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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

CONCERNING AN APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case Nos. 2024-001423 and 2024-001499

John A. Tibbs and Margaret B. Tibbs, ... Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; 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,

of which

Asbestos Corporation Limited is the.....	Appellant,

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 and Altrad Investment Authority SAS, are the..... Petitioners.

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SUPERIOR COURT
(COMMERCIAL DIVISION)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF FRONTENAC

N°: 235-11-000008-259

DATE: July 30, 2025

PRESIDING: THE HONORABLE JEAN-FRANÇOIS ÉMOND, J.S.C.

IN THE MATTER OF THE PLAN OF ARRANGEMENT OR COMPROMISE OF:

ASBESTOS CORPORATION LIMITED

Debtor / Co-Applicant

and

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON

and

TENECOM LIMITED

and

THE OCEAN MARINE INSURANCE COMPANY LIMITED

and

NRG VICTORY REINSURANCE LIMITED

and

THE SCOTTISH LION INSURANCE COMPANY LIMITED

CLMI / Co-Applicants

and

RAYMOND CHABOT INC.

Monitor

and

CHARLES FORMAN, trustee for the Delaware Bankruptcy estate of **NATIONAL SERVICE INDUSTRIES, INC.**

and

JOSEPH BARRALL JR. et al.

Opposing Parties

JUDGMENT

(On a motion to extend the stay order)

I. THE DISPUTE

[1] The co-applicant, Asbestos Corporation Limited (“**ACL**”), is a publicly-traded company which, until the turn of the ’80s and ’90s, operated asbestos mines in the Thetford Mines region.¹

[2] Since it ceased its mining activities, ACL has been the subject of thousands of lawsuits from people claiming to be victims of asbestos-related diseases. These individuals are seeking hundreds of millions of US dollars from ACL and other companies that processed, manufactured, or sold products containing asbestos fibers from its mines.

[3] The co-applicants Certain Underwriters at Lloyd’s, London, Tenecom Limited, The Ocean Marine Insurance Company Limited, NRG Victory Reinsurance Limited and The Scottish Lion Insurance Company Limited *et al.*² (“**CLMI**”) are ACL’s insurers. They cover ACL’s liability and that of its former shareholder General Dynamic Limited (“**GDL**”) in connection with lawsuits brought by people claiming to be victims of asbestos-related diseases.³

[4] ACL and CLMI, the former as debtor and the latter as interested parties, have jointly availed themselves of the *Companies’ Creditors Arrangement Act* (“**CCAA**”).⁴ They obtained an initial order staying creditors’ claims against them.⁵ They are now requesting that this initial order be extended. Under the aegis of the CCAA, with the financial assistance of CLMI, ACL wishes

¹ Pre-filing Report, First Report, Second Report and Supplemental Report by Raymond Chabot in its capacity as Monitor, dated May 5, May 14, June 13, and June 16, 2025, respectively.

² Amended motion dated May 6, 2025.

³ *Id.*

⁴ R.S.C. 1985, c. C-36.

⁵ Initial order dated May 6, 2025.

to present a plan of arrangement to its creditors, mainly the victims of asbestos-related diseases.

[5] The opposing parties are a minority group of people who claim to be victims of asbestos-related diseases, and who have taken legal action against ACL in the United States. They have intervened in the proceedings brought by ACL and CLMI under the CCAA through seven law firms representing them in the United States.⁶ They oppose the extension of the initial order staying the proceedings in favor of CLMI.

[6] The opposing parties argue that a stay order under the CCAA cannot be extended to a debtor's insurers, especially in cases where the evidence does not establish that available insurance coverage cannot indemnify the claimants.⁷

[7] ACL and CLMI replied that the CCAA does not preclude that an order to stay proceedings may be extended to a debtor's insurers where their financial participation is essential to the debtor's restructuring and may enable the debtor to propose an acceptable arrangement.⁸ They argue that this is the case here. The stay order against CLMI, which will only be valid for a limited period of time, will allow ACL to file an acceptable plan of arrangement to fairly, equitably, and expeditiously settle the thousands of claims brought against it by victims of asbestos-related diseases. Given that the vast majority of claimants (98% of them) initiated their claims more than 20 years ago, and that these claims are still unresolved, ACL and CLMI plead that it is in their best interests to stay the proceedings against CLMI until such time as an acceptable plan of arrangement can be filed and submitted to them for approval. They add that the stay in favor of CLMI will not cause any irreparable harm to the claimants, since in the end, the prerogative to accept or reject the plan of arrangement will belong to them.⁹

⁶ Amended Representative Deed of June 27, 2025, mandates entrusted by the firms of Weitz & Luxenberg (on behalf of 49 persons); Howard Reed (on behalf of 1425 persons); Dean Omar Branham Shirley, LLP (on behalf of 53 persons); Brayton Purcell LLP (on behalf of 34 persons); Waddell Anderman, LLC (on behalf of 3 persons); Zamler, Shiftman & Karfis, P.O. (on behalf of 14 persons); Serling & Abramson (on behalf of one person).

⁷ Brief of arguments of Charles Forman, as Trustee for the Delaware Bankruptcy Estate of National Services Industries, Inc. and certain asbestos claimants, dated June 14, 2025. Other arguments are also put forward. These will be described and, of course, analyzed.

⁸ Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order, dated May 6, 2025; Amended application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order, dated May 6, 2025. In the first draft of the initial request for an order, the debtor ACL was not identified as a co-applicant. After the Court questioned this omission, the application was amended to identify the debtor as the principal applicant.

⁹ Debtor's plan of argumentation, dated June 14, 2025; CLMI's plan of argumentation, dated June 14, 2025; Dentons Canada's memorandum of arguments, dated June 11, 2025.

II. THE QUESTIONS

[8] The dispute between ACL and CLMI and the opposing parties raises two main issues: (1) whether an order to stay proceedings under the CCAA can be extended to insurance companies that cover the liability of a debtor; and, if so, (2) whether, in this case, such a measure is appropriate.¹⁰

[9] Before analyzing each party's position and answering these questions, it is necessary to review the context that led the debtor ACL and CLMI to jointly apply for a stay order under the CCAA for their joint benefit. Indeed, the issue at hand cannot be resolved in a theoretical manner, i.e., in a vacuum, without considering the specific context that gave rise to the motion to stay proceedings in favor of the CLMI insurers.

III. THE CONTEXT

[10] ACL is a public corporation that was founded in 1925. It owns mining sites located in the Thetford Mines region of the province of Québec, Canada. For nearly 80 years, ACL operated its mining sites to extract asbestos fibers. During the peak of its business, ACL employed more than 5,000 people.¹¹ It sold asbestos fibers from its mining sites to companies in Canada and the United States, which processed them into building materials or incorporated them into consumer products.

[11] At the turn of the '80s and '90s, after it had been scientifically established that asbestos could cause severe and sometimes malignant respiratory diseases, such as pleura (mesothelioma) or lung cancer, ACL was obliged to reduce and then cease its mining activities.¹² It was at this time that thousands of people claiming to suffer from respiratory diseases caused by asbestos began to take legal action against hundreds of companies that either extracted asbestos fibers, transformed these fibers, manufactured products incorporating them, or distributed or sold these products. ACL and its principal shareholder at the time, GDC, were and still are the targets of these lawsuits.

[12] Over the years, these lawsuits have multiplied, mainly in the United States. In that country alone, there are currently more than 6,000 claims still pending. The amounts claimed from ACL and other companies are estimated to be in the range of US\$400 million. As mentioned in the introduction, the vast majority of these claims (98% of them), excluding the one recently filed by the opposing party Forman, have still not been resolved and are dragging on.

¹⁰ These issues are established in light of the arguments raised in the parties' plans of argumentation.

¹¹ Testimony of the president of Asbestos Corporation Limited, Mr. Guy Bérard, during the hearings on May 15 and June 18, 2025.

¹² This is apparent from the Monitor's three reports and the documents produced by the parties, including the numerous judgments and proceedings.

[13] Due to the heavy contingent liability represented by these claims, ACL has been in a difficult situation for 30 years. It cannot relaunch or reorient its activities. Innovative projects, such as those aimed at recycling extraction residues or transforming mines into carbon dioxide sequestration sites (carbon dioxide capture and storage), a lucrative activity with high added value, are currently on ice.¹³ Due to numerous pending legal actions, investors fear ACL's collapse.¹⁴ In fact, since the early 1990s, ACL's main activities have consisted primarily of maintaining its facilities and managing claims brought against it by people in the United States who claim to suffer from respiratory diseases, in conjunction with the CLMI co-applicants, the insurance companies covering its extracontractual liability,¹⁵ and their agent in the United States, Resolute Management Inc. ("**Resolute**").

*

[14] During 2023, in connection with the claims brought against ACL in the United States, a significant change occurred. This change proved to be particularly unfavorable to ACL and its insurers, CLMI. It explains ACL's and CLMI's decision to seek the protection of the CCAA to produce a plan of arrangement that could, in a conceivable best-case scenario, settle all the claims of the victims of asbestos-related diseases who are suing ACL.¹⁶

[15] It is therefore important to consider the following points.

*

[16] On July 10 and 19, 2023, a South Carolina court (Court of Common Pleas of Richland County ("**Court of Common Pleas**")) issued two judgments against ACL in the *Tibbs v. 3M* case, which involves numerous companies that mined or processed asbestos fibers or distributed or sold products containing asbestos.¹⁷ The first orders that a representative of ACL be questioned and produce certain requested documents, while the second warned ACL that if it refused to comply, it would be held guilty of contempt of court¹⁸:

¹³ *Id.*

¹⁴ *Id.*, testimony of the President of Asbestos Corporation Limited, Mr. Guy Bérard, during the hearings on May 15 and June 18, 2025.

¹⁵ Testimony of the president of Asbestos Corporation Limited, Mr. Guy Bérard, during the hearings on May 15 and June 18, 2025.

¹⁶ Pre-filing Report, First Report, Second Report and Supplemental Report by Raymond Chabot in its capacity as Monitor, *supra*, note 1.

¹⁷ This is apparent from the Monitor's three reports and the documents produced by the parties, including the numerous judgments and proceedings; Exhibit R-7: South Carolina Contempt Order; and R-8: Receivership Order.

¹⁸ Exhibit R-7.

Asbestos Corporation, Ltd. ("ACL") is a defendant in the above referenced matter. On July 10, 2023, this Court, in open court ordered ACL to fully answer discovery and appear for a deposition so that this matter could be prepared for trial. On July 19, 2023, this Court entered an Order stating: "Failure to answer the Court ordered discovery and to provide a corporate representative for deposition shall result in ACL being held in contempt."

[17] Following these judgments, in circumstances that the evidence does not clearly establish, Tibbs' attorneys requested that ACL produce certain documents concerning it. Despite the Order of July 10, 2023, ACL refuses to produce them. ACL based its objection on the *Business Concerns Records Act*¹⁹ ("**BCRA**"), a public policy statute²⁰ that prohibits the communication outside Québec of documents relating to a Québec business, such as an account, balance sheet, statement of receipts and expenditure, profit and loss statement, statement of assets and liabilities, inventory, report and any other writing or material forming part of the records or archives of a business concern, and this, despite the requirement (request, instruction, order, subpoena or summons) of a foreign, legislative, judicial or administrative authority. The sections 1 to 5 of the BCRA read as follows:

1. In this Act, the following words mean:

- a) "document": any account, balance sheet, statement of receipts and expenditure, profit and loss statement, statement of assets and liabilities, inventory, report and any other writing or material forming part of the records or archives of a business concern;
- b) "concern": any business concern in Québec;
- c) "requirement" means a request, an instruction, an order, a subpoena or a summons.

2. Subject to section 3, no person shall, pursuant to or under any requirement issued by any legislative, judicial or administrative authority outside Québec, remove or cause to be removed, or send or cause to be sent, from any place in Québec to a place outside Québec, any document or résumé or digest of any document relating to any concern.

3. The prohibition enacted in section 2 shall not apply in the case of the removal or sending of a document out of Québec

¹⁹ CQLR, c. D-12.

²⁰ *Veeva Systems Inc. v. Otsuka Canada Pharmaceutical Inc.*, 2022 QCCS 4310, para. 29.

- a) by an agency, branch, legal person or firm carrying on business in Québec, to a principal, head office, affiliated legal person or firm, agency or branch situated outside Québec, in the ordinary course of their business;
- b) by or on behalf of a natural or legal person, a partnership or an association that is not a legal person carrying on business in Québec, to a territory subject to another political jurisdiction in which the sale of the securities of such person, partnership or association has been authorized;
- c) by or on behalf of any such person, partnership or association carrying on business in Québec as a broker, security issuer or salesman within the meaning of the *Securities Act* (chapter V-1.1), to a territory subject to another political jurisdiction in which any such person, partnership or association has been registered or is otherwise authorized to carry on business as broker, security issuer or salesman, as the case may be;
- d) whenever such removal or sending is authorized by any law of Québec or of the Parliament of Canada, in accordance with their respective jurisdictions.

4. Whenever there is reason to believe that a requirement has been or is likely to be made for the removal or sending out of Québec of a document relating to a concern, the Attorney General may apply to a judge of the Court of Québec, in the judicial district where the concern in question is located, for an order requiring any person, whether or not designated in the requirement, to furnish an undertaking or security to ensure that such person will not remove or send out of Québec the document mentioned in the said requirement.

In case of urgency, the application may be filed and presented to the judge without prior service. The judge may however order the service thereof within such time, in such manner and on such conditions as he may consider expedient.

Every person having an interest in a concern may exercise the rights contemplated in this section.

5. Every person who, having received notice of an application to a judge of the Court of Québec under section 4, infringes the provisions of section 2, shall be guilty of contempt of court.

Every person who has furnished, or has received from the judge an order to furnish, an undertaking or security and who infringes the provisions of section 2 shall be guilty of contempt of court in addition to any obligation provided by the undertaking or security furnished or ordered by the judge.

[18] In fact, ACL's objection based on the BCRA, a law to which it remains subject as a corporation with its head office, principal assets, and operations in Québec, will be severely punished.

[19] Indeed, because of this objection, Tibbs is asking the Court of Common Pleas to find ACL guilty of contempt, to declare it barred from filing a defense and to appoint a receiver to act on its behalf in all actions brought against it in the United States by persons claiming to be victims of asbestos-related lung diseases.²¹

[20] On September 8, 2023, in two separate judgments, the Court of Common Pleas SC granted these requests.

[21] At the conclusion of the first judgment²², the Court of Common Pleas declared that ACL had knowingly refused to comply with its order of July 10, 2023, and in so doing had committed contempt of court. The Common Pleas Court sanctioned this contempt by declaring ACL barred from defending itself²³:

Here there is no dispute that ACL has violated this Court's orders. Moreover, ACL has indicated that it does not intend to comply with those orders in the future. In light of ACL's position, this Court has no choice but to find ACL in contempt of court. ACL has failed to produce a witness. ACL has refused to participate in a meaningful discovery. It has refused to produce documents. Given this intentional and willful refusal to participate in the discovery, the Court hereby strikes ACL's pleadings.

IT IS SO ORDERED.

[22] At the conclusion of the second judgment²⁴, the Court of Common Pleas appointed lawyer Peter Protopapas to act as Receiver of ACL's assets in all court cases in the United States in which it is being sued by victims of asbestos-related respiratory diseases. To enable the Receiver to perform his duties, the Court granted him extraordinary powers, including those to administer the insurance policies covering ACL, to ascertain the extent of insurance coverage, to manage ACL's defense in all proceedings in the United States, to select the attorneys to represent it, and to decide alone whether to file a contestation or enter into settlements²⁵:

As set forth above, the powers afforded to the Receiver here are all related to the insurance assets of ACL. Therefore, this Court hereby orders that Peter Protopapas be and hereby is appointed Receiver in this case with the power and authority fully administer all insurance assets of Asbestos Corporation, Ltd., and any subsidiaries, accept service on behalf of ACL, engage counsel on behalf of ACL, to assume control of the defense of asbestos claims made against ACL in the United States, and take any and all steps necessary to protect the interests of ACL whatever they may be. This order includes the right and obligation to

²¹ Pre-filing Report, First Report, Second Report and Supplemental Report by Raymond Chabot in its capacity as Monitor, *supra*, note 1.

²² Exhibit R-7.

²³ *Id.*

²⁴ Exhibit R-8.

²⁵ *Id.*

administer any insurance or indemnification assets of ACL as well as any claims related to the actions or failure to act of ACL insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of ACL against which the ACL may have claims.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, powers and authority, insofar as they are related to the discovery of and recovery of insurance assets, to: 1) open any mail which is reasonably believed to contain information relating to insurance assets addressed to the defendant and addressed to any business owned by the ACL; redirect the delivery of any such mail addressed to the ACL or any business of the ACL, so that such mail may come directly to the receiver; 2) endorse and cash all checks and negotiable instruments payable to ACL relating to insurance assets; 3) obtain from any financial institution, bank, credit union, savings and loan or title, credit bureau or any other third party, any financial records belonging to or pertaining to the insurance assets of ACL; 4) hire any person necessary to accomplish any right or power under this Order; 5) to assume control of the defense of asbestos claims made against ACL in the United States; and 6) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of ACL may be situated, and to review and obtain copies of all documents related to insurance assets of ACL.

The Court expects the Receiver to investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to ACL. The Receiver will provide potential insurers or indemnifiers 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 ACL or any entity for whom ACL did work or supplied materials or licensed products or the use thereof as an "additional insured" under coverage written to another entity). The Court expects all insurers or indemnifiers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

This Court notes that under the Barton doctrine, suit against the Receiver outside of this Court is expressly prohibited.

CONCLUSION

For the foregoing reasons, the appointment of a receiver for ACL to marshal all of the available insurance assets, including claims related thereto and any other property subject to this receivership of ACL and its subsidiaries, successors, and assigns, is appropriate. Moreover, the Court authorizes Mr. Protopapas to assume the control of the defense of all litigation matters pending in the United States against ACL. Peter Protopapas is hereby appointed the receiver over ACL consistent with this order.

IT IS SO ORDERED.

[Emphasis added by the Court]

[23] As a result of this judgment, which is astonishing in the eyes of a court rooted in Canadian (or British²⁶) judicial culture, it's generally understood that ACL's defense of the lawsuits filed in the United States is becoming considerably more complex, not to say seriously compromised.

[24] In fact, the judgment of the Court of Common Pleas appointing Protopapas to take sole responsibility for ACL's defense in the cases in which it is being sued in the United States is the start of a race to the courts.

[25] The opposing party, Forman, in his capacity as Trustee in bankruptcy for National Service Industries Inc. ("**NSI**"), is involved in the case. On November 14, 2024, he filed an action against ACL in the Court of Common Pleas, County of Richland, South Carolina.²⁷ He is claiming more than US\$151,000,000.

[26] In addition to this major Forman action, default judgments have been entered against ACL, or are in the process of being entered, because it is relying on the BCRA to refuse to produce certain corporate documents.²⁸

[27] For example, on January 29, 2025, in *Kotzerke v. 3M Co.* before the Washington State Superior Court, ACL was ordered to pay a penalty of US\$68,000.²⁹ Then, on March 3, 2025, in the same case, ACL was declared precluded from presenting a defense, which resulted in a default judgment on March 18 ordering it to pay US\$16,219,398.25.³⁰

[28] In another case pending before the Superior Court of Los Angeles County,³¹ ACL's objection to providing corporate documents concerning it under the BCRA was also severely sanctioned. As in *Kotzerke v. 3M Co.*, ACL faces a foreclosure order and the possibility of a default judgment ordering it to pay US\$20,000,000.³²

[29] Therefore, due to the appointment of the Receiver Protopapas, the action brought by Forman, and the excessive judgments entered against it by default, which exacerbate the already difficult situation that has prevailed for 30 years, ACL and its insurers CLMI are now in dire straits. Fearing that the situation will repeat itself and worsen throughout the

²⁶ Exhibit R-13: Copy of the judgment of the UK court [*Cape Intermediate Holdings Limited v. Protopapas*, [2024] EWHC 2999 (Ch)].

²⁷ Exhibit O-4: Charles Forman Complaint against ACL dated November 14, 2024.

²⁸ Exhibit R-14: Copy of the Washington Appellate Decision; R-15: Copy of the Washington Default Order; R-16: Washington Default Judgment; R-18: Copy of the Order of the California Court issued on October 30, 2024; and R-19: Copy of the Order of the California Court issued on February 5, 2025.

²⁹ Exhibit R-15.

³⁰ Exhibit R-16.

³¹ Exhibits R-18 and R-19.

³² Testimony of the Monitor.

United States, they have decided to jointly invoke the CCAA and Chapter 15 of the U.S. Bankruptcy Code ("Chapter 15").³³

[30] Under the aegis of the CCAA and Chapter 15, ACL and CLMI wish to set up a process for evaluating all the claims addressed to them by victims of asbestos-related respiratory diseases, within the framework of a procedure ordered and supervised by a monitor and the Court. To put an end to the thousands of disputes that have been going on for over twenty and even twenty-five years, they would like to have the opportunity to present, as part of a plan of arrangement, a settlement offer that could enable victims of asbestos-related diseases to be indemnified in a fair, equitable and timely manner, while preventing a minority of opportunistic claimants from trying to win the jackpot by exhausting insurance coverage to the detriment of the majority.³⁴

[31] On May 6, 2025, ACL and CLMI appeared before the Superior Court of Québec. They asked the Court to issue an initial order under the CCAA to suspend the proceedings against them, GDC, ACL's former shareholder, and Resolute, CLMI's agent in the United States.³⁵

[32] In their request, they explain what the restructuring will consist of. They also allege the reasons that would justify extending the stay order in respect of CLMI, Resolute, and GDL.³⁶

[33] On the same day, a first-day initial order is issued.³⁷ This ordered the suspension of ACL's creditors' claims, including those brought by people claiming to be victims of asbestos-related respiratory diseases, for a period of ten days. This initial order also applies to CLMI, GDC, and Resolute.

[34] On May 16, 2025, ACL and CLMI return to the Québec Superior Court for the "Comeback Hearing." The purpose of this hearing is to extend the initial stay order. At this hearing, the opposing party Forman, who filed a claim of over US\$151,000,000 in the Court of Common Pleas in the wake of the appointment of the Receiver Protopapas, intervenes in the proceedings. He announces his intention to contest the request for an extension of the initial order. As the parties are not able to proceed on the merits

³³ Assuming that there are more than 6,000 lawsuits pending in the U.S., and that the *Kotzerke* judgment could set a precedent that will be followed, there may be concern that hundreds and perhaps thousands of multi-million US dollar default judgments could be entered against ACL, leaving it facing potential liabilities of several tens of billions of US dollars.

³⁴ Argument by the co-applicants' attorneys during oral arguments.

³⁵ Amended Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order, dated May 6, 2025.

³⁶ *Id.*, paras. 103-110.

³⁷ *Arrangement relating to Certain Underwriters at Lloyd's*, London, 2025 QCCS 1474.

of his contestation, an administration of the comeback hearing is held. At the end of this hearing, the comeback hearing was set for June 17 and 18, 2025. At the same time, and without prejudice to Forman's contestation, a judgment was issued extending the stay of proceedings against ACL, CLMI, GDL and Resolute. The period of the stay of proceedings has therefore been extended to September 5, 2025. In addition, the judgment authorizes an administrative charge of CAN\$300,000 and interim financing provided by CLMI in the amount of US\$20 million.

[35] On May 19, 2025, ACL and CLMI applied to the United States Bankruptcy Court for the Southern District of New York for recognition of the Canadian CCAA proceedings and suspension of the claims of ACL's creditors in the United States against ACL, CLMI, GDL, and Resolute.

[36] On the same day, the United States Bankruptcy Court granted this request on an interim basis. It recognized the Canadian CCAA proceedings and stayed the claims of ACL's creditors against ACL, CLMI, GDL and Resolute. This stay of proceedings is valid until August 2025.

[37] On June 12, 2025, in anticipation of the comeback hearing, the Monitor examines the opposing party Forman. A priori, this examination raises doubts about the seriousness of the action he has undertaken.³⁸

[38] On June 14, 2025, two days after Forman's examination, his lawyers filed a representative deed to act on behalf of seven U.S. law firms representing 1,579 individuals, alleged victims of asbestos-related diseases, many of whom have initiated proceedings against ACL and CLMI in Louisiana, a state where direct actions against the insurer are permitted.³⁹ They joined Forman in requesting that the stay of proceedings not be extended to CLMI, GDL, and Resolute.⁴⁰

[39] On June 17 and 18, 2025, at the comeback hearing, the parties proceeded as agreed during the May 16 management hearing.

[40] To demonstrate the merits of the request to extend the initial order in respect of third parties CLMI, GDC and Resolute, ACL and CLMI rely in particular

³⁸ Interrogation by videoconference of Mr. Charles Forman, June 12, 2025, p. 22, 1. 4-15; Supplemental Report by Raymond Chabot in its capacity as Monitor, paras. 3.3 to 3.17.

³⁹ This representative deed did not comply with the requirements of article 91 C.P.C. in that the mandate entrusted to the Davies firm had been given not by the 1,579 individuals concerned, but by the seven law firms representing them in the proceedings in the United States. This deficiency was corrected on June 27, 2025, after the hearing on the contestation.

⁴⁰ The seven U.S. law firms representing the 1,579 individual opponents, who had retained Québec counsel to represent them in the CCAA proceedings, cooperated little with the Monitor's investigative work, either before or after the comeback hearing, according to the Monitor's testimony. See also: Supplemental Report to the Second Report by Raymond Chabot in his capacity as Monitor, dated June 16, 2025.

on reports produced by the Monitor⁴¹, as well as several documents filed as exhibits.⁴² In addition, they call several witnesses, namely the Monitor's representative, Mr. Jean Gagnon, the president of ACL, Mr. Guy Bérard, and the president of Resolute, Mr. Thomas Ryan.

[41] As for the opposing parties, the evidence they presented was limited. None of them came to testify, with the exception of the out-of-court examination of the opposing party Forman appended to the Monitor's fourth report. Furthermore, they did not present any witnesses. Apart from their legal position, the evidence does not reveal their motives. It is unclear why they oppose the order staying the proceedings against CLMI, GDL, and Resolute, given that this stay could allow their clients to receive a settlement offer in a plan of arrangement. Nevertheless, it is possible to guess what is behind their contestation.

