American Asbestos Corporation*" who was tasked with marshalling the assets of Cape and its affiliates and that Locke Lord LLP was an LLP organised under the State of Delaware, with its principal place of business in the State of Texas. [RO-1669-1670] It stated that pursuant to the Receivership Order Mr Protopapas controlled the attorney-client privilege of Cape and its affiliates. Given

[14] [RO-1989]. The same common interest privilege is asserted by Mr Protopapas as between himself and the Tibbs Plaintiffs.

[15] These are (a) Covil Corp. (2018-CP-40-04940) (b) Starr Davis Company, Inc. (2019-CP-40-00076) (c) Starr Davis Company of S.C., Inc. (2019-CP-40-00076) (d) Southern Insulation, Inc. (2019-CP-40-00076) (e) Great Barrier Insulation Co. (2020-CP-40-02692) (f) J&L Insulation, Inc. (2020-CP-40-01952) (g) Pipe & Boiler Insulation, Inc. (2020-CP-40-01952) (h) Piedmont Insulation Inc. (2020-CP-40-004475) (i) Presnell Insulation Co., Inc. (2020-CP-40-01364) (j) Flame Refractories, Inc. (2021-CP-40-03484) (k) General Boiler Casing Co. (2021-CP-40-03484) (l) General Boiler Casing Co. (2021-CP-40-03484) (m) Payne & Keller Co. (2021-CP-40-03484) (n) United Construction Co. of Rome (2021-CP-40-03484) (o) Standard Insulation Co. (2021-CP-40-03484) (p) J.R. Deans Co., Inc. (2021-CP-40-03484) (q) HEFCO, Inc. (2021-CP-40-03484) (r) Davis Mechanical Contractors, Inc. (2021-CP-40-03484) (s) Heat & Frost Insulation Co. (2021-CP-40-06190) (t) Whittaker Clark & Daniel, Inc. (2022-CP-40-01265) (u) Beaty Investments, Inc (2022-CP-40-01241) (v) Atlas Turner Co., Ltd. (2022-CP-40-03834) (w) Asbestos Co., Ltd. (2022-CP-40-03834.

that the South Carolina Court is not competent to exercise jurisdiction over the Claimants or their assets, that summons was issued without authority.

205. The Locke Lord Summons related to an order seeking disclosure of files of NAAC and financial records. It sought damages on the basis that Locke Lord, LLP had allegedly "*ignored Plaintiff's interests by refusing to provide him with his files and thereby causing delay and increased costs.*" [RO-1671]

Current Status of the Park Claim

206. I understand that no further steps have been taken by Mr Protopapas in the Park Claim.

207. Further, I understand that no additional substantive steps have been taken by the Park Plaintiffs in the Park Claim against Cape plc.

(2) Background to the Tibbs Claim

208. On 5 April 2023, a claim was brought in the South Carolina Court by John A. Tibbs and Margaret B. Tibbs against various defendants under claim number 2023-CP-40-01759 ("**the Tibbs Claim**") ("**the Tibbs Plaintiffs**") in respect of alleged personal injury relating to the exposure to asbestos. [RO-1674-1769]

209. Cape plc is a named defendant in the Tibbs Claim. CIHL is not named as a defendant in the Tibbs Claim. [RO-1675]

210. Cape plc has not been served with the Tibbs Claim in Jersey. CIHL has also not been served with the Tibbs Claim in the UK.

211. Further, the Tibbs Plaintiffs have not issued a motion seeking to appoint Mr Protopapas as the receiver over Cape plc or CIHL. Also, no application for judgment has been made against Cape plc or CIHL in the Tibbs Claim.

212. Despite this:

(1) Mr Protopapas has purported to act as a receiver of "Cape plc" in the Tibbs Claim.

(2) As such, he has taken no steps to defend that claim other than on 29 June 2023, filing an "Answer of Cape plc" that included only a general denial of the Tibbs

Claim "*to the extent not inconsistent with the allegations of its Third Party defences*" and a reservation of all affirmative defences. [RO-1770-1773]

The Dismissal Agreement

213. In respect of the Tibbs Claim, the current position is that by an agreement dated 12 June 2023 Mr Protopapas and the Tibbs Plaintiffs have agreed to dismiss the Tibbs Claim against Cape plc ("**the Dismissal Agreement**").

214. The Dismissal Agreement was first referred to at a pre-trial hearing on 10 April 2024 in the Tibbs Claim, where it was disclosed by Counsel acting on behalf of the Tibbs Plaintiffs that Cape plc (or CIHL) was not included among the remaining defendants because it was subject to an agreement having been reached with the Tibbs Plaintiffs [RO-1806, lines 16 and 17]. This followed on from an email dated 8 April 2024 from Counsel acting on behalf of the Tibbs Plaintiffs to the South Carolina Court, in which it was expressly stated that the remaining defendants in the Tibbs Claim are simply Asbestos Company Ltd ("**ACL**"). [RO-1965]

215. More recently, in a notice of removal application dated 28 June 2024 (referred to in more detail below) made by Anglo American to remove the 3P Complaint (defined below) from the State Court to the Federal Court, Anglo-American referred to and attached a sealed copy of the Dismissal Agreement, over which Mr Protopapas was claiming "*confidentiality*". [RO-1971, footnote 2][16] It stated at paragraph 8 that "*Pursuant to the Dismissal Agreement, Plaintiff agreed to toll the statute of limitations on the Tibbs plaintiffs' claims against Cape plc in exchange for the Tibbs plaintiffs' agreement to dismiss their claims against Cape plc*"; and at paragraph 9 it stated that "*the Dismissal Agreement demonstrates that at the time Plaintiff filed this lawsuit against the defendants on June 30 2023, there was no active dispute between Plaintiff and the Tibbs plaintiffs.*" [RO-1970]

216. In other words, the Tibbs Plaintiffs and Mr Protopapas appear to have reached an agreement which compromises the Tibbs Claim and at the same time have agreed to toll the statute of limitations if a further claim were to be brought. It is assumed that

[16] As it is alleged that the Dismissal Agreement is confidential and has been filed under seal pursuant to a confidentiality order entered by the court in South Carolina, it is not exhibited to this witness statement.

this may have been designed to preserve the position so that if a new claim were subsequently brought it would not be barred by virtue of the statute of limitations.

217. However this is put, even if Mr Protopapas had any authority (which I do not believe to be the case), the logic behind the Dismissal Agreement is that it involves the compromise of those proceedings and there is no longer any "lis" between the parties and on that basis they have agreed that the Tibbs Claim against Cape plc is to be dismissed.

218. It is also noteworthy that Mr Protopapas has claimed that the Dismissal Agreement is subject to common interest privilege [RO-1980-1992] in circumstances where he is purporting to act on behalf of Cape at arms' length from the Tibbs Plaintiffs. It is not understood how any common interest privilege could arise in these circumstances if that indeed were the case.

219. Notwithstanding the Dismissal Agreement, Mr Protopapas has not accepted that the Tibbs Claim is no longer extant and to be dismissed (and this position has now been confirmed in the Remand Order referred to below at [321]). Instead, he has been purporting to take the steps set out below on behalf of Cape plc.

220. As a matter of English law, it is my understanding that the steps being taken by Mr Protopapas are not steps taken by an authorised agent of Cape plc or CIHL.

(3) <u>The 3P Complaint in the Tibbs Claim</u>

221. Despite the Dismissal Agreement, on 30 June 2023 Mr Protopapas has taken it upon himself to issue third party proceedings in the name of and on behalf of Cape plc against a variety of defendants (the "**3P Complaint**"). [RO-1993-2059]

222. At paragraph 1 of the 3P Complaint, it stated that it was brought by Cape plc "*appearing by and through its duly appointed Receiver*". [RO-2001] It stated that on 17 March 2023, the Court appointed Mr Protopapas as the Receiver to undertake actions to administer all assets on behalf of Cape plc. [RO-2002]

223. As set out above, Mr Protopapas had no authority to issue the 3P Complaint on behalf of Cape plc.

224. Further:

(1) As the Receiver of Cape, Mr Protopapas has a duty to act on behalf of the companies of which he is the receiver and in their interests – and not the interests of third parties.

(2) The 3P Complaint involves making highly contentious allegations directly against Cape that are plainly contrary to the best interests of Cape for the reasons set out below.

225. The 3P Complaint was stated to be brought by "*Cape plc, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas*" against various third party defendants ("**the Third-Party Defendants**")[17] including, but not limited to (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 (viii) Hawk Bidco (US) Inc (ix) ArranCo US LLC (x) Sparrows Offshore LLC. [RO-1995-1996]

226. The 3P Complaint categorised the Third-Party Defendants into 3 groups: (1) the Altrad Third-Party Defendants; (2) the Oppenheimer Third-Party Defendants; and (3) the Charter Third-Party Defendants. [RO-2047-2048 and RO-2050]

227. As for the Altrad Third-Party Defendants, these are stated to be:

(1) Cape subsidiaries or affiliates based in the UK (namely Cape Holdco Ltd, Cape UK Holdings Newco Ltd, Cape Industrial Services Group Ltd and Altrad Services Ltd f/k/a Cape Industrial Services Ltd).

(2) Cape owners based in the UK and France (namely AIA SAS, Altrad UK and the majority shareholder and founder of the Altrad Group, Mohed Altrad).

(3) Cape affiliates in the US (namely Hawk Bidco US Inc, Arranco US LLC, Sparrows Offshore LLC – which are owned[18] by Altrad UK) ("**the Sparrow**

[17] There are, in total, more than 100 Third-Party Defendants named in the 3P Complaint.
[18] The 3P Complaint also names The Sparrows Group LLC and Sparrows Offshore Group Ltd as defendants. Neither of these companies have any links to the Altrad Group (and, according to Companies House, the second of them is in liquidation).

Third-Party Defendants"). [RO-2047]

228. The 3P Complaint alleges (at paragraph 119) that each of these entities are either successors-in-interest to Cape and its subsidiaries and affiliated entities, or beneficiaries from – and continuing participants in – Cape's liability avoidance scheme. [RO-2047]

229. As for the Oppenheimer Third-Party Defendants, they include Anglo American, De Beers PLC, De Beers Centenary AG, De Beers Consolidated Mines Ltd (n/k/a De Beers Consolidated Mines Proprietary Ltd) and De Beers UK Ltd. [RO-2048]

230. As for the Charter Third-Party Defendants, they include Charter, its subsidiary Central Mining, and ESAB (the parent company, and alleged successor in interest to Charter and Central Mining). [RO-2050]

231. As against each of the Third-Party Defendants, it is alleged that they have facilitated, caused, or directed Cape's US-based asbestos sales and liability avoidance scheme, or otherwise acted as successors in interest to or beneficiaries of entities involved in that scheme.

232. In the Introductory Statement to the 3P Complaint it is stated that: [RO-2002]

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

233. Amongst other things, despite the 3P Complaint purportedly having been issued by Mr Protopapas, the 3P Complaint makes a number of highly contentious assertions

directed against Cape itself. These include the following assertions (which are admissions by Cape, and which now form part of the court record), namely that:

(1) Cape's historic operations involved a complex scheme to sell millions and millions of dollars of asbestos – knowing with certainty that it would kill and maim tens of thousands of Americans – while, at the same time, developing and executing a ploy to escape any legal or financial responsibility to the people harmed by intentionally depleting its US-based subsidiary of attachable assets (paragraph 41). [RO-2010]

(2) Cape and its affiliated domestic and foreign entities got extraordinarily wealthy off the suffering and deaths of tens of thousands, and then cheated the system to escape responsibility for its and their tortious misconduct (paragraph 41). [RO-2010]

(3) Cape established NAAC in 1953 and designed NAAC to operate as Cape's wholly controlled instrument for the purpose of expediting and facilitating the movement of asbestos from South African mines into the US (paragraphs 70, 72). [RO-2027-2028]

(4) At the direction of the amalgamated Cape/Oppenheimer network, Cape and NAAC implemented a conscious pattern of product distribution of asbestos nationally resulting in NAAC selling asbestos to customers in the US (paragraph 75). [RO-2029]

(5) NAAC's operations and decision-making were dominated by Cape and its owners, with NAAC not permitted to borrow money without Cape's approval and being forced to pay dividends to Cape, thereby depleting the assets reachable by NAAC's creditors in the US (paragraph 79). [RO-2031]

(6) Cape's products caused individuals (including residents of South Carolina) to be exposed to asbestos and suffer bodily injury, which has resulted in myriad suits against Cape ("Asbestos Suits") including the Tibbs Claim (paragraph 74). [RO-2029]

(7) Because of Cape's domination of NAAC, and as part of the liability-avoidance

scheme, Cape directed NAAC to buy wholly inadequate insurance coverage to address its massive future products-liability exposure (paragraph 80). [RO-2031-2032]

(8) Cape led efforts in the US and internationally to hide the risks of asbestos (paragraphs 81-88). [RO-2032-2035]

(9) Cape and its affiliated entities undertook numerous actions in a deliberate effort to escape responsibility for the harm caused by Cape's asbestos products (paragraphs 89-93) [RO-2036-2038]

(10) Cape liquidated NAAC, siphoning any remaining assets out of the US to Cape Industries Overseas Ltd in an effort to reduce the assets available to creditors but at the same time Cape contemplated ways to continue the flow of asbestos to US customers and asbestos profits out of the US (paragraphs 94-98). [RO-2038-2040]

(11) Although Cape had entered into certain agreements to address bodily harm caused, including the 2006 Scheme of Arrangement with former employees in the UK, Cape had done nothing about its massive unpaid responsibility for the death and illness caused by its asbestos products in South Carolina and elsewhere in the US (paragraph 114). [RO-2046]

234. By their very nature, these assertions involve wide ranging claims against Cape. They also purport to constitute admissions on behalf of Cape and are clearly against Cape's interests. They are designed to open up the prospect of expanding and maximising the liability of Cape to third parties. Further, as a result of the order of Toal J dated 23 May 2024 referred to at [305], these assertions have now been deemed to be true.

235. This is also clear in terms from the remedies sought against the Third-Party Defendants in the 3P Complaint. The claims are for an <u>indeterminate amount</u> (to potentially be made available for potential claimants) under the following causes of action, namely:

(1) <u>Unjust enrichment</u> – as to which it is said that it would be inequitable for the Third-Party Defendants to retain any benefit from Cape as a result of the liability

avoidance scheme without paying the Receiver for its value and that the proper and appropriate remedy under the circumstances is for the Court to exercise its equitable power and authority to require the Third-Party Defendants to return funds that have been wrongfully diverted (paragraphs 125-130). [RO-2051-2052]

(2) Constructive trust – as to which it is contended that the Third-Party Defendants have taken possession of property – cash and assets – which they should not have taken through the wrongful acts alleged and that the funds they (or predecessors in interest) have wrongfully diverted should have remained available to bodily-injury claimants in the US, including in South Carolina (paragraphs 131-136). [RO-2052-2053]

(3) Alter ego and veil-piercing liability – that in furtherance of the ends of justice, the South Carolina Court may exercise personal jurisdiction over the Third-Party Defendants and impose liability on them for the acts of Cape plc, which the Third-Party Defendants are said to be responsible for having dominated, controlled, facilitated, or benefitted from Cape's successful asbestos business and liability-avoidance scheme and that the proper and appropriate remedy is for the Court to declare the Third-Party Defendants are *alter egos* of Cape and thereby liable to Cape and/or the Receiver for asbestos suits (paragraphs 137-141). [RO-2053-2056]

236. It is therefore self-evident that the 3P Complaint does not seek to protect the company over which Mr Protopapas has purportedly been given authority, but to generate liability for that company and to obtain an advisory opinion on alter ego and veil piercing liability against Third-Party Defendants when no asbestos exposure liability against any Cape entity has been adjudicated in any South Carolina court.

237. It is also self-evident that in substance the 3P Complaint amounts to a proxy claim for the benefit of potential asbestos plaintiffs in the US. It seeks to turn Cape into a corporate vehicle which – having been sued in South Carolina for the benefit of asbestos plaintiffs (and in circumstances where there has been no finding of liability against Cape plc or CIHL in the Tibbs Claim) – can then be used to sue its own

affiliates/parents for the benefit of the Tibbs Plaintiffs (and other future asbestos plaintiffs).

238. Further, this is occurring in the State of South Carolina, which is a state where Cape plc and CIHL are not incorporated, do not conduct business and have no assets. It is patently not litigation which is in the best interests of Cape and cannot (indeed does not) remotely purport to be so.

239. In reality, the 3P Complaint demonstrates that Mr Protopapas is acting against Cape – a company that he is required to protect – and contrary to its best interests.

240. Appended to the 3P Complaint in the Tibbs Claim were a number of discovery and interrogatory requests, including:

(1) Interrogatories in relation to ownership of the various third-party defendants, their insurance policies and documents prepared for their defence; and [RO-2130, RO-2244 and RO-2357]

(2) Wide-ranging requests for document production, including 81 different document types. These requests are very broad in scope, most of which are either without date limit, or if limited extend to the documents that have existed since the formation of the relevant defendant. [RO-2140, RO-2254 and RO-2367]

241. Mr Protopapas had no authority from Cape plc or CIHL to make such applications.

242. The Altrad Third-Party Defendants and the Sparrows Third-Party Defendants did not file any separate service acknowledgments. Instead, each responded within the deadline for responding from service with preliminary motions to dismiss in lieu of responding, including challenging personal jurisdiction and the propriety of the receivership. No contest as to service was made by the Sparrows Third-Party Defendants. It should be noted that all submissions were filed subject to a reservation as to jurisdiction. No response was submitted for Altrad UK or indeed any of the Cape entities.

(4) The Motions made by the Altrad Third-Party Defendants and the Sparrows Third-Party Defendants

243. The following paragraphs set out a number of motions, objections and appeals that have been filed by the Altrad Third-Party Defendants and the Sparrows Third-Party Defendants.[19]

244. On 21 August 2023, the Sparrows Third-Party Defendants filed:

(1) A Motion to dismiss the 3P Complaint for lack of personal jurisdiction and to request a stay of discovery (submitted with associated affidavits). [RO-2400-2410]

(2) A Motion to dismiss the 3P Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure, and an alternative Motion to obtain a more definite statement and to strike out or sever the 3P Complaint pursuant to Rules 12(e) and 14 of the South Carolina Rules of Civil Procedure; [RO-2411-2436] and

(3) A Motion to dismiss Mr Protopapas' receivership over Cape plc. [RO-2437-2457]

245. On 1 September 2023, the Altrad Third-Party Defendants filed:

(1) A Motion to request that: [RO-2461, 2468, 2482]

(1) The Court dismiss the claim for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure;

(2) The Court dismiss the claim for failure to state a claim pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure; and/or

(3) In the alternative, the Court strike out or sever the claim under Rule 14 of the South Carolina Rules of Civil Procedure, or compel the plaintiff to provide a more definite statement under Rule 12 of the South Carolina Rules of Civil Procedure.

(2) A Motion (and associated affidavits) to: [RO-2487-2502]

[19] A series of similar motions that were also made by the Oppenheimer Third-Party Defendants are not set out, given the volume of further detail this would entail.

(1) Submit that Mr Protopapas' third party complaint should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure on the grounds that the Court lacked personal jurisdiction; and

(2) Seek an order pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure, to stay discovery pending resolution of this Motion.

