

RECEIVED

Jun 16 2025

S.C. SUPREME COURT

Exhibit A

Notice of Release of Claims (filed with the
Circuit Court on June 4, 2025)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
John A. Tibbs and Margaret B. Tibbs,	)	Civil Action No. 2023-CP-40-01759
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
3M Company, <i>et al.</i> ,	)	
	)	<u>NOTICE OF RELEASE OF CLAIMS</u>
Defendants.	)	
	)	
Cape PLC, individually and as successor	)	
in interest to Cape Asbestos Company	)	
Limited, by and through its duly	)	
appointed Receiver Peter D. Protopapas,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
Anglo American PLC, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	

Without waiving any of their personal jurisdiction arguments, their appellate rights, their Rule 205-based arguments, other arguments previously presented, or any of the other protections afforded them by international courts in the United Kingdom and in France declaring the invalidity of the putative receivership, the Altrad Defendants respectfully file this Notice of Release to make the Court aware that Cape PLC and Cape Intermediate Holdings Limited (“CIHL”) have released any claims that they may have had with respect to the Altrad Defendants and certain other third-party defendants. A copy of that release has been provided to the Receiver, and it is attached as Exhibit A.

This release is consistent with not only the High Court’s ruling in November 2024, which held that the actual directors of these English and Jersey companies speak for these companies, but also with the South Carolina Supreme Court’s recent ruling in *Welch v. Advance Auto Parts, Inc.*, Op. No. 28284 (S.C. May 21, 2025).

Welch reversed in part the circuit court’s receivership order to the extent it encroached on Atlas Turner’s “business activities.” Op. at 18. The Supreme Court drove this point home to ensure no doubt that a receiver cannot have any “entry into the Atlas Turner boardroom or some vague right to ‘take over’ operation of the company.” *Id.*

But that is exactly what this third-party case purports to be: the Receiver stepping into the boardrooms of an English company and a Jersey company to file suit against numerous other foreign entities and one individual French citizen, allegedly in the name of the English and Jersey companies. As this Court knows, the actual directors of those companies have specifically disclaimed any authority for the Receiver to act or speak on their behalf.

Welch’s command that a receiver must stay out of the “boardroom” and out of a company’s “business activities” confirms the unlawfulness of both this receivership and the entire “third-party complaint.” Litigation decisions are quintessential “boardroom” decisions and “business activities.” *See, e.g., Freedman v. Redstone*, 753 F.3d 416, 424 (3d Cir. 2014) (“The decision whether to bring a lawsuit is a ‘decision concerning the management of the corporation and consequently is the responsibility of the directors.’” (quoting *Blasband v. Rales*, 971 F.2d 1034, 1048 (3d Cir. 1992))), *rev’d in relevant part by In re Cognizant Tech. Sols. Corp. Deriv. Litig.*, 101 F.4th 250 (3d Cir. 2024); *Muzek v. Eagle Mfg. of N. Am., Inc.*, Case No. 6:18-cv-199-REW-EBA, 2019 U.S. Dist. LEXIS 244216, at *5 (E.D. Ky. Oct. 23, 2019) (“Thus, directors rather than shareholders [or receivers] manage the business and affairs of a corporation. In other words, a

decision whether to bring a lawsuit, refrain from litigation on behalf of a corporation, or the appointment of an examiner is a decision concerning the management of a corporation.”); *cf. Protopapas v. Whittaker, Clark & Daniels, Inc.*, Case No. 23-4151 (ZNQ), 2024 U.S. Dist. LEXIS 97270, at *22 (D.N.J. May 31, 2024) (“The Court affirms the Bankruptcy Court’s opinion that under New Jersey state law, the text of the Receivership Order did not change the fact that WCD’s Board of Directors [and not the Receiver] held the power to file for bankruptcy and properly did so.”), *further appeal pending at* Case No. 24-2210 (3d Cir.).

Even the South Carolina General Assembly recognizes that a business operating only through its actual directors can make the decision to file suit. *See generally* S.C. Code Ann. § 33-2-102(1) (providing “sue and be sued, complain, and defend in its corporate name” as the very first “general power” of a South Carolina corporation); *id.* § 33-8-101 (providing that, with limited irrelevant exceptions, “all corporate powers must be exercised by or under the authority of, and the business and affairs of a corporation must be managed under the direction of, a board of directors”).