IV. THE MEANS

[42] To demonstrate that it is appropriate in this case to extend the initial order staying the claims of the creditors in favor of ACL and that of CLMI, GDL, and Resolute, they argue that⁴³:

- a. To end the uncertainty that has prevailed for 30 years, avoid its collapse, and reorient its activities in a region that needs them, ACL is seeking CCAA protection for its benefit and that of CLMI, GDC, and Resolute, which are essential partners in its reorganization;
- b. With CLMI's financial support, ACL intends to: (i) set up an orderly and independent assessment procedure, under the supervision of the Monitor and the Court, for all claims submitted to it by people suffering from asbestos-related lung diseases; and (ii) present a plan of arrangement to all those who have a valid claim to make, and who have been waiting for over twenty years, to be indemnified promptly, fairly and equitably;
- c. With CLMI's financial support, ACL is confident of being able to present an acceptable and viable plan of arrangement to people suffering from asbestos-related lung diseases, and thus put an end to their difficulties. This would also enable it to relaunch its activities by undertaking new projects, which would be in its own interest and in the interest of thousands of residents of the Thetford Mines region, who have suffered greatly from the problems experienced in the asbestos industry;

⁴¹ Pre-filing Report, First Report, Second Report and Supplemental Report by Raymond Chabot in his capacity as Monitor, *supra*, note 1.

⁴² Exhibits R-1 to R-22.

⁴³ This evidence consists mainly of testimony from the Monitor, the president of ACL, and the president of Resolute, as well as extensive documentary evidence.

- d. Referring to a recent arrangement carried out by the Monitor,⁴⁴ ACL and CLMI believe they can assess the claims and present a plan of arrangement over a period as short as 18 months;
- e. If no stay order is issued in respect of CLMI, GDC and Resolute, no plan of arrangement can be presented to the victims of asbestos-related lung diseases, and the claims they have been pursuing, in the vast majority of cases for over 20 years, will continue to drag on for several more years;
- f. There is no principled prohibition in the CCAA against extending a stay order to a debtor's insurers. On the contrary, a number of case law precedents in the United States and Canada have extended the effects of stay orders and even discharges in respect of a debtor towards solvent third parties.⁴⁵ Moreover, the United States Bankruptcy Court judge who recognized the Canadian CCAA proceedings (Judge Glenn) echoed this view;
- g. In all cases, the stay of proceedings against third parties is a matter of circumstances and must be assessed on a case-by-case basis;

*

[43] As for the opposing parties, they put forward seven means to demonstrate that the stay of proceedings order should not be extended for the benefit of ACL and the third parties CLMI, GDC and Resolute, namely that⁴⁶:

- a. ACL allegedly carries out no activities, generates no income and has no future plans to generate any, so it would use the CCAA for the sole purpose of liquidating the claims of victims of asbestos-related diseases⁴⁷;
- b. ACL allegedly has no real assets, apart from the insurance coverage it enjoys, which exists solely to meet the claims of victims of asbestos-related diseases in the context of the claims filed⁴⁸;

⁴⁴ *Imperial Tobacco Canada Limited*, 2025 ONSC 1358.

⁴⁵ *Re Muscletech Research and Development Inc.*, 2006 CanLII 34344 (ON S.C.J.); *ATB Financial v. Metcalfe & Mansfield Alternative Investment II Corp.*, 2008 CanLII 27820 (Ont. S.C.J.), aff'd 2008 ONCA 587, application for leave to appeal dismissed (S.C.C., 2008-09-19) 32765; *Montréal, Maine & Atlantic City Canada Co. (Montréal, Maine & Atlantique Canada Cie) (Arrangement relating to)*, 2015 QCCS 3235.

⁴⁶ Brief of arguments of Forman and certain asbestos claimants, dated June 14, 2025.

⁴⁷ *Id.*, paras. 31-32.

⁴⁸ *Id.*, para. 33.

- c. ACL and CLMI are said to be responsible for the appointment of the Receiver Protopapas and for the judicial chaos that has reigned in the United States since his appointment, through their stubbornness in invoking the BCRA not to produce the insurance policies⁴⁹;
- d. The discretion vested in the supervising judge is not unlimited⁵⁰ and would not allow him to issue a stay order against insolvent insurance companies, which are excluded from the scope of the CCAA⁵¹;
- e. The stay order with respect to CLMI would contravene articles 2500 *et seq.* CCQ, a provision of public order that gives the victim the choice of bringing his action against the insured or his insurer, or both⁵²;
- f. Generally speaking, CLMI, which are solvent insurers, would use the CCAA as a protective shield to avoid being bound to honor their contractual obligations towards victims of asbestos-related diseases.⁵³

V. THE PRINCIPLES

a. The objectives of the CCAA:

[44] In the *Callidus Capital Corp.* decision,⁵⁴ handed down in May 2020, the Supreme Court provides a much-needed reminder of the principles governing the CCAA, and insolvency law in Canada more generally. It recalls the *raison d'être* of the CCAA. It explains that, like the two other Canadian statutes dealing with insolvency in Canada,⁵⁵ the CCAA pursues remedial objectives, the underlying purpose of which is to avoid the social and economic losses resulting from the liquidation of an insolvent company, hence the importance of seeking to maintain its operations to enable it to propose an arrangement to its creditors and restart its business.⁵⁶ In this sense, the main objective of the CCAA is to effectively and impartially resolve the insolvency of a distressed commercial company, preserving or maximizing as much as possible the value of its assets, ensuring fair and equitable treatment of its creditors' claims and protecting the public interest.⁵⁷

⁴⁹ *Id.*, paras. 5-20.

⁵⁰ *Id.*, paras. 21-24.

⁵¹ *Id.*, para. 25.

⁵² *Id.*, paras. 26-30.

⁵³ *Id.*, para. 2.

⁵⁴ 9354-9186 *Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 [*"Callidus"*].

⁵⁵ Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3; Winding-up and Restructuring Act, R.S.C., 1985, c. W-11.

⁵⁶ *Callidus*, supra, note 53, paras. 40-41.

⁵⁷ *Id.*, para. 40.

[45] It explains that to facilitate the achievement of these objectives, the CCAA provides a range of tools that enable insolvent companies, with the assistance of a monitor and under the supervision of a judge, to resolve the serious consequences of their financial difficulties, regardless of their source.

b. The role of the supervising judge

[46] Also in *Callidus Capital Corp.*, the Supreme Court emphasized the importance of the role played by the supervising judge in a reorganization process under the CCAA. It emphasized that the CCAA grants a “broad” discretionary power to the supervising judge. It states that this discretionary power makes it possible to tailor orders to meet specific situations that may arise. The Supreme Court points out that the anchor of this discretionary power is found in section 11 of the CCAA, which gives the supervising judge the power to “make any order he considers appropriate.”⁵⁸ This provision has been repeatedly described in case law as the “driving force” behind the CCAA legislative regime.⁵⁹ It reads as follows:

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[Emphasis added by the Court]

[47] Obviously, like any discretionary power, the power granted to the supervising judge under section 11 of the CCAA is not unlimited.

[48] On the one hand, this discretionary power remains subject to the restrictions specifically provided for in the CCAA. For example, the supervising judge may not prevent a person from demanding payments for the supply of goods or services, the use of leased or licensed property or the provision of any other valuable consideration that occurs after the initial order staying the proceedings,⁶⁰ order a lender to make new cash advances or credits,⁶¹ suspend actions against the directors for guarantees they have given in respect of the company’s obligations, or measures in the nature of an injunction against them in respect thereof⁶² or suspend any action, suit or other proceeding against the person who has obligations under letters of credit or guarantees relating to the company.⁶³

⁵⁸ *Id.*, para. 48.

⁵⁹ *Id.*, citing *Stelco Inc. (Bankruptcy)*, Re, 2005 CanLII 8671 (ON CA), para. 36.

⁶⁰ Al. 11.01 (a) CCAA.

⁶¹ Al. 11.01 (b) CCAA.

⁶² Para. 11.03 (2) CCAA.

⁶³ Art. 11.04 CCAA.

[49] On the other hand, this discretionary power is exercised taking into account three considerations: (1) the order sought by the debtor or an interested party must be appropriate and indicated⁶⁴; (2) the debtor or interested party must act in good faith⁶⁵; and (3) the debtor or interested party must exercise due diligence.⁶⁶

[50] The first consideration, that of appropriateness, is satisfied when it is demonstrated that the order sought may further the objectives of the CCAA, for example, by allowing the debtor corporation to present a viable arrangement to its creditors to enable it to resume its operations.

[51] The second consideration, that of good faith, implies that the debtor corporation or interested person seeking an order, as well as the person contesting it, is not acting in bad faith or dishonestly.

[52] The third and final consideration, diligence, presupposes that the debtor or interested party seeking the order, or the party contesting it, is not seeking to obtain, by deception, an advantage that would defeat the objectives of the CCAA and, ultimately, the filing of a plan of arrangement. With regard to this consideration, the Supreme Court wrote⁶⁷:

[51] The third consideration of due diligence requires some elaboration. Consistent with the CCAA regime generally, the due diligence consideration discourages parties from sitting on their rights and ensures that creditors do not strategically manoeuvre or position themselves to gain an advantage (*Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24 (Ont. C.J. (Gen. Div.)), at p. 31). The procedures set out in the CCAA rely on negotiations and compromise between the debtor and its stakeholders, as overseen by the supervising judge and the monitor. This necessarily requires that, to the extent possible, those involved in the proceedings be on equal footing and have a clear understanding of their respective rights (see McElcheran, at p. 262). A party's failure to participate in CCAA proceedings in a diligent and timely fashion can undermine these procedures and, more generally, the effective functioning of the CCAA regime [...].

[53] In short, when the measure sought by way of an order is not covered by one of the restrictions set out in the CCAA, the supervising judge may grant it if it proves appropriate, given that its implementation may assist the recovery undertaken and favor the filing of a plan of arrangement, and that the debtor or interested party requesting it is acting in good faith and with diligence.

⁶⁴ Al. 11.02 (3) (a) CCAA.

⁶⁵ Al. Para. 11.02 (3) (b) and art. 18.6 CCAA.

⁶⁶ Al. 11.02 (3) (b) CCAA.

⁶⁷ *Callidus*, supra, note 53, para. 51.

c. The evolving nature of the CCAA

[54] Beyond these general principles, it is worth noting that the CCAA has a distinctive feature, namely its evolving nature.

[55] In an article published in May 2016 in the *Annual Review of Insolvency Law*, lawyers Alain Riendeau and Brandon Farber highlighted this particular feature of the CCAA, referring to decisions that authorized the liquidation of distressed companies under the CCAA, a measure that in the past was not unanimously supported and that some judges did not dare to authorize⁶⁸:

Over time, the CCAA proceeding has evolved, and it is now quite common for there to be “liquidating” CCAA proceedings in which there is no successful restructuring of the business, but rather, a sale of substantially all of the debtors’ assets and a distribution of the proceeds to the creditors of the business. In the *Nortel Networks* CCAA proceeding, Justice Morawetz’s rationale for authorizing the sale of substantially all the debtors’ assets in the context of the CCAA proceeding was the following:

[47] It seems to me that the foregoing views expressed in *Forest and Marine* are not inconsistent with the views previously expressed by the courts in Ontario. The CCAA is intended to be flexible and must be given a broad and liberal interpretation to achieve its objectives and a sale by the debtor which preserves its business as a going concern is, in my view, consistent with those objectives.

[Emphasis in original; references omitted]

[56] In its decision in *Callidus Capital Corp.*, the Supreme Court also emphasized the “evolving nature of proceedings brought under the CCAA.”⁶⁹ To illustrate this evolving nature of the CCAA, it also cites the example of the liquidation of a debtor company under the CCAA, a process that was once criticized but has become commonplace and recognized by the courts, even before the legislature amended the CCAA to regulate the process⁷⁰:

[42] That said, the CCAA is fundamentally insolvency legislation, and thus it also “has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm’s financial distress [...] and enhancement of the credit system generally” [...]. In pursuit of those objectives, CCAA proceedings have evolved to permit outcomes that do not result in the emergence of the pre-filing debtor company in a restructured state, but rather involve some form of liquidation of the debtor’s assets under the auspices of the Act itself [...]. Such scenarios are referred to as “liquidating CCAAs,” and they are now commonplace in the CCAA landscape [...].

⁶⁸ Alain RIENDEAU and Brandon FARBER, “Using the CCAA to Achieve a Global Resolution of Complex Litigation ‘To Infinity and Beyond!’ (*Buzz Lightyear, Toy Story*)”, in Janis P. BARRA (dir.), *Annual Review of Insolvency Law 2016*, Toronto, Thomson Reuters, 2017.

⁶⁹ *Callidus*, supra, note 53, para. 38.

⁷⁰ *Id.*, paras. 42-46.

[43] Liquidating CCAAs take diverse forms and may involve, among other things: the sale of the debtor company as a going concern; an “en bloc” sale of assets that are capable of being operationalized by a buyer; a partial liquidation or downsizing of business operations; or a piecemeal sale of assets [...]. The ultimate commercial outcomes facilitated by liquidating CCAAs are similarly diverse. Some may result in the continued operation of the business of the debtor under a different going concern entity while others may result in a sale of assets and inventory with no such entity emerging [...]. Others still, like the case at bar, may involve a going concern sale of most of the assets of the debtor, leaving residual assets to be dealt with by the debtor and its stakeholders.

[44] CCAA courts first began approving these forms of liquidation pursuant to the broad discretion conferred by the Act. The emergence of this practice was not without criticism, largely on the basis that it appeared to be inconsistent with the CCAA being a “restructuring statute” [...].

[45] However, since section 36 of the CCAA came into force in 2009, courts have been using it to effect liquidating CCAAs. Section 36 empowers courts to authorize the sale or disposition of a debtor company’s assets outside the ordinary course of business. Significantly, when the Standing Senate Committee on Banking, Trade and Commerce recommended the adoption of section 36, it observed that liquidation is not necessarily inconsistent with the remedial objectives of the CCAA, and that it may be a means to “raise capital [to facilitate a restructuring], eliminate further loss for creditors or focus on the solvent operations of the business” (p. 163). Other commentators have observed that liquidation can be a “vehicle to restructure a business” by allowing the business to survive, albeit under a different corporate form or ownership [...]. Indeed, in *Indalex*, the company sold its assets under the CCAA in order to preserve the jobs of its employees, despite being unable to survive as their employer (see para. 51).

[46] Ultimately, the relative weight that the different objectives of the CCAA take on in a particular case may vary based on the factual circumstances, the stage of the proceedings, or the proposed solutions that are presented to the court for approval. Here, a parallel may be drawn with the *BIA* context. In *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, [2019] 1 S.C.R. 150, at para. 67, this Court explained that, as a general matter, the *BIA* serves two purposes:

(1) the bankrupt's financial rehabilitation and (2) the equitable distribution of the bankrupt's assets among creditors. However, in circumstances where a debtor corporation will never emerge from bankruptcy, only the latter purpose is relevant (see para. 67). Similarly, under the CCAA, when a reorganization of the pre-filing debtor company is not a possibility, a liquidation that preserves going-concern value and the ongoing business operations of the pre-filing company may become the predominant remedial focus. Moreover, where a reorganization or liquidation is complete and the court is dealing with residual assets, the objective of maximizing creditor recovery from those assets may take center stage. As we will explain, the architecture of the CCAA leaves the case-specific assessment and balancing of these remedial objectives to the supervising judge.

[References omitted]

[57] In short, the flexibility offered by the CCAA, by virtue of the broad and liberal interpretation it must be given and the "broad" discretionary power it grants to the supervising judge, explains its evolving nature.

[58] As we will see below, the evolution of practices under the CCAA has not been limited to liquidation proceedings.

d. The CCAA and solvent third parties

[59] In recent decades, the courts have not hesitated to implement certain unprecedented measures to enable the restructuring of debtor companies. Two examples are the approval of arrangements leading to the release of solvent third parties and orders to stay proceedings against them. As explained by Riendeau and Farber,⁷¹ the courts have not hesitated to implement exceptional and innovative measures due to the special circumstances of certain reorganizations⁷²:

As has often been, and will continue to be, repeated by courts across Canada, the CCAA is intended to be flexible and must be given a broad and liberal interpretation. Courts enjoy significant discretionary powers to make orders that help achieve the objectives of the CCAA. This broad interpretation of the CCAA is what allows insolvency practitioners to explore innovative solutions to crises and financial challenges that may be facing their clients. Indeed, insolvency law is advanced by insolvency practitioners tasked with finding exceptional measures to deal with extraordinary circumstances, particularly in the absence of any specific legislative authority. The CCAA has been used to address several high-profile crises.

⁷¹ A. RIENDEAU and B. FARBER, *supra*, note 67.

⁷² *Re Muscletech Research and Development Inc.*, *supra*, note 44; *ATB Financial v. Metcalfe & Mansfield Alternative Investment II Corp.*, *supra*, note 44; *Montréal, Maine & Atlantic City Canada Co.*/(*Montréal, Maine & Atlantique Canada Cie*) (*Arrangement relating to*), *supra*, note 44.

Some examples of exceptional measures that have made their way into CCAA practice as a result of extraordinary circumstances include:

- stay of proceedings against non-debtors, including directors, related parties and even insurance companies:
- implementing a claims process with a bar date in order to liquidate creditors' claims against a debtor in a timely manner;
- interim financing, colloquially known as "debtor in possession financings," which grants a super-priority charge to the interim financing lender over the debtor's assets;
- asset sales with a vesting order, which allow for a debtor's assets to be sold free and clear of any charges; and
- third-party releases.

[References omitted; emphasis added by the Court]

[60] With regard to the practice of extending the application of the CCAA to solvent third parties, the precedents referred to by Riendeau and Farber⁷³ are interesting in the context of the present case. They have one thing in common: the essential nature of the measure for the success of the restructuring. When determining whether a plan of arrangement could discharge solvent third parties or whether a stay order should be granted in their favor, the judges asked themselves the following question: Did the debtor and the solvent third party affected by a plan of arrangement that discharged third parties demonstrate that the measure was essential to the success of the restructuring?

[61] This aspect is particularly evident in the test developed by the Ontario Superior Court (Campbell J.) in the *Metcalfe & Mansfield Alternative Investments II Corp.* arrangement,⁷⁴ an important and well-known case. The question at issue was whether the proposed plan of arrangement, which discharged solvent third parties, including banks, should be approved. After reviewing Canadian and US case law on the issue,⁷⁵ Justice Campbell concluded that a plan of arrangement containing such discharges could be approved if certain requirements were met⁷⁶:

[143] I have as a result addressed a number of questions in order to be satisfied that in the specific context of this case, a Plan that includes third party releases is justified within CCAA jurisdiction. I have concluded that all of the following questions can be answered in the affirmative.

⁷³ A. RIENDEAU and B. FARBER, *supra*, note 67.

⁷⁴ *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, *supra*, note 44.

⁷⁵ *Muscletech Research and Development Inc. (Re)*, *supra*, note 44.

⁷⁶ *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, *supra*, note 44.

1. Are the parties to be released necessary and essential to the restructuring of the debtor?
2. Are the claims to be released rationally related to the purpose of the Plan and necessary for it?
3. Can the Court be satisfied that without the releases the Plan cannot succeed?
4. Are the parties who will have claims against them released contributing in a tangible and realistic way to the Plan?
5. Is the Plan one that will benefit not only the debtor but creditor Noteholders generally?
6. Have the voting creditors approved the Plan with knowledge of the nature and effect of the releases?
7. Is the Court satisfied that in the circumstances the releases are fair and reasonable in the sense that they are not overly broad and not offensive to public policy?

[144] I have concluded on the facts of this Application that the releases sought as part of the Plan, including the language exempting fraud, to be permissible under the CCAA and are fair and reasonable.

[62] On appeal from Justice Campbell's judgment, the Court of Appeal confirmed the accuracy of the analysis carried out and the test that had been developed⁷⁷:

[69] In keeping with this scheme and purpose, I do not suggest that any and all releases between creditors of the debtor company seeking to restructure and third parties may be made the subject of a compromise or arrangement between the debtor and its creditors. Nor do I think the fact that the releases may be "necessary" in the sense that the third parties or the debtor may refuse to proceed without them, of itself, advances the argument in favor of finding jurisdiction (although it may well be relevant in terms of the fairness and reasonableness analysis).

[70] The release of the claim in question must be justified as part of the compromise or arrangement between the debtor and its creditors. In short, there must be a reasonable connection between the third-party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third-party release in the plan. This nexus exists here, in my view.

⁷⁷ 2008 ONCA 587.

[71] In the course of his reasons, the application judge made the following findings, all of which are amply supported on the record:

(a) The parties to be released are necessary and essential to the restructuring of the debtor; [page 534] (b) the claims to be released are rationally related to the purpose of the Plan and necessary for it; (c) the Plan cannot succeed without the releases; (d) the parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan; and (e) the Plan will benefit not only the debtor companies but creditor Noteholders generally.

[72] Here, then — as was the case in T&N — there is a close connection between the claims being released and the restructuring proposal. The tort claims arise out of the sale and distribution of the ABCP Notes and their collapse in value, as do the contractual claims of the creditors against the debtor companies. The purpose of the restructuring is to stabilize and shore up the value of those notes in the long run. The third parties being released are making separate contributions to enable those results to materialize. Those contributions are identified earlier, at para. 31 of these reasons. The application judge found that the claims being released are not independent of or unrelated to the claims that the Noteholders have against the debtor companies; they are closely connected to the value of the ABCP Notes and are required for the Plan to succeed. At paras. 76–77, he said:

I do not consider that the Plan in this case involves a change in relationship among creditors “that does not directly involve the Company.” Those who support the Plan and are to be released are “directly involved in the Company” in the sense that many are foregoing immediate rights to assets and are providing real and tangible input for the preservation and enhancement of the Notes. It would be unduly restrictive to suggest that the moving parties’ claims against released parties do not involve the Company, since the claims are directly related to the value of the Notes. The value of the Notes is in this case the value of the Company.

This Plan, as it deals with releases, doesn’t change the relationship of the creditors apart from involving the Company and its Notes.

[73] I am satisfied that the wording of the CCAA — construed in light of the purpose, objects and scheme of the Act and in accordance with the modern principles of statutory interpretation — supports the court’s jurisdiction and authority to sanction the Plan proposed here, including the contested third-party releases contained in it.

[...]

[113] At para. 71, above, I recited a number of factual findings the application judge made in concluding that approval of the Plan was within his jurisdiction under the CCAA and that it was fair and reasonable. For convenience, I reiterate them here—with two additional findings—because they provide an important foundation for his analysis concerning the fairness and reasonableness of the Plan. The application judge found that:

(a) The parties to be released are necessary and essential to the restructuring of the debtor; (b) the claims to be released are rationally related to the purpose of the Plan and necessary for it; (c) the Plan cannot succeed without the releases; (d) the parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan; (e) the Plan will benefit not only the debtor companies but creditor Noteholders generally; (f) the voting creditors who have approved the Plan did so with knowledge of the nature and effect of the releases; and that, (g) the releases are fair and reasonable and not overly broad or offensive to public policy.

[114] These findings are all supported on the record. Contrary to the submission of some of the appellants, they do not constitute a new and hitherto untried “test” for the sanctioning of a plan under the CCAA. They simply represent findings of fact and inferences on the part of the application judge that underpin his conclusions on jurisdiction and fairness.

[63] Although the test developed in this case was intended for an application for approval of a plan of arrangement that included a release of solvent third parties, it appears that it can be applied, with some adaptation, to determine whether a stay order can be extended to solvent third parties. Indeed, if discharges in favor of solvent third parties included in a plan of arrangement may be fair and acceptable in certain cases, the same should apply to a stay order, which is not final and has no effect on the substantive rights of creditors other than to impose a waiting period.

[64] Incidentally, in the arrangement of *Montréal, Maine & Atlantic Canada Co. (Arrangement relating to)*⁷⁸, my colleague Justice Martin Castonguay, J.S.C., ordered a stay of proceedings against the debtor’s insurer. Without formally applying the test developed in *Metcalf & Mansfield Alternative Investments II Corp (Re)*, supra, Justice Castonguay, J.S.C., refers to it. One of the elements that led him to conclude that the stay of proceedings against the insurer was appropriate in the circumstances of this case stemmed from its financial participation in the plan of arrangement, a contribution that was “tangible,” concrete and realistic:

[60] While it is clear that XL’s insurance coverage will only benefit the victims of the derailment, whether they be the victims themselves, the landowners, the municipality of Lac-Mégantic or the Government of Québec for decontamination costs, it is necessary to avoid the chaos of a first-come, first-served approach.

[61] Already, XL has announced that it will deposit the amount of insurance coverage.

[62] A plan of arrangement can surely provide for a proposal to distribute this sum among the victims, hence MMA’s request to extend the stay of proceedings to a third party, in this case XL.

⁷⁸ 2013 QCCS 4039.

[65] Thus, it should be noted that a request for a stay of proceedings in favor of a solvent third party may be seriously considered when it is shown that: (1) the third party in question has an essential role to play in the debtor's restructuring; (2) its participation may enable the filing of a viable plan of arrangement that would not otherwise be possible; (3) the third party will make a tangible, concrete and realistic contribution to this plan; and (4) the creditors will be able to benefit from this plan.

*

[66] It is therefore with these statements of principle in mind that the Court will conduct a *de novo* analysis to determine whether, on the one hand, ACL meets the criteria for obtaining a CCAA stay order and, on the other, whether the stay can be extended to the third parties CLMI, GDL and Resolute.

[67] In conducting this analysis, each of the opposing parties' grounds for contestation described above will be considered.⁷⁹

VI. THE ANALYSIS

a. The stay of proceedings in favor of ACL

[68] The evidence adduced by ACL to demonstrate that it meets the criteria to avail itself of the CCAA is uncontradicted and preponderant. Indeed, there is no doubt that ACL is a company facing very significant financial difficulties.⁸⁰ It faces claims that far exceed the threshold required to invoke the CCAA. For some 30 years, ACL, along with many other companies that processed, distributed or sold products incorporating asbestos, has had to deal with thousands of claims from people alleging they suffer from asbestos-related respiratory diseases.

[69] Prior to the appointment of Receiver Protopapas (September 8, 2023), these claims already totaled several hundred million US dollars. And since the appointment of the Receiver, significant claims have been added, including the US\$151 million claim by the opposing party Forman.