(3) A Motion to dissolve Mr Protopapas' receivership over Cape plc.[20] [RO-2503-2531]

246. On 5 September 2023, the Sparrows Third-Party Defendants filed a Motion to obtain a protective order and to dissolve Mr Protopapas' receivership over Cape plc. [RO-2532-2535] The Motion requested that the Court should enter an Order:

(1) Dissolving Mr Protopapas' receivership over Cape plc and dismissing the Sparrows Third-Party Defendants from the 3P Complaint;

(2) Striking out the relevant discovery requests;

(3) Quashing and denying the 30(b)(6) deposition notices; and

(4) Ruling that the Sparrows Third-Party Defendants have no obligations to respond to the relevant discovery requests or the 30(b)(6) deposition notices. [RO-2534-2535]

247. On 20 September 2023, the Altrad Third-Party Defendants filed a Motion for a protective order and to dissolve Mr Protopapas' receivership over Cape plc. [RO-2536-2539]

248. On 18 October 2023, Mr Protopapas filed with the Court:

(1) An omnibus opposition to the Motions for a stay of discovery and for a protective order brought by a number of the third-party defendants to the 3P Complaint. [RO-2540-2547]

(2) An omnibus opposition to the Motions to dismiss the Tibbs Claim for lack of

[20] In summary, the Motion was sought on the basis of the following arguments: (1) the factual grounds presented to the Court for appointing Mr Protopapas were false; (2) the Receivership Order was void as a matter of US constitutional law; and (3) bad-faith conduct should void Mr Protopapas' receivership.

personal jurisdiction, which concluded that the Court should deny the relevant third-party defendants' Motions to dismiss on personal jurisdiction grounds. [RO-2548-2599]

(3) An omnibus opposition to certain Third-Party Defendants' Motions to dismiss under Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure and, alternatively, for a more definite statement, and to strike out or sever the claim under Rules 12(e) and 14. This opposition concluded that the Court should deny the Altrad Third-Party Defendants, the Sparrows Third-Party Defendants, and the Charter Third-Party Defendants' Motions to dismiss under Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. [RO-2608 and RO-2632]

(4) An omnibus opposition to certain third-party defendants' Motions to dissolve brought by the Altrad Third-Party Defendants, the Sparrows Third-Party Defendants, and the Charter Third-Party Defendants, which concluded that the Court should deny the Motions to dissolve. [RO-1557-1593]

249. On 23 October 2023, the Altrad Third-Party Defendants filed a reply in support of their Motion to dismiss the 3P Complaint for lack of personal jurisdiction and for a stay of discovery. [RO-2635-2656]

250. On 23 October 2023, the Sparrows Third-Party Defendants filed a reply in support of the Motion to dismiss the 3P Complaint on the basis of a lack of personal jurisdiction and to stay discovery on similar terms to the Altrad Third-Party Defendants. [RO-2657-2676] On 23 October 2023, the Altrad Third-Party Defendants also filed a reply in support of their Motion to dismiss the 3P Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure, their alternative Motion for a more definite statement, and to strike out or sever the claim pursuant to Rules 12(e) and 14 of the South Carolina Rules of Civil Procedure. [RO-2677-2687]

251. Also on 23 October 2023, the Sparrows Third-Party Defendants filed with the Court:

(1) A Memorandum in support of a Motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure and an alternative Motion for a more definite statement and to strike out or sever pursuant to Rules

12(e) and 14 of the South Carolina Rules of Civil Procedure. [RO-2688-2700] The Memorandum requested that all claims asserted against any of the Sparrows Defendants be dismissed for lack of subject matter jurisdiction and failure to state a claim [RO-2699]; and

(2) A reply in support of the Motion to dissolve Mr Protopapas' receivership over Cape plc and the Motion for a protective order. [RO-2701-2717]

The Stated Position of the Receiver

252. The Opposition Memorandum contended that the Receivership Order was not just confined to the Park Claim. In respect of the Appointment Order, the position taken by Mr Protopapas was that: [RO-1557-1593]

(1) The Receivership Order "*describe[s] the powers and duties of the receiver or custodian in its appointing order*" *such as* "*su[ing] and defend[ing] in his own name as receiver of the corporation in all courts of this State*". [RO-1586]

(2) He was appointed "*pursuant to the South Carolina Law with the power and authority* [to] *fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any all steps necessary to protect the interests of Cape whatever they may be*". [RO-1586]

253. It was also contended that the appointment in the Park Claim was sufficient to deputise Mr Protopapas as the receiver for any and all future asbestos lawsuits in which Cape plc was named as a party – including the Tibbs Claim. It stated that: [RO-1557-1593]

(1) The Appointment Order made clear that the Receiver acts to marshal assets on behalf of <u>all</u> creditors against Cape. [RO-1585]

(2) "*The Park and Tibbs Lawsuits are similar because those plaintiffs – like tens of thousands of Americans, including citizens of South Carolina – have been harmed by Cape's decades-long asbestos business and liability-avoidance scheme*" and that "*In addition, the Receiver's ability to successfully marshal assets will directly inure to the benefit of the Park Plaintiffs, which allege uncompensated harm from Cape's conduct.*" [RO-1585]

254. Whilst Mr Protopapas did accept that Cape plc was neither dissolved nor insolvent, he maintained that the South Carolina Code § 15-65-10(4) may still be applicable because Cape plc had "*forfeited its corporate rights*". [RO-1580] That contention was again based on the bare allegations in the 3P Complaint and involves making allegations against a foreign company that does not have a presence in South Carolina and has not been subject to any forfeiture procedure and final order in the State of South Carolina.[21]

255. In respect of § 15-65-10(5), Mr Protopapas stated that a receivership can be created "*to correct injustice*" when a "*creditor*" is being prevented from collecting a debt owed. Mr Protopapas reiterated that "[t]*he right to have a receiver appointed is an ancient one*" with "*courts sitting in equity appointing receivers to ensure a fair result*"[22]. [RO-1580-1581 and RO-1586]

256. Again, the uncontested point here is that in this case there is no judgment debt.

257. As to whether there was any territorial jurisdictional limit on the Receivership Order, Mr Protopapas rejected the notion that there was (or should) be any territorial jurisdictional limit on the authority of the Receiver. [RO-1586] In so doing, he referred

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[21] In the Opposition Memorandum, it was stated that Cape had forfeited its corporate rights based on "*its complex scheme and 1978 liquidation of its American subsidiary, NAAC, by which it intentionally fled the United States to avoid its liabilities and obligations to its creditors*" which "*amount[ed] to a crime, breach of obligation, or neglect of duty*" that caused forfeiture of its corporate rights" (Appointment Motion at 6). [RO-1580]

[22] The Opposition Memorandum claimed that this was justified because of Cape's long running, intentional scheme to defraud its tort creditors by refusing to appear in the United States, including South Carolina and that this reflected an "*old practice*" of equity and "*important principle of law*" to correct injustice and this was applicable to Cape given its efforts "*to defeat [its] creditors by an act or course of conduct which indicates moral fraud – a conscious intention to defeat, delay, or hinder his creditors in the collection of his debts*". It contended that Cape set its numerous tort creditors, including the Park Plaintiffs, "at arm's length by refusing ....to take any interest in the satisfaction of their claims" there was a "*prima facie case ....warranting the appointment of a receiver*". [RO-1580-1581] The Opposition Memorandum further contended that given Cape's default in the Park Lawsuit was part of a longstanding practice by the company, the Appointment Order met the strictures of South Carolina law and provides a compelling need for a receivership [RO-1581]. It stated that any contention that Cape lacked assets in South Carolina (apart from its insurance and legal claims) was part of Cape's scheme to defeat tort creditors – thereby demonstrating the necessity of the Receivership and allowing the Third-Party action to continue [RO-1582]. In respect of the Receivership Order, it stated that no finding of personal jurisdiction was needed. It is stated that personal jurisdiction was self-evident, given Cape's large-scale export of asbestos to the US over decades, knowing that it would injure tens of thousands of people, including in South Carolina (Third Party Complaint at para 75). It stated that the applicable long arm statute was easily met by the conduct alleged in the Appointment Motion. Specifically, it claimed that the Court had jurisdiction over Cape as "*a person who act[ed] directly or by agent as to a cause of action arising from Cape's (1) causing tortious injury or death in this state by act or omission outside this State*" and by "*regularly ...engag[ing] in [a] persistent course of conduct, or deriv[ing] substantial revenue from goods used or consumed or services rendered in this State" and/or (2) "production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so consumed.*" SC Code § 36-2-803(4), (8). [RO-1583]

to Rule 66, SCRCP concerning the "Powers of Receiver" which provides "*that "i[n] 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 ... may also sue ... in the name of the debtor where it is necessary or proper for him to do so.*" [RO-1587 and RO-2718]

258. As to whether a pre-judgment order – without any identifiable property in South Carolina – violated the principles of international comity, it was stated that the Receivership Order did not violate principles of international comity and that such an argument was unsupported. [RO-1587-1588]

259. In respect of the Cape Scheme, Mr Protopapas noted that this only applied to the UK asbestos-related claims and stated that there was no factual or legal basis to find that a UK court could completely override the South Carolina Court because the former somehow has exclusive jurisdiction over Cape's "*massive unpaid responsibility for the death and illness caused by its asbestos products in South Carolina and elsewhere in the United States*". [RO-1588]

260. Further, it was stated that no legal or factual foundation was provided for the argument that the receivership "*interfere[s] with the pre-existing exclusive jurisdiction of the Jersey courts to exercise oversight and management over the internal affairs of a Jersey company" and that "the creation of a holding company in...Jersey...did not...somehow absolve Cape of liability to people injured by Cape asbestos in the* [US] *over many decades" and that it did not "deprive* [the] *Court of authority to create a receivership for the purpose of addressing that unanswered liability in the* [US]".[23] [RO-1588-1589]

261. Further, it denied that the receivership violated the US Constitution and that the Appointment Order violated the Dormant Commerce Clause, the Foreign Commerce Clause, the Taking Clause, the Due Process Clause, the Excessive Fines Clause, the

[23] In this regard, it is to be noted that in Adams v Cape, the Court of Appeal found that the companies that exported were South African and that the only agent was NAAC – which was the agent of South African companies and not Cape plc.

Equal Protection Clause, and the Supremacy Clause of the US Constitution. The Opposition Memorandum stated that the complaint about the receivership purportedly having an unlawful "*extraterritorial effect*" erroneously asserted that Cape had "*nothing to do with South Carolina*" which ignored the widespread harm caused by Cape's products in South Carolina (and elsewhere in the US) and the power of the receivership to marshal assets such as by asserting valuable claims for the benefit of creditors. [RO-1589]

262. In this regard, Mr Protopapas rejected that the receivership involved: (1) seeking to have "*manufactured liabilities*" passed on to third parties; (2) acting beyond its authority, with incurable conflicts of interest; (3) violating the Appointment Order by not taking "*any and all steps necessary to protect the interests of Cape*" and that the filing of the Third-Party Complaint constituted "*bad faith*" and "*outrageous conduct*". [RO-1590] In this regard, it was stated by Mr Protopapas that:

(1) If Cape had responded to the Park Claim, then it could have offered its own defended and contested liability for the disease and death of Ms Park, but it did not and it has not responded subsequently.

(2) It was Cape's decades-long profitmaking, while knowing and hiding the health risks, which was truly "*outrageous*" (paragraphs 51-105 of the 3P Complaint).

(3) Mr Protopapas was seeking basic accountability for Cape's conduct – a reckoning that was long overdue. [RO-1590-1591]

263. In relation to the issues pertaining to which entity the Receivership Order covered and the service issues Mr Protopapas expressly/impliedly acknowledged in the Opposition Memorandum ("**Opp**") that:

(1) Cape plc was not the same entity as CIHL. [RO-1566]

(2) Cape plc was never served with any pleading or the motion to appoint the receiver in Park. [RO-1573]

(3) Neither the motion to appoint the Receiver nor the order appointing the Receiver made any reference to CIHL and never used the n/k/a acronym. [RO-1583]

(4) The Second Amended Summons in the Park Claim (i.e. the actual operative pleading) was not served on either Cape plc or CIHL. [RO-1567]

(5) There was no proof that any complaint had been included in any mailing to CIHL. [RO-1575]

(6) The Second Amended Summons in the Park Claim was served before the responsive pleading deadline for the First Amended Summons expired, which would mean that Cape plc and CIHL could not be deemed in default of the superseded First Amended Summons. [RO-1567]

(7) CIHL was allegedly served by DHL with a motion to appoint a receiver that did not reference CIHL at all and purported to seek appointment over Cape plc. [RO-1578]

(8) There was no proof that anything was ever served on Cape plc and Mr Protopapas stated that the entity on whose behalf he purported to act was never involved in the "*underlying Park and Tibbs lawsuits*". [RO-1573]

(9) The Park Plaintiffs had represented to the Court in June 2022 that the case was "*fully resolved*" nine months before the Court made an order appointing a receiver over Cape plc. [RO-1567]

(10) The Park Plaintiffs never served Cape plc in Jersey with a notice of the motion to appoint a receiver over it. [RO-1568]

(11) Neither Cape plc nor CIHL ever defaulted, nor was any default judgment entered against either company: i.e., not in the Park Claim, and not in any other case in South Carolina. [RO-1581]

(12) The order appointing Mr Protopapas made no finding that the South Carolina Court had personal jurisdiction over Cape plc – although he contended that "*no such finding was needed*" and that "*personal jurisdiction is self-evident*". [RO-1583]

(13) Cape plc has no assets in the State of South Carolina. [RO-1581]

(14) He was working to advance the interests of the Park Plaintiffs and not those of

Cape ("*In addition, the Receiver's ability to successfully marshal assets will directly inure to the benefit of the Park Plaintiffs, which allege uncompensated harm from Cape's conduct*"). [RO-1585]

264. It was nevertheless maintained that CIHL was the company over which the Receivership Order had been made and not Cape plc, notwithstanding that Cape plc is a different legal entity to CIHL. In particular:

(1) It is to be noted that in the Opposition Memorandum there is a constant use of the phrase "*Cape PLC, n/k/a Cape Intermediate Holdings Ltd.*". Even though CIHL was separately named in the Park Claim (along with Cape plc), CIHL is not referred to in (i) the motion to appoint a receiver over Cape plc, or (ii) the order appointing a receiver over Cape plc. [RO-1572]

(2) It was suggested that the Court rewrite the Receivership Order to correct the errors (including swapping the entities names and thereby retrospectively validating the defective appointment order) (Opp at 14-15, 17, 19-20) – i.e. to treat the matter as a "misnomer" when it clearly related to the legal entity concerned (and the due process and notice requirements). [RO-1577-1578, 1580, 1582-1583]

(3) It was contended that the wrong name in the Receivership Order did not mislead or prejudice anyone – notwithstanding that Cape plc is an active Jersey entity and the question of which entity is covered by a Receivership Order is central to such a receivership order and the statutory notice requirement thereof. [RO-1572]

(4) It was stated that "*Cape still has not responded*" to the Second Amended Complaint in the Park Claim, in circumstances where neither Cape plc nor CIHL had been served with the operative complaint (Opp at 15). [RO-1578]

(5) It was stated that the Court could disregard the lack of service of Cape plc as this "*exalt*[s] *technical form over substance*" (Opp at 15). [RO- 1578]

(6) It reiterated the claim that Cape plc has "*forfeited its corporate rights*" based on a "*1978 liquidation of its American subsidiary*" (Opp at 17) – even though Cape

plc did not come into existence until 2011 and had forfeited nothing. [RO-1580]

(7) It claimed that Cape plc had "*defraud[ed] its tort creditors*". This is notwithstanding that Cape plc has no "*creditors*" in South Carolina and there is no judgment in the Park Claim (or the Tibbs Claim) against Cape plc or any Cape entity. [RO-1580]

Hearings before Toal J and the 6 December Toal Order

265. On 25 October 2023, a hearing was held before Toal J. [RO-2719-2863] At this hearing Mr Protopapas was asked to prepare a proposed order denying the third-party defendants' Motions to dissolve the Cape plc Receivership and for lack of personal jurisdiction. Before filing the proposed order with the Court, Mr Protopapas was instructed to provide a draft of the proposed order to the Third-Party Defendants for their response or counter-proposal orders. [RO-2748, lines 15-16]

266. On 8 November 2023, Mr Protopapas' counsel emailed a 74-page draft of the proposed order to the Third-Party Defendants. [RO-2864-2938]

267. On 4 December 2023, Mr Protopapas' Counsel filed with the Court a supplement to an omnibus memorandum in opposition of the Third-Party Defendants' motion to dismiss for lack of personal jurisdiction. [RO-2939] The supplement submitted that the third-party defendants' motions to dismiss on personal jurisdiction grounds be denied. [RO-2943] Mr Protopapas' Counsel also filed with the Court a draft proposed order, in materially similar terms to the draft order referred to immediately above.

268. Also on 4 December 2023, both the Altrad Third-Party Defendants and the Sparrows Third-Party Defendants filed Objections to Mr Protopapas' proposed order and counter-proposal orders regarding the Motion to dissolve the receivership and Motions to dismiss for lack of personal jurisdiction (and, in the case of the Sparrows Third-Party Defendants, this included a response to the supplement submitted by Mr Protopapas). [RO-2946-2967 and RO-2968-2990]

269. On 5 December 2023, the Receiver's 74-page proposed order was accepted by the Clerk of Court as an accepted filing awaiting action by Toal J.

270. On 6 December 2023 (that is, within 24 hours of the accepted filing of the draft order and 3P Defendants' oppositions), the Receiver's 74-page proposed order was accepted and adopted in its entirety and without edit by the Court and entered as a filed order.[24]

271. In her order of 6 December 2023 ("**the 6 December Toal Order**), Toal J held that: [RO-2991-3064]

(1) Cape was properly served in the Park Claim with the First Amended Summons and First Amended Complaint which pleaded claims against an entity existing in the UK since 1893, Cape plc n/k/a CIHL. [RO-3006]

(2) The Park Plaintiffs properly served Cape plc in the UK, i.e., the Cape entity for which the Receiver has been appointed with the First Amended Complaint. The Park Plaintiffs did not intend to sue the Jersey entity but the UK entity, service was effected in December 2022, and in an affidavit dated 8 March 2022 the English process server stated he had mailed a copy of the summons to both Cape plc and CIHL – identifying both "*individually and as successors to Cape Asbestos Company Limited*". [RO-3008] To the extent there was an error in the service paperwork to include "*formerly known as*", the Court found this was a misnomer which did not render service ineffective. [RO-3009]

(3) The Court had authority to appoint the receiver. It held that it was not necessary to hold Cape in default and enter judgment for a liquidated sum due to the Park Plaintiffs. It held that the use of SC Code § 15-65-10(5) was proper based on evidence of Cape's long-running, intentional scheme to evade its tort creditors by refusing to appear in the US and that this subsection reflected an old practice of equity and important principle of law to correct injustice which is particularly applicable to Cape given its efforts "*to defeat* [its] *creditors by an act or course of conduct which indicates moral fraud – a conscious intent to defeat, delay or hinder his creditors in the collection of their debts*". It held that because Cape set its numerous tort creditors including the Park Plaintiffs "*at arm's length by*

[24] The Third-Party Defendants' counter proposed orders were rejected in their entirely.

refusing ... to take any interest in the satisfaction of their claims" there was a "*prima facie case ... warranting the appointment of receiver*". It further held that in recent years there was widespread evidence of an "*"existing practice" of appointing a receiver – even in the absence of a judgment – where the Court is concerned that the party at issue may move assets and avoid litigation*". [RO-3014]

(4) The Court had personal jurisdiction over Cape as "*a person who act*[ed] *directly or by an agent as to a cause of action arising from*" Cape's and NAAC's (i) "*causing tortious injury or death in this State by an act or omission outside this State*" and by "*regularly ... engag*[ing] *in* [a] *persistent course of conduct, or deriv*[ing] *substantial revenue from goods used or consumed or services rendered in the state*" and/or (ii) "*production, manufacture or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used and consumed*". [RO-3026]

(5) The allegations regarding Cape's effective domination of NAAC, including pursuant to *alter ego*, veil-piercing, and/or business enterprise doctrines, as well as the allegation that NAAC acted as Cape's agent, separately provided a proper basis to exercise personal jurisdiction over Cape. [RO-3026]

(6) The Court had personal jurisdiction over each of the Altrad Third-Party Defendants and each of the Sparrows Third-Party Defendants. It held that the 3P Complaint adequately alleged facts sufficient under an *alter ego*, guiding light, and/or single business enterprise theory as it was alleged that they were responsible, with Cape, for an ongoing scheme to evade responsibility from harm caused by Cape's asbestos, while also financially benefitting from that scheme as effective alter egos of Cape. [RO-3028]

272. On that basis the Third-Party Defendants' Motions to dissolve Mr Protopapas' receivership and Motions to dismiss for lack of personal jurisdiction were dismissed. [RO-3063]

273. Further, on 6 December 2023, on the application of Mr Protopapas, Toal J issued an Order to enter default judgment relative to the 3P Complaint against certain of the Third-Party Defendants – namely, Altrad Services Ltd, Altrad UK Ltd, Cape Holdco

Ltd, Cape Industrial Services Group Limited, Cape UK Holdings Newco Ltd, the Sparrows Group LLC and Sparrows Offshore Group Ltd ("**the 3P Complaint Default Judgement**").[25] [RO-3066]

274. Accordingly, Mr Protopapas in the name of "Cape plc" has sought and obtained the 3P Complaint Default Judgment against: (a) the Claimants' direct parent and subsidiaries undertakings (e.g. Cape UK Holdings Newco Limited, Cape Industrial Services Group Limited, Cape Holdco Limited and Altrad Services Limited) and (b) companies in the Altrad Group. [RO-3066-3067]

275. On 15 December 2023, Toal J issued an Order denying the Motions to dismiss filed by the Altrad Third-Party Defendants, the Sparrows Third-Party Defendants and the Charter Third-Party Defendants. [RO-3069-3072] Toal J held that she had proper subject matter jurisdiction and that Mr Protopapas' third party claim brought on behalf of Cape plc pleaded a valid claim for relief based on the allegations made in its summons and complaint. Toal J referred to her earlier 6 December 2023 Order as supporting authority. [RO-3069]

The Appeal Proceedings

276. On 18 December 2023, the Altrad Third-Party Defendants filed a Notice of Appeal in respect of the Order entitled "Order Denying Certain Third-Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction" i.e. the 6 December Toal Order. [RO-3073-3074] The Sparrows Third-Party Defendants filed a Notice of Appeal the same day in respect of the same order ("**the Receivership and Personal Jurisdiction Appeals**"). [RO-3075-3076]

277. On 22 February 2024, in the Receivership and Personal Jurisdiction Appeals, the Altrad Third-Party Defendants and the Sparrows Third-Party Defendants filed their Initial Briefs and Designation of Matters. [RO-3077-3134, RO-3135-3141, RO-3142-3148, RO-3149-3210]

[25] This was further to a motion filed by Mr Protopapas on 18 August 2023.