And because only the directors can make litigation decisions on behalf of Cape PLC or CIHL, they have executed a release of all claims against several of the purported third-party defendants to further ensure that this litigation isn’t misunderstood by any court, including this Court, as having even a hint of legitimacy.

To be clear, what the Receiver is asking this Court to do through his “third-party complaint” is to unlawfully “self-pierce” the corporate form and to artificially manufacture liability on behalf of, but also against, the very entity he claims to represent. His theory has already been directly presented to and directly rejected by both an English trial court and an English appellate court 35 years ago. *Adams v. Cape Industries plc* (1990) 1 Ch. 433 (CA). Filing a lawsuit in the name of

Cape PLC or CIHL that is designed to vacate decades-old English case law that protects them from and directly rebuts the specious allegations asserted by the Receiver is precisely the type of “boardroom” decision that only a company’s directors can make, and that *Welch* specifically forbids a receiver from attempting to make.

Here, the actual “boardrooms” of Cape PLC and CIHL have released all such claims against various third parties. That release aligns these entities consistent with *Adams*’s findings. The corporate authority to execute that release resides exclusively with these companies as a matter of English law; it was reinforced by Justice Mann’s ruling that the directors, not the Receiver, control these companies; and it has now been reaffirmed by *Welch*’s unambiguous prohibition against a receiver being involved in “business activities” or in the “boardroom.”¹

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

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*Attorneys for Mohed Altrad and Altrad
 Investment Authority SAS*

June 4, 2025

¹ Without waiving any of their arguments or objections, the Altrad Defendants adopt and incorporate by reference any additional arguments contained in submissions by the DeBeers Defendants or the Charter Defendants with respect to the Receiver’s “interim status report” and request for a trial date despite the stay mandated by the ACL bankruptcy proceedings.

From: [Jamie Leader](#)
To: pdp@rplegalgroup.com
Cc: [Olivia Gare](#)
Subject: Pre-Action Letter Regarding Declaratory and Injunctive Relief Contemplated Before the English Court [ENYOLAW-LIVE.FID63397]
Date: Monday, June 2, 2025 2:05:07 PM
Attachments: [envologo_2ee2fe48-4748-4a37-a7a4-41b76115f0e4.png](#)
[LBA to Protopapas 2 June 2025\(4814873.2\).pdf](#)
[Settlement Agreement - Draft Consent Order\(4823422.1\).docx](#)
[Cape, Altrad and Sparrows Settlement Agreement Dated - FINAL.pdf](#)
Importance: High

Dear Mr Protopapas,

Please see the attached letter and enclosures.

Yours faithfully,

Enyo Law LLP

Jamie Leader | Enyo Law LLP
Partner



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Our Ref: JTL/ALT1.1
Your Ref:

2 June 2025

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Direct line: +44 (0)20 3837 1670
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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.

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 world-wide.
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 of 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 Blvd, 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).

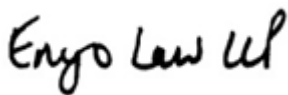
Accordingly, please indicate that you will consent to the terms of the draft Consent Order by 9am on 10 June 2025

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.: [REDACTED]

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

BEFORE [REDACTED]
[REDACTED]

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 [REDACTED] [REDACTED] 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 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)

AGREEMENT 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 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

Arranco US, LLC

By: Adam Wood
Name: Adam Wood
Title: Director

Exhibit B

Packet of Correspondence Sent to Appellate
Courts Regarding *Welch*

Clement & Murphy
PLLC

June 11, 2025

VIA CM/ECF

Patricia S. Dodszuweit
Clerk of Court
U.S. Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: *In re Whittaker, Clark & Daniels, Inc.*, Nos. 24-2210, 24-2211

Dear Ms. Dodszuweit:

Appellants invoke a South Carolina decision, *Welch v. Advance Auto Parts, Inc.*, 2025 WL 1450573 (S.C. May 21, 2025) (“Op.”), Dkt.68-1, whose only relevance is to confirm that a South Carolina receiver is not authorized to “ent[er] into the [company’s] boardroom” or “take over” an out-of-state corporation, Op. at *12.