[70] If we add to this picture the fact that, since the appointment of the Receiver Protopapas, ACL is no longer in a position to manage the claims it receives in the United States itself, in collaboration with CLMI, we can see that the situation is precarious and extraordinarily difficult.

[71] All this to say that, under the current circumstances, ACL is fully justified in invoking the CCAA.

⁷⁹ Para. 41 (a) to (f) of this judgment.

⁸⁰ Amended Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order, dated May 6, 2025, paras. 38-55.

[72] It is abundantly clear that a stay order in its regard is appropriate, if not essential.

[73] Furthermore, nothing could call into question the good faith and diligence shown in connection with its application for the initial order. Moreover, the opposing parties have not presented any evidence to that effect.

[74] The opposing parties argued that ACL was not carrying on any business, was not generating any income from its activities, had no future plans to generate income, and even that it had no real assets other than the insurance coverage it enjoys, arguing that it was using the CCAA for the sole purpose of liquidating the claims it faces for the benefit of CLMI.⁸¹

[75] The opposing parties even tried to question ACL's *Center of Main Interest* ("**COMI**") or principal place of business ("**PPB**"), arguing that it was located in the United States, because it was being sued there.

[76] However, all these arguments are not only unsupported by evidence, but also, in the case of COMI, they defy logic.⁸²

[77] With regard to ACL's operations, it is understandable that, given its latent liabilities, they have been reduced to a bare minimum. It is equally understandable that, despite the support of public authorities in the Thetford Mines region and the province of Québec, ACL is unable to restart or reorient its activities with innovative projects, such as those aimed at recovering mining residues or converting its mines into carbon dioxide sequestration sites. It is abundantly clear that in the current situation, no one would dare to invest in ACL or finance such projects.

[78] With regard to COMI or PPB, it suffices to mention that the only ACL activities, although reduced for entirely understandable reasons, are still taking place in Québec. Furthermore, all of ACL's assets, including its real estate assets, which consist mainly of mining sites, are still located there.

[79] In short, the Court finds that ACL has amply demonstrated that it meets the criteria required to avail itself of the CCAA and that, in this case, the stay order in its regard is appropriate. Furthermore, the evidence does not in any way call into question its good faith and diligence. With regard to the criteria of good faith and diligence, it is more appropriate to look at the opposing parties, particularly the opposing party Forman. It cannot be ruled out that he is seeking to position himself to maintain a strategic advantage.

⁸¹ Brief of arguments of Charles Forman, as Trustee for the Delaware Bankruptcy Estate of National Services Industries, inc. and certain asbestos claimants, paras. 2 and 31-32.

⁸² See, in particular, *Gyro-Trac (USA) Inc. and Raymond Chabot Inc.*, 2010 QCCS 1311, application for leave to appeal (2010 QCCA 800), paras. 93-99, which set out the criteria applicable for identifying the COMI.

b. The stay of proceedings in favor of CLMI

[80] CLMI are the insurance companies that insure ACL's liability in actions brought by victims of asbestos-related respiratory diseases in the United States. The CLMI companies are obviously not insolvent. Based on the evidence presented, it is understood that the stay requested in their regard is based on the fact that their financial contribution is required by ACL. Indeed, to carry out its reorganization and propose an acceptable plan of arrangement, ACL needs substantial funds that only the CLMI insurers can provide.

[81] With CLMI's financial assistance, ACL and the Monitor are confident that they will be able to present a fair and equitable plan of arrangement to victims of asbestos-related respiratory diseases who are claiming damages. The Monitor estimates that the operation could be completed in as little as 18 months, thereby ending litigations that, in the vast majority of cases, have been ongoing for more than 20 years. ACL, the Monitor and CLMI argue that this operation would remove the uncertainty affecting all stakeholders, including the claimants suffering from asbestos-related respiratory diseases, and would thereby enable ACL to reorganize and relaunch its activities by carrying out new projects that would benefit the Thetford Mines region, which has been suffering for 30 years from problems affecting the asbestos industry.⁸³

[82] However, despite this, the opposing parties see the approach taken by ACL and the CLMI insurers as a ploy to evade their responsibility.⁸⁴ They believe that the CLMI insurers, with ACL's help, are using the CCAA as a protective shield, in order to avoid being bound to honor their contractual obligations towards the victims of asbestos-related respiratory diseases who are suing them.⁸⁵ In fact, this is their main means of contestation.

[83] A quick and superficial examination of the issue could perhaps lead an uninformed observer to believe that the CLMI insurers' contribution to the restructuring is for their exclusive benefit. But we need to look beyond appearances. It is important to question the true contribution of CLMI insurers in the context of the reorganization that ACL wishes to achieve for all stakeholders, first and foremost the victims of asbestos-related respiratory diseases, who have been waiting for their "day in court" for over 20 years.

⁸³ As mentioned in paragraph [9] of this judgment, ACL has already employed more than 5,000 people, not counting indirect jobs. See also the testimony of Mr. Guy Bérard, President of ACL.

⁸⁴ This means is more fully described in paragraphs 2 and 21 to 25 of the opposing parties' Brief of Arguments.

⁸⁵ This means is more fully described in the opposing parties' Brief of Arguments.

[84] In this respect, the evidence presented by ACL and CLMI demonstrates that it is highly likely that the stay of proceedings in favor of CLMI will result in a substantial injection of funds as part of ACL's reorganization.⁸⁶ This will, in all likelihood, enable ACL to present a plan of arrangement that is fair, equitable and acceptable to all affected parties or stakeholders, including victims of asbestos-related respiratory diseases, ACL's directors, its current and former shareholders, its employees, the citizens of the Thetford Mines region, and perhaps even CLMI's insurers.

[85] The stay of proceedings against CLMI insurers represents an interesting opportunity, a window that could prove useful and beneficial to all stakeholders, without excluding CLMI insurers.

[86] Conversely, if no stay order is issued in respect of the CLMI insurers, this opportunity will elude the parties involved, first and foremost the claimants suffering from asbestos-related respiratory diseases. No plan of arrangement can be presented to them in the short term, since ACL needs substantial funds that only the CLMI insurers can provide in the current circumstances.

[87] In the absence of a stay order in respect of CLMI's insurers, the actions brought by claimants suffering from asbestos-related respiratory diseases are likely to continue for several more years and, in the majority of cases, these actions were initiated more than 20 years ago. The presence of the Receiver will not improve their situation. On the contrary, it is more than likely to lead to an increase in the number of proceedings in courts of first instance and courts of appeal, both in the U.S. and abroad.⁸⁷

[88] What's more, claimants alleging to be victims of asbestos-related respiratory diseases will suffer no irreparable harm if the order staying proceedings against the CLMI insurers is upheld. At several stages of the proceedings, they will have the right to be heard, for example, to contest the process by which their claims were assessed, the assessment itself, and ultimately to vote on the plan of arrangement presented to them or contest its approval.

[89] In short, the application of the test developed in *Re Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, cited above, adapted to the context of an application for a stay of proceedings involving solvent third parties, convinces the Court that the order sought with respect to CLMI is, in the particular circumstances of the case, appropriate. Indeed, it has been established that:

⁸⁶ It is important to mention that the insurers have already committed to advance temporary financing of 20 million, while the proceedings have only just begun.

⁸⁷ *Id.* Note 23, Exhibit R-13.

- 1) The order staying the proceedings against CLMI is necessary and essential to ACL's restructuring;
- 2) CLMI's involvement and financial participation are rationally related and necessary to the implementation of the plan that ACL wishes to present;
- 3) Without a stay order in respect of CLMI insurers, the proceedings initiated under the CCAA are doomed to failure, and no plan of arrangement will be possible;
- 4) The CLMI insurers have announced that they intend to finance the plan in a meaningful and realistic way, and have already committed to fund the reorganization process with temporary financing of US\$20 million;
- 5) The plan of arrangement will benefit not only the debtor ACL, but also claimants who are genuine victims of asbestos-related respiratory diseases, as well as all stakeholders;
- 6) At several stages in the proceedings, creditors who are victims of asbestos-related respiratory diseases will be able to appear before the Court, for example, to contest the procedure for assessing their claims, the assessment itself, the approval of the plan and, above all, to exercise their right to vote on the plan of arrangement presented to them;
- 7) The stay of proceedings against CLMI is also in the public interest, that of a large community affected by ACL's difficulties.

[90] The fact that the proposed reorganization may also benefit CLMI should not be an obstacle. Contrary to the opposing parties, the Court believes that it should refrain from concluding in an abstract way that a debtor's insurers cannot, in all cases, benefit from a stay order under the CCAA. Such a question must be decided on the basis of the circumstances of each case, in light of the evidence presented to justify the stay.

[91] In short, for the reasons described above, the Court is of the opinion that the stay order with respect to the CLMI insurers must be maintained and should continue to be maintained until a vote is held on the plan of arrangement that will eventually be presented by the debtor ACL.

c. The stay of proceedings in favor of GDC and Resolute

[92] ACL requests that the solvent third parties GDC and Resolute also be covered by the stay of proceedings.

[93] In the case of Resolute, this measure appears to be applicable. Indeed, Resolute is an extension of Certain Underwriters at Lloyd's, London. It does not itself indemnify claimants. It manages and administers the insurance policies of Lloyd's insurers in the United States. In itself, it does not appear to be the subject of any legal proceedings. At least, the evidence does not reveal this. It will undoubtedly have a role to play alongside CLMI in the reorganization process that has been undertaken. The stay of proceedings with respect to it does not seem to be problematic.

[94] As for GDC, the former shareholder of ACL in the 1980s and 1990s, it is also being sued alongside ACL in several cases. The evidence does not reveal the basis for the claims against it. Why is it being sued when it was only a shareholder of ACL? This is unknown. However, it is known that it is the main insured party under CLMI's insurance policies.

[95] For this reason, it seems appropriate to extend the scope of the stay order with regard to it. Refusal to do so could lead CLMI's insurers to reconsider their participation in the plan of arrangement.

FOR THESE REASONS, THE COURT:

[96] **MAINTAINS** the Amended and Restated Order of May 15, 2025 in its entirety;

[97] **REJECTS** the Opposing Parties' contestation;

[98] **WITH COSTS.**

[SIGNATURE]

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Hearing dates: June 17 and 18, 2025

Protopapas v. Brenntag AG (In re Whittaker Clark & Daniels Inc.)

United States Court of Appeals for the Third Circuit

April 1, 2025, Argued; September 10, 2025, Opinion Filed

Nos. 24-2210 & 24-2211, No. 25-1044

Reporter

2025 U.S. App. LEXIS 23439 *; 2025 LX 375634; ___ F.4th ___; 2025 WL 2611753

In re: WHITTAKER CLARK & DANIELS INC, Debtor, PETER PROTOPAPAS, Appellant in No. 24-2210, OFFICIAL COMMITTEE OF TALC CLAIMANTS, Appellant in No. 24-2211; In re: WHITTAKER CLARK & DANIELS INC., Debtor; WHITTAKER CLARK & DANIELS INC; BRILLIANT NATIONAL SERVICES INC; L.A. TERMINALS INC.; SOCO WEST INC. v. BRENNTAG AG; BRENNTAG CANADA INC.; BRENNTAG GREAT LAKES LLC; BRENNTAG MID-SOUTH INC.; BRENNTAG NORTH AMERICA INC.; BRENNTAG NORTHEAST INC.; BRENNTAG PACIFIC INC.; BRENNTAG SOUTHEAST INC.; BRENNTAG SOUTHWEST INC.; BRENNTAG SPECIALTIES LLC (f/k/a Brenntag Specialties, Inc., and as Mineral and Pigment Solutions, Inc.); COASTAL CHEMICAL CO. LLC; MINERAL PIGMENT SOLUTIONS INC.; THOSE PARTIES LISTED ON APPENDIX A TO THE COMPLAINT; JOHN AND JANE DOES 1-1000; JULIET M. GRAY; KYUNG H. LEE Official Committee of Talc Claimants, Appellant

Prior History: [*1] On Appeal from the United States District Court for the District of New Jersey. (D.C. Nos. 3:23-cv-04151; 3:23-cv-04156). District Judge: Honorable Zahid N. Quraishi.

[*Protopapas v. Whittaker, Clark & Daniels, Inc.*, 2024 U.S. Dist. LEXIS 97270, 2024 WL 2796449 \(May 31, 2024\)](#)
[*In re Whittaker, Clark & Daniels, Inc.*, 2023 Bankr. LEXIS 1600, 2023 WL 4111338 \(June 20, 2023\)](#)

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Judges: Before: KRAUSE, MATEY, and AMBRO, Circuit Judges. KRAUSE, Circuit Judge, concurring. AMBRO, Circuit Judge, concurring.

Opinion by: AMBRO

Opinion

OPINION OF THE COURT

AMBRO, *Circuit Judge*

Plagued by tort liability claims for distributing asbestos-

contaminated talc, Whittaker, Clark & Daniels, Inc. ("Whittaker") and its debtor affiliates filed for bankruptcy in 2023 seeking to dispose finally of those claims. Like [*3] many masstort bankruptcies, counsel contested Whittaker's from the beginning. On appeal, Appellants—the receiver appointed for Whittaker by a South Carolina Court and the Official Committee of Talc Claimants—raise two fundamental questions about Whittaker's bankruptcy: Should we be here at all given that, in their view, Whittaker's petition was improperly filed, and if rightly in bankruptcy, do its assets include certain tort claims relating to asbestos liability?

We conclude that Whittaker properly filed for bankruptcy and the Bankruptcy and District Courts correctly declined to dismiss its petition. We also determine that successor liability claims Appellants seek to assert against a nondebtor belong to the bankruptcy estates rather than individual creditors. Therefore, Whittaker may pursue those claims for the benefit of the estates. Accordingly, we affirm.

I. BACKGROUND

A. The Debtors' Corporate History.

Whittaker and its three affiliated debtors—Brilliant National Services, Inc., L.A. Terminals, Inc., and Soco West, Inc. (collectively with Whittaker, the "Debtors")—were processors, manufacturers, and distributors of various industrial chemicals and minerals, including talc. Through [*4] a series of corporate transactions—too tortured to recount in full here—the Debtors sold substantially all of their operating assets in 2004 to subsidiaries of Brenntag North America. As part of that transaction, the Debtors ceased to be operating entities, and Whittaker and Soco were left as shell companies to manage asbestos liability from the Debtors' operating businesses. Whittaker, Brilliant, and Soco also took on the obligation to indemnify Brenntag and its affiliates for any liabilities it accrued from asbestos-related tort claims.

Three years later, National Indemnity Company—a subsidiary of Berkshire Hathaway Inc.—acquired Brilliant and L.A. Terminals, thereby indirectly acquiring Whittaker and Soco.¹ Through a chain of indemnity agreements and obligations, National Indemnity now backstops asbestos-related successor liability claims against Brenntag.

¹National Indemnity assigned its acquisition rights to another Berkshire affiliate, Ringwalt & Liesche Co., who is now the Debtors' ultimate parent.

B. Proceedings in South Carolina.

Prior to the Debtors' bankruptcy, plaintiffs across the country filed approximately 2,700 suits against the Debtors for asbestos-related torts. Our case concerns Sarah Plant's lawsuit in the South Carolina Court of Common Pleas. The suit followed Plant's diagnosis of mesothelioma (a form of cancer [*5] affecting the protective lining of the lungs) from asbestos-contaminated talc produced by Whittaker. In March 2023, a jury awarded her a \$29 million verdict against it.

Days later, Plant moved the South Carolina Court to place Whittaker into receivership. The Court granted Plant's motion and entered an order (the "Receivership Order" or "Order") appointing Peter Protopapas (the "South Carolina Receiver") as Whittaker's receiver. The Receivership Order, among other things, vested the South Carolina Receiver "with the power and authority [to] fully administer all assets of [Whittaker], accept service on behalf of [it], engage counsel on behalf of [it] and take any and all steps necessary to protect the interests of [Whittaker] whatever they may be." Appellants' Consolidated J.A. 217.

Whittaker promptly moved the South Carolina Court to reconsider. It held a hearing on Whittaker's motion, during which, in response to counsel's suggestion that Whittaker had the "authority to enter into voluntary bankruptcy," the Court stated:

I'm well aware, that was the main factor in my signing the order so quickly is that I wanted to be sure that something other than [a] kind of amorphous organization [*6] I wasn't quite sure about in terms of asset picture, control[,] or anything else[,] would not simply declare bankruptcy and that entity would still be controlling things. I wanted a receiver that I knew would take it seriously, to look at the asset picture and see what was going on.

Id. at 423. The Court denied Whittaker's motion and directed the parties to submit a proposed form of order to memorialize its ruling.

C. The Debtors Petition for Bankruptcy.

The Debtors soon thereafter filed for bankruptcy in the United States Bankruptcy Court for the District of New Jersey. Whittaker's board passed a resolution beforehand authorizing the filing without gaining the approval of the South Carolina Receiver or consulting him. He promptly moved in the Bankruptcy Court to dismiss Whittaker's bankruptcy as an unauthorized petition, arguing that the Receivership Order

"divested [its] board of the authority to approve a bankruptcy filing on [its] behalf and instead gave such authority to the Receiver alone." Appellants' Consolidated Opening Br. 13.

The Bankruptcy Court denied the South Carolina Receiver's motion, concluding that the Receivership Order did not remove the authority of Whittaker's board to file [*7] a bankruptcy petition because its terms did not demonstrate the South Carolina Receiver displaced the board. He appealed to the District Court, which affirmed the Bankruptcy Court's ruling for substantially the same reasons. A timely appeal to our Court followed.

Parallel with the South Carolina Receiver's appeal, Whittaker's bankruptcy proceeded in the Bankruptcy Court. In light of the substantial talc-related asbestos liability the Debtors face, the United States Trustee appointed the Official Committee of Talc Claimants (the "Committee") to represent that constituency's interests during the bankruptcy proceedings.

In September 2023, the Debtors began an adversary proceeding— naming as defendants Brenntag, related entities, and hundreds of individual talc plaintiffs—seeking a declaratory judgment that successor liability claims against Brenntag premised on a "product line" theory of liability² (the "Successor Liability Claims") are property of the Debtors' estates under [11 U.S.C. § 541\(a\)\(1\)](#).³ The Committee intervened in the adversary proceeding, and the Debtors moved for summary judgment. In their briefing, the Debtors argued that our decision in [In re Emoral](#), 740 F.3d 875 (3d Cir. 2014), requires treating the Successor Liability Claims as property [*8] of the Debtors' bankruptcy estates.

After rounds of unsuccessful mediation, in August 2024 the Bankruptcy Court granted summary judgment to the Debtors.

²The "product line" theory of liability "imposes strict liability for injuries caused by defects of a product line on a corporation that acquires the manufacturing assets of another corporation and undertakes essentially the same manufacturing operation and practices." Appellant Committee's Opening Br. 33 (citing [Ramirez v. Amsted Indus., Inc.](#), 86 N.J. 332, 431 A.2d 811, 820 (N.J. 1981)).

³In the Bankruptcy Court, the Committee distinguished between claims premised on the "product line" theory generally and those claims governed by California law. The latter, the Committee contended, cannot be property of the estate because the "Debtors are precluded by California law from bringing successor liability claims against Brenntag." [In re Whittaker, Clark, & Daniels](#), 663 B.R. 1, 12 (Bankr. D.N.J. 2024). As the "California Claims" comprise a subset of the Successor Liability Claims, and the parties place no meaningful significance on the distinction between the two on appeal, we refer simply to the Successor Liability Claims.

It agreed that, under *Emoral*, the Committee's Successor Liability Claims are property of the Debtors' estates and alternatively held that [11 U.S.C. § 544\(a\)\(1\)](#) provides an additional basis for drawing those claims into the estates.⁴ Recognizing the uncertainty of the law governing its decision, the Bankruptcy Court certified its decision for direct appeal to our Court under [28 U.S.C. § 158\(d\)\(2\)](#). The Committee timely sought a direct appeal, and we granted its petition to do so on December 2, 2024. Given the Receiver's pending appeal and the importance of the issues raised in the Committee's appeal, we ordered expedited briefing and consolidated the two. We now consider both appeals together.⁵

II. JURISDICTION AND STANDARD OF REVIEW

The Bankruptcy Court had jurisdiction under [28 U.S.C. §§ 1334](#) and [157\(b\)](#), and in the South Carolina Receiver's appeal the District Court had jurisdiction under [28 U.S.C. § 158\(a\)](#). We have jurisdiction under [28 U.S.C. § 158\(d\)](#). We review without deference both the Bankruptcy Court's and the District Court's legal conclusions, while our review of their factual findings is for clear error. [In re Trans World Airlines, Inc.](#), 145 F.3d 124, 131 (3d Cir. 1998).

III. DISCUSSION [*9]

Before us are two issues, each with accompanying nuance. First, the South Carolina Receiver and the Committee contend that Whittaker improperly filed for bankruptcy because the South Carolina Court vested that authority exclusively in the South Carolina Receiver, meaning Whittaker's bankruptcy must be dismissed. Second, the Committee argues that the Bankruptcy Court incorrectly concluded that the Successor Liability Claims belong to the Debtors' bankruptcy estates

⁴[Section 544\(a\)](#) vests a trustee with the rights and powers of a hypothetical lien creditor who extended credit at the time of the debtor's petition, and under [11 U.S.C. § 1107\(a\)](#), a debtor in a Chapter 11 case (technically called a debtor in possession) has essentially the rights of a trustee ordered to be appointed by the bankruptcy court. Hence here the Debtors' rights are coextensive with those of a trustee.

⁵In the meantime, the Debtors have sought approval from the Bankruptcy Court to settle the Successor Liability Claims for approximately \$535 million. That settlement amount includes \$50 million in debtor-in-possession financing provided by Berkshire Hathaway, which the Bankruptcy Court approved on October 15, 2024. The Bankruptcy Court held a trial the week of March 3, 2025, on, *inter alia*, the Debtors' settlement motion. A decision remains pending.

under our decision in *Emoral*. We review each in turn.

A. A Properly Filed Petition Is Not a Jurisdictional Prerequisite.

Before considering whether Whittaker properly entered bankruptcy, we encounter a predicate question: Does a properly filed petition affect a court's subject matter jurisdiction? Or is a valid petition instead a non-jurisdictional—but nonetheless integral—component of a bankruptcy case? We conclude it is the latter.

The Bankruptcy Code provides that, except in narrow circumstances, "on request of a party in interest, and after notice and a hearing, the court shall . . . dismiss a case under [Chapter 11] . . . for cause." [11 U.S.C. § 1112\(b\)\(1\)](#). "Cause" typically includes things like "gross mismanagement of the estate," "failure to [*10] comply with an order of the court," and "material default by the debtor with respect to a confirmed plan." *Id.* [§ 1112\(b\)\(4\)\(B\), \(E\), \(N\)](#). But it also includes occasions when a debtor "did not have the proper authority to commence the . . . bankruptcy proceeding." *In re 3P Hightstown, LLC*, 631 B.R. 205, 209 (Bankr. D.N.J. 2021). In those cases, the court "has no alternative but to dismiss the petition." *Price v. Gurney*, 324 U.S. 100, 106, 65 S. Ct. 513, 89 L. Ed. 776 (1945).

The Supreme Court previously described this necessary component of the bankruptcy case as a limitation on courts' "jurisdiction," stating, in interpreting the predecessor statute to the Bankruptcy Code, "nowhere is there any indication that Congress bestowed on the bankruptcy court *jurisdiction* to determine that those who in fact do not have the authority to speak for the corporation . . . should be empowered to file a petition on behalf of the corporation." *Id.* at 107 (emphasis added).

"Jurisdiction," however, "is a word of many, too many, meanings." *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 90, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998) (quoting *United States v. Vanness*, 85 F.3d 661, 663 n.2, 318 U.S. App. D.C. 95 (D.C. Cir. 1996)). And some courts have taken *Price*'s mention of "jurisdiction" to mean a limitation on bankruptcy courts' subject matter jurisdiction. See, e.g., *In re Parks Diversified, L.P.*, 661 B.R. 401, 415-420 (C.D. Cal. 2024) (collecting cases); *In re Mach I Aviation, Inc.*, No. 10-01225, 2011 Bankr. LEXIS 4334, 2011 WL 5838520, at *4 n.11 (B.A.P. 9th Cir. Sept. 15, 2011). Following that understanding, the absence of a properly filed petition would extinguish "a court's power to hear a case," leaving it no choice but to dismiss [*11] it for lack of jurisdiction. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235,

[163 L. Ed. 2d 1097 \(2006\)](#) (quoting *United States v. Cotton*, 535 U.S. 625, 630, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002)).

But in recognition of jurisdictional limitations' "unique potential to disrupt the orderly course of litigation," recent Supreme Court cases exercise greater care before hanging the "jurisdictional label" on a statutory provision. *Wilkins v. United States*, 598 U.S. 152, 157-58, 143 S. Ct. 870, 215 L. Ed. 2d 116 (2023). Today the standard for concluding a statute limits federal courts' subject matter jurisdiction is an exacting one. While Congress need not employ any specific formulation or "incant magic words," "the 'traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences.'" *Boechler, P.C., v. Comm'r*, 596 U.S. 199, 203, 142 S. Ct. 1493, 212 L. Ed. 2d 524 (2022) (first quoting *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 154, 133 S. Ct. 817, 184 L. Ed. 2d 627 (2013); then quoting *United States v. Kwai Fun Wong*, 575 U.S. 402, 410, 135 S. Ct. 1625, 191 L. Ed. 2d 533 (2015)). Anything short of a clear indication will not do.

The statutes granting federal courts jurisdiction over bankruptcy cases do not attach jurisdictional significance to the propriety of a debtor's petition. The governing provision, [28 U.S.C. § 1334\(a\)](#), provides only that, absent exceptions not relevant here, "the district courts shall have original and exclusive jurisdiction of all cases under title 11." In addition, "district court[s] may provide that any or all cases under title 11 . . . shall be referred to the bankruptcy judges for the district" who "may hear and determine [*12] all cases under title 11 . . . and may enter appropriate orders and judgments." *Id.* [§ 157\(a\), \(b\)\(1\)](#). These statutes establish the jurisdictional grant for district and bankruptcy courts over bankruptcy cases, and neither they, nor any other provision, condition that grant on a properly filed petition.