278. On 5 March 2024, Mr Protopapas' Counsel filed a Motion for an extension of time to file the Respondent's Initial Brief in the Receivership and Personal Jurisdiction Appeals. [RO-3211-3219]

279. On 6 March 2024, the South Carolina Court of Appeals issued an Order to confirm that the time for serving and filing the respondent's Initial Brief and Designation of Matter in the Receivership and Personal Jurisdiction Appeals was extended to 1 May 2024. [RO-3220-3223]

280. On 16 April 2024, Mr Protopapas' Counsel filed a Motion to dismiss the Receivership and Personal Jurisdiction Appeals. [RO-3224-3252]

281. On 19 April 2024, the Altrad Third-Party Defendants and the Sparrows Third-Party Defendants filed requests for an extension of time to file their return to the Motion to dismiss the Receivership and Personal Jurisdiction Appeals, and counsel for Mr Protopapas objected to those extension requests on the same day. [RO-3253 and RO-3254-3255]

282. On 26 April 2024, in the Receivership and Personal Jurisdiction Appeals, the South Carolina Court of Appeals issued an Order to confirm that the time for serving and filing the return to the Motion to dismiss was extended to 6 May 2024. [RO-3258]

283. On 2 May 2024, the Altrad Third-Party Defendants issued a Petition for a Rehearing [RO-3260-3272]. On 3 May 2024, the South Carolina Court of Appeals issued an Order denying the Petitions for a Rehearing on the basis that the Court was "*unable to discover that any material fact or principle of law has been either overlooked or disregarded*". [RO-3275]

284. On 6 May 2024, the Altrad Third-Party Defendants filed an Opposition to the Motion to dismiss its Receivership and Personal Jurisdiction Appeal. [RO-3277-3295] On the same date, the Sparrows Third-Party Defendants filed a Return to the Motion to dismiss its Receivership and Personal Jurisdiction Appeal. [RO-3296-3778]

285. On 9 May 2024, the South Carolina Court of Appeals issued an Order in the Receivership and Personal Jurisdiction Appeals granting Mr Protopapas' motion to dismiss. It stated that: [RO-3781-3782]

"*After careful consideration of the submissions from all parties, the motion to dismiss is granted. See Mid-State Distrib., Inc. v. Century Imp., Inc., 310 S.C. 330, 426 S.E.2d 777 (1993) (holding the denial of a motion to dismiss based on a lack of personal jurisdiction is not immediately appealable); Childers v. Davis Mech. Contractors, Inc. (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a receivership). The remittitur will be sent as provided by Rule 221 (b) of the South Carolina Appellate Court Rules.*"

286. On 24 May 2024, the Sparrows Third-Party Defendants filed with the South Carolina Court of Appeals a "Petition for a Rehearing and Rehearing En Banc" in relation to the Receivership and Personal Jurisdiction Appeals. [RO-3783-3803]

287. On 29 May 2024, the clerk to the South Carolina Court of Appeals wrote letters to parties' counsel to confirm receipt of the Petition for Rehearing with Suggestion for Rehearing En Banc and requesting returns to be filed no later than 10 days from the date of the letter. [RO-3804-3805 and RO-3806-3807] On 10 June 2024, Mr Protopapas' Counsel filed a "Return to the Altrad Defendants' Petitions for Rehearing" which requested that the Petition for a Rehearing should be denied on the basis that the Appellants had allegedly failed to identify a point that the Court of Appeals had overlooked or misapprehended. [RO-3811] On the same date, Mr Protopapas' Counsel filed a similar "Return to the Sparrows Defendants' Petitions for Rehearing". [RO-3821-3833]

288. On 17 June 2024, the Altrad Third-Party Defendants filed a "Reply in Support of the Altrad Defendants' Petition for Rehearing and Suggestion for Rehearing En Banc". [RO-3834-3844] On the same date, the Sparrows Third-Party Defendants filed a "Reply in Support of [the Sparrows' Defendants'] Petition for Rehearing and Suggestion for Rehearing En Banc". [RO-3845-3854]

289. On 1 July 2024, the South Carolina Court of Appeals handed down an Order in response to the Petition for a Rehearing in the Receivership and Personal Jurisdiction Appeals which stated that: [RO-3859]

"*... the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly,* ***the petition for rehearing is denied.***" (emphasis added).

(5) <u>The Motions made by the Receiver</u>

Motions for discovery

290. On 12 January 2024, Mr Protopapas' Counsel filed various Motions to compel third party defendants to the Tibbs Claim (including the Altrad Third-Party Defendants and the Sparrows Third-Party Defendants) to provide discovery responses. [RO-3861-3868, RO-3869-3875, RO-3876-3883, RO-3884--3890] There was no authority from Cape plc or CIHL to do so.

291. On 16 February 2024, the Altrad Third-Party Defendants filed a Cross-Motion to enjoin all activity by the "*putative Cape plc Receiver*", opposed a Motion to compel, [RO-3891] and sought to remind the court that, under Rule 205 of the South Carolina Appellate Court Rules ("**Rule 205 SCACR**"), it was prevented from proceeding with matters affected by a pending appeal. [RO-3895]

292. On the same date, the Sparrows Third-Party Defendants filed a Memorandum in opposition to (1) Mr Protopapas' Motion to compel discovery responses and a 30(b)(6) deposition, (2) Mr Protopapas' proposed order of 9 February 2024, and also filed a Cross-Motion to enjoin all activity undertaken by Mr Protopapas, [RO-3910-3930] whilst reminding the court of the restrictions imposed on it under Rule 205 SCACR. [RO-3929]

293. On 27 February 2024, the Altrad Third-Party Defendants filed an Objection to a court ruling on Motions for a protective order or Mr Protopapas' Motions to compel, which concluded by reiterating the Court's obligations under Rule 205 SCACR whilst requesting, in the alternative that it determine the Altrad Third-Party Defendants' Cross-Motion. [RO-3949]

294. On the same day, the Sparrows Third-Party Defendants filed an Objection to a court ruling on Motions for a protective order or Mr Protopapas' Motions to compel on substantially the same terms as the Altrad Third-Party Defendants' Objection. [RO-3950-3970]

295. On 12 March 2024, Toal J issued an Order granting Mr Protopapas' Motions to compel discovery responses of the Third-Party Defendants. Toal J also made orders for the 30(b)(6) depositions of Arranco US, LLC and Central Mining & Investment Corporation Ltd. [RO-3983]

296. On 19 March 2024, the Altrad Third-Party Defendants filed their Notice to Appeal in respect of the Order entitled "Order Granting the Receiver's Motions to Compel Discovery Responses of Third-Party Defendants and 30(b)(6) Depositions of Arranco US, LLC and Central Mining & Investment Corporation Ltd." [RO-3985-3986] The Sparrows Third-Party Defendants also filed a Notice of Appeal in respect of the same order, an Initial Brief and a Designation of Matter. [RO-3987-3988]

The motions for sanctions adverse inferences

297. On 3 April 2024, Mr Protopapas' Counsel filed a Motion to seek that the Court preadmit a number of trial exhibits ahead of trial. [RO-3990] On 4 April 2024, Mr Protopapas' Counsel filed a Pre-Trial Hearing Status Report. [RO-3996-4003] On 5 April 2024 and 12 April 2024 respectively, Mr Protopapas' Counsel filed:

(1) A Motion for adverse inference as to the Altrad Third-Party Defendants, the Sparrows Third-Party Defendants, and the Charter Third-Party Defendants. The adverse inference sought would determine the case against those defendants by having the Court grant the following: "*the Altrad and Charter Third-Party Defendants are or were at relevant times the alter ego of Cape, or otherwise liable under a veil-piercing theory, and have been unjustly enriched due to Cape's liability-avoidance scheme*"; [RO-4005]

(2) A Motion for sanctions against the Altrad Third-Party Defendants, the Sparrows Third-Party Defendants, and the Charter Third-Party Defendants pursuant to Rule 37(d) of the South Carolina Rules of Civil Procedure. The Motion submitted that it was being sought on the basis of those parties' "*refusal to participate in discovery despite the Court's March 12, 2024 order compelling their discovery participation and despite the Court's repeated rejection of their claim that the Receiver cannot proceed with discovery during the pendency of their appeals.*" Again, the sanction sought would have the effect of determining the case against the relevant Third-Party Defendants. [RO-4010]

(3) The Motion for sanctions requested that the Court: [RO-4011-4012]

(a) *"find that the authentication requirements of Rule 901, SCRE, have been met as to all the Receiver's exhibits related to these Third-Party*

Defendants (as previously identified in Exhibit A to the Receiver's Motion to Preadmit Exhibits filed on April 3, 2024) and find that those exhibits therefore are admissible at trial against these Third-Party Defendants";

(b) *"infer as to Mohed Altrad, Altrad Investment Authority S.A.S., ArranCo US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC., that each is the alter ego of Cape, or otherwise liable as a matter of veil piercing, including with respect to Cape's ongoing liability-avoidance scheme, and have been unjustly enriched due to Cape's liability-avoidance scheme";*

(c) *"infer as to Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation, that each was at relevant times, including with respect to the implementation of a liability-avoidance scheme in the 1980s and before, the alter ego of Cape, or otherwise liable as a matter of veil piercing, and have been unjustly enriched due to Cape's liability-avoidance scheme, with ESAB Corporation acting as the corporate successor with respect to the liability of Charter Consolidated Ltd. And Central Mining & Investment Corporation Ltd.*"; and

(d) *"award him all fees and costs associated with bringing this Motion and all associated motions.*"

298. Mr Protopapas had no authority from Cape plc or CIHL to take those steps.

299. On 9 April 2024, the Sparrows Third-Party Defendants filed:

(1) A Memorandum in opposition to Cape plc's Motion for adverse inference as to the Altrad Third-Party Defendants and the Charter Third-Party Defendants. The Memorandum submitted that the Motion be refused or denied; [RO-4015-4022]

(2) A Memorandum in opposition to Cape plc's Motion to pre-admit exhibits. The Memorandum requested that the Motion be refused or denied; [RO-4027]

(3) A Notice of Motion and Motion to enforce the mandatory provisions of Rule 205 SCACR pending their appeals, their second Motion to enjoin and any other relief under applicable law. [RO-4029-4053]

(4) A Notice of Motion and Motion to quash the third-party plaintiff's notices of *de bene esse* videotaped depositions, as amended, and Motion for a protective order. [RO-4054]

300. On the same date, the Altrad Third-Party Defendants filed an adoption and Notice of joinder in filings of other Third-Party Defendants, including the Sparrows Third-Party Defendants. [RO-4060-4062]

301. On 10 April 2024, Toal J held a pre-trial hearing for a number of cases on the South Carolina asbestos docket, including as to the Tibbs Claim and the claims asserted by the 3P Complaint. [RO-1774-1961] During that hearing, it was disclosed that Mr Protopapas had entered into the Dismissal Agreement with the Plaintiff's Counsel on the Tibbs Claim. [RO-1774-1961]

302. On the same date, the Altrad Third-Party Defendants wrote to the South Carolina Court of Appeals to request a 10-day extension to the deadline for the filing and service of the Appellants' response to the Respondent's Motion to dismiss a pending appeal filed by the Altrad Third-Party Defendants. [RO-4063] On 19 April 2024, a similar 10-day extension request was made to the deadline for the filing and service of the Appellants' response to a separate Motion to dismiss of the Respondent filed relative to a separate pending appeal that had been filed by the Altrad Third-Party Defendants. Both of these requests for extension were opposed by Mr Protopapas. [RO-4064-4065]

303. On 19 April 2024:

(1) Mr Protopapas' Counsel wrote to the South Carolina Court of Appeals objecting to extension requests. [RO-4064-4065]

(2) The Sparrows Third-Party Defendants filed a Memorandum in opposition to Cape plc's Motion for sanctions. The Memorandum submitted that the Motion be refused or denied. [RO-4086]

(3) The Altrad Third-Party Defendants filed a Memorandum in opposition to Cape plc's Motions for sanctions, all relief sought and the same and/or similar relief sought in prior filings. [RO-4088]

304. On 22 April 2024, Mr Protopapas' Counsel filed a Motion for entry of a confidentiality order pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure. [RO-4111] Mr Protopapas had no authority to take that step.

305. On 13 May 2024, the Altrad Third-Party Defendants filed Objections to Mr Protopapas' Proposed Orders. [RO-4116-4133] On 23 May 2024, Toal J handed down an "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" in exactly the terms requested by the Receiver. [RO-4134-4167] In relation to this:

(1) The Order contained a list of adverse inferences to be made by the Court in respect of each of the Altrad Third-Party Defendants, the Sparrows Third-Party Defendants, and the Charter Third Party Defendants in the form requested by the Receiver.

(2) Those adverse inferences comprised 46 individual inferences and was summarised in the order as an "*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*". [RO-4160]

(3) The Court noted in the order "*that these rebuttable inferences are subject to evidentiary challenge by [the Altrad and Sparrows 3P Defendants] 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*". [RO-4149]

(4) The net effect of the order is that if the Altrad Third-Party Defendants and Sparrows Third-Party Defendants do not participate in the extensive discovery requests summarised at [290] to [296] above, the Court will infer against them (and by extension against CIHL and Cape Plc) every material fact which the Receiver alleges.

(5) This leaves those Third-Party Defendants in an invidious position – in circumstances where if they do participate, they will no longer be able to rely on jurisdictional lines of defence similar to Adams v Cape (and if they do not

participate, adverse inferences will be made against them that could expose them to potentially huge liabilities in future asbestos-related litigation).

306. On the same date, Toal J handed down an "Order Granting the Receiver for Cape plc's Motion to Pre-Admit Exhibits". [RO-4168-4175] In effect, in reliance on the fact the Altrad and Sparrows Third-Party Defendants did not provide discovery, the order determines more than 2,500 exhibits to be genuine and admissible and pre-determines all the factual and legal allegations made by Mr Protopapas against the Altrad Third-Party Defendants and the Sparrows Third-Party Defendants. On 5 June 2024, an email exchange between Mr Protopapas' Counsel, De Beers' Counsel and the Court took place in relation to a requested confidentiality order. [RO-4176-4185] On 6 June 2024, Toal J handed down a "Confidentiality Order for Third Party Action" which was to bind all counsel in the action, as well as their respective law firms and clients. [RO-4204-4221]

(6) <u>The Trial Listing, Transfer of the 3P Complaint to the Federal Court, Current Position</u>

Trial Listing

307. On 10 June 2024, Mr G. Murrell Smith, Jr, Counsel for Mr Protopapas, wrote to Toal J to request the trial be scheduled for 9 December 2024. Mr G. Murrell Smith, Jr is also the Speaker of the South Carolina House of Representatives and former head of the Judicial Merit Selection Commission. The reasons given for this proposed timetable were stated to be driven by his personal legislative commitments. [RO-4222]

308. On 11 June 2024, Mr Protopapas' Counsel filed a "Receiver's Report on Certain Third-Party Defendants' Ongoing Defiance of this Court [sic] Orders". [RO-4223-4235] It said that Mr Protopapas was reporting violations of court orders, and it sought further instructions from the Court or a hearing to be scheduled to address the issue. [RO-4226]

309. On 13 June 2024, Richardson Plowden, for Anglo American, wrote to the Court in response to the letter from Mr G. Murrell Smith, Jr to object to the trial being scheduled for 9 December 2024. [RO-4236]

310. On the same date, 13 June 2024, referring to the letter from Mr G. Murrell Smith, Jr, the clerk to Toal J emailed the parties confirming that the trial would be scheduled for 9 December 2024 as requested by Mr Smith. [RO-4253]

311. The order scheduling the trial of the 3P Complaint for 9 December 2024 was subsequently made on 19 June 2024. [RO-4260]

312. On 21 June 2024, the Court Clerk emailed the parties to confirm that a status conference in the case had been rescheduled for 16 July 2024. [RO-4262]

The Removal to the Federal Court

313. On 28 June 2024 Anglo American filed a Notice of Removal to remove the 3P Complaint from the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, to the Federal Court, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and Local Civil Rules 83.IV.01–02 ("**Notice of Removal**"). [RO-1968] This was consented to by all other Third-Party Defendants whose consent was required. [RO-1968]

314. The Notice of Removal concluded that: [RO-1978]

> "*Plaintiff filed this action under the guise of a third-party derivative suit on June 30, 2023. As purported third-party defendants, the defendants believed they could not remove the suit to federal court. On June 18, 2024, the defendants learned for the first time that the first-party claims that allegedly formed the basis for Plaintiff's suit had been dismissed weeks before Plaintiff filed his complaint. Plaintiff's lawsuit therefore is, and has always been, a first-party action removable on the basis of diversity jurisdiction because the amount in controversy exceeds $75,000, there is complete diversity between the parties, and none of the defendants is a citizen of South Carolina. Having obtained the consent of all defendants whose consent is necessary to remove, Removing Defendant is now removing the action to this Court pursuant to 28 U.S.C. § 1332(a).*"

315. On 1 July 2024, the US District Court of South Carolina issued a notice to the parties confirming that the case had been assigned to "*Judge Mary Geiger Lewis*" ("**Lewis J**") [RO-4266] and confirmed application of "Standing Order Regarding All Removed Cases Assigned to [Lewis J]". [RO-4268] This had the effect of removing the proceedings to the United States District Court for the District of South Carolina Columbia Division (i.e. the Federal Court).

316. In response to that, Mr Protopapas' Counsel applied on an expedited basis for the case to be remanded back to Toal J and the response to that remand application was due on 16 July 2024. The "Third Party Plaintiff's Expedited Motion to Remand" submitted in conclusion: [RO-4280]

> "*For all the foregoing reasons, the Receiver respectfully requests that the Court find that the Third-Party Defendants have failed to meet their burden of proving that this Court has subject-matter jurisdiction and that the Third-Party Defendants properly removed the action to federal court. The Receiver further requests that this Court immediately remand the case to the Court of Common Pleas for the Fifth Judicial Circuit in Richland County, South Carolina, for further proceedings, and grant any other relief to which the Receiver is entitled.*"

317. Pursuant to local procedural rules, all defendants in proceedings removed to the Federal Court had 14 days to respond to any Motion to Remand (i.e. 16 July 2024). [RO-4283]

318. On 9 July 2024, Toal J wrote to Counsel to all parties to the Federal Court proceedings, copying Lewis J, suggesting it was unclear to her whether "*Cape [sic – Anglo American] is attempting to remove only the third-party complaint, or is attempting to remove the entire Tibbs case in which the third-party complaint is a derivative part*" [RO-4284] In her letter Toal J indicated that unless Lewis J confirmed otherwise she would "*go forward with the Tibbs case*" (i.e. the Tibbs Claim). [RO-4284] She also appeared to raise legal argument in that letter and referred to issues regarding the volume of pages of electronic documents being filed in the proceedings.

319. On 16 July 2024, in response to the Receiver's Motion to Remand, Anglo American, along with the Altrad Third-Party Defendants, the Sparrows Third-Party Defendants, and the Charter Third-Party Defendants, each filed Oppositions to remand. [RO-4287-4315, RO-4316-4327, RO-4328-4362, RO-4363-4364]

320. On 16 July 2024, Toal J proceeded with the status conference despite the transfer to the Federal Court. At the status conference, Counsel for the Tibbs Plaintiffs submitted that they still had a case only against ACL (but did not submit that they still had a case against either Cape plc or CIHL) [RO-4844].

321. On 13 August 2024, Lewis J handed down an order granting Mr Protopapas' motion to remand the matter to Toal J ("**the Remand Order**"). [RO-4367-4379] The Remand

Order indicated that Lewis J considered she lacked jurisdiction to hear the matter. [RO-4379]

The Current Position

322. On the day the Remand Order was granted, Mr Protopapas wrote Toal J and the South Carolina Court of Appeal and Supreme Court to notify those courts of the Remand Order. [RO-4365]

323. On 14 August 2024, Mr Protopapas filed a Fifth Motion to Compel Discovery against the Anglo American Defendants. [RO-4396-4447]

324. On 16 August 2024, Mr Protopapas filed a further motion for sanctions against the Anglo American, Charter, Altrad and Sparrows Defendants on the alleged grounds that the removal by Anglo American and the various appeal steps that have been taken by all Third-Party Defendant are said to be improper [RO-4448-4454]. Other than to request attorneys' fees, the nature of the sanctions sought by Mr Protopapas is not specified.