The decision is otherwise irrelevant because, as all parties agree, the internal affairs doctrine dictates that New Jersey law—not South Carolina law—decides who has authority to put WCD into bankruptcy. Dkt.61 at 11-12. Under New Jersey law, as Appellants conceded at oral argument, no authority suggests that a “foreign receiver[] may enter New Jersey and conduct the affairs of a New Jersey corporation simply by virtue of a lower state court receivership order dealing principally with assets,” without obtaining appointment by the New Jersey courts as a primary or even ancillary receiver. *Id.* (brackets in original) (quoting Tr.24); accord Restatement (Second) of Conflict of Laws §§367-369 (Oct. 2024 update).

Appellants assert that *Welch* “rejected the territorial-limits objection” to a receiver’s authority. Dkt.68-1 at 1. But *Welch* holds only that a South Carolina court with personal jurisdiction over a defendant can order it to bring assets into the court’s territorial jurisdiction. Op. at *9-10. It does not remotely suggest that a South Carolina receiver can displace the powers of a New Jersey corporation’s board to file for bankruptcy.

In fact, *Welch* says the opposite, emphasizing that an order authorizing a receiver to manage company assets “does not grant the Receiver entry into the [company’s] boardroom or some vague right to ‘take over’ operation of the company.” Op. at *12. Appellants seek to minimize that devastating language on the ground that *Welch* involved a pre-judgment receivership, but nothing in *Welch* limited that no-power-to-enter-the-boardroom language to pre-judgment receivers. They also claim that the receivership order here “expressly authorized the Receiver *alone* to decide whether to file a bankruptcy petition for WCD,” Dkt.68-1 at 2, but they cite no such express language in the receivership

June 11, 2025

Page 2 of 2

order—because there is none, Dkt.32 at 26-42. *Welch* accordingly only confirms that this Court should affirm.

Respectfully,

s/Paul D. Clement
Paul D. Clement

Counsel for Debtor-Appellee

Cc: All Counsel of Record



June 4, 2025

Via E-File

Hon. Deborah M. Young
Clerk, Fourteenth Court of Appeals
301 Fannin, Room 245
Houston, Texas 77002

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
6/4/2025 5:17:35 PM
DEBORAH M. YOUNG
Clerk of The Court

Re: *National Union Fire Ins. Co. of Pittsburgh, PA, et al. v. Payne & Keller Co.*, No. 14-23-00899-CV; on appeal from 127th District Court of Harris County, No. 2023-70875

Dear Ms. Young:

Appellant National Union Fire Insurance Company of Pittsburgh, PA (“National Union”) submits this response to the post-submission letter brief filed on May 28, 2025 by Appellee Peter D. Protopapas, the South Carolina court-appointed receiver for Payne & Keller Co. Appellants respectfully ask that this response be provided to Justices Wilson, Hart, and Boatman, to whom this case has been submitted.

Appellee’s letter references a recent decision from the South Carolina Supreme Court, *Welch v. Advance Auto Parts, Inc.*, No. 2023-001096, 2025 WL 1450573 (S.C. May 21, 2025), which Appellee argues “bears on the issues in th[e] [above-captioned] appeal.” Ltr. at 1. To the contrary, *Welch* is only marginally relevant to this appeal, and its glancing relevance concerns a standing issue that Appellee conveniently ignores—namely, it further invalidates Appellee’s recent attempt to moot this controversy.

***Welch* is Wholly Irrelevant to the Merits of this Appeal**

As Appellee’s own brief concedes, “[t]his appeal concerns a very narrow issue”: Whether “[a] South Carolina Order”—purporting to revoke the 1986 dissolution of a Texas company (Payne & Keller) so that a personal-injury plaintiff can bring time-barred claims against it—“is entitled to full faith and credit” under the U.S. Constitution.¹ As Appellant has forcefully shown, that South Carolina Order is *not* entitled to full faith and credit—*first*, because it interferes with Texas’s competing interests in (among other things) regulating the existence and dissolution of Texas companies;² *second*, because the South Carolina court lacked jurisdiction to revive a dissolved

¹ See Appellee Br. at 1.