Code [§ 301\(a\)](#), which does deal with bankruptcy petitions, provides only that a voluntary bankruptcy "is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter." This provision focuses on the commencement of a bankruptcy case by a *debtor*, not on the power to decide of the *court*. Simply put, [§ 301\(a\)](#) "does not speak in jurisdictional terms," *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 394, 102 S. Ct. 1127, 71 L. Ed. 2d 234 (1982), and we "will not lightly apply" the jurisdictional label to a provision absent a "clear statement" to the contrary, *Wilkins*, 598 U.S. at 158.

Accordingly, an improperly filed bankruptcy petition constitutes "cause" to dismiss a bankruptcy case, [11 U.S.C. § 1112\(b\)\(1\)](#), but it does not strip bankruptcy courts of subject matter jurisdiction.

B. Whittaker Properly Filed Its Bankruptcy Petition.

The Supreme Court has long held that, "[i]n the absence of federal incorporation," "local law" governs a corporate debtor's authority to petition for bankruptcy. [*13] [Price, 324 U.S. at 106](#). As corporations act through agents, "local law" is the non-federal rule that gives a corporation's agents—typically in those circumstances its board of directors—the "authority . . . to act." *Id.* And because "[c]orporations are creatures of state law," [Burks v. Lasker, 441 U.S. 471, 478, 99 S. Ct. 1831, 60 L. Ed. 2d 404 \(1979\)](#) (quoting [Cort v. Ash, 422 U.S. 66, 84, 95 S. Ct. 2080, 45 L. Ed. 2d 26 \(1975\)](#)), "it is state law which is the font of corporate directors' powers," *id.* So we look to governing state law to determine the propriety of a corporation's bankruptcy petition. [In re Franchise Servs. of N. Am., Inc., 891 F.3d 198, 206 \(5th Cir. 2018\)](#).

But which state's law governs? More precisely, in a situation such as this, where a South Carolina court has putatively exercised authority over the assets of a New Jersey corporation, do we assess the authority of Whittaker's board to file for bankruptcy with reference to New Jersey or South Carolina law?

Fortunately, the parties make answering this question easy. They agree that New Jersey law governs the authority of Whittaker's board over its internal affairs, like petitioning for bankruptcy. Appellants' Second Supp. Br. 1; Appellees' Second Supp. Br. 2, 11; [Williams v. BASF Catalysts LLC, 765 F.3d 306, 317 \(3d Cir. 2014\)](#) (where parties do not dispute governing law, we need not conduct a choice-of-law analysis). So the question becomes whether, under New Jersey law, the Receivership Order stripped Whittaker's [*14] board of the authority to file for bankruptcy. It did not.

While we stand far removed in time from the zenith of equity receiverships in this country, see David A. Skeel, Jr., *Debt's Dominion: A History of Bankruptcy Law in America* 56-60 (2001) (describing the rise of equity receivership in the late nineteenth century as a device for resolving corporate insolvency), this case proves that state courts retain the traditional equitable authority to appoint receivers for insolvent corporations. But that authority is not without limits, as this case also proves.

New Jersey law recognizes that "comity requires that [a foreign receiver] should be acknowledged and aided" to the extent that doing so is not "to the disadvantage of creditors resident [in New Jersey]." [Stone v. N.J. & H. R. Ry. & Ferry Co., 75 N.J.L. 172, 66 A. 1072, 1073 \(N.J. 1907\)](#). So where a foreign court appoints a receiver, New Jersey courts generally "will appoint an ancillary receiver, [and] the assets will be so administered that creditors in [New Jersey] and in the foreign

jurisdiction shall fare alike." *Id.*; accord [Clark v. Painted Post Lumber Co., 89 N.J. Eq. 409, 104 A. 728, 728 \(N.J. Ch. 1918\)](#) (recognizing that "after the appointment of the receiver in New Jersey, [an ancillary receiver] was appointed" by a New Jersey court); [Ware v. Supreme Sitting of Order of Iron Hall, 28 A. 1041, 1043 \(N.J. Ch. 1894\)](#) (recognizing that an ancillary receiver was appointed [*15] in New Jersey and "should be regarded as auxiliary to the [foreign] receiver").

New Jersey law authorizes its Superior Court to appoint receivers for New Jersey corporations. See [N.J. Stat. Ann. § 14A:14-2\(3\)](#) ("The court . . . shall have power to appoint and remove one or more receivers of the corporation."). That provision also permits the court to "enjoin the corporation, its officers and agents, from exercising any of its privileges and franchises, and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its property, except to a receiver, and except as the court may otherwise order." *Id.* This statute suggests that New Jersey has licensed its courts to exercise broad authority over domestic corporations consistent with its corporate law. Thus, on our reading, New Jersey law permits its courts to recognize foreign receivership orders and appoint an ancillary receiver to aid in the execution of foreign judgments, including by enjoining the corporation and its board from taking specific actions and exercising specific powers.

The Restatement (Second) of Conflict of Laws supports as much. In recognizing that courts may appoint a receiver over a foreign corporation, the Restatement observes that "[w]hen a principal [*16] receiver of a corporation has been appointed by a court of a state other than the state of incorporation, and it is intended to dissolve the corporation . . . , an ancillary receiver should be appointed for those purposes by a court of the state of incorporation." [Restatement \(Second\) of Conflict of Laws § 367 cmt. d \(Am. L. Inst. 1971\)](#). This is so because "only a receiver appointed by a court in the state where the corporation was incorporated can institute action to dissolve a corporation."⁶ *Id.*

Accordingly, under New Jersey law and settled choice-of-law

⁶Of course, neither New Jersey law nor the Restatement contemplates a state's authority over domestic corporations in instances of bankruptcy, as that power is an area of exclusive federal competence. [Hanover Nat'l Bank v. Moyses, 186 U.S. 181, 187, 22 S. Ct. 857, 46 L. Ed. 1113 \(1902\)](#) ("The framers of the Constitution . . . granted plenary power to Congress over the whole subject of 'bankruptcies.'"). But the scenarios these authorities posit are sufficiently analogous in character to bankruptcy—in that they involve fundamental changes to a corporation's structure (or, in the instance of dissolution, existence)—that their precepts apply to the same extent when a board seeks to enter bankruptcy.

principles, the South Carolina Receiver needed to move for, and be granted, recognition in New Jersey and the appointment of an ancillary receiver to displace Whittaker's board's control over, *inter alia*, the company's privileges, franchises and assets. It did not do so, meaning Whittaker's board retained authority over those corporate decisions reserved to it by New Jersey law, including the decision whether to reorganize by filing for bankruptcy.

Appellants respond by invoking one of our Nation's oldest laws—the [Full Faith and Credit statute, 28 U.S.C. § 1738](#). They contend that, under obligations imposed by that provision, "New Jersey would not ignore the Receivership Order, just as the Bankruptcy Court could not ignore it." Appellants' Second Supp. [*17] Br. 6-7. This argument falters on three fronts.

First, on its face, the Receivership Order does not reach as far as Appellants insist. Rather than extending to displace Whittaker's board's authority over corporate affairs, it purports only to give the South Carolina Receiver control of Whittaker's "assets" and the power and authority to "take any and all steps necessary to protect the interests of [Whittaker] whatever they may be." Appellants' Consolidated J.A. 217. Nowhere does the Order speak to Whittaker's corporate affairs, including the board's authority under New Jersey law to decide whether to file for bankruptcy.⁷ And in the absence of anything to the contrary in it, the default rule discussed above controls—namely, Whittaker's board controls the entity's corporate affairs, subject to lawful displacement under New Jersey law. Thus, because the Receivership Order on its own terms does not dictate the result Appellants assert, affording it full faith and credit under [§ 1738](#) does not lead to a different outcome.

Second, even if we assume the Receivership Order extended to corporate affairs, Appellees still did not attempt to enforce it against Whittaker. [*18] While an order rendered by a foreign court may warrant recognition and enforcement under [§ 1738](#), "[e]nforcement measures do not travel with the sister

state judgment," and full faith and credit "does not mean that States must adopt the practices of other States regarding the time, manner, and mechanisms for enforcing judgments." [Baker ex rel. Thomas v. Gen. Motors Corp., 522 U.S. 222, 235, 118 S. Ct. 657, 139 L. Ed. 2d 580 \(1998\)](#). So even spotting Appellants the enforceability of the Order, they needed to employ the enforcement mechanisms provided under New Jersey law outlined above, which they did not do (e.g., not securing the appointment of an ancillary receiver in New Jersey),⁸ meaning their [§ 1738](#) argument fails on this basis too.

Third, and more fundamentally, were the South Carolina Court to issue an order purporting to place the control of Whittaker's corporate affairs in the hands of the South Carolina Receiver, we doubt its ability to do so. Our system of federalism embodies "the fundamental principle of equal sovereignty" among the states. [Nw. Austin Mun. Util. Dist. No. One v. Holder, 557 U.S. 193, 203, 129 S. Ct. 2504, 174 L. Ed. 2d 140 \(2009\)](#). Implicit in that foundational organization of co-equal sovereigns is "the usual legislative power of a State to act upon persons and property within the limits of its own territory," permitting "different communities to live with different local standards." [*19] [Nat'l Pork Producers Council v. Ross, 598 U.S. 356, 375, 143 S. Ct. 1142, 215 L. Ed. 2d 336 \(2023\)](#) (cleaned up).

But states' power to exercise control over actors within their respective borders is not without limits. Indeed, the Constitution has a great deal to say about the relations between states, their authority to decide the rights of foreign parties, and the application of their laws in instances of conflict. For instance, the [Due Process Clause of the Fourteenth Amendment](#) is long understood to impose limitations on state courts' authority to determine non-resident parties' rights. See, e.g., [Pennoyer v. Neff, 95 U.S. \(5 Otto\) 714, 723-43, 24 L. Ed. 565 \(1877\)](#); [Int'l Shoe Co. v. Washington, 326 U.S. 310, 323-24, 66 S. Ct. 154, 90 L. Ed. 95 \(1945\)](#); [World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291, 100 S. Ct. 559, 62 L. Ed. 2d 490 \(1980\)](#); [Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 592 U.S. 351, 358,](#)

⁷Appellants have also argued that this type of interpretation is effectively an appeal of the Receivership Order and thus barred by the *Rooker-Feldman* doctrine, which essentially prohibits federal courts, save the Supreme Court, from reviewing final state court judgments. But if an order is interlocutory, the *Rooker-Feldman* doctrine applies only to those that are "effectively final" because, among other things, the parties have abandoned further litigation. Cf. [Malhan v. Sec'y U.S. Dep't of State, 938 F.3d 453, 459 \(3d Cir. 2019\)](#). And here, state-court litigation over the Order is not abandoned—it is merely stayed. See [11 U.S.C. § 362\(a\)](#). Indeed, Appellants expressed their intention to continue to litigate the Order if the stay were lifted.

⁸The Receiver contends that he should not have been required to seek appointment of an ancillary receiver in New Jersey because Whittaker "itself made [doing so] impossible" by "filing for bankruptcy before the South Carolina Court could even issue a written order memorializing its denial of [Whittaker]'s motion for reconsideration," characterizing Whittaker's position as "Kafkaesque." Appellants' Consolidated Reply Br. 21. But without an order lawfully preventing it from doing so, Whittaker's board was free to exercise its authority under New Jersey law to enter bankruptcy. The fact that the Receiver lost the race to the courthouse does not render the results invalid.

[141 S. Ct. 1017, 209 L. Ed. 2d 225 \(2021\)](#). Likewise, the dormant [Commerce Clause](#) prohibits, among other things, "the enforcement of state laws 'driven by . . . economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.'" [Ross, 598 U.S. at 369](#) (omission in original) (quoting [Dep't of Revenue v. Davis, 553 U.S. 328, 337-38, 128 S. Ct. 1801, 170 L. Ed. 2d 685 \(2008\)](#)).

So it is no surprise that the Constitution limits the authority a state court can exercise over a corporation incorporated in a sister state. Those limitations are as intuitive as they make good sense. A corporation's state of incorporation or principal place of business determines its domicile.⁹ See [Daimler AG v. Bauman, 571 U.S. 117, 137, 134 S. Ct. 746, 187 L. Ed. 2d 624 \(2014\)](#). And domicile has long carried with it great significance for states' authority. See *id.*; [Pennoyer, 95 U.S. at 723](#). Among the many powers over their domiciliaries, states may [*20] determine "'any and all claims' brought against a [resident] defendant." [Ford Motor Co., 592 U.S. at 358](#) (quoting [Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919, 131 S. Ct. 2846, 180 L. Ed. 2d 796 \(2011\)](#)). But "the very nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort to the full faith and credit clause as the means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." [Pac. Emps. Ins. Co. v. Indus. Accident Comm'n, 306 U.S. 493, 501, 59 S. Ct. 629, 83 L. Ed. 940 \(1939\)](#). Thus, when it comes to control over corporate decision-making, a state "has no interest in regulating the internal affairs of foreign corporations." [Edgar v. MITE Corp., 457 U.S. 624, 645-46, 102 S. Ct. 2629, 73 L. Ed. 2d 269 \(1982\)](#).

But as Appellants would have it, that is precisely what the South Carolina Court did in this case. They contend that the Receivership Order, properly construed, "divest[ed]" Whittaker's board of authority to conduct the internal affairs of the corporation—including the authority to file for bankruptcy.¹⁰ Oral Arg. Tr. 15:17. As explained above, the

Order, reasonably interpreted, does not extend so far. And if it did, it would be an unprecedented exertion of power over a foreign corporation whose internal affairs are governed by the laws of a sister state, and a radical intrusion into the province of a co-equal sovereign. [*21]

These constitutional infirmities provide an independent basis to reject Appellants' appeal to [§ 1738](#). Rendering full faith and credit to foreign judgments does not entail blind deference in the face of constitutional limitations. Just as "[a] State may not grant preclusive effect in its own courts to a constitutionally infirm judgment, . . . other state and federal courts are not required to accord full faith and credit to such a judgment." [Kremer v. Chem. Constr. Corp., 456 U.S. 461, 482, 102 S. Ct. 1883, 72 L. Ed. 2d 262 \(1982\)](#) (footnote omitted). So where, as here, the parties did not litigate the constitutionality of the state-court judgment, [§ 1738](#) does not require New Jersey to acquiesce in the enforcement of the Receivership Order without assessing its (doubtful) constitutionality.

* * * *

"Our Constitution 'was framed upon the theory that the peoples of the several states must sink or swim together.'" [Am. Trucking Ass'n, Inc. v. Mich. Pub. Serv. Comm'n, 545 U.S. 429, 433, 125 S. Ct. 2419, 162 L. Ed. 2d 407 \(2005\)](#) (quoting [Baldwin v. G.A.F. Seelig, Inc., 294 U.S. 511, 523, 55 S. Ct. 497, 79 L. Ed. 1032 \(1935\)](#)). But while bound together in a federal union, certain powers are reserved to states' respective provinces to the exclusion of sister states. Among others, the state of incorporation enjoys the exclusive authority to govern the internal affairs of its corporations. Thus, consistent with constitutional constraints, New Jersey law governs and sanctions the Whittaker board's [*22] authority to petition for bankruptcy. And in any event, the Receivership Order did not purport to divest that body of the authority to seek bankruptcy protection, as the Bankruptcy and District Courts correctly concluded.

C. Successor Liability Claims Are Property of the Debtors' Estates.

As Whittaker properly entered bankruptcy, we now turn to consider whether the Successor Liability Claims belong to the Debtors' estates. We conclude they do.

At the outset of a bankruptcy case, [Code § 541\(a\)\(1\)](#)

amend the bylaws of the corporation, to enter into mergers," or to "[c]hange domicile," counsel for Appellants neither disavowed those actions nor offered a limiting principle for their interpretation of the Order. Oral Arg. Tr. 14:1-3.

⁹ Whittaker's principal place of business is in Connecticut. We take no position on the authority a state in which a corporation has a principal place of business may exert over that corporation when it is incorporated in a different state. Neither party has argued that Connecticut is the proper forum to enforce the Receivership Order or that its law governs. Accordingly, we limit our discussion to New Jersey and South Carolina laws, as the parties have framed this case.

¹⁰ Appellants seemingly take the position that the Receivership Order did far more than merely attempt to prevent Whittaker from filing for bankruptcy. At oral argument, when asked whether, in their view, the Receivership Order authorized the South Carolina Receiver "to

establishes an estate comprised of "all legal or equitable interests of the debtor in property," including causes of action, "wherever located and by whomever held." This feature of bankruptcy law can have significant repercussions, for "once a cause of action becomes the estate's property, the Bankruptcy Code gives the trustee, and only the trustee, the statutory authority to pursue it."¹¹ [In re Wilton Armetale, Inc.](#), 968 F.3d 273, 280 (3d Cir. 2020). So whether a claim is in or out of the estate determines who can pursue (and recover on) that claim—a difference, as this case demonstrates, with significant consequences.

In order for a claim putatively held by a creditor to belong to the estate, two conditions must be met: (1) it must have existed at the outset of the [*23] bankruptcy, and (2) it must be a "general" claim, meaning one "with no particularized injury arising from it." [Emoral](#), 740 F.3d at 879 (quoting [Bd. of Trs. of Teamsters Loc. 863 Pension Fund v. Foodtown, Inc.](#), 296 F.3d 164, 169 (3d Cir. 2002)). Whether a claim is "general" to all creditors or "personal" to a specific creditor calls for an "examin[ation of] the nature of the cause of action itself." *Id.* In doing so, "we focus not on the nature of the injury, but on the 'theory of liability.'" [Wilton Armetale](#), 968 F.3d at 282 (quoting [Emoral](#), 740 F.3d at 879).

"General" claims are ones "based on facts generally available to any creditor, and [for which] recovery would serve to increase the pool of assets available to all creditors." [Emoral](#), 740 F.3d at 881. Contrast this with "personal" claims, which are "specific to the creditor" and in which "other creditors generally have no interest." *Id.* at 879 (quoting [Foodtown](#), 296 F.3d at 170). A claim is "personal" when the creditor's injury can be "directly traced" to wrongful conduct committed by the defendant, whether that be the debtor or a third party. [Wilton Armetale](#), 968 F.3d at 283 (quoting [In re Tronox Inc.](#), 855 F.3d 84, 100 (2d Cir. 2017)). A claim is "general" if the creditor's theory of liability depends on facts concerning the relationship between the defendant and another party—that is, "facts generally available to any creditor." [Emoral](#), 740 F.3d at 881.

In *Emoral*, we applied this standard to a case that shares many similarities with this one. The debtor (*Emoral*) [*24] manufactured diacetyl, a chemical used in the food flavoring industry that was later found to cause various lung ailments. *Id.* at 877. Through a complicated procedural history, a group of plaintiffs eventually sued Aaroma Holdings LLC—a

company that bought some of *Emoral*'s assets and assumed some of its liabilities in the bankruptcy case—for diacetyl-related injuries they suffered from *Emoral*'s products. *Id.* The plaintiffs proceeded against Aaroma on the theory that it was the "mere continuation" of *Emoral* and thus liable for the plaintiffs' diacetyl-related personal injury and product liability claims as *Emoral*'s successor. *Id.*

We held that the plaintiffs' successor liability claims against Aaroma were "general" claims and belonged to *Emoral*'s bankruptcy estate rather than individual creditors. *Id.* at 880. Because they had not alleged "any direct injury" caused to them by Aaroma, the plaintiffs "fail[ed] to demonstrate how any of the factual allegations" were "unique to them as compared to other creditors of *Emoral*." *Id.* at 879-80. While the plaintiffs "focus[ed] on the individualized nature of their personal injury claims against *Emoral*," the same could not be said about their claims against Aaroma. *Id.* at 879. Their only [*25] theory of liability as to those claims depended on Aaroma's status as *Emoral*'s successor, not its relationship with or conduct toward the plaintiffs.

This case mirrors [Emoral](#), and that sounds the death knell for the Committee's argument.¹² Start from the beginning: The Committee's theory of liability against Brenntag depends exclusively on the latter's relationship with the Debtors, not on any interaction with the individual claimants themselves. It attempts to hold Brenntag liable under a "product line" tort theory, which, to repeat note 2 above, "imposes strict liability for injuries caused by defects of a product line on a corporation that acquires the manufacturing assets of another corporation and undertakes essentially the same manufacturing operation and practices." Appellant Committee's Opening Br. 33. While that theory of liability is distinct from the "mere continuation" theory advanced in *Emoral*, the Committee here—just as the plaintiffs in *Emoral*—seeks to impose the Debtors' liability onto Brenntag solely due to its status as the Debtors' successor, not because of any "particularized injury that can be 'directly traced' to [its] conduct." [Wilton Armetale](#), 968 F.3d at 283 (quoting [Tronox](#), 855 F.3d at 100). So the Successor Liability [*26] Claims against Brenntag belong to the Debtors' estates, meaning they are for the Debtors to pursue or settle, not the Committee.

The Committee challenges this logic on two fronts. It contends that "[t]he absence of an independent right under state law for the Debtors to bring on their own behalf at least

¹¹ As mentioned already, *supra* note 4, in Chapter 11 cases (where there is seldom a trustee) the debtor in possession enjoys "all the rights . . . and powers . . . of a trustee," save for exceptions not relevant here. [11 U.S.C. § 1107\(a\)](#).

¹² All agree the Successor Liability Claims existed as of the Debtors filing bankruptcy, so [Emoral](#)'s first prong is satisfied and we focus on the second. See Appellant Committee's Opening Br. 25 (not disputing this element); Appellees' Answering Br. 20.

a subset of the Successor Liability Claims . . . demonstrates that the Debtors cannot satisfy the first part of the *Emoral* test." Appellant Committee's Opening Br. 32 (quoting *Emoral*, 740 F.3d at 879). For this assertion, the Committee calls out language from a footnote in *Foodtown* that "[a] cause of action is considered property of the estate if [1] the claim existed at the commencement of the filing and [2] the debtor could have asserted the claim on his own behalf under state law." 296 F.3d at 169 n.5 (citing *Butner v. United States*, 440 U.S. 48, 54, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979)). From this statement, the Committee seeks to add a third prong to that property-of-the-estate test, namely that a debtor must have a state cause of action to assert before filing for bankruptcy in order for a claim to be property of the estate.

But this argument divines too much from too little. Elsewhere in *Foodtown* itself, we recited the now-familiar standard noted above governing when claims become property [*27] of the estate: "In order for the claim to be the 'legal or equitable interest of the debtor in property,' the claim must be a 'general one, with no particularized injury arising from it.'" *Id.* at 170 (quoting *St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc.*, 884 F.2d 688, 701 (2d Cir. 1989)). We reiterated that test in both *Emoral* and *Wilton Armetale*, see 740 F.3d at 879 & 968 F.3d at 282, and neither time did we impose an additional, free-standing condition that a debtor be able to pursue the cause of action under state law for it to become property of the estate. So while the ability to "assert[] the claim on his own behalf under state law" is enough to become property of the estate, it is not necessary. *Foodtown*, 296 F.3d at 169 n.5. Thus, any inability by the Debtors to assert the Successor Liability Claims against Brenntag outside of bankruptcy does not affect whether those claims are property of the estate inside bankruptcy.¹³

The Committee also argues that the Successor Liability Claims are not "general" because the theory of liability against Brenntag (the product-line theory) involves "specific claims exclusively belonging to victims injured by defective products," and "[t]hey arise from harms unique to those victims . . . based on conduct of the successor entity." Appellant Committee's Opening Br. 33. Those claims do not [*28] inure to the benefit of all creditors, the Committee asserts, because they are only available to "personal-injury and environmental tort creditors; they do not include, for

example, the Debtors' various commercial and contract creditors." *Id.* at 36.

While this argument may have intuitive appeal, our precedent has already rejected it. When assessing whether a claim is "general" or "personal," we "focus not on the nature of the injury, but on the 'theory of liability.'" *Wilton Armetale*, 968 F.3d at 282 (quoting *Emoral*, 740 F.3d at 879). As the Committee presses a "product line" theory, we evaluate whether the facts necessary to establish liability under *that theory* are "generally available to any creditor." *Emoral*, 740 F.3d at 881.

The product-line theory depends entirely on the successor's relationship with the manufacturer because it is the successor's acquisition and continuation of the "same manufacturing operation and practices" as the manufacturer that seeds potential successor liability to individual claimants. Appellant Committee's Opening Br. 33 (citing *Ramirez*, 431 A.2d at 820). That sort of pass-through liability—using the manufacturer as a conduit to reach the successor—was rejected in *Emoral* because the facts on which liability depended—the successor's relationship with the [*29] manufacturer—do not implicate a claim that is "specific to the creditor." *Emoral*, 740 F.3d at 879 (quoting *Foodtown*, 296 F.3d at 170).

So too here. The talc claimants' injuries do not stem from the nucleus of facts that underlay Brenntag's status as a successor to the Debtors. They trace only to the exposure to asbestos-contaminated products manufactured by the Debtors at a time before Brenntag was even in the picture. This obviates their being "directly traced" to it. *Wilton Armetale*, 968 F.3d at 283 (quoting *Tronox*, 855 F.3d at 100). Those claims are quintessentially "general."¹⁴

¹⁴ At oral argument, the Committee gestured at the prospect of conceiving its constituents' claims as "direct" and stemming from Brenntag's own conduct, namely its status as "a successor who continues to manufacture the product." Oral Arg. Tr. 77:6-7. But this characterization merely repackages the product-line theory and runs into the same problems. True, the Committee's product-line claims depend, in some measure, on Brenntag's conduct. In order to be a successor susceptible to the product-line theory, Brenntag must have actually continued the product line, which it has. But that fact was equally present in *Emoral*, where the diacetyl plaintiffs' "mere continuation" claims depended in part of Aaroma's purchase of *Emoral*'s assets and continuation of its business enterprise. *Emoral*, 740 F.3d at 880. So while successor liability claims at some level depend on actions by the successor, the injuries to the Committee's constituents cannot be "directly traced" to Brenntag's conduct because they stem from *the Debtors'* manufacture and sale of asbestos-contaminated products. *Wilton Armetale*, 968 F.3d at 283

¹³ In *Emoral* we expressed doubt that such an inability made a difference to whether a claim was properly characterized as "general." 740 F.3d at 881 ("As a practical matter, it is difficult to imagine a factual scenario in which a solvent *Emoral*, outside of the bankruptcy context, would or could bring a claim for successor liability against Aaroma.").