325. It is clear from the motions filed on 14 August 2024 and 16 August 2024 that Mr Protopapas is proceeding on the basis that the trial set down for 9 December 2024 will take place as ordered by Toal J (and which Toal J clarified that she would ensure occurs at the conference of 16 July 2024). [RO-4397 and RO-4882] In addition, on 19 August 2024, Mr Protopapas filed notices of deposition in relation to AIA SAS and the Sparrow Third-Party Defendants [RO-4885-RO-4927]. He also filed a motion seeking the dismissal, on an expedited basis, of all the Third-Party Defendants' outstanding appeals [RO-5075-5743].

326. As at the date of this witness statement, Counsel for Mr Protopapas has requested, in a letter to the Court dated 26 August 2024, that a hearing be scheduled for 24 September 2024 to consider various motions referred to therein (including for sanctions against the Third-Party Defendants for "improper removal" to the Federal Court). [RO-4829-4831] The Court granted this request on 30 August 2024 [RO-4942].

I. THE IMPACT OF THE US PROCEEDINGS ON THE CAPE GROUP

The Nature and Scope of the Receivership Order

327. As set out above, the Receivership Order orders as follows: [RO-1604]

> "*Therefore, this Court appoints Peter Protopapas be and hereby is appointed Receiver in a case pursuant to the South Carolina Law with the power and authority fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be. This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape's insurance carriers*".

328. Cape is broadly defined in the Receivership Motion which the order granted. Cape is defined in that Receivership Motion as "*Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd) ("Cape Asbestos")* ***and its subsidiaries and global affiliates*** *(collectively, "Cape" or the "Company")*" (emphasis added). [RO-1594]

329. The specific powers purportedly given to Mr Protopapas are set out on internal page 2 of the Receivership Order (which is referred to at [180]-[195] above). It is important to have in mind that:

(1) These powers were requested by Mr Protopapas in the Receivership Motion.

(2) There does not appear to be any jurisdictional limit on these powers.

(3) The powers are generic and were drafted without reference or attention to the actual assets or business of Cape plc or CIHL.

330. Before I comment on these, I note the power and authority vested in Mr Protopapas under the Receivership Order "*to engage counsel on behalf of Cape*". This raises immediate and obvious issues in this case, including the ability of Mr Protopapas to (purport to) dismiss the Claimants' legal team in these proceedings (in circumstances where the Claimants' solicitors –W&S – have offices in the US). Mr Protopapas has a proven track record of pursuing the Cape Group's legal representatives (see, in this regard, the motions filed against Locke Lord referred to above at [203]-[205]); he has recently filed a further motion for sanctions in the Tibbs Claim (see above at [297]-[306]); and I understand that in proceedings against ACL an order was sought by Mr Protopapas from Toal J seeking to terminate the retainer of ACL's legal

representatives, Clement Rivers (albeit such an order was not ultimately made). Indeed, in the W&S Motion issued on 5 September 2024 (at [RO-5056] to [RO-5057]), Mr Protopapas now seeks declaratory relief from the South Carolina Court that W&S is not the proper legal representative of "Cape plc" and that W&S no longer act as attorneys for "Cape plc". The W&S Motion will, as I understand it, be opposed by W&S (as the named defendant). This of itself is a cause for serious concern. W&S have been appointed by the *de jure* directors in London as the legal representatives of the Claimants to act on behalf of the Claimants and this constitutes a refusal on Mr Protopapas' part to accept that the directors have any authority to act on behalf of the Claimants or to make a challenge in this jurisdiction seeking to resolve the question of who controls the Claimants and has the right to act for and on their behalf. It is a vivid illustration of the current intolerable situation and the approach of Mr Protopapas.

331. I now comment on each of the specific powers in turn.

332. The first power is to collect all accounts receivable of "the Respondent" and all rents due to "the Respondent" from any tenant. Whilst the Claimants do not own any real property, the power to collect receivables due to them (including dividends to be paid by subsidiaries) is obviously prejudicial to them – and, given the risk that the Receivership Order appears to extend to all affiliates/subsidiaries, could also affect the broader Cape Group.

333. The second power is to change locks to all premises at which any property is situated. Again, while the Claimants do not own real property, given the risk that the orders appear to extend to affiliates/subsidiaries, this could affect the broader Cape Group (and have an effect upon freehold and leasehold assets within the wider group of companies). This includes all the assets of the trading companies that sit below CIHL.

334. The third power is to open any mail addressed to "the Respondent" and addressed to any business owned by "the Respondent"; and redirect the delivery of any mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver. This would be an obvious interference with the Claimants' confidential information/property.

335. The fourth power is to endorse and cash all cheques and negotiable instruments payable to "the Respondent" (except pay cheques for current wages). This would

interfere with and divert the Claimant's money and, given the risk that the orders appear to extend to affiliates/subsidiaries, this could also affect the broader Cape Group (and interfere with contracts with counterparties).

336. The fifth power is to hire a real estate broker to sell any real property and mineral interest belonging to "the Respondent". The Claimants do not own real property. However, given the risk that the orders appear to extend to affiliates/subsidiaries, this could affect the broader Cape Group, and could apply to the Cape Group's property in e.g. England (it does not own any property in the US), in circumstances where on no view could the South Carolina Court have jurisdiction to cause a sale of real property in England.

337. The sixth power is to hire any person or company to move and store the property of the Respondent. Again, the Claimants do not own any movable property – but if the order extended the broader Cape Group, this would be an interference with that property.

338. The seventh power is to insure any property belonging to the Respondent (but not the obligation). Mr Protopapas has no authority to enter into contracts, whether of insurance or otherwise, on behalf of the Claimants or the broader Cape Group (and if he took out insurance coverage, he could expose Cape entities to further liabilities in relation to the payment of insurance premiums). If he were to do so, this might undermine or interfere with the Cape Group's existing contractual arrangements (and, moreover, purporting to enter into any contracts would be a breach of warranty of authority).

339. The eighth power is to obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party any financial records belonging to or pertaining to Cape plc and CIHL. This could have serious consequences for the Claimants – not least because if Mr Protopapas obtained these records, it would be very difficult to control how he used this information. It might cause disruption and interference in the Claimants' (and the broader group's) relationships with their banks.

340. The ninth power is to obtain from any landlord, building owner or building manager where Cape plc or CIHL is a tenant, copies of the lease, lease application, credit

application, payment history and copies of Cape plc or CIHL's cheques for rent or other payments. Neither Cape plc nor CIHL has any leasehold interests in real property. However, given the risk that the orders appear to extend to affiliates/subsidiaries, this could also affect the broader Cape Group, and its relationships with landlords.

341. The tenth power is a wide-ranging power to hire any person or company necessary to accomplish any right or power under the Receivership Order. If Mr Protopapas purports to hire any such person, it may create potential liabilities for the Cape Group. In addition, were any such persons hired by Mr Protopapas to purport to act, this could cause confusion and disruption.

342. The final power is to take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Cape plc or CIHL may be situated, and to review and obtain copies of all documents related to the same. The same points apply as set out above.

343. In short, the exercise of any of these powers could interfere with the property or contracts of the Claimants and the broader Cape Group. These powers are those sought by Mr Protopapas and were granted without debate or amendment.

344. Accordingly, the following is clear from the Receivership Order:

(1) It purports to give the broadest possible authority/power to the Receiver to administer all of the assets of the Claimants. There is no territorial restriction on those assets (i.e. it purports to give the Receiver authority to administer the assets of the Claimants worldwide).

(2) It purports to give the broadest possible authority/power to the Receiver to take all and any steps necessary to protect the Claimants (whatever they be).

(3) It purports to be over "Cape", being not only the legal entity Cape plc, but also its "*subsidiaries and global affiliates*".

345. Despite the limitations on the recognition/enforcement of the Receivership Order as a matter of English private international law, which I address in more detail in Section J below, the Receivership Order – and the US Proceedings of which it forms a central part – are highly prejudicial to the Claimants, both in terms of actual harm that has

already been caused, as well as potential harm that is likely to be caused in the future (or where there is a real risk that such harm will be caused).

346. I now address the real and immediate harm to the Claimants' ongoing business activities and operations (upon which basis the Claimants seek the relief sought in the Draft Order).

Consequences of the US Proceedings on the Cape Group

The Negative Impact on Directors/Management

347. First (and foremost) the continuance of the US Proceedings – and the Receivership Order which is central to them – is highly prejudicial to the Cape Group, the directors of the Claimants (as well as their subsidiaries) and the proper management of the Cape Group.

348. By purporting to give Mr Protopapas the broadest authority to act on behalf of the Claimants, the Receivership Order creates two conflicting centres of authority and, in those circumstances, leaves the directors of the Claimants in a state of uncertainty as to the nature and extent of their authority to act on behalf of and bind the companies in respect of which they are the *de jure* directors (which authority arises pursuant to the Claimants' articles of association, as well as CA2006 and the Jersey Companies Law 1991).

349. This prevailing sense of uncertainty raises serious questions about the extent of the directors' current powers which (unless resolved) make it very difficult for the directors to continue to act (or, at least, continue to act in a timely and efficient manner). In this regard:

(1) It is unclear how the directors are able to comply with their duties to act *bona fide* and promote the interests of the Claimants. As to this, there is a clear tension between the Claimants' fulfilment of their common law and statutory duties, and the purported authority of Mr Protopapas to protect the interests of the Claimants (whatever they may be).

(2) It is unclear to what (if any) extent the directors have power to manage the assets of the Claimants. Again, there is an obvious tension between the directors'

duties in relation to the assets of the Claimants – which are very significant indeed – and the power of Mr Protopapas to administer all the assets of the Claimants.

a) To put this in context, on the face of the Receivership Order (which purports to have worldwide effect – a position confirmed by Mr Protopapas in court filings, see at [257] above) the directors of the Claimants do not have authority to administer the assets of the Claimants – which would, by extension, include not having authority to sell/divest the assets of the Claimants. If, however, the directors did not sell an asset (either at the optimum time, or for the best price reasonably obtainable) because of the effect of the Receivership Order, they could potentially make themselves vulnerable to a claim for breach of directors' duty.

b) Similar issues may arise if, for example, the Claimants were presented with an opportunity to acquire an asset (which would be consistent with the broader strategy of the Altrad Group which I have referred to below at [377]).

c) A further possibility is that Mr Protopapas may seek to sell the assets of the Claimants pursuant to his powers in the Receivership Order (for example, to a fund specialising in distressed assets). As set out above, the assets of CIHL, for example, include its shareholdings in very valuable subsidiaries (including the administrator of the Cape Scheme, CCS). In those circumstances, the directors would be liable to severe criticism (and potentially litigation) if they did not seek (in the proper exercise of their directors' duties) to challenge Mr Protopapas dealing with those assets.

d) Finally, Mr Protopapas might, theoretically, seek to try to appoint himself to the board of directors of CIHL (in England) or Cape plc (in Jersey) (and seek to interfere with the proper administration of the Claimants' affairs e.g. by filing documents at Companies House in relation to this purported appointment as a director). Mr Protopapas has a proven track record of taking actions that are intended to be as harmful and disruptive as possible for the Cape Group and the Third-Party Defendants.

(3) There is a lack of clarity as to whether (if at all) the directors have the ongoing authority to bind the Claimants, and to perform core regulatory/administrative functions on behalf of the Claimants. For example, there is uncertainty as to whether the directors:

a) Can sign off on the company accounts. In relation to this, there is currently no provision in the accounts of the Claimants as regards their potential liability arising out of the US Proceedings. However, this position may change in the event that the trial in the 3P Complaint proceeds in December 2024 (as I explained above at [325]). This is relevant in view of directors' duties in relation to the accurate filing of accounts (for example, under section 386 of CA2006).

b) Can execute company guarantees for their subsidiaries.

c) Can provide comfort letters in favour of subsidiaries (which would mean that, in turn, they could sign off audits across the Cape Group).

(4) There is a lack of clarity as to the extent to which the directors are authorised to conduct the financial affairs of the Claimants. In relation to this, there is a clear tension between their day-to-day powers in relation to the Claimants' financial affairs and the broad powers granted to Mr Protopapas under the Receivership Order, including:

a) The Receiver's power under sub-clause 1 of the Receivership Order to collect all accounts receivable of the Claimants.

b) The Receiver's power under sub-clause 4 of the Receivership Order to endorse all cheques and negotiable instruments payable to the Claimants.

c) The Receiver's power under sub-clause 8 of the Receivership Order to obtain the financial records of the Claimants from any bank or other financial institution. Under this power, for example, the Receiver could make direct contact with the Claimants' bankers. [RO-1605]

350. In practical terms, these uncertainties make it difficult for the directors of the Claimants to exercise their powers or carry out their duties in a proper, timely or

efficient manner. The directors are placed in an entirely invidious position where they are "damned if they do, and damned if they don't" – the fundamentally inconsistent position as between their directors' duties, on the one hand, and the broad authority of Mr Protopapas, on the other, means that they are potentially exposed to liability under either US law or English/Jersey law depending on how they seek to act.

351. Furthermore, if (as they now appear to do) the Claimants have two continuing and conflicting centres of authority, this potentially exposes the Claimants (and their directors) to significant claims from both their shareholders and/or the Receiver and/or other third parties. In this regard:

(1) The Receiver could be carrying out and could continue to carry out in the future acts which (a) affect third parties (b) purport to bind the Claimants and (c) are entirely unknown to the directors/management of the Claimants.

(2) By carrying out such acts, the Receiver could potentially make the Claimants liable to substantial claims by third parties which, in turn, could make the directors liable to personal claims against them by the Claimants.

(3) These circumstances could raise real issues about the extent to which (if at all) the directors are covered by their director and officer ("**D&O**") policies and/or the continuing willingness of their D&O insurers to provide continuing coverage in the future.

(4) Separately, by acting in a manner which is not authorised by the Receiver or the Receivership Order, it could be claimed that the directors may potentially be held responsible in the US (whether it be South Carolina or in other states) for breach of the Receivership Order and/or other orders ancillary to the US Proceedings.

352. In these circumstances, there are numerous unresolved questions about the extent of the directors' authority (and the actual and/or potential conflict with the authority vested in Mr Protopapas by the Receivership Order) which are of serious concern to the directors of the Claimants and render it very difficult for them to fulfil their duties to the Claimants (and their shareholders) under the constitution of the companies and the relevant corporate law. In short, the directors are hindered from acting in a clear

and certain manner by the Receivership Order – and, unless/until the issue of who runs the Claimants is resolved, both the directors (and the Claimants) will continue to be prejudiced.

353. The issues/concerns I have referred to above are the ones that are currently foreseeable. There may be many unforeseeable actions which also put the Cape Group at risk – and which are actions that are outside of our control in circumstances where Mr Protopapas has shown himself to have a track record of acting in a way which causes the maximum damage and prejudice to the Cape Group and the Third-Party Defendants (for example, by making admissions in the US Proceedings that Cape is part of an intentional "*liability avoidance scheme*").

354. Ultimately, as the director of the Claimants, I have directors' duties to both companies under English and Jersey law (as well as having contractual obligations to them). If I act in a manner that gives priority to those obligations, I necessarily run the potential risk of exposing myself to liability under US law. This position is worsening on a daily basis and, some 18 months after the making of the Receivership Order, it is an intolerable situation.

Negative Impact on Operations/Business/Reputation

355. Second, the Receivership Order has the potential to cause serious prejudice to the operations/business of the Claimants (and their direct and indirect subsidiaries).

356. In this regard, any publicity in relation to the Receivership Order could be identified by the customers and/or suppliers of the Cape Group (in relation to which they will carry out regular credit checks and adverse media checks through their online reporting databases).

357. In the event our customers and/or suppliers learn of the Receivership Order – and the extent of the authority apparently vested by it in Mr Protopapas – this could adversely impact their willingness to do business with the companies within the Cape Group (which are the operational subsidiaries of the Claimants).

358. In addition, and as a result of the Receivership Order, the suppliers of the operational subsidiaries within the Cape Group may form the view that the Claimants and/or the

wider Cape Group are either insolvent, alternatively at risk of insolvency, which may (in turn) lead to them taking the following counter measures:

(1) They may delay supplies (alternatively cease to provide supplies altogether). This would negatively impact the Cape Group's ability to service its clients, adversely affecting current contracts, as well as future work, and potentially creating rights for clients to seek compensation if the Cape Group cannot deliver work and materials on time.

(2) They may seek payment in advance. This would adversely affect cash-flow, with a knock-on effect on broader operations (which could ultimately affect the solvency of the Claimants and the broader Cape Group).

359. Furthermore, such concerns about the Receivership Order and the potential insolvency of the Cape Group may also affect employees (in circumstances where the Cape Group has thousands of employees, and there is a real risk of the loss of staff and/or difficulties in recruiting further staff).

360. In addition, the Receivership Order is financially damaging to the Claimants insofar as the Receiver is spending large sums of money on attorneys and other expenses purportedly connected with the Receivership. The recent filings in the US Proceedings show [RO-4466] that Mr Protopapas has already spent at least $2.6 million on legal fees (in circumstances where his legal team are working on a contingent fee basis). In addition, it is unclear how Mr Protopapas would pay any adverse costs order made against him in favour of the Third-Party Defendants (or whether he would seek an indemnity for such costs/his fees more generally from the assets of the Claimants upon whose behalf and for whose purported benefit he seeks to advance the 3P Complaint).

361. Furthermore, the Receivership Order gives the Receiver the authority to deal with all of the assets of the Claimants (on a worldwide basis). As explained above, the Cape Group does not have any insurance assets in the US – indeed, these were all exhausted at the time of the dissolution of NAAC (as I have explained above) – and in those circumstances Mr Protopapas may seek to take control of other assets of the Claimants (including by coming to Europe and seeking to enforce the terms of the Receivership Order).

362. Finally, the Receivership Order has the ability to cause significant reputational damage to the Cape Group. In this regard:

(1) The Cape Group is now the leading UK and international asbestos removal and insulation specialist.

(2) It has a valuable brand, both in the UK and abroad, which it has sought to protect and secure through addressing its exposure to historic liabilities via the Cape Scheme.

(3) Under the powers vested in him by the Receivership Order, the Receiver has (a) issued legal proceedings in the US against several major (and entirely reputable) international companies and (b) admitted wrongdoing/liability avoidance (via a series of admissions in the US Proceedings as referred to above).

(4) The acts of Mr Protopapas stand to undo decades of work by the Cape Group to re-establish the group's post-asbestos credentials and to impact the reputation of the Cape Group negatively (which could, in turn, lead to further claims in the future).

363. In short, if and to the extent that it becomes common knowledge in the jurisdictions where the Cape Group has operations that (a) the ultimate and intermediate holding company within the group are subject to the Receivership Order (b) the Receivership Order is premised on the dissolution of the Claimants (which have "*forfeited [their] charter*") and (c) the Receiver has authority to administer all the Cape Group's assets (apparently on a worldwide basis) (including, for example, the power to collect its receivables from customers), then there is a serious risk that there will be material prejudice to the group's business and operations.

Negative Impact on the Cape Scheme

364. Third, the Receivership Order threatens the viability of the Cape Scheme (which, as I have explained above, is premised on the Court of Appeal's decision in Adams v Cape and has been carefully calibrated to balance the relative interests of the Cape Group, on the one hand, and potential claimants, on the other, which scheme has been

sanctioned by the High Court, and continues to be subject to that court's supervisory jurisdiction of schemes pursuant to Part 26 of CA2006).

365. As I have explained in detail above, the ongoing operation of the Cape Scheme is dependent on the ability of the Claimants to comply with the Funding Requirement and Scheme Funding Requirement under the provisions of the Scheme (and the relevant clauses in the Funding Agreement).

366. As matters stand, the stated effect of the Receivership Order is that it is Mr Protopapas that has the exclusive authority to administer and deal with the assets of the Claimants. In the event that CIHL and/or Cape plc are unable to comply with the Funding Requirement and/or otherwise place funds into CCS, this would be a material breach of both the Cape Scheme and the Funding Agreement and would potentially prevent CCS from continuing to pay out Scheme Creditors under the terms of the Scheme.

367. As set out above, the Cape Scheme is a court-sanctioned process that has been running (successfully) for nearly two decades, and which has led to the payment of approximately £60 million to Scheme Creditors during that period. However, the status quo – and, in particular, the existence of a Receivership Order which gives the broadest power to the Receiver to administer the assets of the Cape Group which are the very same assets which contribute to the Scheme Assets – means that the continued function of the Cape Scheme could potentially be placed at risk (causing harm not only to the Cape Group, but also to the Scheme Creditors/claimants who are intended to be protected by it). In this regard:

(1) The Cape Group has made a provision of £100.4 million for further asbestos-related liabilities over the next 30 years.