² See National Union’s Opening Br. at 31-45; Travelers’ Opening Br. at 11-13.

Texas company;³ and *third*, because under South Carolina law, the South Carolina Order is not a “final judgment” capable of being enforced in Texas.⁴

Welch—which did not concern the domestication of any out-of-state order—addressed *none* of these three issues governing the merits of the appeal. Rather, in reviewing a discovery-sanctions order, the South Carolina court addressed whether “the trial court abused its discretion in appointing a Receiver.” *Welch*, 2025 WL 1450573, at *6 (emphasis added). But the question before this Court is whether Texas should give full faith and credit to a South Carolina court’s order purporting to revive Payne & Keller, a company that was incorporated and dissolved in Texas—a question that is distinct from whether appointment of a receiver was appropriate.

In any event, counsel for Appellee has recently highlighted in another court that the *Welch* receiver was appointed under a different provision of South Carolina law than the receiver here. The *Welch* receiver was appointed pursuant to section 5 of the South Carolina receivership statute, which permits the appointment of a receiver “in accordance with the existing practice, except as otherwise provided in this Code.” S.C. CODE § 15-65-10(5); see Ex. A (Receiver’s Resp. to Insurers’ Notice of Supp. Authority) at 2.⁵ The *Welch* court held that this provision permitted a receiver to be appointed “before judgment where the plaintiff has made a prima facie showing that the defendant intends to fraudulently avoid or defeat the plaintiff’s recovery,” *Welch*, 2025 WL 1450573, at *7. By contrast, in the Payne & Keller receivership, Appellee was appointed under *section 4*, under which a receivership over a foreign corporation that “has been dissolved” is limited to its “*property within this State*” (South Carolina). S.C. CODE § 15-65-10(4) (emphasis added). In light of this distinction, counsel for Appellee argued that the *Welch* decision does not control the scope of an appointment under Paragraph 4 of the receivership appointment statute, stating: “Here, the Receiver was appointed in the *Mimms* case under S.C. CODE § 15-65-10(4), a *different* provision, which authorizes appointment of a receiver over ‘the property within this State’ of dissolved or insolvent companies.”⁶

If Anything, *Welch* Further Negates One of Appellee’s Standing-Based Challenges

The only potential relevance *Welch* has to this case concerns Appellee’s far-fetched claim that, because he unilaterally “redomesticated” Payne & Keller in South Carolina while this appeal was pending, this case has now become moot.⁷ As Appellant has explained, this argument is unavailing for any number of reasons. *One* of those reasons is that, to re-domicile a Texas corporation in South Carolina, its “*owners or members*”—not its receiver—“must approve a plan of

³ See National Union’s Opening Br. at 45-49; Travelers’ Opening Br. at 8-11.

⁴ See National Union’s Opening Br. at 50-51; Travelers’ Opening Br. at 3-7.

⁵ Appellee Protopapas’s law firm represents the receiver in the *Mimms* case, and there is a motion pending for Appellee Protopapas to be substituted as the receiver there.

⁶ To be clear, Appellant does not accept or adopt counsel’s varying characterizations of *Welch* or their positions as to the proper application of SC Code § 15-65-10(4) or (5).

⁷ See Appellee Br. at 23.

conversion.”⁸ *Welch* further supports this argument. As the South Carolina Supreme Court made clear, under South Carolina law, “[a] Receivership order does not grant the Receiver entry into the [company’s] boardroom or some vague right to ‘take over’ operation of the company.” *Welch*, 2025 WL 1450573, at *12. Of course, in trying to “redomesticate” Payne & Keller in South Carolina to moot this appeal, that is precisely what Appellee sought to do—and precisely what the South Carolina Supreme Court has now forbidden.

Appellants respectfully ask the Court to (1) reverse the trial court’s denial of Appellants’ motion to vacate the October 12, 2023 domestication notice, or (2) alternatively, reverse the trial court’s refusal to stay enforcement of such notice until an appeal concludes, or the time for appeal expires, in South Carolina.