To be sure, the Committee correctly points out that its constituents have each suffered "harms unique to [them]." Appellant Committee's Opening Br. 33. Indeed, this echoes arguments raised in the *Emoral* dissent, which would have held that "[b]ecause the Diacetyl Plaintiffs' underlying allegations are clearly individualized in nature, their claims against Aaroma—which seek to hold this third party liable for their alleged injuries as the 'mere continuation' of *Emoral*—must also be considered as individualized claims." [Emoral, 740 F.3d at 883](#) (Cowan, J., dissenting). The *Emoral* majority, however, rejected that focus on "the nature of the [underlying] injury," instead returning to consideration of "the 'theory of liability'" [*30] and the facts on which it relies. [Wilton Armetale, 968 F.3d at 282](#) (quoting [Emoral, 740 F.3d at 879](#)). And that analysis controls even though the harm suffered by some creditors "might be worse in degree than that suffered by other[s]." ¹⁵[Id. at 283](#).

IV. CONCLUSION

Whittaker filed for bankruptcy after its board exercised its power to authorize the petition. The South Carolina Court could not divest Whittaker's board of that authority on its own, and, once appointed, the South Carolina Receiver had to move successfully a New Jersey court to displace the board. That did not occur (indeed, the attempt was not made), and Whittaker properly entered bankruptcy. Once there, [Code § 541\(a\)\(1\)](#) and *Emoral* brought the Successor Liability Claims into the Debtors' estates.¹⁶ For these reasons, we affirm the

(quoting [Tronox, 855 F.3d at 100](#)).

¹⁵The Bankruptcy Court held in the alternative that [§ 544\(a\)\(1\)](#), ~~coupled with § 541(a)(7)~~, brought the Successor Liability Claims into the Debtors' estates. [Section 541\(a\)\(7\)](#) provides that "[a]ny interest in property that the estate acquires after the commencement of the case" becomes property of the estate. So because the debtor in possession enjoys the rights of a trustee under the Code—including the right to pursue estate causes of action, [Wilton Armetale, 968 F.3d at 282](#)—the Bankruptcy Court reasoned that the post-petition cause of action conferred on the trustee by [§ 544\(a\)\(1\)](#) is after-acquired property of the estate under [§ 541\(a\)\(7\)](#). See [In re Whittaker, Clark, & Daniels, 663 B.R. at 14](#). Thus, because, in the Bankruptcy Court's view, the Successor Liability Claims could be asserted by a trustee under [§ 544\(a\)\(1\)](#), [§ 541\(a\)\(7\)](#) drew those claims into the Debtors' estates. While the parties have devoted portions of their briefs and arguments to address this alternative holding, we need not consider it because we conclude that our decision in [Emoral](#) makes the Successor Liability Claims property of the estate under [§ 541\(a\)\(1\)](#).

¹⁶Supplementing note 5 above, we are aware that the Debtors, having prevailed in the Bankruptcy Court, have moved for approval of a settlement of the Successor Liability Claims with Brenntag,

judgments of the District and Bankruptcy Courts.

Concur by: KRAUSE; AMBRO

Concur

KRAUSE, *Circuit Judge*, concurring.

I join the majority opinion in full. As it persuasively explains, New Jersey law governs the authority of Whittaker's board to exercise corporate authority, and the South Carolina Court did not—and likely could not—unilaterally divest the board of that authority. Once in bankruptcy, moreover, our decisions in [In re Emoral, 740 F.3d 875 \(3d Cir. 2014\)](#), and [In re Wilton Armetale, Inc., 968 F.3d 273 \(3d Cir. 2020\)](#), straightforwardly dictate that the Successor Liability Claims [*31] are property of the estate under [11 U.S.C. § 541\(a\)\(1\)](#). I write separately, however, to address which choice-of-law rules govern in bankruptcy—an issue that both looms in the background of this case and that has divided courts for decades.

Both parties ultimately agree that New Jersey law governs Whittaker's authority to petition for bankruptcy protection, but they also recognize that there are two distinct paths to that choice of law—the "forum state" rule of [Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 61 S. Ct. 1020, 85 L. Ed. 1477 \(1941\)](#), on the one hand, and a federal common law choice of law rule, incorporating the internal affairs doctrine, on the other. Here, because the forum state is New Jersey and because Whittaker is a New Jersey corporation, those paths converge. But, as highlighted in the parties' briefing and argument on this question, each rule involves a different analysis and is capable of producing a different outcome. And confusion about how to resolve this conflict-of-laws question

National Indemnity, and others. Naturally, our conclusion that the Successor Liability Claims are property of the estate under [§ 541\(a\)\(1\)](#) puts the ball in the Debtors' court, and it is their prerogative to pursue or settle those claims. But we note that the Debtors do not enjoy unbounded discretion. As debtors-in-possession, they owe fiduciary duties to all creditors, including the Committee's constituents, to maximize the value of the estate. [In re Marvel Ent. Grp., Inc., 140 F.3d 463, 471 \(3d Cir. 1998\)](#). Sometimes the most beneficial course may be to settle claims and avoid the cost and uncertainty of litigation. Other times it may not. For that reason, bankruptcy courts must scrutinize proposed settlements under [Bankruptcy Rule 9019](#) "to determine what course of action will be in the best interest of the estate." [In re Martin, 91 F.3d 389, 394 \(3d Cir. 1996\)](#). And that scrutiny is "rigorous[]" when the debtor looks to settle with an insider. [In re Winstar Commc'ns, Inc., 554 F.3d 382, 412 \(3d Cir. 2009\)](#) (quotation omitted). We have no doubt the Bankruptcy Court will evaluate the Debtors' proposed settlement with these precepts in mind.

in bankruptcy cases will persist in our Circuit absent guidance from our Court. I write here with an eye towards that eventual resolution. As it turns out, the answer lies in established doctrine. For the reasons explained more thoroughly below, the Bankruptcy Code; [Erie R.R. Co. v. Tompkins](#), 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938), and the Rules of [*32] Decision Act; and the grant of bankruptcy jurisdiction to federal courts all support employing the choice-of-law rules of the state in which the bankruptcy court sits.

I. The Puzzle: Choice of Law in Bankruptcy

Federal courts are most often called on to resolve choice-of-law questions while exercising diversity jurisdiction. In those cases, non-federal law (usually state law) provides the rule of decision, [Erie](#), 304 U.S. 64, and diverse parties might dispute which law governs their claims. When those candidate laws conflict, courts must decide which one controls. To answer that question, a federal court sitting in diversity uses the choice-of-law rules of the state in which it sits. [Klaxon](#), 313 U.S. at 496.

Our Court has not previously determined whether the same rule applies in bankruptcy proceedings.¹ But some of our sister circuits have entered this fray, coming to differing conclusions. The Eighth Circuit applies *Klaxon* in bankruptcy cases, directing that "bankruptcy court[s] appl[y] the choice of law rules of the state in which it sits," [In re Payless Cashways](#), 203 F.3d 1081, 1084 (8th Cir. 2000), and that "when some federal interest requires a different result," the "appropriate question" is not choice-of-law but rather rule of decision, i.e., "whether the state [law] can trump [*33] the federal [law]," which it obviously cannot, [In re Schriock Constr., Inc.](#), 104 F.3d 200, 201-02 (8th Cir. 1997) (quoting [Butner v. United States](#), 440 U.S. 48, 54, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979)).² The Ninth Circuit (and possibly the Fifth), on the other hand, have rejected *Klaxon* in bankruptcy cases and instead require a federal common law choice-of-law rule. See [In re Lindsay](#), 59 F.3d 942, 948 (9th Cir. 1995); [Wallace Lincoln-Mercury Co. v. Gentry](#), 469 F.2d 396, 400 n.1 (5th Cir. 1972). But see [Fishback Nursery, Inc. v. PNC Bank, N.A.](#), 920 F.3d 932, 935 (5th Cir. 2019) (describing

Klaxon's application in bankruptcy as "an open question"). Finally, the Second and Fourth Circuits take a hybrid approach—applying *Klaxon* "in the absence of a compelling federal interest which dictates otherwise." [In re Merritt Dredging Co.](#), 839 F.2d 203, 205-06 (4th Cir. 1989); see also [In re Gaston & Snow](#), 243 F.3d 599, 607 (2d Cir. 2001) (applying *Klaxon* unless "significant federal policy, calling for the imposition of a federal conflicts rule, exists"). In other words, in contrast to the Eighth Circuit, which would accommodate any overriding federal interest by applying a federal rule of decision, these courts would reach the same result but under the auspices of a choice-of-law rule.

This tripartite circuit split has persisted for decades and created disparities in how bankruptcy courts determine which law governs parties' rights and obligations. As I explain below, however, there is no basis to depart from the established rule from [Klaxon](#), and, consistent with the Eighth Circuit's approach, any conflict-of-laws issue is properly [*34] resolved as a matter of rule of decision, not choice of law.

II. The Affirmative Case for Applying Klaxon in Bankruptcy

The reasons for extending *Klaxon* to bankruptcy are many and exceedingly strong. All relate to the structure of the Bankruptcy Code, the purposes the Code serves, and *Erie* and the Rules of Decision Act. I consider them in turn.

First, while bankruptcy provides an "orderly and centralized" process to restructure the debts of the honest but unfortunate debtor, 1 *Collier on Bankruptcy* ¶ 1.01[1] (16th ed. 2025), it does not create substantive property rights. Instead, consistent with the Rules of Decision Act, 28 U.S.C. § 1652, it is non-bankruptcy law that defines parties' property interests,³ [Butner](#), 440 U.S. at 55; accord [In re Boy Scouts of Am.](#), 137 F.4th 126, 164 (3d Cir. 2025). Accordingly, courts exercising bankruptcy jurisdiction regularly look to governing non-bankruptcy law—often "state law"—to determine parties' "rights and obligations when the Code does not supply a federal rule." [In re Wright](#), 492 F.3d 829, 832 (7th Cir. 2007) (Easterbrook, J.). And in doing so, those courts frequently encounter the same dilemma they do when sitting in diversity: conflicting laws that purport to govern parties' rights and interests.

¹ See [In re Abeinsa Holding Inc., No. 20-3333](#), 2021 U.S. App. LEXIS 26370, 2021 WL 3909984, at *3 (3d Cir. Sept. 1, 2021) (noting that our Court has "not yet precedentially resolved the choice-of-law rules applicable in bankruptcy proceedings").

² To be sure, the Eighth Circuit adopted *Klaxon's* rule in bankruptcy without much reasoning. See [In re Payless Cashways](#), 203 F.3d at 1084.

³ While "property" generally conjures images of real property or tangible items, in bankruptcy (and elsewhere), various intangibles, such as causes of action, similarly constitute property. See, e.g., [In re Kane](#), 628 F.3d 631, 637 (3d Cir. 2010).

As bankruptcy law takes parties' property rights as it finds them, [Butner](#), 440 U.S. at 55; [Mission Prod. Holdings, Inc. v. Tempnology, LLC](#), 587 U.S. 370, 381, 139 S. Ct. 1652, 203 L. Ed. 2d 876 (2019), the fact that parties find themselves [*35] wound up in a bankruptcy case should not work to alter the law that would otherwise govern their rights, cf. [Phillips Petroleum Co. v. Shutts](#), 472 U.S. 797, 820, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985) (rejecting notion that participation in a class action changes the substantive law governing individual plaintiffs' disputes). But adopting a choice-of-law rule unique to bankruptcy risks just that and would subject identically situated parties to different governing laws simply by virtue of one dispute occurring in bankruptcy court while the other unfolds in run-of-the-mill civil litigation.⁴ Our bankruptcy system does not demand—and, indeed, militates against—such a disparity. See [BFP v. Resol. Tr. Corp.](#), 511 U.S. 531, 544-45, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (1994) (absent a clear and manifest conflict, "the Bankruptcy Code will be construed to adopt, rather than to displace, pre-existing state law"). And nothing in the text of the Code or the statutes granting bankruptcy jurisdiction warrants a departure from the ordinary rule of *Klaxon*. See [Zachary D. Clopton, Horizontal Choice of Law in Federal Courts](#), 169 U. Pa. L. Rev. 2193, 2212 (2021).

Second, influential bankruptcy scholarship buttresses this conclusion. As renowned scholars have advocated, the bankruptcy system in many ways "mirror[s] the agreement one would expect the creditors to form among themselves

were they able to negotiate such an agreement from an *ex ante* position." [*36] Thomas H. Jackson, *Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors' Bargain*, 91 Yale L.J. 857, 860 (1982). This view, coined the "creditors' bargain" theory, conceptualizes bankruptcy's primary role as a means to resolve the collective action problem posed by self-interested creditors who, absent a centralized insolvency resolution system, would engage in individual collection actions under applicable non-bankruptcy law, inefficiently picking the debtor apart and "destroying value for the collective body of creditors." Kenneth Ayotte & David A. Skeel Jr., *Bankruptcy Law as a Liquidity Provider*, 80 U. Chi. L. Rev. 1557, 1564 (2013). Without bankruptcy's centralization, "[a]n unsecured creditor who seizes the debtor's assets early enough in time, when the debtor has enough to pay, will receive full payment," while "[l]ate-arriving creditors are left out in the cold when the assets are not sufficient to pay the firm's debts." *Id.*

Viewed through this lens, among its other features, bankruptcy facilitates the orderly resolution of competing creditor entitlements that exist under governing non-bankruptcy law. Such a system takes as a given creditors' preexisting property interests and "does not . . . justify the implementation of a different [*37] set of relative entitlements, unless doing so is necessary as a part of the move from the individual remedies system" that exists outside of bankruptcy. Thomas H. Jackson, *The Logic and Limits of Bankruptcy Law* 21 (1986).

True, the Bankruptcy Code does change parties' "relative entitlements" in some circumstances in aid of debtor rehabilitation. See, e.g., 11 U.S.C. §§ 364(d); 365(e), (i); 502(b); see also Daniel J. Bussel et al., *Bankruptcy* 33 (11th ed. 2021). But among the Code's voluminous rules, these provisions fall in the minority.⁵ And as the creditors' bargain

⁴In addition to diversity cases, *Klaxon* governs choice-of-law questions where jurisdiction is anchored on other bases, including federal questions under 28 U.S.C. § 1331, [Shields v. Consol. Rail Corp.](#), 810 F.2d 397, 399 (3d Cir. 1987) (ancillary (now supplemental) jurisdiction); [Sys. Operations, Inc. v. Sci. Games Dev. Corp.](#), 555 F.2d 1131, 1136 (3d Cir. 1977) ("Although *Klaxon* was a diversity jurisdiction case, the same principle holds true with respect to pendent jurisdiction claims."); accord [Elliott v. Cartagena](#), 84 F.4th 481, 496 n.14 (2d Cir. 2023); [Osborn v. Griffin](#), 865 F.3d 417, 443 (6th Cir. 2017); [BancOklahoma Mortg. Corp. v. Cap. Title Co.](#), 194 F.3d 1089, 1103 (10th Cir. 1999); [Ideal Elec. Sec. Co. v. Int'l Fidelity Ins. Co.](#), 129 F.3d 143, 148, 327 U.S. App. D.C. 60 (D.C. Cir. 1997); [Paracor Fin., Inc. v. Gen. Elec. Cap. Corp.](#), 96 F.3d 1151, 1164 (9th Cir. 1996); [Sommers Drug Stores Co. Emp. Profit Sharing Tr. v. Corrigan](#), 883 F.2d 345, 353 (5th Cir. 1989); [Bi-Rite Enters., Inc. v. Bruce Miner Co.](#), 757 F.2d 440, 442 (1st Cir. 1985); [ITCO Corp. v. Michelin Tire Corp., Com. Div.](#), 722 F.2d 42, 49 n.11 (4th Cir. 1983), and interpleader under 28 U.S.C. § 1335, [Griffin v. McCoach](#), 313 U.S. 498, 503, 61 S. Ct. 1023, 85 L. Ed. 1481 (1941). Moreover, outside of federal court, state courts employ the forum's choice-of-law rules, see [Restatement \(Second\) of Conflict of L. § 5 cmt. b \(A.L.I. 1971\)](#) ("A court applies the law of its own state, as it understands it, including its own conception of Conflict of Laws.")—the practice that *Klaxon* aims to mirror.

⁵To be sure, bankruptcy does not have to work this way. The Constitution reserves to Congress the authority to legislate for "the entire 'subject of Bankruptcies,'" [Cent. Va. Cmty. Coll. v. Katz](#), 546 U.S. 356, 370, 126 S. Ct. 990, 163 L. Ed. 2d 945 (2006) (quoting [U.S. Const. art. I, § 8, cl. 4](#)), which encompasses "nothing less than . . . the relations between . . . [a] debtor, and [its] creditors," [Wright v. Union Cent. Life Ins. Co.](#), 304 U.S. 502, 513-14, 58 S. Ct. 1025, 82 L. Ed. 1490 (1938) (internal quotation marks omitted). Congress could enact legislation that impairs any number of entitlements created by non-bankruptcy law. In this way, [Butner](#) [*38] is merely descriptive of the bankruptcy system that Congress has chosen to enact: "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law." 440 U.S. at 54. It does not stand for the proposition that our Nation's bankruptcy laws *cannot* determine parties' relative entitlements, as scholars have pointed out. See, e.g., [Anthony J. Casey, Chapter 11's Renegotiation](#)

theory advances, non-bankruptcy entitlements generally should endure within bankruptcy, *see* Ayotte & Skeel, *supra*, at 1564-65 ("The second element of the Creditors' Bargain theory is the claim that resolution of common-pool problems may require altering the procedural rights of creditors, but that it typically does not require altering the substantive values of those rights as established by nonbankruptcy law."); *see also* [7 Collier on Bankruptcy ¶ 1100.01](#) (16th ed. 2025) (noting the importance of "preserv[ing] creditors' and stakeholders' existing legal rights to the greatest extent possible"), counseling in favor of adopting *Klaxon* to preserve parity with parties' pre-bankruptcy positions vis-à-vis one another.

Third, extending *Klaxon* to the bankruptcy context is fully consistent with—and supported by—*Erie* and the Rules of Decision Act. *Klaxon* is a product of *Erie*, which announced "[t]here is no federal general common law." [304 U.S. at 78](#). Instead, where federal law does not govern, "[t]he laws of the several states" are "regarded as rules of decision . . . in cases where they apply." [28 U.S.C. § 1652](#). While *Erie* itself was a diversity case, it "reflects the principle now well established that federal courts should apply state law to legal issues, unless there is some definable federal interest sufficient to justify applying corresponding and possibly inconsistent federal rules of decision." 19 Wright & Miller's Federal Practice & Procedure § 4520 (3d ed. May 2025 update). *Klaxon* reflects the same principle, for "[a] choice-of-law rule is no less a rule of state law than any other." [A.I. Trade Fin., Inc. v. Petra Int'l Banking Corp.](#), [62 F.3d 1454, 1464, 314 U.S. App. D.C. 122 \(D.C. Cir. 1995\)](#); *see also* Russell J. Weintraub, *The Erie Doctrine and State Conflict of Laws Rules*, 39 Ind. L.J. 228, 242 (1964) ("[T]he choice-of-law rules of a state are important expressions of its domestic policy."). Thus, it would seem that wherever *Erie* travels, *Klaxon* ought to follow. *See* Clopton, *supra*, at 2198 ("In short, *Klaxon* all the way down.").

In the bankruptcy arena, the Bankruptcy Code supplies the federal rules of decision that Congress has **[*39]** deemed necessary to effectively govern the relationship between the debtor and its creditors. Even a cursory review of the Code's "hundreds of interlocking rules," [Harrington v. Purdue Pharma L.P.](#), [603 U.S. 204, 209, 144 S. Ct. 2071, 219 L. Ed. 2d 721 \(2024\)](#), reveals that Congress took care to include many provisions that aim "to protect [] national" interests, [In re Trib. Co. Fraudulent Conveyance Litig.](#), [946 F.3d 66, 94](#)

[\(2d Cir. 2019\)](#); *see, e.g.*, [11 U.S.C. §§ 362\(a\)](#) (automatic stay of collection of prepetition debts, including state-court litigation); [365\(e\)](#) (invalidating *ipso facto* clauses); [546\(e\)](#) (safe harbor for certain pre-petition securities transactions); 555-56, 559-61 (protections for post-petition securities, commodities, repurchase, swap, and netting transactions); [1110](#) (providing preferred rights to aircraft and vessel lessors).

As these provisions illustrate, Congress identified and manifested in the Code the specific federal interests it wished to protect; it did not leave readers to divine untold rules from some brooding cloud of federal interests hanging over bankruptcy. As we invariably do when construing federal statutes, we look to its text to discern meaning, [In re Imerys Talc Am., Inc.](#), [38 F.4th 361, 375 \(3d Cir. 2022\)](#), and we "presume that [Congress] says in a statute what it means and means in a statute what it says," [Conn. Nat'l Bank v. Germain](#), [503 U.S. 249, 253-54, 112 S. Ct. 1146, 117 L. Ed. 2d 391 \(1992\)](#). So while "the [Bankruptcy Clause](#) confers broad authority on Congress," [Siegel v. Fitzgerald](#), [596 U.S. 464, 476, 142 S. Ct. 1770, 213 L. Ed. 2d 39 \(2022\)](#), to establish "uniform Laws on the subject of **[*40]** Bankruptcies," [U.S. Const. art. I, § 8, cl. 4](#), Congress has not dictated a particular choice-of-law rule to govern in bankruptcy cases.

This is a glaring omission in a sea of provisions relating to bankruptcies and not one we should presume Congress simply overlooked. To the contrary, we must respect the presumption that state law governs "until Congress strikes a different accommodation." [United States v. Kimbell Foods, Inc.](#), [440 U.S. 715, 740, 99 S. Ct. 1448, 59 L. Ed. 2d 711 \(1979\)](#). It is not the role of federal courts to extend federal interests beyond those Congress has prescribed. *See* [Tex. Indus., Inc. v. Radcliff Materials, Inc.](#), [451 U.S. 630, 641, 101 S. Ct. 2061, 68 L. Ed. 2d 500 \(1981\)](#); [In re One2One Commc'ns, LLC](#), [805 F.3d 428, 444 \(3d Cir. 2015\)](#) (Krause, J., concurring); *cf.* [Cassirer v. Thyssen-Bornemisza Collection Found.](#), [596 U.S. 107, 116, 142 S. Ct. 1502, 212 L. Ed. 2d 451 \(2022\)](#) (concluding that, when an exception to foreign sovereign immunity applies under the Foreign Sovereign Immunities Act, federal courts must apply *Klaxon* because the statute already protects the unique federal interest of foreign relations). Instead, "the issue of whether to displace state law . . . is primarily a decision for Congress," [Miree v. Dekalb Cnty.](#), [433 U.S. 25, 32, 97 S. Ct. 2490, 53 L. Ed. 2d 557 \(1977\)](#), and "[w]e should not assume that Congress intended to set the courts completely adrift from state law with regard to questions for which it has not provided a specific and definite answer in an act . . . so intimately related to state law," [Richards v. United States](#), [369 U.S. 1, 11, 82 S. Ct. 585, 7 L. Ed. 2d 492 \(1962\)](#). In these circumstances, with a "federal statutory regulation [so] comprehensive and

[Framework and the Purpose of Corporate Bankruptcy](#), 120 *Colum. L. Rev.* 1709, 1751 (2020) (advancing a theory of Chapter 11 that "support[s] a soft version of *Butner*" positing that, "[i]n the absence of any evidence of hold up, nonbankruptcy provisions should remain intact . . . simply because in the absence of hold up there is no role for bankruptcy law").

detailed," the usual rule applies [*41] that "matters left unaddressed in such a scheme are presumably left subject to the disposition provided by state law," negating the need to "adopt a court-made rule to supplement" the Code. [*O'Melveny & Myers v. FDIC*, 512 U.S. 79, 85, 114 S. Ct. 2048, 129 L. Ed. 2d 67 \(1994\)](#).

Accordingly, there is no need to craft a choice-of-law rule unique to bankruptcy to preserve some "undefined federal interests" that do not appear in the Code.⁶ [*CoreCivic, Inc. v. Governor of N.J.*, 145 F.4th 315, 2025 WL 2046488, at *10 \(3d Cir. 2025\)](#) (Ambro, J., dissenting). Rather, when a provision of the Bankruptcy Code governs, the [*Supremacy Clause*](#) obviates any choice-of-law analysis, for federal law always trumps conflicting state law. [*U.S. Const. art. VI, cl. 2*](#); see also *infra* Section IV. And when the Code or other federal law does not supply the rule of decision, the Rules of Decision Act commands that governing non-federal law fills the gap. [*28 U.S.C. § 1652*](#). Outside of bankruptcy, that means [*Klaxon*](#) controls, and nothing about the bankruptcy context warrants departing from that rule.

Of course, *Erie*, and consequently *Klaxon*, arose in the context of diversity jurisdiction, so the extension of the policies those cases embody to other contexts is not obvious. And that uncertainty has caused some of our sister circuits to either reject *Klaxon* in bankruptcy cases or hedge on its application. See, e.g., [*In re Lindsay*, 59 F.3d at 948](#); [*In re Gaston & Snow*, 243 F.3d at 601-02](#); [*In re Merritt Dredging*, 839 F.2d at 206](#). To be sure, that hesitation is [*42] not unfounded. As scholars have noted, "[p]art of the explanation for the departures from *Klaxon* can be found in Supreme Court dicta" in [*Vanston Bondholders Protective Committee v. Green*, 329 U.S. 156, 67 S. Ct. 237, 91 L. Ed. 162 \(1946\)](#). Clopton, *supra*, at 2204; see also [*Tobias Barrington Wolff, Choice of Law and Jurisdictional Policy in the Federal Courts*, 165 U. Pa. L. Rev. 1847, 1875-78 \(2017\)](#). There, the Supreme Court considered whether, and to what extent, an insolvent debtor must pay interest on delinquent interest payments due under a prepetition bond indenture under Chapter X of the Bankruptcy Act. [*Vanston*, 329 U.S. at 159](#). In doing so, the Supreme Court admonished:

[O]bligations, such as the one here for interest, often have significant contacts in many states so that the question of which particular state's law should measure the obligation seldom lends itself to simple solution. In determining which contact is the most significant in a particular transaction, courts can seldom find a complete solution in the mechanical formulae of the conflicts of law. . . . In determining what claims are allowable and how a debtor's assets shall be distributed, a bankruptcy court does not apply the law of the state where it sits. [*Id. at 161-62*](#). And it is this language upon which some courts have seized to conclude *Klaxon* has no application in bankruptcy cases because it is inconsistent with some amorphous federal interest. See, e.g., [*In re SMEC, Inc.*, 160 B.R. 86, 91 \(M.D. Tenn. 1993\)](#); [*In re McCorhill Publ'g, Inc.*, 86 B.R. 783, 792 \(Bankr. S.D.N.Y. 1988\)](#).