(2) Note 26 (Provisions) to the most recent accounts of Cape plc states that "*the directors anticipate that,* ***assuming no material deterioration in trading performance and no material change in legal precedence or judgment, the Group will be able to sufficiently fund its subsidiary Cape Claims Services Limited to satisfy all claims that will be settled under the Scheme of Arrangement***". [RO-1292]

(3) However, if, as set out above, there is a material deterioration in the Cape Group's finances as a result of the US Proceedings and/or Mr Protopapas seeks to undermine the effect of Adams v Cape (which is the legal bedrock on which the Cape Scheme is based) then there is obviously a risk that the ability to fund CCS and to settle the claims under the Cape Scheme will be seriously prejudiced.

368. Finally, under the terms of the Receivership Order, the Receiver is allegedly entitled to deal with CIHL's shares in CCS. As set out above, CCS is a valuable company, with net assets of £12.3 million declared in its most recent accounts. If the Receiver sought, in the exercise of his purported authority under the Receivership Order, to take control of CCS, the consequence for the Court-supervised Scheme could be very serious indeed.

Conclusions

369. For these reasons, it is clear that the Receivership Order will have a direct impact on the Cape Group, creating uncertainty for its directors, potentially exposing them/the Claimants to claims by third parties, and prejudicing business/operations and the Cape Scheme. Unless/until the issue of who runs the Claimants is resolved, the directors are in an impossible position (which makes risk management and the proper fulfilment of their duties very difficult indeed).

Consequences of the US Proceedings on the Altrad Group

370. In addition to the direct negative effect of the Receivership Order on the Cape Group, I now address the negative impact which it will have on the wider Altrad Group – which, in turn, will create an indirect negative effect on the Cape Group (which is, as set out above, a major sub-group within the Altrad Group).

Negative Impact on Financing/Funding

371. First, the Receivership Order is having a negative effect on the current financing and potential future funding of the Altrad Group. Whilst, for the reasons set above, the directors do not consider that the Receivership Order has been made by a court of competent jurisdiction and there has been no event of default in the financing

agreement between AIA SAS (as borrower) and certain of its lenders, it could nevertheless be contended that the appointment of Mr Protopapas under the Receivership Order in South Carolina constitutes an event of default in the financing agreement between AIA SAS and its lenders. AIA SAS is not a party to this Claim, and the Claimants are not a party to that agreement. However, I am aware given my role at AIA SAS that this agreement contains, as is typically the case, a clause that provides that the appointment of a receiver constitutes an event of default (including in the event that a receiver is appointed over a qualifying subsidiary). For obvious reasons of commercial confidentiality, AIA SAS has not agreed to provide a copy of this agreement.

372. The lenders have not to date sought to demand repayment of the loan and/or accelerate it and/or take any other action in relation to the event of default. Nevertheless, the situation is plainly most unsatisfactory, potentially very harmful to the Altrad Group and the Cape Group which forms part of it and illustrates that the Claim is required to resolve this issue so that matters can be put on a secure footing.

373. In addition to the adverse impact on the group's current financing, the Receivership Order presents a serious risk to its ability to raise funds in the future. In relation to this:

(1) The Receivership Order affects the parent company and/or the intermediate holding company in the Cape Group, which is one of the most significant sub-groups within the Altrad Group, and which represents approximately 20% of the group's annual turnover.

(2) In 2025, some of the group's current financing arrangements will mature, and it may become necessary to conduct a refinancing. The Altrad Group's ability to raise finance would be potentially hindered by the fact that approximately 20% of the group (in terms of annual turnover) is subject to the Receivership Order.

374. In the event that the Altrad Group is unable to repay the approximately €2 billion of loans which are currently outstanding to external lenders, this will have a directly negative impact on the Cape Group. In these circumstances:

(1) All the external funding of the Altrad Group is centralised in AIA SAS, which acts as the internal bank for the group.

(2) AIA SAS would need to call in its debts from Altrad UK (which are approximately $1 billion).

(3) Altrad UK would need to call in its loans to the Cape Group (which are approximately £160 million under the inter-company funding arrangements which I have referred to above).

(4) The Cape Group would have immediate solvency issues (which would impact on both its business/operations, referred to above, as well as its ability to continue to fund the Scheme, also referred to above).

Negative impact on Business/Reputation

375. Second, the Receivership Order (and the US Proceedings) have had a negative effect on the business/business reputation of the Altrad Group – which, in turn, has an indirect effect on the Cape Group.

376. In terms of the US Proceedings, these constitute a clear threat to the Altrad Group. There are already 3P Default Judgments against various Cape entities and Altrad entities. If there were to be a floodgate of litigation which sought to piggy-back on the existing US Proceedings, then the Third-Party Defendants could be exposed to claims that could exceed several $billions (in circumstances where, in my experience, claims for asbestos-related damage/loss in the US are very substantial e.g. $millions per individual claim). Such a liability could ultimately render the Altrad Group balance-sheet insolvent.

377. In terms of its business strategy, the role of the Altrad Group is to continue to grow and develop, especially through its international subsidiaries. In this regard, it acquires know-how, technology, people and opportunities to cross-sell services (in relation to which subsidiaries within the Cape Group have sold services to the African, Norwegian and other regional business of the Altrad Group).

378. The Receivership Order (and the vexatious attempts to target companies in the US Proceedings which are unrelated to the Cape Group – for example, the Sparrows

Third-Party Defendants) has created a massive barrier to the ability of the Altrad Group to acquire companies in the US. This, in turn, has a negative impact on the Cape Group, which is unable to learn and benefit from US know-how (but which also has been unable to sell its services to US entities within the Altrad Group).

379. Finally, the Altrad Group was never a party to any of the former activities of the Cape Group, either in the UK or the US. The reputational impact of the contrived association with the asbestos legacy of the Cape Group continues to impact the reputation of the Altrad Group on an ongoing basis (in circumstances where the Cape Group has largely rebranded to the Altrad Group in any event).

Conclusions

380. For these reasons, there is clear evidence that the Receivership Order will have a direct impact on the Altrad Group, creating financing/funding problems, as well as adversely affecting its business/commercial reputation – all of which has, in turn, a direct impact on the Cape Group.

J. THE LETTER BEFORE ACTION, THE CLAIM AND THE RELIEF SOUGHT

381. On 30 August 2024, the Claimants' legal representatives wrote the LBA to the Defendant in which they asked him to consent to the terms of the Draft Order attached thereto on an urgent basis; and to accept service of the claim form either at Morgan, Lewis & Bockius LLP in London, alternatively at his professional address in South Carolina [RO-4831-4841].

382. I understand that the Claimants served the LBA personally on Mr Protopapas via a process server, Proietta (www.proiettapi.com) (their affidavit of service is exhibited at [RO-4841a]). I also understand that, on 30 August 2024, Mr Protopapas made a filing at the South Carolina Court entitled "Notice of Filing of Attempt to Enjoin the Receiver in the High Court of Justice of England and Wales" (and to which he attached the LBA) [RO-4928-RO-4939].

383. On 5 September 2024, Mr Protopapas responded to the LBA (at [RO-4944 to RO-5018] ("**the LBA Response**"). In the LBA Response:

(1) Mr Protopapas sought to rely upon the "Barton Doctrine" (which is a principle of US law that "a Receiver represents the Court appointing him or her; he or she is an officer of the Court and is the agency through which the courts acts".

(2) Mr Protopapas sought to rely upon the fact that "your clients" (i.e. the Altrad Third-Party Defendants and the Sparrow Third-Party Defendants) were pursuing various appeals before the South Carolina Courts which meant that it was "abusive, vexatious and unconscionable that these entities would now seek assistance in the English Courts for the same or similar relief from which its asks in South Carolina".

(3) Mr Protopapas sought to contend that the LBA requires him to violate the orders of the South Carolina Court.

384. Each of these points is misconceived:

(1) The Barton Doctrine (in respect of which English law has a similar principle i.e. that court-appointed receivers/liquidators are officers of the court) is in fact irrelevant to the material issue in this case – which is that the lack of competence of the South Carolina Court as a matter of English private international law.

(2) The reference to "your clients" is highly misleading. The LBA was written on behalf of the Claimants, not the Altrad Third-Party Defendants and/or the Sparrow Third-Party Defendants. The Claimants have not appealed any orders of the South Carolina Court (and they are not represented in, nor have they submitted to the US Proceedings).

(3) The basis of this application is that the Receivership order has not been made by a court of competent authority and is not binding on the Claimants or their directors and that in this Claim the directors of the Claimants are seeking relief from the English Court in this regard. Accordingly, the Claimants do not require the Defendant to violate the orders of the South Carolina Court. Furthermore, and in any event, the Defendant has not been ordered by the South Carolina Court to pursue the 3P Complaint (as defined below).

385. Further, on 5 September 2024, Mr Protopapas issued the W&S Motion seeking, amongst other things, declaratory relief that (i) W&S is "*improperly interfering with an Officer of the Court in the conduct of his duties*" (ii) W&S is "*attempting to intimidate an Officer of the Court in the conduct of his duties*" (iii) W&S "*does not represent the Plaintiff and therefore can take no action on his behalf*" (iv) W&S "*is no longer acting as attorneys when it attempts to threaten., extort, and/or intimidate a Receiver during the performance of his duties*" (at [RO-5056] to [RO-5057]).

386. In the W&S Motion, Mr Protopapas is seeking to procure the Claimants to sue their own legal representatives in London.

387. I understand that the W&S Motion is likely to be heard and determined by Toal J at a hearing on 24 September 2024.

388. At the end of the LBA Response, Mr Protopapas states that:

"*A sensible solution to this issue is for you to withdraw the Letter [the LBA] and to undertake not to seek any relief in the English Courts or any other court than that seized of the jurisdiction in South Carolina, and I will withdraw the Complaint and Rule to Show Cause*".

389. This "offer" is addressed to W&S. Mr Protopapas has deliberately ignored the directors of the Claimants and the fact that it is the Claimants' directors who are making the Claim in the English Court on the basis of their *de jure* right as officers of those Companies. The "offer" constitutes an invitation to W&S to "swap sides" on the question of control and authority by Mr Protopapas saying that he will proceed in his summons against W&S if they do not accede to his demand. Given that, I do not understand how it can be said that such an "offer" is a proper one to have made.

390. Finally, in the LBA Response, Mr Protopapas refuses to accept service of the Claim Form – and refuses to agree to Morgan, Lewis and Bockius LLP accepting service on his behalf in London. He refers to "*the exclusive jurisdiction*" of the South Carolina Court in relation to all matters concerning the Receivership Order.

391. This indicates (although it is not said expressly) that Mr Protopapas may choose not to participate in the Claim or to engage properly with the issues that it raises.

392. It is in these circumstances the Claimants have issued the Claim. The relief sought in the Claim is set out in the Draft Order.

Declaratory Relief

393. The first part of the Draft Order seeks certain negative declaratory relief.

394. Whilst I will leave it to the Claimants' Counsel team to make submissions in relation to the form of the Draft Order, I make the following observations:

(1) There is no connection between the Claimants (or, indeed, the broader Cape Group) which would justify the recognition of the Receivership Order in England and Wales.

(2) The South Carolina Court had no recognisable jurisdiction over CIHL, Cape plc or any other Cape company in England and Wales. If a judgment had been entered against any of those companies, it would not have been recognised or enforced in England. If a receiver by way of execution, or otherwise, had been appointed on such a judgment, it would not have been recognised or enforced in England. Mr Protopapas was purportedly appointed an interim receiver in proceedings that could not have resulted in a recognisable or enforceable final judgment or a receivership. An interim appointment can give Mr Protopapas' appointment no greater status. The Receivership Order is not recognisable or enforceable and no steps taken by Mr Protopapas as a receiver are properly steps taken by CIHL or Cape plc.

(3) Further, Mr Protopapas has no authority to act in relation to the Claimants under their respective constitutions. Under their respective constitutions (and CA2006 and the Jersey Companies Law 1991) the directors of the Claimants continue to act as directors, exercising all the powers allocated to them.

(4) Mr Protopapas has no authority to act as the receiver of the Claimants either in England and Wales, or the South Carolina Court, or worldwide – either as a matter of private international law or company law.

(5) Accordingly, given that as a matter of English law the South Carolina Court was not jurisdictionally competent to make the Receivership Order, Mr Protopapas

has had no legitimate basis for acting as he has done, and he has been acting without the Claimants' authority and/or any mandate from the Claimants.

(6) Despite the fact that the Receivership Order would not be recognised in England and Wales, and his lack of authority to act on behalf of the Claimants, Mr Protopapas continues to act in a manner that is contrary to the Claimants' interests (and the interests of their subsidiaries and affiliates) in the US. For example:

(a) In the Tibbs Claim, Mr Protopapas has purported to cause "Cape plc" to issue third party proceedings (and obtain the 3P Complaint Default Judgments) against companies that include (a) the Claimants' direct parent and subsidiary undertakings (e.g. Cape UK Holdings Newco Limited, Cape Industrial Services Group Limited, Cape Holdco Limited and Altrad Services Limited) and (b) companies in the Altrad Group (upon which the Cape Group relies for funding/financing and business cross-opportunities and whose only connection to Cape is an ownership interest in it nearly 50 years after the dissolution of NAAC).

(b) The 3P complaint also makes assertions <u>against</u> Cape, despite the proceedings supposedly being brought <u>by</u> Cape. They have been accepted by the South Carolina Court. Those assertions are set out in [233] to [234] above. They purport to constitute admissions on behalf of Cape and are hugely harmful to it.

(c) Mr Protopapas has also purported to defend proceedings on behalf of Cape plc. As set out above at [212], on 29 June 2023 he purported to file an Answer to the Second Amended Complaint in the Park Claim on behalf of Cape plc. He has also entered into the Dismissal Agreement with the Tibbs Plaintiffs. Mr Protopapas has also purported to issue a motion against W&S seeking, inter alia, declaratory relief that W&S cannot act for or represent the Claimants.

(d) In these circumstances, Mr Protopapas has purported to cause "Cape plc" to pursue litigation, make admissions and issue applications that no

fiduciary acting *bona fide* in the interests of Cape plc could take. In this regard:

i) It is clear that Mr Protopapas has a conflict of interest. He purports to act in the interests of Cape, but his actions are intended to pursue the interests of the Park Plaintiffs and the Tibbs Plaintiffs.

ii) It is clear that Mr Protopapas is not acting *bona fide* in the interests of the companies in respect of which he is purportedly a fiduciary and in whose interests he purports to act.

(7) Further, there is a real risk that there are further acts that Mr Protopapas will carry out which would be seriously harmful to the Claimants (both in England and Wales and worldwide). Mr Protopapas has demonstrated his determination to harm the interests of the Cape Group – and that he regards this litigation as a 'day of reckoning' (which is the phrase used by him at page 10 of the 3P Complaint).

395. The Court is accordingly invited to declare that the Receivership Order (as set out above) is not recognised and has no legal effect in England and Wales and worldwide.

396. In addition, the Court is invited to and to grant the other declaratory relief set out in the Draft Order.

397. I understand (on the basis of legal advice, in relation to which privilege is not waived) that key issues (amongst others) that the Court will consider in relation to granting negative declaratory relief include (a) whether the declaratory relief would serve a useful purpose (b) whether there is a real and present dispute between the parties (c) whether the declaratory relief provides justice in the particular case and (d) whether the granting of declaratory relief is the most effective way of resolving the issues raised.

398. Again, I will leave it to Counsel to make submissions in relation to these points. However, I believe that these criteria are satisfied. In relation to this:

(1) The relief sought will serve a useful purpose – in that it will resolve the issue of who has the proper authority to act on behalf of and bind the Claimants (and

resolve the uncertainty on this issue in circumstances where there are currently two competing centres of control within the companies).

(2) There is a real and present dispute between the parties. I understand from my solicitors, Winston and Strawn LLP, that the Claimants have asked Mr Protopapas to agree to the terms of the Draft Order (which would mean that he ceases and desists from continuing the 3P Complaint) – and that he not agreed to or complied with this request. There is on any view a real and present dispute between the parties which needs to be resolved (and on an urgent basis). The concerns raised by the Claimants are neither academic nor hypothetical: rather, the position has now become intolerable.

Injunctive Relief

399. The second part of the Draft Order seeks certain negative injunctive relief.

400. Again, while I will leave it to the Claimants' Counsel team to make submissions in relation to the form of the Draft Order, I make the following points:

(1) The Claimants have a right not to have lawsuits brought in their name by other individuals/entities anywhere in the world – and, in particular, the right not to have lawsuits conducted without authority in their name by Mr Protopapas in a jurisdiction (i.e. the US and, potentially, in the event that Mr Protopapas seeks to enforce any subsequent judgments in the US Proceedings worldwide, in both England and in France) with which they have no connection and where they have declined to submit to the jurisdiction (in circumstances where the purpose of those lawsuits is in fact to harm the very companies on whose behalf and in whose interests the proceedings are being taken).

(2) The conduct of Mr Protopapas in the 3P Complaint is vexatious and unconscionable. Specifically, in the 3P Complaint he seeks to cause obvious harm to the Claimants by, in effect, procuring them to sue their parents and subsidiaries – in circumstances where (a) he has no authority to act on their behalf and (b) his conduct is plainly contrary to the direct interests of the Claimants.

(3) The damage to the Claimants caused by both Mr Protopapas' acts in the Tibbs Claim, as well as the potential harm caused by him in England and worldwide, is of such a nature that it cannot be adequately compensated in damages. The quantum of the claim in the 3P Complaint is of an indeterminate amount: however, as explained above at [376], the findings in the 3P Complaint could open a floodgate of copycat group/class litigation against both the Cape Group and the Altrad Group (which could expose them to liabilities in the $billions).

401. Given Mr Protopapas' past and likely future conduct in relation to the Claimants and the broader Cape Group/Altrad Group, the court is invited to grant injunctive relief to stop him taking further unauthorised steps. As set out above, consent to the Draft Order has been requested – but it has not been provided.

402. The Claimants seek a prohibitive injunction pursuant to which:

(1) Mr Protopapas be injuncted in England and Wales and worldwide from acting or purporting to act as a receiver of the Claimants pursuant to the Receivership Order.

(2) Mr Protopapas be injuncted 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 the Claimants.

(3) Mr Protopapas be injuncted from acting or purporting to act as a receiver of the Claimants in the Park Claim and the Tibbs Claim.

(4) Mr Protopapas be injuncted from litigating as "Cape plc" or CIHL in any legal proceedings in the State of South Carolina, US or elsewhere.

403. I understand and believe that the granting of such relief would be both equitable and just.

K. CONCLUSIONS

404. Mr Protopapas has had no authority conferred on him by CIHL or Cape plc, and the South Carolina Court does not have jurisdiction over either CIHL or Cape plc as they do not have a sufficient connection with that jurisdiction and the decision in Adams v

Cape should be applied. Mr Protopapas has no legitimate authority or mandate to act for an on their behalf. The lawful authority to act for and on their behalf remains with the directors of the Claimants. Further, for the reasons set out above, the conduct of Mr Protopapas is abusive, vexatious and unconscionable.

405. For all these reasons, the Claimants ask the Court to grant the relief in the Draft Order.

406. In that regard, the Court will be asked to consider the Claimants' claim on an expedited basis – and the Claimants will file a separate application and supporting witness statement in that regard on the basis that the claim needs to be determined as a matter of urgency (not least given the impending trial of the 3P Complaint on 9 December 2024); and, prior to that, the Claimants will also be asking the Court to determine the issue of service out of the jurisdiction on an expedited basis as well.

Statement of truth

I believe that the facts stated in this witness statement are true. 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.

Ran Oren
Dated: 6 September 2024

Certificate of compliance

I hereby certify that:

1. I am the relevant legal representative within the meaning of Practice Direction 57AC.
2. I am satisfied that the purpose and proper content of trial witness statements, and proper practice in relation to their preparation, including the witness confirmation required by

paragraph 4.1 of Practice Direction 57AC, have been discussed with and explained to Ran Oren.

3. I believe this trial witness statement complies with Practice Direction 57AC and paragraphs 18.1 and 18.2 of Practice Direction 32, and that it has been prepared in accordance with the Statement of Best Practice contained in the Appendix to Practice Direction 57AC.