Respectfully,



Ayesha Najam

**Counsel for Appellant National Union
Fire Insurance Company of Pittsburgh,
PA**

cc: All counsel of record – via E-File

⁸ See National Union’s Reply Br. at 9-13.

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

BURLINGTON INDUSTRIES, INC., by §
and through its court-appointed Receiver, §
Peter M. McCoy, Jr., §

Plaintiff, §

v. §

CONTINENTAL CASUALTY COMPANY, §
et al., §

Defendants. §

CIVIL ACTION NO. 7:25-cv-01706-DCC

**RECEIVER’S RESPONSE TO
INSURERS’ NOTICES OF
SUPPLEMENTAL AUTHORITY**

Burlington Industries, Inc., by and through its court-appointed Receiver, responds to Defendant Insurers’ letter regarding the South Carolina Supreme Court’s recent decision in *Welch v. Atlas Turner*, No. 2023-001096 (S.C. May 21, 2025).

Welch affirmed that, under S.C. Code § 15-65-10(5), a trial court may appoint a pre-judgment receiver over an active, out-of-state company (*Atlas Turner*). The Supreme Court forcefully rejected the objection—also raised by Insurers in their motion to dismiss—that a court is powerless to appoint a receiver over a company simply because it is from outside South Carolina. “We hope *Atlas Turner* does not believe a court exercising its equity powers cannot order a party over whom it has personal jurisdiction to convey and produce its property and assets,” including its insurance assets. Op. 16. Because the “Receiver stands in the companies’ shoes,” he “may do whatever the corporation could do in relation to its property[.]” *See* Op. at 15-18.¹

¹ The Supreme Court (at 15) also expressly rejected *Atlas Turner*’s argument, repeated by Insurers in their Motion to Dismiss, that certain cases like *Pollock v. Carolina Interstate Building* and *Booth v. Clark* hold otherwise.

The Insurers point to the Court’s observation that the *Welch* receiver could control only “insurance policies that have the potential to cover” the injuries of the plaintiff against whom the company engaged in moral fraud. Op. at 19. From that, the Insurers argue that this Receiver somehow cannot maintain this suit against them. That argument is wrong and inapposite.

The *Welch* receiver was appointed under S.C. Code § 15-65-10(5), which authorizes appointment of receivers “in accordance with existing practice.” One such practice concerns defendants engaged in moral fraud, and the Court in *Welch* found it appropriate for the receiver to recover from insurance policies to compensate the particular plaintiff whom Atlas Turner defrauded.

Here, the Receiver was appointed in the *Mimms* case under S.C. Code § 15-65-10(4), a *different* provision, which authorizes appointment of a receiver over “the property within this State” of dissolved or insolvent companies. The Receivership Court here could—and did—therefore appoint a Receiver over *all* Burlington’s assets within South Carolina—and *all* of Burlington’s insurance policies are assets in the state.

The Receiver has not exceeded the bounds of his authority. The Receivership Court wants the Receiver to collect all of Burlington’s insurance assets and thus approved a Qualified Settlement Fund so the Receiver can “more easily manage Burlington’s assets and garner those assets for the defense and resolution of future Burlington Suits.” Ex. A (QSF Approval). Nothing about that approval, the Receivership Order, S.C. Code § 15-65-10(4), or the *Welch* decision limits the authority of the Receiver to marshal all Burlington’s insurance assets or to deal with additional suits against Burlington.

As can be seen, *Welch* not only devastates the Insurers’ motion to dismiss; it is also completely irrelevant to the Receiver’s pending remand motion. Unsurprisingly, the South Carolina Supreme Court said nothing about the *Barton* doctrine, service-of-suit clauses, or federal

jurisdiction—none of that was at issue in *Welch*. The Insurers’ contention that *Welch* supports their removal is as meritless as the removal itself. See *Protopapas v. Zurich Am. Ins. Co.*, 2023 WL 2206640, at *4 (D.S.C. Feb. 24, 2023).

This case must be remanded. The state court should be the one to hear the Insurers’ attempt to make *Welch* seem favorable to them. See *Cape plc v. Anglo Am. plc*, 2024 WL 4647873, at *4 (D.S.C. Aug. 13, 2024). After that, the court can deny their motion to dismiss.