But on closer inspection, [*Vanston*](#) says nothing about what choice-of-law [*43] rule a court should employ in bankruptcy cases when non-federal law provides the rule of decision. Rather than rejecting *Klaxon*'s application in favor of fashioning a bespoke federal choice-of-law rule for bankruptcy cases, the Supreme Court concluded that the bankruptcy courts "administer and enforce the Bankruptcy Act . . . in accordance with authority granted by Congress to determine how and what claims shall be allowed under equitable principles," whereas "[w]hen and under what circumstances federal courts will allow interest on claims against debtors' estates being administered by them has long been decided by federal law." [*Vanston*, 329 U.S. at 162-63](#) (emphasis added). Thus, [*Vanston*](#) did not resolve the question of what choice-of-law rule courts employ when non-federal law governs a dispute in a bankruptcy case. Instead, it merely determined that when federal law provides a rule of decision that conflicts with state law, federal law controls—a proposition that flows directly from the Constitution. [*U.S. Const. art. VI, cl. 2*](#); see also [*In re Gaston & Snow*, 243 F.3d at 607](#) (interpreting [*Vanston*](#) in this way). [*Vanston*](#), then, embodies nothing more than foundational and uncontroversial principle that federal law reigns supreme.

In sum, the structure of the Bankruptcy Code, the purposes of our bankruptcy system, [*44] and federal courts' obligation to respect the application of state law under *Erie* and the Rules of Decision Act all support *Klaxon*'s extension to bankruptcy cases.

III. Nothing Requires a Federal Choice-of-Law Rule in Place of *Klaxon*

Aside from seemingly the Eighth Circuit, no other Court of Appeals has extended *Klaxon*—without reservation—to the

⁶This is not to say that the Bankruptcy Code can never embody federal rules that do not appear in its specific provisions. Indeed, the Code can, and does, provide such rules of decision, such as where "pre-Code practice" has not been expressly abrogated by statute, [*In re Hertz Corp.*, 120 F.4th 1181, 1198 \(3d Cir. 2024\)](#), or where a rule "has long been considered fundamental to the Bankruptcy Code's operation," [*Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 465, 137 S. Ct. 973, 197 L. Ed. 2d 398 \(2017\)](#).

bankruptcy context. The Ninth Circuit, as well as the Second and Fourth Circuits, have also addressed the question, taking different approaches but each evincing an unwarranted suspicion of *Klaxon's* relevance beyond diversity cases. I address each approach in turn.

The Ninth Circuit has long eschewed *Klaxon's* rule in favor of federal choice-of-law rules. *In re Lindsay*, 59 F.3d at 948. In doing so, it stated that "the risk of forum shopping which is avoided by applying state law has no application [in bankruptcy cases], because [they] can only be litigated in federal court," and instead "[t]he value of national uniformity of approach" on this question prevails over a patchwork of state choice-of-law regimes. *Id.* Thus, "[i]n federal question cases with exclusive jurisdiction in federal court, such as bankruptcy, the court should apply federal, not forum state, choice of law [*45] rules." *Id.*

There are two flaws in this reasoning. First, it confuses the basis for federal jurisdiction with the question of governing law. A "federal jurisdictional grant . . . is not in itself a mandate for applying federal law in all circumstances." *United States v. Little Lake Misere Land Co.*, 412 U.S. 580, 591, 93 S. Ct. 2389, 37 L. Ed. 2d 187 (1973). Instead, as is by now clear, "it is the source of the right sued upon, and not the ground on which federal jurisdiction over the case is founded, which determines the governing law." *Maternally Yours v. Your Maternity Shop*, 234 F.2d 538, 540 n.1 (2d Cir. 1956).⁷ In other words, the observation that federal courts possess exclusive jurisdiction over bankruptcy cases is correct as far as it goes, but it merely identifies a potential choice-of-law question—it does nothing to resolve it. Instead, the existence of federal jurisdiction begets the downstream question of which law governs the dispute and how to decide that question in instances of conflict. That is a question of parties' rights, not federal courts' jurisdiction. See *Shutts*, 472 U.S. at 818. But by reflexively employing a federal common law choice-of-law rule, the Ninth Circuit's approach risks altering parties' rights by selecting different law than would govern outside of bankruptcy.

That points up the second problem with the Ninth Circuit's approach. The *Lindsay* [*46] court touts a federal choice-of-

law rule as carrying a great deal of "value" without greater explanation, seemingly elevating "national uniformity" for uniformity's sake. 59 F.3d at 948. But uniformity at what cost? Even accepting the premise that national uniformity has inherent value,⁸ the value in uniformity does not outweigh the significant incongruities a bespoke bankruptcy choice-of-law rule portends. A federal choice-of-law rule in bankruptcy cases risks altering parties' substantive rights. State law governs many issues in bankruptcy cases, but none arises more frequently than property interests. See, e.g., *Butner*, 440 U.S. at 55. And the fact that a dispute turns up "in the context of a federal bankruptcy" proceeding "doesn't change much." *Rodriguez v. FDIC*, 589 U.S. 132, 137, 140 S. Ct. 713, 206 L. Ed. 2d 62 (2020). So "[s]ince state, rather than federal, substantive law is at issue there is no need for a uniform federal rule." *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508, 121 S. Ct. 1021, 149 L. Ed. 2d 32 (2001). Indeed, as the Fourth Circuit rightly noted, "[i]t would be anomalous to have the same property interest governed by the laws of one state in federal diversity proceedings and by the laws of another state where a federal court is sitting in bankruptcy." *In re Merritt Dredging*, 839 F.2d at 206. But that disparity is exactly what the Ninth Circuit's approach invites, and it does so with no basis in [*47] the Code or the statutes granting federal courts jurisdiction over bankruptcy cases. Parties' property rights do not depend on the basis for a court's jurisdiction.

The approaches of the Second and Fourth Circuits are flawed as a doctrinal matter, though difficult to distinguish from the Eighth Circuit's in practice. Those courts have rightly observed that, in the ordinary course, the fact that a choice-of-law question arises in bankruptcy does not provide sufficient

⁸In *Gaston & Snow*, the Second Circuit gestured at the notion that "an interest in uniformity can justify the creation of federal common law," 243 F.3d at 606, and cited the Supreme Court's decision in *Kimbell Foods* for that proposition. But *Kimbell Foods* does not speak to whether a federal choice-of-law rule should govern in bankruptcy. There, the Supreme Court determined that "the priority of liens stemming from federal lending programs must be determined with reference to federal law," *Kimbell Foods*, 440 U.S. at 726, which obviates the need of a choice-of-law inquiry because the *Supremacy Clause* requires application of federal rules of decision. Having concluded that federal law, rather than state law, provides the governing rule, the Court went on to define the content of that federal common law rule. And at that second step, the Court noted that "[c]ontroversies directly affecting the operations of federal programs, although governed by federal law, do not inevitably require resort to uniform federal rules" before "reject[ing] generalized pleas for uniformity" in favor of a federal common law rule that "adopt[s] the readymade body of state law as the federal rule of decision." *Id.* at 727-28, 730, 740.

⁷See also *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 159 n.13, 103 S. Ct. 2281, 76 L. Ed. 2d 476 (1983) ("[W]here Congress directly or impliedly directs the courts to look to state law to fill in details of federal law, *Erie* will ordinarily provide the framework for doing so."); 19 Wright & Miller's Federal Practice & Procedure § 4520 (3d ed. May 2025 update) ("[T]he law to be applied is not selected by reference to the basis of the court's subject matter jurisdiction In other words, the choice of applicable law turns upon the source or genesis of the right or issue being adjudicated.")

reason to depart from *Klaxon* because state law generally provides the substantive law governing a dispute, so *Erie* and the Rules of Decision Act control. See [In re Gaston & Snow, 243 F.3d at 607](#); *In re Merritt Dredging*, 839 F.2d at 206.

They also theorize, however, that there may be exceptional cases when a "compelling federal interest," *In re Merritt Dredging*, 839 F.2d at 206, would require the application of a federal common law choice-of-law rule. Thus, they purport to adopt a safety valve by applying *Klaxon* only "in the absence of a compelling federal interest which dictates otherwise." *Id.*; see also [In re Gaston & Snow, 243 F.3d at 607](#) ("We necessarily limit our holding to cases where no significant federal policy, calling for the imposition of a federal conflicts rule, exists."). In positing that carveout, these courts hypothesize a scenario where some [*48] federal interest compels abandonment of *Klaxon*. Though this rule may appear on its face to conflict with the rule from *Klaxon*, in practice, it does not. Tellingly, neither court has actually identified—much less confronted—such a situation. And the prospect of them ever doing so seems fanciful because their hypothesis runs headlong into the presumption against, and stringent criteria for, the making of federal common law.

At the outset, it is not clear whether the federal interest the Fourth and Second Circuits hypothesize would need to conflict with a state's choice-of-law rule or the substantive law that choice-of-law rule selects. If the former, it is particularly difficult to imagine what federal interest would conflict with the use of a specific choice-of-law rule given the absence of a federal choice-of-law rule provision in the Bankruptcy Code and the Code's indifference to the law that determines parties' rights and interests. See *infra* pp. 21-23. If it is the latter, then the real problem is not the use of a state's choice-of-law rule at all. Rather, as the Eighth Circuit has properly characterized it, the problem is the incompatibility between the non-bankruptcy law chosen [*49] to govern a dispute and the federal interest, because permitting a state law to "trump" the federal interest expressed in the Bankruptcy Code "would effectively convert the [] choice of law [question] to an 'anti-preemption' [question]." [In re Schriock Constr., 104 F.3d at 202](#). In short, the resolution to that conflict is application of a federal rule of decision and its priority over state law pursuant to the [Supremacy Clause](#), not abandonment of *Klaxon*.

Even moving past this ambiguity, embracing the alternative to *Klaxon*—a federal choice-of-law rule—must "begin[] with the recognition that federal choice of law rules are a species of federal common law." [In re Gaston & Snow, 243 F.3d at 605](#). But "those cases in which judicial creation of a special federal rule would be justified . . . [are] 'few and restricted.'" [O'Melveny, 512 U.S. at 87](#) (quoting [Wheeldin v. Wheeler, 373](#)

[U.S. 647, 651, 83 S. Ct. 1441, 10 L. Ed. 2d 605 \(1963\)](#)). Crucially, the creation of federal common law is appropriate only in "situations where there is a 'significant conflict between some federal policy or interest and the use of state law.'" *Id.* (quoting [Wallis v. Pan Am. Petroleum Corp., 384 U.S. 63, 68, 86 S. Ct. 1301, 16 L. Ed. 2d 369 \(1966\)](#)). Indeed, "such a conflict [is] a precondition for" federal common law-making. *Id.* But where none exists, federal law "supplies no rule of decision," leaving non-bankruptcy law to govern the controversy. [Rodriguez, 589 U.S. at 138](#).

In order to justify the Second and Fourth Circuits' [*50] approach that departs from *Klaxon*, yet requires a choice-of-law analysis—i.e., employing a federal common law choice-of-law rule—two conditions must be true: (1) there must be a sufficiently weighty federal interest in conflict with otherwise governing non-federal law to warrant fashioning a federal rule of decision to resolve conflicts among non-bankruptcy law, but (2) that interest must not be sufficiently weighty to justify fashioning a federal common law rule of decision. The former must be true to justify the "[j]udicial lawmaking" involved in crafting federal common law rules—lawmaking that "plays a necessarily modest role under a Constitution that vests the federal government's 'legislative Powers' in Congress." *Id. at 136* (quoting [U.S. Const. art. I, § 1](#)). The latter must be true in order to preserve any choice-of-law question at all, for if the federal interest is sufficiently important to justify creation of a federal rule of decision, then there is no "choice" among laws because the Constitution invariably resolves such conflicts in favor of federal law. [U.S. Const. art. VI, cl. 2](#). In other words, for the Second and Fourth Circuits' approach to be correct—as opposed to the Eighth Circuit's, which accounts for an overriding federal [*51] interest as a matter of rule of decision, see [In re Schriock Constr., 104 F.3d at 202](#)—a federal interest has to fall into the goldilocks zone: not too strong, yet not too weak.

Yet a review of the Bankruptcy Code and its policies establishes neither condition. The Code is agnostic about which body of non-bankruptcy law governs parties' rights—it simply "takes the [interest] as it finds it." [Bartenwerfer v. Buckley, 598 U.S. 69, 82, 143 S. Ct. 665, 214 L. Ed. 2d 434 \(2023\)](#). That is to say, the Bankruptcy Code embodies no federal interest that favors the application of any particular non-bankruptcy law over another. And this makes good sense. It is "the basic federal rule" that "entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the . . . obligation." [Raleigh v. Ill. Dep't of Revenue, 530 U.S. 15, 20, 120 S. Ct. 1951, 147 L. Ed. 2d 13 \(2000\)](#). Sometimes, federal non-bankruptcy law will control that issue. See, e.g., [Bd. of Trs. of Teamsters Loc. 863 Pension Fund v. Foodtown, Inc., 296 F.3d 164, 168 \(3d Cir. 2002\)](#). Other times, it may be state or foreign law that does. Either

way, the Bankruptcy Code directs courts to consider parties' interest under whichever law governs outside of bankruptcy, and it then establishes a collection of rules to deal with those interests.

The Supreme Court's decision in *Butner* is not to the contrary. There, the Court famously held that "[p]roperty interests are created and defined by state law. Unless some federal [*52] interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." [440 U.S. at 55](#). At first glance, this passage might seem to support the Second and Fourth Circuits' approach—after all, the Supreme Court included the proviso "[u]nless some federal interest requires a different result." *Id.* But on closer inspection, this line from *Butner* cannot be read as suggesting the possibility of a different choice-of-law rule to apply in bankruptcy.

Butner addressed whether "the right to the rents collected during the period between [a] mortgagor's bankruptcy and the foreclosure sale of the mortgaged property . . . is determined by a federal rule of equity or by the law of the State where the property is located." *Id.* at 49. In other words, the Supreme Court considered which body of law—state or federal—supplies the rule of decision for allocation of rents. It concluded, as a general matter, "[p]roperty interests are created and defined by state law." *Id.* at 55. But it also recognized that, while uncommon, federal law can sometimes define parties' property interests, especially where the United States is a party. [*53]⁹ See, e.g., [Clearfield Tr. Co. v. United States](#), 318 U.S. 363, 366, 63 S. Ct. 573, 87 L. Ed. 838 (1943). For this reason, the Court acknowledged that where federal law does govern property rights, that law controls. But *Butner* cannot reasonably be read to suggest that federal law provides the choice-of-law rule to decide among conflicting non-federal laws when it is those laws that provide the rule of decision. That is because *Butner* posits a scenario in which state property law is displaced due to "some federal interest [that] requires a different result," [440 U.S. at 55](#), not that this federal interest favors one state law over others. See [Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.](#), 549 U.S. 443, 451, 127 S. Ct. 1199, 167 L. Ed. 2d 178 (2007) (juxtaposing *Butner* and *Vanston* to illustrate this point). Put another way, reading *Butner* to license creation of a federal common law choice-of-law rule renders the proviso meaningless because, read in such a way, state law still

governs the substantive property interest while federal law simply chooses among conflicting state laws. That plainly is not the dichotomy *Butner* envisioned. Instead, *Butner* stands for the far more straightforward proposition that state law generally governs parties' property interests except in the unusual case where federal law provides the rule of decision. It offers no insight, however, into how to choose among conflicting laws [*54] when non-federal law governs.¹⁰

This result does not derogate those federal interests that do exist. To be sure, there are many areas of law in which Congress has legislated extensively. See, e.g., [Sherman Antitrust Act](#), 15 U.S.C. §§ 1-7; [Securities Act of 1933](#), 15 U.S.C. § 77a et seq.; [Securities Exchange Act of 1934](#), 15 U.S.C. § 78a et seq.; [Investment Company Act of 1940](#), 15 U.S.C. §§ 80a-1 to 80a-64; [Lanham Act](#), 15 U.S.C. § 1051 et seq.; [Comprehensive Environmental Response, Compensation, and Liability Act of 1980](#), 42 U.S.C. § 9601 et seq. Perhaps none is a greater expression of a federal interest than those statutory provisions that completely preempt state law, i.e., those where a federal interest "is so powerful," [Franchise Tax Bd. v. Constr. Laborers Vacation Tr. for S. Cal.](#), 463 U.S. 1, 23, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983), that "federal law does not merely preempt a state law to some degree" but instead "substitutes a federal cause of action for the state cause of action," 14C Wright & Miller's Federal Practice & Procedure § 3722.2 (Rev. 4th ed. May 2025 update). Those instances are few, but important. See [Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists & Aerospace Workers](#), 390 U.S. 557, 560, 88 S. Ct. 1235, 20 L. Ed. 2d 126 (1968) (Section 301 of the Labor Management Relations Act); [Metro. Life. Ins. Co. v. Taylor](#), 481 U.S. 58, 66, 107 S. Ct. 1542, 95 L. Ed. 2d 55 (1987) (Section 502(a) of the Employee Retirement Income Security Act); [Beneficial Nat'l Bank v. Anderson](#), 539 U.S. 1, 11, 123 S. Ct. 2058, 156 L. Ed. 2d 1 (2003) (Sections 85 and 86 of the National Bank Act).

¹⁰ My concurring colleague disagrees, asserting that "[f]ederal courts can and do develop federal choice-of-law rules that select state substantive law." Concurring Op. 13. But the cited cases do not support that proposition; they merely recognize that courts can create federal common law rules of decision—not choice-of-law rules—that incorporate the contents of state law. See [Kamen v. Kemper Fin. Servs., Inc.](#), 500 U.S. 90, 107-09, 111 S. Ct. 1711, 114 L. Ed. 2d 152 (1991) (creating a rule of decision for derivative actions that incorporates the contents of state law rather than "displac[ing] state law in this area"); [Semtek](#), 531 U.S. at 508-09 (describing the issue as "a classic case for adopting, as the federally prescribed rule of decision, the law that would be applied by state courts," rather than creating "a contrary federal rule" (emphasis added)); see also *infra* note 13.

⁹ The scenario is far from hypothetical, as the federal government is "one of the Nation's largest lenders," [Dep't of Agric. Rural Dev. Rural Housing Serv. v. Kirtz](#), 601 U.S. 42, 45, 144 S. Ct. 457, 217 L. Ed. 2d 361 (2024), and is a frequent creditor in bankruptcies.

But again, in these instances—and all others where federal law supplies the rule of decision—there is no choice-of-law question, making *Klaxon* inapplicable. That is because the Constitution resolves vertical choice-of-law questions in absolute terms: "[I]f a state measure conflicts with a federal requirement, the state provision must give way." *Swift & Co. v. Wickham*, 382 U.S. 111, 120, 86 S. Ct. 258, 15 L. Ed. 2d 194 (1965). In all other cases, non-federal law enjoys the usual presumption against "displacement." *Boyle v. United Techs. Corp.*, 487 U.S. 500, 507, 108 S. Ct. 2510, 101 L. Ed. 2d 442 (1988). So it is only in the absence of a federal rule of decision—that is, in the absence of a [*55] federal interest warranting displacement of non-federal law—that a choice-of-law question arises. And at that juncture, the Bankruptcy Code is agnostic about which law governs, leaving "no reason [for] such interests [to] be analyzed differently" than if they had arisen outside of bankruptcy. *Butner*, 440 U.S. at 55.

* * *

The daylight between these positions—especially between those of the Eighth Circuit and the Second and Fourth Circuits—can be elusive, and the debate can easily be labeled esoteric. Relative to the number of questions governed by state law that arise in bankruptcies across the country, those that present genuine choice-of-law questions are admittedly few. And those whose outcome would change depending on the application of *Klaxon* versus a federal choice-of-law rule are likely fewer still. But apart from doctrinal clarity, which carries its own virtue, resolution of this question in the manner I have proposed serves two important purposes.

First, federal courts exercise limited powers. Perhaps nowhere is that power more at its nadir than in the area of fashioning federal common law. As the Supreme Court has admonished since *Erie*, those contexts that necessitate a federal common law rule are [*56] fleeting, and the criteria for recognizing such a rule are exacting. It is incumbent on us to candidly recognize the limits of our authority as a function of the Constitution's separation of powers. After all, "[t]he Framers 'built into the tripartite Federal Government . . . a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.'" *Clinton v. Jones*, 520 U.S. 681, 699, 117 S. Ct. 1636, 137 L. Ed. 2d 945 (1997) (omission in original) (quoting *Buckley v. Valeo*, 424 U.S. 1, 122, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (per curiam)). Acknowledging that the federal courts' role in crafting common law is necessarily "modest," *Rodriguez*, 589 U.S. at 136, does much to guard against encroachment upon Congress's authority to legislate on the subject of bankruptcies.

Second, with doctrinal clarity and the acknowledgment of

federal courts' limited authority comes clearer notice to litigants as to what rule they can expect to govern their rights. As discussed, the Ninth Circuit's departure from *Klaxon* is misguided. As for the Second, Fourth, and Eighth Circuits, their approaches in practice always have, and always will, lead to the same result—*Klaxon* applies in bankruptcy, but federal law necessarily provides the rule of decision "when some federal interest requires a different result." *In re Schriock Constr.*, 104 F.3d at 202. But by framing the question [*57] as choice-of-law instead of rule-of-decision and leaving the door open for a different choice-of-law rule in theory, the Second and Fourth Circuits invite needless litigation over *Klaxon*'s applicability and leave lingering uncertainty about which law will govern parties' disputes. They hypothesize a category of cases that, in reality, is a null set. No federal interest exists that will displace a state's choice-of-law rule without simultaneously requiring displacement of state substantive law in favor of a federal rule of decision. Instead of perpetuating the uncertainty surrounding the choice-of-law rule that governs in bankruptcy, we should recognize what practice teaches and give courts and litigants alike notice of the governing framework: The rule from *Klaxon* extends to bankruptcy cases.¹¹

IV. Idiosyncratic State Choice-of-Law Rules Do Not License Abandoning *Klaxon*

For their part, among the options in this three-way circuit split, the parties urge us to adopt the Second and Fourth Circuits' hybrid approach to *Klaxon*, cautioning that we "should not adopt a rule that would require bankruptcy courts to follow idiosyncratic state choice-of-law rules even when doing so would create conflicts, [*58] encourage forum-shopping, or undermine significant federal interests." Appellees' Second Supp. Br. 11; see also Appellants' Second Supp. Br. 4. And to illustrate their point, Appellees pose the example of "a hypothetical forum state . . . reject[ing] the internal-affairs doctrine [to] allow its own idiosyncratic rules to dictate who speaks for a foreign corporation." Appellees' Second Supp. Br. 10. They insist that in such a scenario, "the federal interest in preserving the internal-affairs doctrine and orderly bankruptcy filings would warrant a federal choice-of-

¹¹ My concurring colleague agrees that "state choice-of-law rules will almost always apply" in bankruptcy but insists that "[r]are is not never." Concurring Op. at 9-10. It is telling, however, that the concurrence does not identify a single instance—even a hypothetical one—that would require the application of a federal common-law choice of law rule, but would not result, in any event, in the application of federal law as the rule of decision.

law rule vindicating the internal affairs doctrine."¹² *Id.* at 11.

But choice of law is not a panacea, nor need we make it one. Instead, among other constraints, the Constitution places limits on the extent to which states may exert regulatory authority over parties' disputes and that resolve many of the concerns the parties raise here. Four constitutional provisions in particular—the [Supremacy Clause](#), the [Full Faith and Credit Clause](#), the [Privileges and Immunities Clause](#), and the [Due Process Clause of the Fourteenth Amendment](#), each of which is discussed below—provide a federal backstop to permissible state choice-of-law regimes.

First, and most intuitively for choice-of-law purposes, is the [Supremacy Clause](#). *U.S. Const. art. VI, cl. 2*. In "split[ting] the atom of sovereignty" for our federal [*59] union, *U.S. Term Limits Inc. v. Thornton*, 514 U.S. 779, 838, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995) (Kennedy, J., concurring), the Framers "provide[d] 'a rule of decision' for determining whether federal or state law applies in a particular situation," *Kansas v. Garcia*, 589 U.S. 191, 202, 140 S. Ct. 791, 206 L. Ed. 2d 146 (2020) (quoting *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324, 135 S. Ct. 1378, 191 L. Ed. 2d 471 (2015)). The [Supremacy Clause](#) supplies a bright-line rule to resolve "vertical" choice-of-law questions, i.e., those that implicate a conflict between federal and state law. *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 691, 126 S. Ct. 2121, 165 L. Ed. 2d 131 (2006). When federal and state law are "in conflict or at cross-purposes," the [Supremacy Clause](#) embodies the "clear rule" that federal law prevails. *Arizona v. United States*, 567 U.S. 387, 399, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012).

Thus, when state courts consider which law governs a dispute, the existence of a controlling federal rule resolves any choice-of-law question, "[f]or the policy of the federal [law] is the prevailing policy in every state." *Testa v. Katt*, 330 U.S. 386, 393, 67 S. Ct. 810, 91 L. Ed. 967 (1947). In this way, the [Supremacy Clause](#) protects the federal authority to enact federal rules of decision to control in circumstances "necessary to protect uniquely federal interests." *Rodriguez*, 589 U.S. at 136 (quoting *Radcliff Materials*, 451 U.S. at 640).

Often, those federal interests will be embodied in a federal

statute. But in few, yet important, contexts, federal courts have recognized the need to fashion "federal common law—substantive rules of decision not expressly authorized by either the Constitution or any Act of Congress—that supplant state law," 19 Wright & Miller's Federal Practice & Procedure § 4514 (3d ed. May 2025 update), often when the [*60] controversy's subject matter closely relates to the federal government or falls within an area of exclusive federal competence, see, e.g., *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 23, 125 S. Ct. 385, 160 L. Ed. 2d 283 (2004) (admiralty); *Boyle*, 487 U.S. at 505-06 (civil liabilities of contractors under federal procurement contracts); *Clearfield Tr.*, 318 U.S. at 366 (rights and duties of the United States under federally issued commercial paper); *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 110, 58 S. Ct. 803, 82 L. Ed. 1202 (1938) (apportionment of water rights between states).