Name: Paul Joseph Fleming

Position: Partner, Winston & Strawn London LLP

Dated: 6 September 2024

Insurance Coverage Inquiry

Below is the result of your South Carolina Workers' Compensation insurance coverage inquiry

Policy Information

WC169037204
Effective Date: 03/01/2024
Cancellation Date: 00/00/0000

Carrier Claims Service Address

Zurich American Insurance Company
WC Carrier Code: 00090
P O Box 968084
Schaumburg, IL 60196-8084
800-241-7570

Employer Policy Issued to

G&A OUTSOURCING LLC
17220 KATY FWY STE 350
HOUSTON , TX 77094

☑ I would like to be notified of mid-term cancellations for this policy

Email Address:

Confirm Email Address:

Submit Clear

For additional information, please contact

SC Workers' Compensation Commission Coverage Division

(803) 737-6203
coverage@wcc.sc.gov

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Insurance Coverage Provider

ZURICH AMERICAN INS CO

Policy Number

WC169037204

Coverage Date

09/05/2024

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E: Parker.bates@rmdkwikform.com
T: 281.755.3693

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Chief Executive Officer

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It was great to see our teams raising both awareness and funds for such an important cause. Every sale and donation helps make a difference in the fight against breast cancer. 💖

To learn more about Breast Cancer Now and all of the incredible work they do, please follow this link: **https://lnkd.in/eU2W5uNs**

#BreastCancerNow #AfternoonTea #CharityEvent #Fundraising #TeamWork #AltradRMDKwikform

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Challenges and Solutions:

· Structural Design: The 'A' frame design with sloping columns posed a challenge. Our engineers proposed a single flat concrete foundation to avoid exacerbating existing damage and simplify the erection process.

· Heavy Load Support: To support the 750-tonne bridge deck, we deployed two 12m-high Megashor and Slimshor shoring towers, known for their robust load-bearing capabilities.

· Innovative Load Monitoring: Introducing our e-Pins for the first time in an above-ground project allowed for real-time web monitoring of thermal load variations. These solar-powered, 3G-connected devices ensured optimal performance and safety.

This strategic approach not only bolstered the bridge's structural integrity but also lifted traffic restrictions, benefiting the 3,000 residents in the area.

Read the full case study here: **https://bit.ly/46psSbE**

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Last Thursday, members of our Barking sales team attended CONSTRUCT's annual Golf Day at the prestigious Foxhills Golf Club in Surrey. The event, held on the 19th of July, was not just a day of networking and friendly competition, but also a significant opportunity to support a worthy cause.

We were proud to raise funds for the Lighthouse Construction Industry Charity, the only charity dedicated to providing comprehensive emotional, physical, and financial wellbeing support to construction workers and their families. This charity plays a crucial role in ensuring the wellbeing of our industry's workforce, and we are honoured to contribute to their mission.

A big thank you to CONSTRUCT for organising such a fantastic event, and to all the participants who made it a memorable day. Together, we are making a difference!

#GolfDay #ConstructionIndustry #CharitySupport #LighthouseConstructionIndustryCharity

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🏢 12 Storey Development, London 🏢

A significant £22 million development, this transformative project aims to reshape the local landscape with a 12-storey building that includes office spaces, a ground-floor retail unit, and 400-bed student accommodation, complemented by parking, landscaping, and vital infrastructure.

To support the excavation work, we adopted a strategic two-phase approach by supplying sufficient Ground Shoring equipment to support only half of the excavation at a time. This approach ensured stability during each phase while also maximising equipment reuse, thereby significantly reducing transport costs and enhancing overall project efficiency.

Challenges & Solutions:

Two-Phase Approach: To optimise efficiency and resource use, we specified Tubeshor 460 props and GeoBrace 390 waling beam for the excavation support.

Equipment Reuse: After stabilising the first half of the excavation, two 10m Tubeshor props remained while other props and walers were reused for the second half, reusing about 95% of the equipment, reducing transport costs, and enhancing efficiency.

Structural Challenges: The need to avoid an opening to the existing structure and the use of a short Megashor prop for a short return demonstrated the project's complexity and the adaptability of our solutions.

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Exciting news for our colleagues in the USA who have recently opened the latest RMD Kwikform branch in Anderson, South Carolina.

Thanks to Branch Manager Parker Bates & Site Supervisor Dennis Rhodes for the great snap – wishing all continued success and growth at your new site!

3:04 AM · Apr 8, 2022

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27 November 2024

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

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

pdp@rplegalgroup.com

Our ref 5346.1

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.

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138 Fetter Lane, London, EC4A 1BT. The word "partner" denotes a member of the LLP, or an employee or consultant with equivalent standing and qualifications.

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@signaturelitigtion.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

Signature Litigation LLP

SIGNATURE

Signature Litigation LLP
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London, EC4A 1BT

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F: +44 (0)20 3818 3501

29 November 2024

By email

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

jon@smithrobinsonlaw.com

Our ref 5346.1

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).

Signature Litigation LLP is a limited liability partnership registered in England & Wales with registered number OC371068
and is authorised and regulated by the Solicitors Regulation Authority. A list of LLP members is available for inspection at the LLP's registered address:
138 Fetter Lane, London, EC4A 1BT. The word "partner" denotes a member of the LLP, or an employee or consultant with equivalent standing and qualifications.

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@signaturelitigtion.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

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29 November 2024

By email

FAO: John T. Lay Jr & C. William McGee
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Columbia, SC 29201

jlay@gwblawfirm.com
bmcgee@gwblawfirm.com

Our ref 5346.1

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**").

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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@signaturelitigtion.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

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T: +44 (0)20 3818 3500
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10 December 2024

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

Our ref **5346.1**

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

pdp@rplegalgroup.com

Dear Mr Protopapas,

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

We enclose by way of service the final Approved Judgment of Mr Justice Mann of the High Court in London which contains minor editorial changes from the version served on you on 22 November 2024.

We also write further to the Order of Mr Justice Mann of 22 November 2024, our Cease and Desist Notice of 27 November 2024 and our letter of 28 November 2024.

We understand that since receiving the Judgment, the Order and our letters referred to above, you filed on 6 December 2024 with the Supreme Court of South Carolina a Motion to Strike Petitioner's Supplements to Petitions for Writ of Certiorari and Supplemental Appendix purportedly in your capacity as *"court appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd* [CIHL]*."* For the avoidance of doubt, this letter does not respond to that Motion and should not be taken as any form of acceptance/acquiescence to the points raised therein.

Your actions are in direct contravention of the Order the High Court which confirms that you have no power or authority to act on behalf of CIHL and specifically that you have no power or authority to act for and on behalf of CIHL in any proceedings in the South Carolina Court or to seek further relief on behalf of CIHL from the South Carolina Court.

It is clear that you are deliberately violating and disregarding the Order of the High Court and continuing to purport to act for and on behalf of CIHL in breach of that Order. We have already drawn your attention to the Penal Notice at the front of the Order which makes it clear that if you disobey the Order you may be held in contempt of court and may be imprisoned, fined or have your assets seized. For the avoidance of doubt, we regard your continued breaches of the Order as constituting a contempt of court and unless you immediately cease and desist from acting in contravention to the Order, our client reserves the right to issue proceedings for contempt against you without further notice.

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138 Fetter Lane, London, EC4A 1BT. The word "partner" denotes a member of the LLP, or an employee or consultant with equivalent standing and qualifications.

In this regard, we would also draw to your attention to the fact that contempt proceedings in these circumstances can be brought without the further permission of the Court, to the fact that permission of the Court would likewise not be required for contempt proceedings to be served on you in the United States within the Proceedings, and to the fact that it is no bar to a finding of contempt simply for a defendant to state that they were acting in compliance with the order of another Court.

Further, you will note from paragraphs 111 and 112 of the Judgment that the Court confirmed that you are liable in tort for the losses that have been and continue to be caused by you acting without any authority that is recognised under English law (being the law of CIHL's place of incorporation). By continuing to hold yourself out as acting as agent of CIHL without mandate, permission or authority from CIHL to do so, you are continuing to commit this tort against CIHL and so you are liable to CIHL for losses it has suffered as a result of your actions. In this regard, our client has instructed us to take further action against you unless you confirm by the close of business on Thursday 12 December 2024 that you will immediately comply with the terms of the Judgment and Order as set out and explained in the Cease and Desist Notice and that neither you or your attorneys will take any further steps in any proceedings on behalf of CIHL or Cape Plc.

This letter is also a formal request, on behalf of our clients, that you preserve, and take all necessary steps to preserve and safeguard, any and all documents or data relating to your conduct purportedly on behalf of CIHL and Cape Plc in South Carolina or elsewhere as they will be highly relevant and material to any potential action and claims our clients may wish to pursue against you.

Yours faithfully

Signature Litigation LLP

Signature Litigation LLP

enc

SIGNATURE

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F: +44 (0)20 3818 3501

11 December 2024

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

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

pdp@rplegalgroup.com

Our ref 5346.1

Dear Sirs/Madams

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

Please enclosed, by way of service the following documents:

1. The Claimants' Application dated 11 December 2024;
2. The Draft Order;
3. The Third Witness Statement of Ran Oren dated 11 December 2024;
4. Exhibit RO3.

We are requesting the Court to determine the Application at a one hour hearing before Mr Justice Mann on 13 December 2024. You have the right to respond to the Application.

We should be grateful if you could acknowledge receipt of this letter.

Yours faithfully

Signature Litigation LLP

Signature Litigation LLP

enc

www.signaturelitigation.com
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BL-2024-001337

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 / Applicants

- and –

PETER D. PROTOPAPAS
Defendant / Respondent

SKELETON ARGUMENT ON BEHALF OF THE CLAIMANTS
For application dated 28 May 2025

Suggested Pre-Reading:

(1) This skeleton argument
(2) The application notice dated 28 May 2025
(3) The updating letter to the Court written by Signature Litigation LLP dated 28 May 2025 (the "**Updating Letter**")
(4) The Draft Order filed with this skeleton.

A. INTRODUCTION

1. This skeleton is filed in support of the Claimants' application dated 28 May 2025 (the "**Application**") for summary assessment of their costs of these proceedings, as commenced by a Part 8 Claim form with claim number BL-2024-001337 (the "**Claim**").

2. The Court is well aware of the background that underlies these proceedings, and in particular that:

   2.1 On 22 November 2024 the Court handed down an approved judgment in the Claim (the "**Judgment**") giving judgment for the Claimants and the Court's order was sealed on the same day (the "**Order**").

   2.2 By paragraph 12 of the Order, the Claimants were awarded their costs of the Claim on the standard basis, to be a matter of detailed assessment if not agreed[1].

   2.3 By a further order dated 31 March 2025 (the "**Interim Payment Order**")[2], the Court ordered Mr Protopapas to make an interim payment on account of costs within 28 days of the Interim Payment Order being served on him.

   2.4 By paragraph 3 of the Interim Payment Order the Court gave the Claimants liberty to apply for further relief, including specifically liberty to apply for an order for summary assessment of their costs of the Claim.[3]

3. As the Court is aware, Mr Protopapas has been validly served with these proceedings and has not objected to the Court's jurisdiction over him, but he has not directly participated in the Claim (whilst nevertheless making various accusations and comments against the Claimants and indeed against this Court in filings he has made in the South Carolina court).

4. Since the Interim Payment Order was made:

[1] See the Order at Attachment 1 to the Updating Letter.
[2] See Attachment 11 to the Updating Letter.
[3] The Court's comments as expressed in the reasons accompanying the Interim Payment Order are—of course—noted by the Claimants, and it is hoped that these points are addressed below.

4.1 On 10 April 2025, Mr Protopapas was validly served with the Interim Payment Order.[4]

4.2 Mr Protopapas has not made any payment under the Interim Payment Order by the relevant deadline of 8 May 2025 (or at all) and indeed he has not communicated with the Claimants in relation to this (or otherwise).

4.3 On 21 February 2025, the Claimants filed a Notice of Commencements of detailed assessment proceedings and a Bill of Costs, both of which were served on Mr Protopapas on the same date.[5]

4.4 Mr Protopapas has not responded to this in any way, and in particular he has not served any Points of Dispute in relation to the Bill of Costs[6] as he is required to do if he wishes to dispute the quantum of the costs that the Claimants seek in detailed assessment.[7]

5. Whilst the Claimants are now entitled as of right to seek a Default Costs Certificate giving them judgment for the full amount of their costs, it is clearly far more appropriate in the circumstances of this case for the Court to make a summary assessment of their costs of the Claim instead. A summary assessment by the trial judge (Mann J):

(1) can be made by the Court on a sensible and pragmatic basis;
(2) will allow for discounts to be made by the Court which would not otherwise occur, given the absence of any engagement or points of dispute raised by Mr Protopapas;
(3) will therefore be just in all the circumstances, allowing the Court to consider any relevant matters which it considers appropriate (and which would be to the benefit of Mr Protopapas);
(4) is in accordance with the case law on summary assessment where a detailed assessment would be otherwise expensive and time-consuming; and
(5) will have greater utility than a Default Costs Certificates when it comes to enforcement, given that any enforcement proceedings can be expected to take place abroad.

[4] See paragraph 3 of the Updating Letter and the associated Attachment 12 as evidence.
[5] See paragraph 8(a) of the Updating Letter and the associated Attachments 7, 8, 9 and 10 as evidence.
[6] See paragraph 8(b) of the Updating Letter.
[7] See CPR rule 47.9(2) and PD47 paragraph 5.4. Mr Protopapas had 21 days from being served with the Bill of Costs to file any Points of Dispute, and this period expired on 14 March 2025.

6. Accordingly, by this Application, the Claimants respectfully ask the Court to make such a summary assessment, and the Court is invited to summarily assess the Claimants' costs in the sum of £2,437,729.32.

7. Further, the Court is invited to consider this application on the papers in light of any evidence or argument in opposition put forward by Mr Protopapas after being served with this Application and this skeleton argument.

8. The Claimants have adopted this approach to the Application in order to take a proportionate and costs-minimising approach as is consistent with the purpose of this Application and with the reasons given by the Court in the Interim Payment Order. Further and in support of the same approach, the Claimants do not seek their costs of this Application.

B. THE LEGAL FRAMEWORK

8. The Court must consider whether to make a summary assessment of costs "*whenever*" a costs order is made (Practice Direction 44 paragraph 9.1), and the Court has the power to make a summary assessment of a large bill of costs (Pipia v BGEO Group Ltd [2022] Costs LR 773 at [39]-[40], *per* Henshaw J).

9. This flows from the fact that the Court has a general power to make either a summary assessment or an order for detailed assessment (CPR rule 44.6). Whenever consider what order to make about costs, the Court must make this decision in light of all the circumstances, including *inter alia* the conduct of the parties (CPR rule 44.2(4)).

10. It has been held that it is right to order a summary assessment of a large bill of costs where this is a pragmatic and sensible approach for the Court to adopt (Pipia v BGEO Group Ltd at [38], *per* Henshaw J quoting Master Rogers in Rotary Watches (17 December 2004, unreported)).

11. The failure to make a payment in respect of an interim payment order has been held to be a relevant factor pointing in favour of a party's request for summary assessment (Pipia v BGEO Group Ltd at [42]).

12. In Pipia v BGEO Group Ltd the Court ordered a summary assessment in the context of detailed assessment proceedings that would otherwise be expensive and time-consuming,

but an order can likewise be made because of a party's expected failure to participate—in Certain Underwriters at Lloyd's v Syrian Arabic Republic [2018] EWHC 385 (Comm) an order was made because "*the history of proceedings to date suggests that there is little or no prospect of the Defendants participating in any detailed assessment process*" (see [88(iii)] and [91]).

C. THE SUBMISSIONS IN THIS CASE

13. It is submitted that the Court should order a summary assessment where it is just to do so in all of the circumstances of the case.

14. In the reasons accompanying the Interim Payment Order, the Court indicated that it may be more appropriate for the Claimants' costs to be considered in detail by a costs judge rather than by a summary assessment.

15. However, in this case the true choice is between a Default Costs Certificate for the full amount or a summary assessment by the trial judge, which allows for any appropriate discounts the Court considers just in the circumstances of this case.

16. Fundamentally, this is because the result of Mr Protopapas non-engagement—and specifically his failure to serve any Points of Dispute in relation to the Claimants' Bill of Costs, either by the relevant deadline or at all—is that the Claimants are now entitled to request a Default Costs Certificate as of right (CPR rules 47.9(4) and 47.11). The Default Costs Certificate would contain an order of the Court requiring Mr Protopapas to pay the full amount of the Claimants' Bill of Costs (CPR rule 47.11(2)).

17. The alternative to an order for summary assessment would therefore not be the consideration of the Claimants' costs by a costs judge, but simply the issue of a Default Costs Certificate making Mr Protopapas liable for the entirety of the Claimants' incurred costs.

18. In these circumstances, it is submitted that the appropriate course is for the Court to make a summary assessment.

19. Without waiving privilege in relation to their own legal advice, it is the Claimants' understanding that a summary assessment will have a greater utility than a Default Costs Certificate when it comes to enforcement in other jurisdictions. In a context that is similar

to that outlined by Henshaw J in Pipia v BGEO Group Ltd,[8] the Claimants wish the Court to make an order that will involve an actual and final assessment by the Court of the Claimants' costs.

20. Further, such an approach is clearly fairer as regards Mr Protopapas for there to be an actual assessment of the Claimants' costs. To the extent that there are any concerns raised about the appropriateness of the costs which have been incurred by the Claimants and for which the Court may or may not be making Mr Protopapas liable, it is submitted that an assessment process is in the interests of justice.

21. In these circumstances, the Court's discretion as to costs under CPR rule 44.2(4) should be directed pragmatically towards the process that will lead to an assessment on a proportionate basis, and that points clearly to a summary assessment by the trial judge.

22. The Court is therefore invited to make a summary assessment of the Claimants' costs.

D. QUANTUM OF SUMMARY ASSESSMENT

23. The Court will naturally perform a careful examination of the material before it when assessing the costs.

24. In support of the Claimants' application for an interim payment, the Court was referred to a number of factors which caused and justify the level of costs which have been incurred by the Claimants—see paragraphs 28-30 of the Claimants' skeleton argument dated 3 February 2025 and the paragraphs of Brehony 8 referenced there[9]—and the Court is referred to this material again in support of the reasonable and proportionate level of costs incurred.

[8] See [38], "*Ms Trevan also explains that there is a potential enforcement advantage of a final order being made now. She states that BG is concerned that Mr Pipia's conduct over the past six months strongly suggests that he does not intend to, and will not, comply with existing or future orders of the court, so that BG will need to take steps to enforce its costs claim against Mr Pipia, including internationally. Without waiving privilege, it is, she says, BG's understanding that it is likely to require a final, rather than an interim, costs order from this court in order to have reasonable prospects of doing so in those foreign jurisdictions where Mr Pipia resides or may have assets. It seems to me entirely likely that that is the case*."

[9] Both the skeleton argument and Brehony 8 are enclosed with the Updating Letter as Attachments 3 and 5 respectively.

25. As set out in the Claimants' N260 Statement of Costs for the Claim[10] (and as set out in more detail in the Bill of Costs), the Claimants have incurred total costs of £3,794,987.85.

26. In the reasons accompanying the Interim Payment Order, the Court noted the higher hourly fees charged by Winston & Strawn, and so the Claimants note that if one reduces these hourly rates by 25% to align them with the hourly rates charged by Signature Litigation LLP, this would reduce the total costs incurred by £201,465.50.

27. Further noting the comments made by the Court in relation to the number of counsel instructed in relation to the Claim, the Claimants note that removing all of the fees charged by Mr Derrick Dale KC, Ms Louise Merrett and Mr Angus Groom would result in a reduction in the Claimants' costs of £725,605.50.

28. Whilst the Claimants do not agree that these costs (in part or in whole) were not reasonably or proportionately incurred in the circumstances outlined in Brehony 8, it is also recognised that any summary assessment will require a broad-brush approach, and it is therefore noted that these two reductions would together reduce the Claimants' costs to an indicative total of £2,867,916.85.

29. In the circumstances, in order to achieve finality on this issue without incurring any further costs unnecessarily the Court is invited to make yet a further deduction of 15% from this indicative figure to give a total of summary assessment of £2,437,729.32.

30. In this regard, the Court is invited to note that the "rule of thumb" that a party will recover 70% of their costs incurred when assessed on the standard basis (Lamport v Jones [2023] EWHC 667 (Ch) at [107]) would result in the Claimants' costs being assessed at £2,656,491.495. The proposed summary assessment of £2,437,729.32 is a deduction of over £200,000 from this figure.

E. CONCLUSIONS AND APPROACH

31. Following the approach taken in relation to the Interim Payment Application, the Court is invited to determine this Application on the papers.

[10] Further provided to the Court as Attachment 6 to the Updating Letter .

32. In order to take a proportionate and cost-saving approach, the Claimants have prepared their evidence and argument (i.e. this skeleton argument) in support of the Application to be filed and served together with the Application.

33. The Court is therefore invited to consider this Application on the papers after taking into account any evidence and argument filed and served by Mr Protopapas within 17 days of being served with this Application, or alternatively within 17 days of a further direction of the Court.[11]

34. The Court is thereafter respectfully invited to make an order in the form of the draft order filed with this Application.