Respectfully Submitted,

/s/ Duke K. McCall, III

Duke K. McCall III (Federal Bar 6539)
Morgan Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
Telephone: (202) 739-3000
Email: duke.mccall@morganlewis.com

John K. Chandler (Federal Bar 14100)
Rikard & Protopapas LLC
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Columbia, SC 29204
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Email: jchandler@rplegalgroup.com

Alex R. Stalvey (Federal Bar 10636)
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Dated: May 23, 2025.

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June 9, 2025

Deborah M. Young
Clerk, 14th Court of Appeals
301 Fannin, Room 245
Houston, TX 77002

Re: Cause No. 14-23-00899-CV, *National Union v. Payne & Keller*

Dear Ms. Young:

Travelers submits this letter in response to Appellee's May 28, 2025, correspondence regarding the South Carolina Supreme Court's decision in *Welch v. Advance Auto Parts, Inc.*, No. 2023-001096, 2025 WL 1450573 (S.C. May 21, 2025).

At the outset, *Welch* does not address—and sheds no light on—the issue before this Court: whether Texas must give full faith and credit to a South Carolina court order purporting to reinstate the corporate existence of Payne & Keller, a Texas corporation dissolved in 1986. That is a question governed solely by Texas law. The authority of a South Carolina court to alter the corporate status of a Texas entity is not remotely presented in *Welch*, much less resolved by it.

To the extent *Welch* has any relevance, it supports Travelers—not Appellee. *Welch* underscores the limited scope of equity-based receiverships and expressly rejects efforts to extend them into matters governed by the corporate law of other sovereign states.

The South Carolina Supreme Court made clear in *Welch* that a receivership must be narrowly drawn, tied specifically to assets or insurance policies relevant to the injuries alleged in a particular case. The Court disclaimed any notion that a receiver may intrude into corporate governance, dissolve or revive entities, or otherwise operate a business. *See id.* at 11–12 (“The Receivership order does not grant the Receiver entry into the Atlas Turner boardroom or some vague right to ‘take over’ operation of the company.”).

Here, the South Carolina court's appointment of a receiver over Payne & Keller—a Texas corporation dissolved in 1986—exceeds every limit articulated in *Welch*. The receiver's attempt to revoke a decades-old Texas dissolution, re-domesticate the company in South Carolina, and reconstitute it as an active corporate entity runs afoul of both equitable limits and foundational principles of federalism. Corporate status is governed by the law of the state of incorporation. South Carolina has no authority to override Texas's sovereign determination that Payne & Keller ceased to exist almost forty years ago.

Appellee invokes *Welch* for the proposition that a court with personal jurisdiction may compel a party to act with respect to out-of-state property. But *Welch* involved a far narrower exercise of that authority: marshaling insurance assets to satisfy a judgment in a particular tort suit. The Court did not remotely suggest that receivership allows one state to rewrite the corporate history of another. Quite the contrary—*Welch* emphasized that receivership powers must remain tethered to the specific litigation at hand and cannot intrude upon matters beyond the court's jurisdiction.

In that light, Appellee's invocation of full faith and credit is misplaced. That doctrine does not require Texas courts to enforce a foreign order that exceeds the rendering court's jurisdiction or conflicts with Texas's own law. Nor does it compel recognition of a legal fiction—a “revived” corporation conjured by a South Carolina court lacking authority to amend Texas corporate history.

As *Welch* confirms, receivership is not a license for extraterritorial corporate surgery. The South Carolina court's attempt to undo a lawful Texas dissolution and substitute its own version of corporate existence is precisely the kind of overreach *Welch* repudiates. It is also incompatible with the constitutional structure of dual sovereignty.

Travelers respectfully submits that the South Carolina court's order should not be recognized or enforced in Texas. It exceeds equitable authority, intrudes upon the prerogatives of another state, and violates the full faith and credit clause as properly understood.

Please circulate this letter to Justices Wilson, Hart, and Boatman.

Respectfully,

/s/ *Robert B. Gilbreath*

Robert B. Gilbreath

Certificate of Service

A true and correct copy of this Appellant's Brief has, on June 9, 2025, been served on counsel of record via the electronic filing system.

/s/ Robert B. Gilbreath

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