To be sure, federal courts' common law-making authority "plays a necessarily modest role," and the Supreme Court has "underscore[d] the care federal courts should exercise before taking up an invitation to try their hand at common lawmaking." *Rodriguez*, 589 U.S. at 136, 138. But in the narrow circumstances that command a federal rule of decision absent constitutional or statutory authority, the [Supremacy Clause](#) ensures that federal courts may still fashion such a rule and that contrary state law will yield.¹³ See *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427, 84 S. Ct. 923, 11 L. Ed. 2d 804 (1964) (recognizing the preemptive force of federal common law), *superseded on other grounds by statute*, *Pub. L. 88-633, 78 Stat. 1013*, as recognized in, *Fed. Republic of Ger. v. Philipp*, 592 U.S. 169, 179, 141 S. Ct. 703, 208 L. Ed. 2d 589 (2021). After all, "exclusive state power takes up only where federal power leaves off." John Hart Ely, *The Irrepressible Myth of Erie*, 87 Harv. L. Rev. 693, 705 (1974). So that vertical choice-of-law rule, enshrined in our Constitution, does much to ensure that state choice-of-law rules do not unduly "undermine significant federal interests." [*61] Appellees' Second Supp. Br. 11.

Second, the [Full Faith and Credit Clause](#) occupies a modest, but important, position among the constitutional provisions bearing on choice of law. In relevant part, it provides that

¹² Apart from the reasons I describe below, I agree with the majority that such a scenario is fanciful because it would violate the Constitution. Maj. Op. 24 ("[W]hen it comes to control over corporate decision-making, a state 'has no interest in regulating the internal affairs of foreign corporations.'" (quoting *Edgar v. MITE Corp.*, 457 U.S. 624, 645-46, 102 S. Ct. 2629, 73 L. Ed. 2d 269 (1982))).

¹³ When adopting a federal common law rule, federal courts must assess both "(1) the competence of federal courts to formulate a federal rule of decision, and (2) the appropriateness of declaring a federal rule rather than borrowing, incorporating, or adopting state law in point." *McVeigh*, 547 U.S. at 692. So in some circumstances, federal courts may "adopt the readymade body of state law as the federal rule of decision until Congress strikes a different accommodation," and state law yields only in the sense that it is supplanted by an identical federal rule. *Kimbell Foods*, 440 U.S. 740.

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1, cl. 1. As the Supreme Court has recognized, the Clause's purpose "was to alter the status of the several states as independent foreign sovereignties . . . and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." *Milwaukee Cnty. v. M.E. White Co.*, 296 U.S. 268, 277, 56 S. Ct. 229, 80 L. Ed. 220 (1935); see also *Magnolia Petro. Co. v. Hunt*, 320 U.S. 430, 439, 64 S. Ct. 208, 88 L. Ed. 149 (1943).

In modern jurisprudence, much of the *Full Faith and Credit Clause*'s function—and that of the statute with which it shares a name, 28 U.S.C. § 1738—occurs in the recognition of judgments rendered by foreign states. See, e.g., *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233, 118 S. Ct. 657, 139 L. Ed. 2d 580 (1998). But as the Supreme Court has recognized, the *Full Faith and Credit Clause* continues to have an enduring role in the regulation of "credit owed to [foreign] laws." *Id.* at 232. Indeed, "where the policy of one state statute comes into conflict with that of another, the necessity of some accommodation of the conflicting interests of the two states is . . . apparent." *Alaska Packers Ass'n v. Indus. Accident Comm'n of Cal.*, 294 U.S. 532, 547, 55 S. Ct. 518, 79 L. Ed. 1044 (1935).

Apart from its other commands, the *Full Faith and Credit Clause*, at [*62] a minimum, requires that a forum state confronting a horizontal choice-of-law question have "some rational basis" for applying its law over that of a sister state. *Id.* at 547-48. That basis must be above and beyond mere favoritism toward forum law, for a state does not have a legitimate interest in discriminating against another state's law simply by virtue of its foreign origin. See *First Nat'l Bank of Chi. v. United Air Lines*, 342 U.S. 396, 398, 72 S. Ct. 421, 96 L. Ed. 441 (1952); *Hughes v. Fetter*, 341 U.S. 609, 613, 71 S. Ct. 980, 95 L. Ed. 1212 (1951); cf. *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 878, 105 S. Ct. 1676, 84 L. Ed. 2d 751 (1985) (holding that a state does not have a legitimate interest purely in favoring domestic economic interests over foreign ones).

Of course, the *Full Faith and Credit Clause* "does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events." *Pac. Emps. Ins. Co. v. Indus. Accident Comm'n of Cal.*, 306 U.S. 493, 502, 59 S. Ct. 629, 83 L. Ed. 940 (1939). And no doubt, in many cases, forum states will have rational, nondiscriminatory reasons for applying their law over that of others. See, e.g., *Cardillo v. Liberty Mut. Ins.*

Co., 330 U.S. 469, 476, 67 S. Ct. 801, 91 L. Ed. 1028 (1947). But the *Full Faith and Credit Clause* does "set[] certain minimum requirements which each state must observe when asked to apply the law of a sister state," *Wells v. Simonds Abrasive Co.*, 345 U.S. 514, 516, 73 S. Ct. 856, 97 L. Ed. 1211 (1953), and it "requires that a state base its assertion of legislative jurisdiction on a claim that its interests are superior," [*63] not simply that conflicting law is foreign, Kermit Roosevelt III, *The Myth of Choice of Law: Rethinking Conflicts*, 97 Mich. L. Rev. 2448, 2505 n.240 (1999). This constitutional floor provides yet another constraint on state choice-of-law regimes.

Third, the *Privileges and Immunities Clause* protects out-of-staters from discrimination on the basis of their foreign citizenship.¹⁴ See *Supreme Ct. of N.H. v. Piper*, 470 U.S. 274, 285, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985); see also *Tyler Pipe Indus., Inc. v. Wash. State Dep't of Revenue*, 483 U.S. 232, 265, 107 S. Ct. 2810, 97 L. Ed. 2d 199 (1987) (Scalia, J., concurring in part and dissenting in part) (grounding the protection "against rank discrimination against citizens of other States" in the *Privileges and Immunities Clause*). In full, it provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, § 2, cl. 1. Much like the *Full Faith and Credit Clause*, the *Privileges and Immunities Clause* was intended "to help fuse into one Nation a collection of independent, sovereign States." *Toomer v. Witsell*, 334 U.S. 385, 395, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948).

The Clause does not guarantee that citizens of each state are entitled to all of the same rights and benefits of citizens in other states, see *Piper*, 470 U.S. at 284, but only those that are "fundamental" to "the vitality of the Nation as a single entity," *Baldwin v. Fish & Game Comm'n of Mont.*, 436 U.S. 371, 382-83, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978) (quotation omitted). It does, however, "bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere [*64] fact that they are citizens of other States." *Toomer*, 334 U.S. at 396.

¹⁴This rule may sound identical to the constraint provided by the *Full Faith and Credit Clause* discussed above. But the two clauses play distinct roles. The *Full Faith and Credit Clause* concerns the respect owed by one state to the laws and judgments of another, while the *Privileges and Immunities Clause* concerns states' treatment of citizens of foreign states. Compare U.S. Const. art. IV, § 1, cl. 1 ("Full Faith and Credit shall be given in *each State* to the public Acts, Records, and judicial Proceedings of *every other State*." (emphasis added)), with U.S. Const. art. IV, § 2, cl. 1 ("The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the *several States*." (emphasis added)).

The Supreme Court has recognized that access to a state's courts is among the privileges and immunities protected by the Constitution. [*McKnett v. St. Louis & S.F. Ry. Co.*, 292 U.S. 230, 233, 54 S. Ct. 690, 78 L. Ed. 1227 \(1934\)](#); [*Canadian N. Ry. Co. v. Eggen*, 252 U.S. 553, 562, 40 S. Ct. 402, 64 L. Ed. 713 \(1920\)](#). And implicit in that guarantee is the constituent promise that a state may not withhold the application of its law to a citizen of another state in a situation in which it would extend that law to one of its own citizens solely by virtue of the out-of-stater's foreign citizenship. [*Paul v. Virginia*, 75 U.S. \(8 Wall.\) 168, 180, 19 L. Ed. 357 \(1868\)](#) (the [*Privileges and Immunities Clause*](#) "secures to [citizens of a foreign state] in other States the equal protection of their laws"); see also [*Douglas Laycock, Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law*, 92 Colum. L. Rev. 249, 265-66 \(1992\)](#). Thus, the [*Privileges and Immunities Clause*](#) "place[s] the citizens of each State upon the same footing with citizens of other States," thereby demanding citizens of foreign states derive the same benefit from a state's law that it would extend to its own citizens and prohibiting discrimination against out-of-staters because of their foreign citizenship. [*Paul*, 75 U.S. at 180](#).

Fourth, and finally, the [*Due Process Clause of the Fourteenth Amendment*](#) substantively limits to which disputes states may extend their law.¹⁵ In providing that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law," U.S. Const. amend. XIV, § 1, the Clause requires "that for a State's substantive law to be selected in a constitutionally [*65] permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair," [*Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13, 101 S. Ct. 633, 66 L. Ed. 2d](#)

[*521 \(1981\)*](#) (plurality). Thus, where a state does not have sufficient contacts with a dispute, it lacks legitimate interests warranting extension of its law to the dispute, rendering application of its law "sufficiently arbitrary and unfair as to exceed constitutional limits." [*Shutts*, 472 U.S. at 822](#); accord [*John Hancock Mut. Life Ins. Co. v. Yates*, 299 U.S. 178, 182, 57 S. Ct. 129, 81 L. Ed. 106 \(1936\)](#); [*Home Ins. Co. v. Dick*, 281 U.S. 397, 407-08, 50 S. Ct. 338, 74 L. Ed. 926 \(1930\)](#). And in doing so, the [*Due Process Clause*](#) protects litigants against "unfair surprise or frustration of legitimate expectations" of the law governing their dealings.¹⁶ [*Allstate*, 449 U.S. at 318 n.24](#).

By recounting these well-trodden constitutional constraints, I do not seek to "embark upon the enterprise of constitutionalizing choice-of-law rules." [*Sun Oil*, 486 U.S. at 727-28](#). Rather, these constitutional safeguards demonstrate that by extending the rule of *Klaxon* to bankruptcy cases, federal courts are not bound to reflexively apply impermissibly parochial state choice-of-law rules as Appellees warn. See Appellees' Second Supp. Br. 9-11. But absent running afoul [*66] of the limitations imposed by the Constitution, I find no basis (or authority) in federal bankruptcy law to constrain a state's authority to prescribe the choice-of-law rules that shall govern in its courts. Indeed, it is a feature of our federal system that it "leaves to a state, within the limits permitted by the Constitution, the right to pursue local policies diverging from those of its neighbors," and "it is not for the federal courts to thwart such local policies by enforcing an independent 'general law' of conflict of laws." [*Klaxon*, 313 U.S. at 496](#).

Where states do not transcend constitutional barriers, *Klaxon*'s rule best serves the purposes of the Bankruptcy Code consistent with *Erie*, the Rules of Decision Act, and the presumption against federal common law-making. So just as

¹⁵The Supreme Court's articulation of the [*Fourteenth Amendment Due Process Clause*](#)'s limitations on state choice-of-law rules has been subject to nearly universal criticism. See, e.g., Roosevelt, *supra*, at 2506-07; Louise Weinberg, *Choice of Law and Minimal Scrutiny*, 49 U. Chi. L. Rev. 440, 460-63 (1982). In comparing choice of law with the Court's personal jurisdiction jurisprudence, Professor Linda Silberman famously quipped, "[t]o believe that a defendant's contacts with the forum state should be stronger under the [*due process clause*](#) for jurisdictional purposes than for choice of law is to believe that an accused is more concerned with where he will be hanged than whether." Linda J. Silberman, Shaffer v. Heitner, *The End of an Era*, 53 N.Y.U. L. Rev. 32, 88 (1978). I do not take a side in this debate here. My point, rather, is that wherever the constitutional boundaries lie, so long as states' choice-of-law regimes fall within them, federal courts have no authority under the Bankruptcy Code, Rules of Decision Act, or statutes granting bankruptcy jurisdiction to supplant state choice-of-law rules in favor of federal ones.

¹⁶The Supreme Court has somewhat collapsed the inquiries under the [*Full Faith and Credit Clause*](#) and the [*Due Process Clause*](#) for choice-of-law purposes. See, e.g., [*Sun Oil Co. v. Wortman*, 486 U.S. 717, 729 n.3, 108 S. Ct. 2117, 100 L. Ed. 2d 743 \(1988\)](#); see also Herma Hill Kay et al., *Conflict of Laws* 381 (10th ed. 2018) (noting the convergence in the two analyses). Yet each imposes a different command: As explained above, the [*Full Faith and Credit Clause*](#) governs the respect owed to laws among states, while the [*Due Process Clause*](#) confers an individual right to be free from application of a state's law when that state has no meaningful connection to the dispute. Compare U.S. Const. art. IV, § 1, cl. 1 ("Full Faith and Credit shall be given in *each State* to the public Acts, Records, and judicial Proceedings of *every other State*." (emphasis added)), with U.S. Const. amend. XIV, § 1 ("No *State* shall . . . deprive any *person* of life, liberty, or property, without due process of law." (emphasis added)).

Klaxon and *Erie* aim to preserve the substantive law governing a dispute notwithstanding the "accident of diversity,"¹⁷ [Klaxon, 313 U.S. at 496](#) (citing [Erie, 304 U.S. at 74-77](#)), extending *Klaxon* in this manner avoids altering the substantive law governing a dispute simply because of the "happenstance of bankruptcy," [Lewis v. Mfrs. Nat'l Bank of Detroit, 364 U.S. 603, 609, 81 S. Ct. 347, 5 L. Ed. 2d 323 \(1961\)](#).

* * *

The question of *Klaxon*'s applicability to bankruptcy has persisted for nearly 80 years. This case, just as with others our Court has encountered, [*67] permits us to elide the question of which choice-of-law methodology to employ. But we have the responsibility not to perpetuate this uncertainty. I hope that, in the appropriate case, we will resolve this question and give guidance to bankruptcy and district courts in our Circuit in a way that is consistent with the Bankruptcy Code, *Erie* and the Rules of Decision Act, and the policies underlying the grant of bankruptcy jurisdiction to federal courts.

AMBRO, *Circuit Judge*, concurring

The *Erie* doctrine—taken from [Erie Railroad Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 \(1938\)](#), and its progeny—is the North Star for determining whether federal or state law should apply in federal court. The answer is state law unless the matter is governed by superseding federal law, such as the Constitution, a congressional enactment, or federal common law. See Charles A. Wright, Arthur R. Miller, & Edward H. Cooper, 19 *Federal Practice and Procedure* § 4501 (3d ed. 2025). *Erie* questions occur most often when federal courts sit in diversity-of-citizenship jurisdiction because those disputes usually involve only state substantive law. State law, however, includes more than just the underlying substantive law. The Supreme Court told us in [Klaxon v. Stentor Electric Manufacturing Co., 313 U.S. 487, 61 S. Ct. 1020, 85 L. Ed. 1477 \(1941\)](#), that it includes choice-

¹⁷ Of course, *Klaxon*'s interest in diminishing forum-shopping incentives between state and federal courts, see [313 U.S. at 496](#), does not neatly map onto bankruptcy, as federal courts possess original and exclusive jurisdiction over bankruptcy cases, [28 U.S.C. § 1334\(a\)](#). But just as plaintiffs may choose their favored forum in non-bankruptcy cases, consistent with proper venue, to gain a favorable choice-of-law rule, see [Ferens v. John Deere Co., 494 U.S. 516, 523, 110 S. Ct. 1274, 108 L. Ed. 2d 443 \(1990\)](#); [Van Dusen v. Barrack, 376 U.S. 612, 639, 84 S. Ct. 805, 11 L. Ed. 2d 945 \(1964\)](#), debtors too may choose a forum for purposes of a specific choice-of-law regime in bankruptcy cases where venue properly lies. And that sort of horizontal forum shopping incentive is "attributable to," and an irreducible component of, "our federal system." [Klaxon, 313 U.S. at 496](#).

of-law [*68] rules as well.

What force, if any, does *Klaxon* have in bankruptcy, where the parties' primary rights and interests are often governed by state law? We need not answer that question in a holding, as the parties agree on the law that governs: New Jersey's. See Wright, Miller & Cooper § 4506 (collecting cases for the proposition that courts need not determine which state's choice-of-law regime applies when the parties do not dispute that question).

Though "a pretty good reason for having 'skimmed over the conflicts problem as if none existed' was that none did exist," Henry Friendly, *In Praise of Erie — And the New Federal Common Law*, 39 N.Y.U. L. REV. 383, 401 (1964) (citation omitted), the question whether *Klaxon* applies in bankruptcy has spawned interesting academic debate. Answers span the spectrum. Compare, e.g., Zachary D. Clopton, *Horizontal Choice of Law in Federal Court*, 169 PA. L. REV. 2193, 2203-06 (2021) (*Klaxon* applies without exception), with Tobias Barrington Wolff, *Choice of Law and Jurisdictional Policy in the Federal Courts*, 165 PA. L. REV. 1847 (2017) (*Klaxon* applies only in diversity actions). Our concurring colleague has staked out her position that *Klaxon* always applies in bankruptcy, no exceptions. Because I am uncomfortable with that view, I instead take the opportunity to make some nonbinding observations about *Erie* and choice of law.

I. ERIE AND KLAXON

A brief refresher on the *Erie* doctrine. Despite the almost [*69] mystical fascination that has long surrounded *Erie*, it stands for three basic propositions.

First, "[t]here is no federal *general* common law." [Erie, 304 U.S. at 78](#) (emphasis added). "[N]either Congress nor the federal courts can, under the guise of formulating rules of decision for federal courts, fashion rules which are not supported by a grant of federal authority contained in Article I or some other section of the Constitution." [Hanna v. Plumer, 380 U.S. 460, 471, 85 S. Ct. 1136, 14 L. Ed. 2d 8 \(1965\)](#). When the Constitution *does* authorize Congress or courts to do so, however, *Erie* has no application, and federal law displaces contrary state law through the [Supremacy Clause](#).

Second, without a federal statute or constitutionally authorized federal common-law rule, the [Rules of Decision Act, 28 U.S.C. § 1652](#), commands federal courts to apply the rules of decision of their forum states "in cases where they apply." The Supreme Court has developed a framework for determining when a state law falls within the scope of the

Rules of Decision Act. See [Gasperini v. Ctr. For Humanities, Inc.](#), 518 U.S. 415, 427-28, 116 S. Ct. 2211, 135 L. Ed. 2d 659 (1996); [Hanna](#), 380 U.S. at 468. The specifics of that framework are irrelevant for our purposes.

Third, when a Federal Rule (e.g., the Federal Rules of Civil Procedure) conflicts with state law, then the Rules Enabling Act, 28 U.S.C. § 2072, not the Rules of Decision Act as construed by *Erie* and other cases, determines which law applies. See [Hanna](#), 380 U.S. at 463-64; [Burlington N. R.R. Co. v. Woods](#), 480 U.S. 1, 4-5, 107 S. Ct. 967, 94 L. Ed. 2d 1 (1987). The [Rules Enabling Act](#) is also [*70] irrelevant for our purposes.

Klaxon followed *Erie* and held that a federal court sitting in general diversity-of-citizenship jurisdiction is required to use the choice-of-law rules of its forum state. [Klaxon](#), 313 U.S. at 496-97. The Court's reasoning was sparse, but its decision is best understood as falling into the *Erie* doctrine's second bucket—absent some constitutionally authorized federal law, the Rules of Decision Act kicks in. State choice-of-law rules are state rules of decision under that statute. See [A.I. Trade Fin., Inc. v. Petra Int'l Banking Corp.](#), 62 F.3d 1454, 1464, 314 U.S. App. D.C. 122 (D.C. Cir. 1995) ("A choice-of-law rule is no less a rule of state law than any other"). But if Congress or federal courts invoke some source of constitutional authority to promulgate federal choice-of-law rules, then federal courts would instead find themselves in the first bucket. The Rules of Decision Act, and thus *Klaxon*, would no longer apply.

II. FEDERAL COMMON LAW AFTER *ERIE*

Although *Erie* ended the *general* federal common law, the Supreme Court has been unequivocal in recognizing that the *Erie* doctrine does not entirely displace federal common law. As Justice Brandeis acknowledged in a decision released on the same day as *Erie*, federal courts may still formulate special federal common law on issues of uniquely [*71] federal interest. See [Hinderlider v. La Plata River & Cherry Creek Ditch Co.](#), 304 U.S. 92, 110, 58 S. Ct. 803, 82 L. Ed. 1202 (1938) (concluding that interstate water apportionment "is a question of 'federal common law' upon which neither the statutes nor the decisions of either State can be conclusive"); see also [Boyle v. United Techs. Corp.](#), 487 U.S. 500, 504, 108 S. Ct. 2510, 101 L. Ed. 2d 442 (1988) (noting that federal courts may still formulate federal common law in certain areas implicating "uniquely federal interests").

For example, federal courts may still generate common-law rules when "the policy of the law is so dominated by the sweep of federal statutes and doctrines developed under them

that the legal relations they affect must be deemed governed by federal law." Wright, Miller, & Cooper § 4514. Likewise, it can sometimes "be inferred from congressional or constitutional intent that the federal courts should supply the necessary rule of decision by pronouncing common law to fill the interstices of a pervasively federal substantive framework." *Id.*

To be sure, the "cases in which judicial creation of a special federal rule would be justified ... are ... 'few and restricted.'" [O'Melveny & Myers v. FDIC](#), 512 U.S. 79, 87, 114 S. Ct. 2048, 129 L. Ed. 2d 67 (1994) (quoting [Wheeldin v. Wheeler](#), 373 U.S. 647, 651, 83 S. Ct. 1441, 10 L. Ed. 2d 605 (1963)). Before federal courts develop common-law rules, "a significant conflict between some federal policy or interest and the use of state law must first be specifically shown." [Atherton v. FDIC](#), 519 U.S. 213, 218, 117 S. Ct. 666, 136 L. Ed. 2d 656 (1997) (quoting [*72] [Wallis v. Pan Am. Petrol.](#), 384 U.S. 63, 68, 86 S. Ct. 1301, 16 L. Ed. 2d 369 (1966)). But when that happens, federal courts no doubt have the power to create special federal common law, including choice-of-law rules.

To recap: When Congress or federal courts validly promulgate some federal rule of decision under a source of constitutional authority, then federal law displaces contrary state law. Absent that kind of federal law, then the Rules of Decision Act applies, which commands federal courts to apply state rules of decision. Even after *Erie*, federal courts retain the power to promulgate special federal common-law rules when a strong federal interest requires such rules. Those cases, however, are rare.

III. WHAT CHOICE-OF-LAW RULES GOVERN WHEN FEDERAL COURTS SIT IN BANKRUPTCY?

This leaves our main questions: (1) Does *Klaxon* apply in federal bankruptcy litigation, and if so, (2) may federal courts ever use special federal common-law choice-of-law rules instead?

The circuits are split. The Ninth Circuit limits *Klaxon* to diversity cases, and thus federal courts must apply federal choice-of-law principles in bankruptcy cases. [In re Lindsay](#), 59 F.3d 942, 948 (9th Cir. 1995).¹ The Eighth Circuit has

¹The Fifth Circuit at one time took a similar view but seems more recently to have second-guessed whether it conclusively settled the question. Compare [Wallace Lincoln-Mercury Co. v. Gentry](#), 469 F.2d 396, 400 n.1 (5th Cir. 1972) ("In this federal bankruptcy case the District Court is not obliged to use the choice-of-law methodology of the forum state, Louisiana."), with [Fishback](#)

arguably held that *Klaxon* applies categorically in federal bankruptcy cases without exception. [*In re Payless Cashways*, 203 F.3d 1081, 1084 \(8th Cir. 2000\)](#). I say "arguably" because [*73] that decision passes on the issue in a single conclusory sentence with no further analysis. It is thus hard to conclude that the Eighth Circuit contemplated and rejected the possibility of exceptions. Finally, the Second and Fourth Circuits have held that *Klaxon* applies in federal bankruptcy proceedings unless a strong federal interest justifies creating federal choice-of-law rules as a matter of federal common law. *In re Merritt Dredging Co.*, 839 F.2d 203, 206 (4th Cir. 1988); [*In re Gaston & Snow*, 243 F.3d 599, 605-06 \(2d Cir. 2001\)](#).

I believe that the Second and Fourth Circuits have it right. The Ninth Circuit is wrong because *Erie*, and thus *Klaxon*, is not limited to federal diversity jurisdiction. Whenever federal courts encounter an issue whose resolution is not a matter of federal law, the Rules of Decision Act compels them to use state substantive law, which includes choice-of-law rules. If the Eighth Circuit held that *Klaxon* applies without exception in federal bankruptcy cases, it is wrong as well. Federal courts after *Erie* retain constitutional power to promulgate special federal common-law rules, including choice-of-law rules, when strong federal interests justify doing so. "*Erie* did not fence off a 'local law field' constitutionally immune to federal influence; it was quite [*74] clear that exclusive state power takes up only where federal power leaves off." John Hart Ely, *The Irrepressible Myth of Erie*, 87 HARVARD L. REV. 693, 705 (1974).