35. The Claimants do not seek their costs of this Application.

28 May 2025

DERRICK DALE KC
Fountain Court Chambers

ANGUS GROOM
South Square

[11] This is the equivalent to the approach which the Court adopted in relation to the Claimants' interim payment application (Attachment 2 to the Updating Letter), where (by the Court's order of 17 January 2025 (Attachment 4 to the Updating Letter) Mr Protopapas was ordered to file and serve any evidence in response to the application within 10 days, with the exchange of skeleton arguments to follow 7 days thereafter.

ALTRAD

BEYOND ZERO A culture of safety

Underwriters at Liberty Mutual Insurance Company
175 Berkeley Street
Boston, Massachusetts
MA 02116
United States of America

By Post and email

7 May 2025

Dear Sirs

Re: Isabella Park vs. Armstrong International, et al., in the Court of Common Pleas for the Fifth Judicial Circuit, South Carolina ("the South Carolina Court"): Civil Action No. 2021-CP-40-02727 ("Park Claim")

We refer to the subpoena issued to you in the above proceedings by John Chandler, of the firm Rikard & Protopapas, as Attorney for the purported "Receiver for Cape PLC / Cape Industries Ltd" (**Purported Receiver**) on 28 April 2025 (**Subpoena**).

Attached to this letter is an order from Mr Justice Mann, sitting in the High Court of Justice, Business and Property Courts Of England And Wales (**Court**) dated 22 November 2024 (**High Court Order**).

I write as the sole director of CIHL, being the only person legally entitled to represent CIHL, as confirmed by the High Court Order.

The Purported Receiver has recently been holding himself out as a duly appointed receiver over, alternatively, Cape PLC, Cape Industries Ltd and/or Cape Intermediate Holdings Limited (**CIHL**), all apparently as entities formerly known as Cape Asbestos Company Limited. He has done so relying on an order granted by order of the South Carolina Court dated 16 March 2023 appointing the Purported Receiver as a receiver over CIHL (**Receivership Order**), which the South Carolina Court issued without notice or a hearing several months after the Park Claim was reported to be fully resolved and concluded. The Receivership Order purports to be in respect of the entity "Cape Plc", but has been subsequently clarified by the South Carolina Court to be actually in respect of CIHL.

To the extent you are not already aware, the Receivership Order is currently the subject of appeals with the Supreme Court of South Carolina from several entities. It is also the subject of a request by the Troutman Pepper Locke law firm to dissolve the purported receivership. That request has been pending before the South Carolina Court since 15 September 2023, and has not been opposed by the Purported Receiver. The Purported Receiver and the South Carolina courts have been made aware of the High Court Order.

The High Court of Justice has ordered, amongst other things, that:

1. The Receivership Order is not recognised and has no legal effect in England and Wales and worldwide.

2. The Purported Receiver 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.

Cape Intermediate Holdings Limited, 6-7 Lyncastle Way Barleycastle Lane,
Appleton, Warrington, England, WA4 4ST
United Kingdom
Registered number: 00040203
Tel: +44 (0) 1895 431 705 Fax: +44 (0) 1895 459 999
www.capeplc.com

3. The Purported Receiver 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 has and had no power or authority on behalf of CIHL to issue or pursue third party claims.

4. The Purported Receiver 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, including by taking any actions in the Park Claim.

By reason of the High Court Order, by issuing the Subpoena, the Purported Receiver was acting unlawfully and in clear breach of that order.

Taking steps to comply with the Subpoena would represent conduct that CIHL considers to be unlawful for the purposes of the law of England and Wales.

We ask that you confirm, by response to this letter by **14 May 2025**, that you will take all necessary steps to comply with the law, including by notifying the Purported Receiver that you do not intend to respond to the Subpoena due to the Purported Receiver's lack of power or authority, as determined by the High Court Order.

All of CIHL's rights are reserved.

Yours faithfully

Ran Oren

Ran Oren
Director, Cape Intermediate Holdings Limited

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Underwriters at Lloyd's of London
The Lloyd's building
One Lime Street
London
EC3M 7HA

By Post and email

7 May 2025

Dear Sirs

Re: Isabella Park vs. Armstrong International, et al., in the Court of Common Pleas for the Fifth Judicial Circuit, South Carolina ("the South Carolina Court"): Civil Action No. 2021-CP-40-02727 ("Park Claim")

We refer to the subpoena issued to you in the above proceedings by John Chandler, of the firm Rikard & Protopapas, as Attorney for the purported "Receiver for Cape PLC / Cape Industries Ltd" (**Purported Receiver**) on 28 April 2025 (**Subpoena**).

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The High Court of Justice has ordered, amongst other things, that:

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Taking steps to comply with the Subpoena would represent conduct that CIHL considers to be unlawful for the purposes of the law of England and Wales.

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Underwriters at Continental Casualty Company
151 N. Franklin Street
Chicago, Illinois
IL 60606
United States of America

By Post and email

7 May 2025

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Underwriters of Interstate Fire & Casualty Company
225 W. Washington Street
Suite 1800
Chicago, Illinois
IL 60606-3484
United States of America

RECEIVED
MAY 13 2025
AGRUS CHICAGO, IL

By Post and by email

7 May 2025

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Ran Oren

Ran Oren
Director, Cape Intermediate Holdings Limited

Fifth floor, 1 Tudor Street, London, EC4Y 0AH

Tel: +44 (0)20 3837 1700

www.enyolaw.com

ENYO LAW

Our Ref: JTL/ALT1.1
Your Ref:

2 June 2025

Peter D. Protopapas
Rikard & Protopapas, LLC
2110 N Beltline Blvd
Columbia SC 29204

Direct line: +44 (0)20 3837 1670
jamie.leader@enyolaw.com

BY EMAIL ONLY to pdp@rplegalgroup.com

Dear Mr Protopapas

Re: Pre-Action Letter Regarding Declaratory and Injunctive Relief Contemplated Before the English Court arising out of the Settlement Agreement dated 11 April 2025

Introduction

We are instructed by: Altrad Investment Authority SAS, Altrad UK Limited, Cape UK Holdings Newco Limited, Cape Industrial Services Group Limited, Cape Holdco Limited, Altrad Services Limited, and Mr Mohed Altrad (the "**Potential Claimants**").

We are writing to inform you of the agreement that has been entered into on 11 April 2025 by parties including the Potential Claimants and Cape Intermediate Holdings Limited ("**CIHL**") and Cape plc (a company incorporated under the laws of Jersey, "**Cape Jersey**", and together with CIHL, the "**Cape Parties**") (the "**Settlement Agreement**"). A copy of the Settlement Agreement is enclosed with this letter (and we adopt the abbreviations in the Settlement Agreement in this letter).

The Settlement Agreement has been entered into by the Potential Claimants with CIHL, acting through its lawfully appointed directors who—as the English Court has already determined in its judgment and order of 22 November 2024—have the valid authority to act for and on behalf of CIHL. The directors of Cape Jersey have also authorised and entered into the Settlement Agreement as the lawfully appointed directors of Cape Jersey.

Pursuant to the Settlement Agreement, the Cape Parties have released any relevant claims (as identified below) that the Cape Parties might otherwise have against the Potential Claimants.

This includes the claims brought by you – purportedly in the name of and on behalf of the Cape Parties – in the Third-Party Complaint filed in the South Carolina Court on 30 June 2023; and any other claims in any other asbestos-related litigation in the US based upon the alleged liability of the Claimants for the acts or omissions of CIHL.

As a result, all Claims and Allegations (in each case, as defined in the Settlement Agreement) made against the Claimants relating to the Third-Party Complaint have been settled.

Enyo Law LLP is a limited liability partnership registered in England and Wales (registered number OC356313).
A list of members is available for inspection at the registered office, Fifth Floor, 1 Tudor Street, London. EC4Y0AH.
Authorised and regulated by the Solicitors Regulation Authority (548866).

In these circumstances, we now invite you to acknowledge formally that all Claims and Allegations against our clients which arise out of and relate to the Third-Party Complaint have been settled.

We also invite you to undertake forthwith to take all necessary steps to procure the dismissal of and/or discontinue the Third-Party Complaint against our clients with immediate effect and on a full and final basis.

To this end we ask you to sign the terms of a draft order enclosed with this letter which can then be placed before the English Court as a consent order "**Consent Order**"). We request you return the signed draft Consent Order by 9am (London time) on Tuesday, 10 June 2025.

Factual Background

As you are aware, the Potential Claimants and the Cape Parties are each part of the Altrad Group of companies (the "**Altrad Group**", of which Mr Mohed Altrad is the founder). Certain of the Potential Claimants and the Cape Parties are part of the Cape group of companies (the "**Cape Group**") which is a subgroup within the Altrad Group.

As you know, the Cape Parties (or one of them) are named as defendants in two actions that have been brought in the South Carolina Court. Those actions are brought against various defendants for the alleged exposure of the respective plaintiffs to asbestos. They are (1) the "**Park Claim**" (which was initiated in June 2021 by Ms Park, and subsequently taken over by her son) and (2) the "**Tibbs Claim**" (which was brought in April 2023 by Mr and Mrs Tibbs).

In the Park Claim, the Summons and Complaint names "Cape plc" as a defendant—and an Amended Summons and Complaint has added CIHL as a defendant. In the Tibbs Claim, "Cape plc" is a named defendant (but CIHL is not a named defendant). Neither of the Cape Parties have participated in the Park Claim or in the Tibbs Claim.

On 16 March 2023, Toal J made an order to appoint you as a receiver (the "**Receivership Order**"). The Receivership Order states that you are appointed as a receiver of "Cape plc" (i.e. Cape Jersey), but following the order of Toal J on 6 December 2023 and certain comments made by you in filings in the South Carolina Court it is now understood that the Receivership Order was intended to have been made over CIHL alone.

On 30 June 2023, you issued third-party proceedings in the South Carolina Court within the Tibbs Claim – the Third-Party Complaint. You purported and continue to purport to bring those proceedings in the name of the "*third-party plaintiff*" "*Cape plc, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas*".

Our clients, the Potential Claimants, are among the defendants in the Third-Party Complaint; and the Third-Party Complaint makes a wide range of allegations against our clients (and others) all of which are denied by them.

The CIHL Declaratory Judgment and the CIHL Declaratory Order

In 2024 the Cape Parties applied to the English High Court for declaratory/injunctive relief, and proceedings were issued on 9 September 2024 in the Business List of the Chancery Division of the High Court of England and Wales (the "**English Court**") with claim number BL-2024-001337 (the the "**CIHL Declaratory Claim**").

Following the trial of the 2024 Claim, Sir Anthony Mann (sitting in retirement as a judge of the High Court of England and Wales) ("**Mann J**") handed down a judgment on 22 November 2024 and made an order on the same date (the the "**CIHL Declaratory Judgment**" and the "**CIHL Declaratory Order**").

In the CIHL Declaratory Judgment, Mann J confirmed and concluded that questions of control or authority over a company must be determined under the law of the place of incorporation of that company (which, in the case of CIHL, would be England and Wales). Accordingly, an individual (or individuals) can only have control over or authority to act on behalf of or in the name of an English company – such as CIHL – if they have authority to do so that is valid and recognisable under English law.

In the CIHL Declaratory Judgment, Mann J held that the Receivership Order was not recognisable under English law and was of no effect in England (including inter alia because CIHL was not present in the state of South Carolina at the time when the Receivership Order was made, and further because CIHL has not submitted to the jurisdiction of the South Carolina Court).

As a result, Mann J found that the Receivership Order was of no effect in relation to CIHL (an English company) either in England and Wales or anywhere worldwide.

In the CIHL Declaratory Order, various declarations and orders were made against you; and that order was subsequently duly served on you. Materially, for present purposes, declarations were made against you in the following terms:

1. 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.

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 or in the 3P Complaint.

The CIHL Declaratory Order also contained certain related injunctions against you.

The Settlement Agreement

The parties to the Third-Party Complaint include the Potential Claimants and the Cape Parties.

Those parties have now chosen to settle any claims arising out or and related to the Third-Party Complaint according to the terms of the Settlement Agreement.

Amongst other things, the Settlement Agreement involves a release by the Cape Parties of all claims that they might have against the Potential Claimants for any acts or omissions such as are alleged in the Third-Party Complaint. This release was given by the Cape Parties in exchange for releases given by our clients and in exchange for agreement to other terms such as in relation to the dismissal of actions and related cooperation. Accordingly, the Settlement Agreement includes a settlement the Claims and Allegations made in and relating to the Third-Party Complaint.

As is clear from the terms of the Settlement Agreement, no acceptance or admission of any liability of our clients was made in relation to the Third-Complaint or otherwise (and in fact any such liability is expressly denied in the Settlement Agreement).

The Settlement Agreement is governed by English law and subject to the exclusive jurisdiction of the English courts. As a result, the Potential Claimants must bring any claim to confirm the Settlement Agreement before the English Court, which is clearly the proper and only forum that can determine such matters.

The draft Consent Order

In the light of the above, we ask you to sign the terms of the draft Consent Order enclosed with this letter which can then be placed before the English Court for approval. Please provide your consent by 9am (London time) on Tuesday, 10 June 2025.

If you do not consent to the terms of the draft Consent Order, or other suitable terms, then the Potential Claimants propose to commence proceedings in the English Court under Part 8 of the Civil Procedure Rules ("**CPR**") for an order in the form of the draft Consent Order (the "**Contemplated Claim**").

In this regard, the following declarations will be sought by the Potential Claimants from the English Court:

1. The directors of CIHL are the lawfully appointed directors of CIHL, who have the power and lawful authority to enter into the Settlement Agreement on behalf of CIHL and who have lawfully procured CIHL to enter into the Settlement Agreement.

2. The directors of Cape Jersey are the lawfully appointed directors of Cape Jersey, who have the power and lawful authority to enter into the Settlement Agreement on behalf of Cape Jersey and who have lawfully procured Cape Jersey to enter into the Settlement Agreement.

3. The Settlement Agreement has been entered into by lawfully authorised officers of the Potential Claimants and of and Cape Parties and is lawfully binding on the parties to it.

4. The terms and legal effect of the Settlement Agreement are that it releases and settles any claims (whether known or unknown) that the Cape Parties have against the Potential Claimants related to or arising (i) from the claims and allegations made in the Tibbs Claim (including in the Third-Party Complaint made within it) and (ii) from any other claims made after the date of the Settlement Agreement in any asbestos-related personal injury claims that may be asserted in the USA based in part or in whole upon the Potential Claimants' alleged liability for the acts of the Cape Parties (all such claims together, being "**Settled Claims**") and for the avoidance of doubt it also releases and settles any judgments (and any claims based on or related to any judgments) obtained pursuant to the making any such claims.

5. Pursuant to the terms of the Settlement Agreement, the Potential Claimants have no liability to the Cape Parties for any Settled Claims and the Cape Parties have no lawful claims against any of the Potential Claimants arising out of or in relation to any of the Settled Claims.

Declarations 1 to 3 follow directly from the conclusions in the CIHL Declaratory Judgment and the CIHL Declaratory Order. As set out above, Mann J held not only that the Receivership Order is not recognised and is of no effect, but also that only the directors of CIHL (and not you) have the power and authority to act for and on behalf of CIHL. It necessarily follows that only the directors of CIHL (and not you) have the

power to bind CIHL to a contract such as the Settlement Agreement. The same conclusions follow directly as a matter of Jersey law (which for present purposes is equivalent to English law).

Declaration 4 is a declaration as to the effect and terms of the release and settlement agreed by the Cape Parties in the Settlement Agreement. This declaration follows the terms of the Settlement Agreement, and so it follows directly from declarations 1 to 3.

Declaration 5 is a declaration as to the consequences of the release and settlement in the Settlement Agreement. As all such claims against the Potential Claimants in the Third-Party Complaint have been validly released and settled by the Cape Parties, it necessarily follows that our clients have no liability under the Third-Party Complaint.

Further, the Potential Claimants will also seek two additional declarations to confirm the legal position in respect of CIHL for their benefit, namely that:

6. The powers and lawful authority of the directors of CIHL are unaffected by the Receivership Order (which is not recognised and has no legal effect in England and Wales and worldwide).

7. Mr Protopapas has and had no power or lawful authority to take any steps or acts for, on behalf of, or in the name of the Cape Parties, including (but without prejudice to the generality of the foregoing) in any Settled Claim.

These declarations follow from (and, indeed, are within the terms of) those granted in the CIHL Declaratory Order.

Further, our clients will also seek an indemnity from you in the following terms:

8. Mr Protopapas is liable to indemnify the Potential Claimants for all loss and damage arising out of Mr Protopapas' pursuit of any Settled Claim purportedly undertaken in the name of and on behalf of CIHL.

As you have no authority to act for CIHL, it is only right that, if you continue to purport to act on behalf of CIHL in a manner which causes damage, you should be required to indemnify and hold harmless the Potential Claimants for this loss and damage.

Finally, our clients will also seek the following injunctions against you:

9. Mr Protopapas be restrained from taking any further step in the Third-Party Complaint in the name of or on behalf of CIHL, other than as required by the paragraphs in this order.

10. Mr Protopapas shall forthwith take all and any steps to effect a final and with prejudice dismissal of the Third-Party Complaint against the Potential Claimants with immediate effect and, in any event, Mr Protopapas is to have effected such a dismissal of the Third-Party Complaint against the Potential Claimants within 14 days of the date of this order.

These injunctions will be sought on a number of bases.

As in relation to the injunctions granted in the CIHL Declaratory Order, these injunctions follow from the fact that you are continuing to prosecute the Third-Party Complaint in the name of CIHL and purportedly on its behalf when in fact you have no recognisable authority over CIHL to do so.

Further, these injunctions can also be granted on the basis that our clients have rights (in contract, tort and equity) to prevent you from purporting to procure CIHL to continue to prosecute the Third-Party Complaint—which is contrary to CIHL's obligations under the Settlement Agreement and which is also vexatious and oppressive against our clients in circumstances where the underlying claims have been settled.

In addition, our clients will also seek to recover their costs of and occasioned by the Contemplated Claim.

The position of the Cape Parties

As you will note from the draft Consent Order, if and to the extent necessary, it is anticipated that our clients would bring the Contemplated Claim against you as the First Defendant and also against the Cape Parties as the Second and Third Defendants.

As parties to the Settlement Agreement, it is not envisaged that the Cape Parties would object to the terms of the draft Consent Order. We shall be writing to their solicitors for their formal consent.

Agreement to Service out of the jurisdiction

If you do not consent to the draft Consent Order, it will be necessary to serve a claim form on you. Under the CPR, service on a party out of the jurisdiction normally requires the permission of the Court, if the party to be served does not consent to accept service either itself or by solicitors retained by it.

We therefore invite you to consent to service in respect of such a claim and of any further documents in the proceedings required to be on you:

1. Outside the jurisdiction of England and Wales by posting to your professional address at 2110 N Beltline Bvld, Columbia, South Carolina 29204, United States of America

2. By email at pdp@rplegalgroup.com, and/or

3. By service on any solicitors retained by you, such as Morgan, Lewis & Bockius UK LLP, (at Condor House, 5-10 St. Paul's Churchyard, London, EC4M 8AL) whom we understand you have previously retained.

If you do not provide consent to the Draft Consent Order, please provide consent to service of the claim either as above or in some other way that you prefer. Such consent is also required by 9am (London) on 10 June 2025.

If you do not provide this consent, it will be necessary for our clients to apply to the Court to serve the claim form on you out of the jurisdiction. We do not anticipate that this will cause any substantial delay to the progress of the claim, but it will increase our clients' costs of the proceedings, and as noted above we anticipate that these costs will ultimately be recoverable from you.

Part 8 of the CPR

As suggested at paragraph 13.4(a) of the Business and Property Courts of England and Wales Chancery Guide 2022, we hereby notify you of our clients' intention to bring the Contemplated Claim using the Part 8 procedure under the English Civil Procedure Rules. The Part 8 procedure is suitable as this matter does

not raise any substantial dispute of fact and indeed the only questions raised are questions of contractual construction and questions of law.

Further, in light of the need to deal with this matter as expeditiously and efficiently as possible, the Part 8 procedure is clearly appropriate.

Pre-Action Protocol

This letter is being sent to you in accordance with the Practice Direction on Pre-Action Conduct and Protocols (the "**Pre-Action PD**") contained in the CPR. We note that, as envisaged at paragraph 13 of the Pre-Action PD, the present case is one where a response is required as soon as practicable and on urgent basis.

We refer you to paragraphs 13 to 16 of the Pre-Action PD which set out the Court's powers to impose sanctions for failing to comply with its provisions. We strongly encourage you to read and consider these paragraphs, as well the Pre-Action PD more generally.

You already have the key documents on which we intend to rely to substantiate our clients' claims.

Conclusions

We urge you not simply to ignore this letter. This will lead to a claim being issued without further notice to you, and this will only increase the costs which our clients will seek from you in due course (and which we expect that you will be ordered to pay).

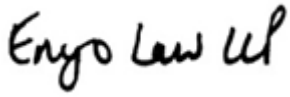
Accordingly, please indicate that you will consent to the terms of the draft Consent Order by 9am on 10 June 2025

For the avoidance of doubt, nothing in this letter is or should be construed as a waiver of any of the Potential Claimants' rights which are reserved to the fullest extent possible.

Finally, nothing in this letter is intended to or amounts to a submission to the courts of the state of South Carolina.

We look forward to receiving your response.

Yours faithfully



Enyo Law LLP

Enclosures: The Settlement Agreement
Draft consent order

Claim No.: [ ]

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

BEFORE [xxx]
[date of this order]

BETWEEN:

(1) ALTRAD INVESTMENT AUTHORITY SAS
(2) ALTRAD UK LIMITED
(3) CAPE UK HOLDINGS NEWCO LIMITED
(4) CAPE INDUSTRIAL SERVICES GROUP LIMITED
(5) CAPE HOLDCO LIMITED
(6) ALTRAD SERVICES LIMITED
(7) MR MOHED ALTRAD

Claimants

and

(1) PETER D. PROTOPAPAS
(2) CAPE INTERMEDIATE HOLDINGS LIMITED
(3) CAPE PLC (a company incorporated under the laws of Jersey)

Defendants

DRAFT ORDER

UPON THE CLAIM brought by the Claimants against Cape Intermediate Holdings Limited ("**CIHL**") and Cape plc ("**Cape Jersey**", and together with CIHL, the "**Cape Parties**") and Peter D Protopapas ("**Mr Protopapas**") by a Part 8 claim form dated [xx] [xxxx] 2025

AND UPON the Court noting that, on 16 March 2023, the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richland (the "**South Carolina Court**") made an order appointing Mr Protopapas as a receiver over CIHL (the "**Receivership Order**")

AND UPON Mr Protopapas having (purportedly in the name of CIHL) brought third party proceedings in the claim brought in the South Carolina Court by John A. Tibbs and Margaret B. Tibbs with claim number C/A No. 2023-CP-40-01759 by a summons and complaint first

issued on 30 June 2023 (the "**Third-Party Complaint**", brought as third-party proceedings in the "**Tibbs Claim**")

AND UPON the Cape Parties having brought a claim by a Part 8 claim form dated 6 September 2024 and with claim number BL-2024-001337 against Mr Protopapas

AND UPON the judgment and order of Sir Anthony Mann (sitting in retirement as a judge of the High Court) on 22 November 2024

AND UPON various parties, including the Claimants and the Cape Parties having entered into a settlement agreement dated 11 April 2025 (the "**Settlement Agreement**")

AND UPON the Court noting that the Settlement Agreement contains a jurisdiction clause under which the Courts of England and Wales have exclusive jurisdiction in respect of any dispute or issue in any way arising from or relating to the Settlement Agreement

IT IS DECLARED THAT

1. The directors of CIHL are the lawfully appointed directors of CIHL, who have the power and lawful authority to enter into the Settlement Agreement on behalf of CIHL and who have lawfully procured CIHL to enter into the Settlement Agreement.

2. The directors of Cape Jersey are the lawfully appointed directors of Cape Jersey, who have the power and lawful authority to enter into the Settlement Agreement on behalf of Cape Jersey and who have lawfully procured Cape Jersey to enter into the Settlement Agreement.

3. The Settlement Agreement has been entered into by lawfully authorised officers of the Claimants and of and Cape Parties and is lawfully binding on the parties to it.

4. The terms and legal effect of the Settlement Agreement are such that it releases and settles any claims (whether known or unknown) that the Cape Parties have against the Claimants related to or arising (i) from the claims and allegations made in the Tibbs Claim (including in the Third-Party Complaint made within it) and (ii) from any other claims made after the date of the Settlement Agreement in any asbestos-related personal injury claims that may be asserted in the USA based in part or in whole upon

the Claimants' alleged liability for the acts and/or omissions of CIHL (all such claims together, being "**Settled Claims**") (and for the avoidance of doubt it also releases and settles any judgments (and any claims based on or related to any judgments) obtained pursuant to the making any such claims).

5. Pursuant to the terms of the Settlement Agreement, the Claimants have no liability to the Cape Parties for any Settled Claims and the Cape Parties have no lawful claims against any of the Claimants arising out of or in relation to any Settled Claims.

AND IT IS DECLARED THAT

6. The powers and lawful authority of the directors of CIHL are unaffected by the Receivership Order (which is not recognised and has no legal effect in England and Wales and worldwide).

7. Mr Protopapas has and had no power or lawful authority to take any steps or acts for, on behalf of, or in the name of the Cape Parties, including (but without prejudice to the generality of the foregoing) in any Settled Claims.

8. Mr Protopapas is liable to indemnify the Claimants for all loss and damage arising out of Mr Protopapas' pursuit of any Settled Claims purportedly undertaken in the name of and on behalf of CIHL.

AND IT IS ORDERED THAT

9. Mr Protopapas be restrained from taking any further step in the Third-Party Complaint (or in relation to any proceedings, including but not limited to any Settled Claims) in the name of or on behalf of CIHL, other than as required by the paragraphs in this order.

10. Mr Protopapas shall forthwith take all and any steps to effect a final and with prejudice dismissal of the Third-Party Complaint against the Claimants with immediate effect and, in any event, Mr Protopapas is to have effected such a dismissal of the Third-Party Complaint against the Claimants within 14 days of the date of this order.

Costs

11. The Claimants' costs of and occasioned by this action be paid by Mr Protopapas.

Service of this order

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

The Court has provided a sealed copy of this order to the solicitors for the Claimants, Enyo Law LLP, One Tudor Street, London EC4Y 0AH (reference: JTL/ALT1.1)

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AGREEEMENT FOR FULL AND FINAL SETTLEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release ("Agreement") is entered into as of 11 April ~~March~~ 2025, by and between:

(1) Cape Intermediate Holdings Ltd (English company no. 00040203) ("CIHL") and Cape plc (Jersey company no. 108031) ("Cape plc") (collectively, the "Cape Parties").

(2) Mr Mohed Altrad ("Mr Altrad"), Altrad Investment Authority S.A.S. ("AIA"), Altrad Services Ltd. f/k/a Cape Industrial Services Ltd., Altrad UK Ltd., Cape Holdco Ltd., Cape Industrial Services Group Ltd., and Cape UK Holdings Newco Ltd. (collectively, the "Altrad Parties").

(3) Sparrows Offshore, LLC, Hawk Bidco US, Inc., and Arranco US, LLC (collectively, the "Sparrows Parties").

Each of the above signatories to this Agreement is hereinafter referred to as a "Party" and collectively, the "Parties."

RECITALS

(A) The Cape Asbestos Company Ltd was incorporated on 28 December 1893. Over the years, The Cape Asbestos Company Ltd has undergone various name changes, such as Cape Industries Ltd. (between 1 July 1974 and 12 November 1981); Cape Industries plc (12 November 1981 – 1 August 1 1989); Cape plc (1 August 1989 – 27 June 2011); Cape Intermediate Holdings plc (27 June 2011 – 19 December 2013); and finally Cape Intermediate Holdings Limited (i.e. CIHL) (19 December 2013 – present).

(B) Cape plc is a company incorporated in the Bailiwick of Jersey in 2011. It is currently an intermediate indirect parent company of CIHL.

(C) On June 4, 2021, Isabella Park sued for asbestos-related injuries in South Carolina in cause number 2021-CP-40-02727 ("the *Park claim*"). The Park claim was brought against multiple defendants, including CIHL and Cape plc as separately named defendants.

(D) On 16 March 2023, a receivership order was entered in the *Park* claim by the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richland ("the South Carolina Court") purportedly appointing Mr. Peter Protopapas ("Mr. Protopapas") as a receiver over "Cape plc" (the "Receivership Order").

(E) On 5 April 2023, an asbestos lawsuit was brought in South Carolina by John A. Tibbs and Margaret B. Tibbs in cause number 2023-CP-40-01759 ("*the Tibbs claim*"). The suit was again brought against multiple defendants, including "Cape plc" (but not CIHL).

(F) In the *Tibbs* claim, on 30 June 2023, the "Third-Party Complaint" was filed against a variety of defendants, including the Altrad Parties and the Sparrows Parties, by Mr. Protopapas. The Third-Party Complaint was and is stated to be brought by Mr Protopapas in the name of "Cape plc, individually and as successor in interest to Cape Asbestos Company Ltd." ("Third-Party Plaintiff").

(G) On 6 December 2023, default judgment in the Third-Party Complaint was entered against a number of parties including all of the Altrad Parties except for Mr Altrad and AIA.

(H) On 9 September 2024, the Cape Parties issued proceedings against Mr Protopapas in the High Court of England and Wales seeking declarations (and injunctive relief) on the basis that the rights and duties of the directors of CIHL remained unaffected by the appointment of Mr. Protopapas, that the Receivership Order was not recognised by the Courts of England and Wales or under the laws of England and Wales, and that the Receivership Order was of no legal effect in England and Wales and worldwide ("the CIHL Declaratory Claim").

(I) On 7 November 2024, a Stipulation of Dismissal without prejudice of the claims against the Sparrows Parties made by Mr Protopapas in the 3P Complaint in the *Tibbs* claim was filed on a joint basis by Mr Protopapas and the Sparrows Parties.

(J) On 8 November 2024, Mr Protopapas filed a motion for summary judgment against certain of the defendants to the 3P Complaint in the Tibbs claim (which included Mr Altrad and AIA) with respect to claims for alleged "*successor liability and/or alter ego/veil piercing liability*".

(K) Between 12-14 November 2024, the trial of the CIHL Declaratory Claim took place before Mr Justice Mann ("Mann J").

(L) On 22 November 2024, the High Court of England and Wales issued a judgment and order in *Cape Intermediate Holdings Limited v. Protopapas* [2024] EWHC 2999 ("the CIHL Declaratory Judgment"), finding, among other things, that the rights and duties of the directors of CIHL remained unaffected by the appointment of Mr. Protopapas and that the Receivership Order was not recognised by the Courts of England and Wales or under the laws of England and Wales, and that the Receivership Order was of no legal effect in England and Wales and worldwide. Pursuant to the CIHL Declaratory Judgment, Mann J made the "CIHL Declaratory Order" granting declarations in CIHL's favour and making injunctions against Mr Protopapas to that effect.

(M) The Parties now wish to settle and resolve their outstanding differences, disputes, and claims, known or unknown, against one another in respect of or arising out of the *Park* claim, the *Tibbs* claim, or any existing asbestos-related personal injury claims (whether known or unknown) relating to the USA that may be made on the terms set out in this Agreement.

(N) In this regard, the Cape Parties wish to compromise and release the Altrad Parties and Sparrows Parties from any actual or potential claims that might be made in the *Park* claim, the *Tibbs* claim, or in any existing asbestos-related personal injury claims relating to the USA (whether known or unknown) that has been or may be made by the Cape Parties against the Altrad Parties and Sparrows Parties and this release includes compromising any judgments in the *Tibbs* claim obtained in the name of the Cape Parties made against the Altrad Parties or Sparrows Parties (whether such judgments were validly obtained or not).

(O) The Altrad Parties and the Sparrows Parties wish to compromise and release any actual or potential claims they may have against the Cape Parties, including but not limited to claims for contribution or indemnity, relating to liabilities in the *Park* claim, the *Tibbs* claim, or any asbestos-related personal injury claims relating to or arising in the USA (whether known or unknown) that may be made by the Altrad Parties and Sparrows Parties against the Cape Parties.

(P) These releases include all claims made and any judgments obtained by or against the Parties in the *Tibbs* claim, as well as any claims the Altrad Parties and Sparrows Parties may have against Cape plc and CIHL related to the allegations in the Third-Party Complaint in the *Tibbs claim*.

(Q) Nothing in this Agreement shall be construed to waive any claims or causes of action of the Parties that they have which have accrued or may accrue in the future against Mr. Protopapas personally or pursuant to his conduct as a purported receiver for issuing and pursuing the Third-Party Complaint in the name of CIHL or Cape Plc or for acting without authority and/or the consent of the directors of CIHL or Cape Plc.

(R) By entering into this Agreement, no Party submits to, agrees to, or waives any defences it may have in respect to personal jurisdiction in South Carolina (or any other US state) and each Party maintains any and all personal jurisdiction defences.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the receipt and sufficiency of which each of the Parties acknowledges, the Parties hereby agree as follows:

OPERATIVE PROVISIONS

1.0 COMPROMISE

The Parties agree and acknowledge that this Agreement is the result of a compromise and shall not be construed as an admission by any Party of any liability, wrongdoing, or responsibility, on their part and on the part of their predecessors, successors, assigns,

agents, parents, subsidiaries, affiliates, officers, directors, or employees. Indeed, each of the Parties expressly deny any such liability, wrongdoing, or responsibility.

In this Agreement:

"Claims" include all existing charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, expenses (including attorneys' fees and costs actually incurred), and punitive damages, of any kind or nature whatsoever, whether in law or in equity, whether known or unknown to the Parties and including for the avoidance of doubt any judgments (and any claims based on or related to any judgments) obtained pursuant to the making of the same.

"**Release**" by a Party includes release and discharge on their own behalf, and on behalf of their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns.

"**Releasing**" a Party includes releasing and discharging them together with their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates, and assigns.

The "**Allegations**" means both (i) the claims asserted in the *Tibbs* claim (including in the Third-Party Complaint made within it), and (ii) any claims made in the future in any asbestos-related personal injury claims that may be asserted in the USA based in part or in whole upon alleged liability for the acts of CIHL, and in either case including but not limited to the claim that each of the Parties is, or is a successor in interest to an entity that was, the alter ego of or part of a single business enterprise with CIHL and any claim based on the right to pierce the corporate veil of CIHL.

2.0 RELEASE OF CLAIMS

2.1 Release by the Cape Parties.

The Cape Parties release the Altrad Parties and Sparrows Parties, from all Claims that the Cape Parties have, or may have had, against the Altrad Parties and Sparrows Parties, for any acts or omissions related to or arising from Allegations. This Release does not apply to any breach of this Agreement.

As part of this Release, and for the avoidance of doubt and without derogating from the generality of the foregoing, the Cape Parties hereby acknowledge and declare that the Altrad Parties and Sparrows Parties have, and at no material time have had, any liability to the Cape Parties (whatsoever and howsoever arising) in respect of the Allegations and the Claims made in the Third-Party Complaint.

2.2 Release by the Altrad Parties and Sparrows Parties.

The Altrad Parties and Sparrows Parties release the Cape Parties from all Claims that the Altrad Parties and Sparrows Parties have, or may have had, against the Cape Parties for any acts or omissions related to or arising from the sale or distribution of asbestos in the United States, including but not limited to the Allegations. This Release does not apply to any breach of this Agreement.

3.0 DISMISSAL OF ACTIONS

3.1 The Parties agree that any Claims that are being released by this Agreement are released in full and final settlement of such Claims.

3.2 Any Party may file this Agreement in any court in which it is a party as evidence of the dismissal of a Claim.

3.3 Any Party to this Agreement may apply to any court for the dismissal of any proceedings in respect of which a Claim which has been released pursuant to this Agreement is made

3.4 No Party to this Agreement will object to the dismissal of proceedings in respect of which a Claim which has been released pursuant to this Agreement is made.

3.5 The Parties agree not assert a right to any Claim released by this Agreement and covenant that not to bring any proceedings in respect of a Claim that has been released by this Agreement.

4.0 RIGHT TO SETTLE: NO ASSIGNMENT OR TRANSFER OF CLAIMS

4.1 The Parties warrant that a person entering into this Agreement on behalf of each party has the authority of the board of directors of that Party to bind that Party and that the Party's execution of this Agreement is not in breach of any by-law, covenants, and/or other restrictions placed upon the Party by its memorandum or articles of association.

4.2 Each Party warrants that it has not transferred, assigned, or novated any right or authority to release, relinquish, settle and discharge the Claims released by that Party as set forth in the Release section of the Agreement any individual or entity who is not a party to this Agreement.

4.3 The Altrad Parties and Sparrows Parties acknowledge and warrant that they are aware of the Receivership Order and the CIHL Declaratory Judgment and that the Third-Party Complaint has been brought and pursued without the consent of the directors of CIHL and/or Cape plc.

4.4 The Altrad Parties and Sparrows Parties agree not to make any Claim against CIHL and/or Cape plc in respect of or arising out of the conduct of Mr. Protopapas in acting or purporting to act as the purported receiver of CIHL and/or Cape plc and their affiliates.

5 AGREEMENT TO COOPERATE

5.1 Each Party agrees to take any and all actions and to make, deliver, sign, and file any other documents and instruments necessary to carry out the terms, provisions, purpose, and intent of this Agreement.

6.0 ENTIRE AGREEMENT

6.1 This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and proposed agreements, written or oral concerning the subject matter contained in this Agreement.

6.2 Each Party expressly acknowledges, warrants, and represents that in executing the releases or entering into this Agreement, it is not relying upon any representation, promise, agreement, or warranty not contained in this Agreement.

6.3 In deciding to enter into this Agreement, each Party acknowledges and represents that it is relying solely on its own judgment and that it has read and understands the entire contents of this Agreement and releases in full, as well as the legal consequences of the Agreement and releases.

7.0 MODIFICATION

7.1 Any agreements, modifications, variations, or waivers to the terms of this Agreement must be made in a writing and signed by the Parties to be binding on the parties and are to be notified to each Party at their registered office within 7 days.

8.0 INTERPRETATION; SEVERABILITY; ENFORCEMENT

8.1 **Interpretation.** The headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation.

8.2 **Severability.** Should any provision of this Agreement be declared or be determined to be illegal, invalid, void, or unenforceable under the laws of England and Wales, the validity of the remaining parts, terms, or provisions shall not be affected thereby and the illegal, invalid, void, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement, which shall continue in full force and effect.

8.3 **Enforcement.** Nothing in this Agreement shall be construed as, or constitute, a release of any Party's rights to enforce the terms of this Agreement.

8.4 The Parties acknowledge, agree and represent that they are of equal bargaining power.

9.0 GOVERNING LAW AND JURISDICTION

9.1 **Governing Law.** This Agreement and all related documents including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, equity, tort, or statute or otherwise are governed by, and construed in accordance with the laws of England and Wales.

9.2 **Jurisdiction.** Each Party irrevocably and unconditionally agrees that the courts of England and Wales have the sole and exclusive jurisdiction in respect of any dispute or issue in any way arising from or relating to the Agreement (including without prejudice to the generality of the foregoing and for the avoidance of doubt any issue or dispute as to the binding nature of the Agreement, the true construction of the Agreement, its terms and legal effect) and by this Agreement each Party hereby irrevocably and unconditionally submits to the sole and exclusive jurisdiction of the Courts of England and Wales

10.0 RELIANCE ON OWN COUNSEL

In entering into this Agreement, each Party acknowledges, represents and warrants that:

10.1 It has had the opportunity to seek and rely upon legal advice and that it has done so.

10.2 Other than as expressly set out in this Agreement, in entering into this Agreement, it has not relied on any oral or written representation, promise or agreement made by or with the other Party or any legal advisor, or other agent or representative of the other Party, including but not limited to any representation promise or agreement about the subject matter, basis, or effect of this Agreement.

11.0 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

11.1 The Parties do not intend that any term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the Parties.

12.0 COUNTERPARTS AND COPIES

12.1 This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic signatures and signature pages sent by electronic mail shall be binding as though they are originals.

IN WITNESS THEREOF, and intending to be legally bound, each of the undersigned Parties hereto has caused this Agreement to be executed as of the date stated at the beginning of this Agreement.

Cape Intermediate Holdings Ltd

By: Ran Oren
Name: Ran Oren
Title: Director

Cape plc

By: John Walsh
Name: John Walsh
Title: Director

Mohed Altrad

By: Mohed Altrad
Name: Mohed Altrad
Title:

Altrad Investment Authority S.A.S.

By: Jan Vanderstraeten
Name: Jan Vanderstraeten representing Jagico BV
Title: CEO

Altrad Services Ltd. f/k/a Cape Industrial Services Ltd.

By: John Walsh
Name: John Walsh
Title: Director

Altrad UK Ltd.

By: John Walsh
Name: John Walsh
Title: Director

Cape Holdco Ltd.

By: John Walsh
Name: John Walsh
Title: Director

Cape Industrial Services Group Ltd.

By: John Walsh
Name: John Walsh
Title: Director

Cape UK Holdings Newco Ltd.

By: John Walsh
Name: John Walsh
Title: Director

Sparrows Offshore, LLC,

By: Adam Wood
Name: Adam Wood
Title: Director

Hawk Bidco US, Inc.

By: Adam Wood
Name: Adam Wood
Title: Director

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Arranco US, LLC

By: Adam Wood

Name: Adam Wood

Title: Director