A. *Erie* and *Klaxon* Apply Outside General Diversity Jurisdiction.

I believe it is wrong to conclude that *Erie* applies only in federal diversity cases. It applies to any "questions which arise in federal court but whose determination is not a matter of federal law." *Merritt Dredging*, 839 F.2d at 206; see also [*Fagin v. Gilmartin*, 432 F.3d 276, 285 n.2 \(3d Cir. 2005\)](#) (Ambro, J.) (invoking *Erie* to apply New Jersey law in a federal securities-law case brought under federal-question jurisdiction). Given the three-bucket framework I described above, this makes sense. Without on-point federal law, the Rules of Decision Act governs. And that statute does not turn on the basis of federal jurisdiction. *Erie* applies just as much when a court is sitting in its federal-question or bankruptcy jurisdiction as it does in general diversity. See, e.g., [*United*](#)

[*Mine Workers v. Gibbs*, 383 U.S. 715, 726, 86 S. Ct. 1130, 16 L. Ed. 2d 218 \(1966\)](#) (applying *Erie* in pendent jurisdiction cases); [*Griffin v. McCoach*, 313 U.S. 498, 503, 61 S. Ct. 1023, 85 L. Ed. 1481 \(1941\)](#) (applying *Erie* in interpleader cases).²

If we accept that *Erie* applies whatever the basis of federal jurisdiction, then it does not take much more analysis to conclude that the same is true for *Klaxon*. Both *Erie* and *Klaxon* "make clear that federal law may [*75] not be applied to questions which arise in federal court but whose determination is not a matter of federal law." *Merritt Dredging*, 839 F.2d at 206. That includes in bankruptcy. As the Fourth Circuit explained, "[i]t would be anomalous to have the same property interest governed by the laws of one state in federal diversity proceedings and by the laws of another state where a federal court is sitting in bankruptcy." *Id.*

B. Federal Courts May Still Apply Federal Common-Law Choice-of-Law Rules in Bankruptcy Cases When Strong Federal Interests Warrant Doing So.

[*Klaxon*](#) applies in bankruptcy proceedings when addressing state-law questions; that much we agree on. The sole remaining wrinkle is whether federal courts sitting in bankruptcy must *always* apply the forum state's choice-of-law rules when the underlying issue is governed by state law. That is where I part with our concurring colleague. In Judge Krause's view, federal courts sitting in bankruptcy jurisdiction can *never* create federal common-law choice-of-law rules for some combination of five reasons.³

[*Nursery, Inc. v. PNC Bank, N.A.*, 920 F.3d 932, 935 \(5th Cir. 2019\)](#) ("[I]t is an open question in this circuit as to whether courts exercising bankruptcy jurisdiction should apply forum or federal choice-of-law rules.").

² *Vanston Bondholders Protective Comm. v. Green* suggests that federal courts have wide latitude to devise common-law choice-of-law rules in bankruptcy. [*329 U.S. 156, 161-62, 67 S. Ct. 237, 91 L. Ed. 162 \(1946\)*](#). When the Court decided that case, however, the Rules of Decision Act covered only common-law claims, and so it would not have applied to claims created by federal bankruptcy law. Clopton, *supra*, at 2205 n.76 ("For those who believe that the Rules of Decision Act plays an important role in *Erie* cases, that statute exclusively referred to common[-]law claims until two years after *Vanston*"). The Court's mature *Erie* cases came only later. See, e.g., [*Day & Zimmermann, Inc. v. Challoner*, 423 U.S. 3, 96 S. Ct. 167, 46 L. Ed. 2d 3 \(1975\)](#); [*Hanna*, 380 U.S. 460](#); [*Byrd v. Blue Ridge Rural Elec., Inc.*, 356 U.S. 525, 537, 78 S. Ct. 893, 2 L. Ed. 2d 953 \(1958\)](#).

³ To avoid confusion on what follows, Judge Krause in part offers numbered reasons to extend *Klaxon* to the bankruptcy context. Those numbered reasons do not correspond to the numbered reasons I note below for why she believes federal courts in bankruptcy can never create special federal choice-of-law rules.

First, the Bankruptcy Code generally absorbs state laws to define the parties' property interests, and so it follows that state choice-of-law rules must also apply. Conc. [*76] Op. 4-6. Second, the Bankruptcy Code is intended to facilitate the orderly resolution of competing creditors' claims without significantly affecting their underlying entitlements, and federal choice-of-law rules, if allowed, could change the outcome. *Id.* at 6-9. Third, federal courts have limited power to make federal common law. *Id.* at 19-20. Fourth, if there were some reason to create a federal rule of decision in bankruptcy, federal courts would be better off creating a rule of decision rather than a choice-of-law rule. *Id.* at 19-21. And fifth, any federal interest strong enough to generate a federal choice-of-law rule would be explicit in the Bankruptcy Code itself; the absence of choice-of-law rules in the Code means there is never any such interest. *E.g. id.* at 21.

None of the first four arguments supports the claim that federal courts can never create choice-of-law rules in bankruptcy—they support only the lesser claim that state choice-of-law rules will almost always apply. As noted, I agree with that conclusion. My colleague's fifth argument, however, is where we part, as the Supreme Court has recognized that even when bankruptcy otherwise looks to state law, sufficiently strong federal interests may warrant [*77] creating special federal common law.

1. Bankruptcy typically absorbs state law.

Our concurring colleagues observes, rightly, that federal courts sitting in bankruptcy "regularly look to governing non-bankruptcy law—often 'state law'—to determine parties' rights and obligations when the Code does not supply a federal rule." Conc. Op. 4 (citation omitted). If federal courts in bankruptcy used special federal choice-of-law rules that differed from those of the forum state, then the parties' choice of forum (or even the basis of federal jurisdiction) could change their primary rights.

This is true, but it does not establish more than we already know—*Klaxon* should ordinarily apply in bankruptcy. That federal courts confronted with state-law questions should use state choice-of-law rules to avoid jurisdiction-shopping is not an interest unique to bankruptcy. Yet even federal courts sitting in diversity jurisdiction may theoretically formulate special federal common law to protect important federal interests. *See, e.g., Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 84 S. Ct. 923, 11 L. Ed. 2d 804 (1964) (applying act-of-state doctrine in diversity case). And when courts do so, neither *Erie* nor *Klaxon* prevents them from using those rules instead of state law.

At most, that [*78] bankruptcy ordinarily absorbs state

substantive law supports a background presumption that federal courts in bankruptcy will rarely have a good reason to create federal choice-of-law rules. It does not support the broader argument that federal courts can never create special choice-of-law rules in bankruptcy.

2. Bankruptcy should rarely alter the parties' underlying entitlements.

Our concurring colleague next cites "renowned scholars" endorsing the "'creditors'[-]bargain' theory," which "conceptualizes bankruptcy's primary role as a means to resolve the collective action problem posed by self-interested creditors who, absent a centralized insolvency resolution system, would engage in individual collection actions under applicable non-bankruptcy law." Conc. Op. 6. On this view, bankruptcy ordinarily should not alter the parties' underlying entitlements.

I take no position on whether the creditors'-bargain theory is the best interpretation of the Bankruptcy Code as a whole. But even if it were, it would not provide an argument in support of the claim that federal courts sitting in bankruptcy lack the power to create federal choice-of-law rules. As above, this argument at most suggests that [*79] the circumstances are rare under which federal courts could justifiably create federal common law that affects the parties' underlying rights and entitlements. Rare is not never. There may be times when the purpose of the Bankruptcy Code may be best served by special federal choice-of-law rules. It may be unlikely that such a circumstance would arise, but it strikes me as overconfident and unnecessary to disclaim the possibility once and for all.

3. Federal common law is rare.

Judge Krause next observes, again correctly, that "the creation of federal common law is appropriate only in 'situations where there is a significant conflict between some federal policy or interest and the use of state law.'" Conc. Op. 20 (quoting *O'Melveny*, 512 U.S. at 87). "[S]uch a conflict [is] a precondition for federal common law-making." *Id.*

Once again, the premise is true, but it does not support the conclusion. If anything, Judge Krause acknowledges that federal courts *can* create federal common-law rules when there is a sufficiently strong federal interest threatened by state law. As with her argument that bankruptcy should rarely change the parties' underlying rights and interests, this argument mistakes rareness for impossibility. [*80] For common lawmaking to be rare, rather than impossible, courts must be able to do it in at least some cases.

Judge Krause also appeals at times to separation-of-powers principles and cautions against leaving courts "to divine untold rules from some brooding cloud of federal interests." Conc. Op. 10. But this misses the point. No one has suggested that federal courts can or should exercise freewheeling lawmaking power or identify federal interests without congressional guidance. See generally [*CoreCivic, Inc. v. Governor of N.J.*, 145 F.4th 315, 2025 WL 2046488 \(3d Cir. 2025\)](#) (Ambro, J., dissenting) (rejecting that view). But Congress may express federal interests through statute—for example, the Bankruptcy Code—and courts may, in rare circumstances, create federal common law to give effect to those congressionally endorsed interests, particularly when applying state law would undermine Congress's objectives.

4. Federal courts should create substantive rules of decision instead of choice-of-law rules.

Next, Judge Krause claims that it is hard to imagine a case involving a federal interest strong enough to justify federal common law, but not strong enough to justify a substantive rule of decision rather than a choice-of-law rule. In her view, "for the Second and Fourth [*81] Circuits' approach to be correct, ... a federal interest has to fall into the goldilocks zone." Conc. Op. 20-21. Maybe so, but it will not surprise the reader to hear that this also is not an argument against the power of federal courts to create federal choice-of-law rules in bankruptcy. It is an argument for the claim that the circumstances when courts would need to do so are "few and restricted." [*O'Melveny*, 512 U.S. at 87](#) (quoting [*Wheeldin*, 373 U.S. at 651](#)). Judicial humility cautions against making the sweeping claim, in the absence of a case or controversy before us, that no such interest can exist just because one has not presented itself.

5. The Bankruptcy Code contains all relevant federal interests, and a choice-of-law rule is not among them.

The only argument my colleague makes that theoretically supports her claim that federal courts can never develop choice-of-law rules in bankruptcy is that the Bankruptcy Code is a comprehensive and reticulated statutory regime whose text exhausts all potential federal interests that could justify federal common-law rules. The lack of special choice-of-law rules in the Code means, in her view, that there is no such interest.

That premise is faulty because it would apply with equal strength [*82] to the power of federal courts to create substantive common-law rules in bankruptcy. Yet the Supreme Court has rejected that argument: "Property interests

are created and defined by state law ... [u]nless some federal interest requires a different result." [*Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 59 L. Ed. 2d 136 \(1979\)](#) (emphasis added). If the Supreme Court has recognized that strong federal interests can sometimes allow federal courts to devise special rules of decision governing the parties' underlying property interests, I do not know why those interests could not also justify special choice-of-law rules.

Judge Krause claims that *Butner* stands only for the limited proposition that a strong federal interest can justify a federal substantive rule, "not that this federal interest [could] favor[] one state law over others." Conc. Op. 22. But *Butner* does not turn on the difference between substantive law and choice-of-law rules. It supports the broader principle that the selection of state rules of decision in bankruptcy must yield to overriding federal interests. On Judge Krause's view, a sufficiently strong federal interest could warrant a federal substantive rule, but never a choice-of-law rule. The unstated assumption seems to be that there could [*83] not be a strong federal interest that would justify a federal choice-of-law rule that ultimately selects state substantive law instead of a federal substantive rule. But that assumption is also faulty. Federal courts can and do develop federal rules that select state substantive law. See, e.g., [*Kamen v. Kemper Fin. Servs.*, 500 U.S. 90, 111 S. Ct. 1711, 114 L. Ed. 2d 152 \(1991\)](#) (formulating federal common-law rule for demand futility in federal derivative actions that incorporates the corporate law of the state of incorporation); [*Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508, 121 S. Ct. 1021, 149 L. Ed. 2d 32 \(2001\)](#) (formulating federal common-law rule for preclusion in general diversity actions and "adopting, as the federally prescribed rule of decision, the law that would be applied by state courts in the State in which the federal diversity court sits").

Judge Krause insists that cases like [*Kamen*](#) and [*Semtek*](#) are distinguishable because they involved "federal common law rules of decision—not choice-of-law rules—that incorporate the contents of state law." Conc. Op. 23 n.10. But it is unclear how that distinction defends her central claim, which I understand to be that any federal interest strong enough to authorize federal common law can justify nothing less than a uniform substantive rule. If federal courts can sometimes formulate a rule of decision [*84] whose content absorbs the law of the defendant's state of incorporation, then I do not understand why, at least in theory, they could not also formulate a choice-of-law rule that selects the law of the defendant's state of incorporation.

* * *

It is worth stepping back to get a clear view of my concurring

colleague's argument. As I understand her, she does not believe *Erie's* constitutional rule prohibits federal courts from developing special federal common law when the Constitution or federal statute authorizes them to do so. Nor does she believe that federal courts properly exercising their limited common-lawmaking authority lack the power to create a rule of decision that always incorporates the contents of state substantive law. At its core, her argument is merely that she cannot imagine a case in which a federal court would need to create a federal choice-of-law rule in bankruptcy. As she rightly notes, I cannot think of such a case either. Conc. Op. 27 n.11. But this is not an argument that federal courts lack the authority to make choice-of-law rules in bankruptcy.

IV. CONCLUSION

We should not succumb to the "beguiling tendency" to make "[c]onflict-of-law problems ... more complicated [***85**] than they are." [*Vanston*, 329 U.S. at 169](#) (Frankfurter, J., concurring). If *Klaxon's* application in bankruptcy becomes an issue, then I would endorse the sensible, never-say-never approach of the Second and Fourth Circuits: Absent an "overwhelming federal policy [that] requires us to formulate a choice of law rule as a matter of independent federal judgment, we adopt the choice of law rule of the forum state." *Merritt Dredging*, 859 F.2d at 206; see also [*Gaston*, 243 F.3d at 607](#) ("We necessarily limit our holding to cases where no significant federal policy, calling for the imposition of a federal conflicts rule, exists.").

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NEUTRAL CITATION NUMBER: [2025] 2470 (Ch)

Case No: BL-2025-000785

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 30 September 2025

Before:

MR JUSTICE MARCUS SMITH

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

Defendants

Heard on 23 and 24 September 2025

Mr Derrick Dale, KC and **Angus Groom** (instructed by **Enyo Law LLP**) for the **Claimants**
Mr William Willson (instructed by **Signature Litigation LLP**) for the **Second and Third**
Defendants

The First Defendant was not represented and did not appear

Approved Judgment

MR JUSTICE MARCUS SMITH

A. Introduction

1. This Judgment disposes of a Part 8 Claim issued by the Claimants on 24 June 2025. The trial of the claim was expedited by order of Trower J on 25 July 2025, and was heard by me on 23 and 24 September 2025.
2. The matters before me are closely related to a Part 8 Claim heard by and disposed of by Mann J (sitting in retirement) in Cape Intermediate Holdings Ltd v. Protopapas [2024] EWHC 2999 (Ch) in a judgment dated 22 November 2024, which I shall refer to as the “Mann J Judgment”. The terms and abbreviations used in this Judgment, including this term just used, are set out and defined in Annex 1 to this Judgment.
3. As was the case in the Mann J Judgment, the matters before me concern the relationship between proceedings in the courts of South Carolina, USA and the courts in this jurisdiction. By these proceedings, the Claimants seek various declarations and injunctive relief. These are described and ruled upon below. But before I come to the substance of the matters before me, it is necessary to begin with a description of the relevant proceedings and events, both in South Carolina and here. Sections B to N of this Judgment, accordingly, set out and (where necessary) make findings in relation to events and proceedings taking place in the US and the UK, not merely over the last months, but over the last decades. It is only at Section O that the substance of the matters at issue can directly be addressed, so dependent are they on the prior history. The substance of the Part 8 Claim before me is addressed in Sections O to U. Section V describes how I dispose of the matters before me.

B. The Park Proceedings (proceedings commenced in South Carolina)

4. On 4 June 2021 a claim was issued by Ms Isabella Park in South Carolina against a large number of companies. Ms Park claimed to have sustained asbestos-related injuries derived from her husband, who had worked with asbestos: Mann J Judgment/[42]. I shall refer to these proceedings as the “Park Proceedings”. One of the many defendants named in the Park Proceedings was “Cape plc”.
5. On 17 November 2021, the complaint in the Park Proceedings (now being pursued by Ms Park’s son as her personal representative) was amended to add a further party, Cape Intermediate Holdings Ltd or “CIHL”: Mann J Judgment/[42].

C. The “Cape” defendants to the Park Proceedings

6. “Cape plc” is the Third Defendant in these proceedings and Cape Intermediate Holdings Ltd – CIHL – the Second Defendant. They were the only Claimants in the proceedings before Mann J. The Mann J Judgment provides a description of the corporate personalities relevant to the proceedings before him, which I gratefully adopt, and summarise in the following sub-paragraphs:

- i) The Cape group is a group of companies that was formerly involved in asbestos mining and distribution. Those activities have now ceased, and the business of the group centres on the provision of critical industrial services focused on the energy and natural resources sectors. The group employs 12,800 employees across 17 countries. In the year ended 31 August 2023, the group had recorded revenue of £848.4m and a profit of £62.6m: Mann J Judgment/[8].
- ii) CIHL was incorporated in December 1893 under the name “The Cape Asbestos Company”. The Cape group has, historically, been involved in the mining and manufacture of asbestos until the group started to curtail those activities when the associated health risks became more widely known. Originally, CIHL conducted all of the business, but (over time) parts of its business were devolved to other companies in the group: Mann J Judgment/[9].
- iii) By 1961, CIHL was essentially a holding company. In May 1974, it changed its name to “Cape Industries Ltd” and changed it again to “Cape Industries plc” when it re-registered as a public company. There was a further name change to Cape plc in July 1989. In June 2011, the company’s name was changed once more to “Cape Intermediate Holdings plc” and then – on de-registration as a public company in December 2013 – to “Cape Intermediate Holdings Ltd”: Mann J Judgment/[10]. I shall use the term CIHL to refer indifferently to this company whatever name it may have used over its long history.
- iv) Cape plc was – as I have described – a former name of CIHL, abandoned as long ago as June 2011: see [6(iii)]. There is a Cape plc within the Cape group, but this is a company incorporated in Jersey in 2011: (Mann J Judgment/[1]). Mann J referred to this company as “Cape Jersey”) in preference to the term Cape plc (Mann J Judgment/[1]) because it appears that there is no intention, in the South Carolina proceedings, to bring claims against Cape Jersey, and that the reference to Cape plc is a reference to CIHL, but by an older (and now inaccurate) name: Mann J Judgment/[1], [138].
- v) Because of the confusion surrounding the constitution of the South Carolina proceedings, it is necessary (i) to say something about Cape Jersey and (ii) to stress that it was entirely right and proper that Cape Jersey was a claimant in the proceedings before Mann J and is now a defendant before me. The uncertainties in the constitution of the South Carolina proceedings render it necessary that the protection of the English courts (to the extent that such protection is appropriate) be considered not merely in relation to CIHL but also in relation to Cape Jersey.
- vi) Cape Jersey was formed in 2011. By virtue of a scheme of arrangement in that year it became the holding company of the Cape group, and has remained so ever since. It was incorporated in Jersey, but listed on the London Stock Exchange, with a tax residence in Jersey and Singapore: Mann J Judgment/[11].

- vii) In 2017, the share capital of Cape Jersey was acquired by Altrad UK Ltd (the Second Claimant), an English company which is part of the Altrad group. That group is a very substantial group, employing over 60,000 employees worldwide. Its parent company is Altrad Investment Authority SAS (the First Claimant in these proceedings), incorporated in France. The founder and President of the Altrad group is Mr Mohed Altrad (the Seventh Claimant in these proceedings): Mann J Judgment/[11].

D. Constitution of the Park Proceedings in South Carolina

7. As I have noted (at [6(iv)]), the reference to Cape plc in the Park Proceedings appears to be an erroneous reference to CIHL. The matter is not completely clear, because the manner in which “Cape plc” is said to be liable is not clearly articulated in the Park Proceedings, and the naming of the parties in those (and other proceedings) is much less clear than it ought to be. Nevertheless, the First Defendant to these proceedings – Mr Protopapas, whose role I shall come to describe – has indicated that the reference to “Cape plc” is intended to refer to CIHL. Of course, Mr Protopapas cannot actually speak for the plaintiffs in either the Park Proceedings or any other proceedings originated against the Cape group in the US.
8. I proceed on the basis that Cape Jersey has been joined to these proceedings (as it was to the proceedings before Mann J) for the avoidance of doubt because of the uncertainties in the constitution of the South Carolina proceedings. Cape Jersey has never been served in those proceedings and (again for the avoidance of any doubt) has not submitted to South Carolina jurisdiction.
9. So far as CIHL is concerned, (i) it is contended that the Park Proceedings have been properly served on CIHL, (ii) which contention is disputed by CIHL, but (iii) in any event CIHL has never responded to the process and has never submitted to the jurisdiction: Mann J Judgment/[42].

E. Apparent conclusion of the Park Proceedings

10. Chief Justice Toal is a retired Chief Justice in the State of South Carolina, but she retains her title. Like Mr Justice Mann (Mann J Judgment/[3]), I will refer to the judge by her title as Chief Justice Toal.
11. By an order of Chief Justice Toal dated 1 December 2021, the Park Proceedings were listed for trial on 20 June 2022. However, on 3 June 2022, the court was informed by counsel that the Park Proceedings had been fully resolved. The terms of that resolution are unknown to CIHL, which was not involved. There has been no trial of the Park Proceedings in the South Carolina Courts, and it is difficult to understand how (as they clearly are: see the receivership order considered further below) the Park Proceedings are continuing in the South Carolina Courts: Mann J Judgment/[43].

F. The receivership application in the South Carolina courts

12. On 6 March 2023, the plaintiff in the Park Proceedings issued a “Receivership Motion” seeking to appoint a receiver over CIHL: Mann J Judgment/[44]. According to the terms of the South Carolina Code (set out by Mann J at Mann J Judgment/[46]), “a receiver may be appointed (i) when a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights and, in like cases, of the property within this State of foreign corporations and/or (ii) in such other cases as are provided by law or may be in accordance with the existing practice”.
13. The jurisdictional basis for the receivership motion against CIHL was said to be the presence and operation in the US of an entity referred to as “NAAC”. On that basis, the appointment of a receiver over CIHL was justified for all purposes, including but not limited to marshalling available assets of CIHL and its subsidiaries, successors and assigns: Mann J Judgment/[45]. NAAC stands for the “North American Asbestos Corporation”, a directly and wholly owned subsidiary of CIHL established by CIHL in October 1953. NAAC was incorporated in the State of Illinois in the US to assist in the marketing of asbestos in the US, to act as a liaison between Egnep Pty Ltd (the principal asbestos mining company in the Cape Group until 1979: Mann J Judgment/[9]) and another Cape company (Casap) on the one hand and US purchasers of asbestos on the other, and to purchase and re-sell asbestos into the US market on its own account: Mann J Judgment/[12].
14. From the early 1970s, NAAC was the defendant in numerous product liability claims. It eventually ran out of insurance cover and was liquidated and then dissolved in 1978. It has never been restored: Mann J Judgment/[13].
15. Continental Productions Corporation or “CPC” took over from NAAC on its liquidation: Mann J Judgment/[32(ii)].
16. In the Mann J Judgment/[47], Mann J recorded:
 - i) That the fundamental factual basis for appointing a receiver was the assertion that CIHL was operating through NAAC and CPC in the US. The Mann J Judgment refers to the confusion in the South Carolina proceedings regarding the entities within the Cape Group that are implicated in the Receivership Motion. It seems to me clear that the Receivership Motion can only (in the first instance) be directed to CIHL and not any other Cape group entity, including in particular Cape Jersey. That is because: (i) NAAC was a subsidiary of CIHL and not of Cape Jersey; (ii) Cape Jersey was incorporated (in 2011: see [6(iv)]) after NAAC was dissolved (in 1978: see [14]). Accordingly, I shall refer to CIHL from hereon, but any orders or declarations that I make will have to reflect the confusing way in which the South Carolina proceedings have been framed.
 - ii) That the receivership was not merely sought against CIHL, but also over (i) its subsidiaries and global affiliates; and (ii) its successors and assigns, with an objective of “marshalling” the assets of CIHL: see

Mann J Judgment/[47]. Thus, although the nexus between NAAC and CIHL is the initial basis for the Receivership Motion, the Receivership Motion then builds on that relationship to stretch to many other entities in the Cape group.

17. The receivership order sought in the Park Proceedings was made on 16 March 2023, without a hearing and without any substantive judgment stating the reasons for the making of the order: Mann J Judgment/[48]. I shall refer to it as the “Receivership Order”. The order is appended to the Mann J Judgment.
18. Mr Peter Protopapas (the First Defendant in these proceedings) was appointed the receiver by way of the Receivership Order.

G. Exorbitant nature of the Receivership Order

19. As I shall come to describe, for the reasons given in the Mann J Judgment, Mann J declined to recognise the Receivership Order. This is an important holding for the purposes of this Judgment, and for that reason it will be necessary to summarise below (hopefully at not too great a length) the terms of the Mann J Judgment in this regard. Of course, the Mann J Judgment stands and should be read in its own right, but a summary is nevertheless necessary and appropriate in this Judgment. Of course, nothing in this Judgment can or is intended to detract from anything said by Mann J in the Mann J Judgment.
20. Mann J also observed that the Receivership Order – leaving on one side the question of recognition – was a remarkably wide one for any court to make:
 - i) It would appear from the terms of the Receivership Order itself and from what Mr Protopapas had said that the Receivership Order has a “long-arm” effect, that is to say it can apply extra-territorially beyond the South Carolina territorial jurisdiction. Mann J observed (Mann J Judgment/[134]):

...The powers given to the receiver are apparently very long-arm and would be capable of being exercised worldwide, including this jurisdiction. He has not disavowed any intention so to use them. They are oppressive and have already been used to the disadvantage of CIHL. CIHL could seek to challenge them in South Carolina, but is, for very good reason, not willing to do acts which would, or might, amount to a submission to the jurisdiction when it laboured long and hard 35 years ago to demonstrate that it was not subject to it...

Receivership orders generally without more do not have extraterritorial effect, as has been recognized in e.g. Re Whitaker Clark & Daniels Inc (a decision of the US Court of Appeals (Third Circuit)); Re Asbestos Corporation Ltd (a decision of the Superior Court in the Province of Quebec, Canada); and Masri v. Consolidated Contractors International (UK) Ltd (No 2) [2008] EWCA Civ 303 at [28] (Court of Appeal, England). The approach of most jurisdictions is that receiverships operate locally and where a receiver seeks to take steps in a foreign jurisdiction, (i) the receivership order must expressly so state and (ii)

the receiver will have no power to act even so unless their title to act has been recognized by the foreign jurisdiction in question: see, e.g., Robinson and Walton, Kerr & Hunter on Receivership and Administration, 21st ed (2020), chapter 7.

- ii) Mann J expressed the view that Mr Protopapas, at least, was seeking to deploy the Receivership Order “with the object of marshalling assets in some sort of less than complete insolvency proceedings”: Mann J Judgment/[135]. If this is the way the Receivership Order is intended by Mr Protopapas to operate, then it runs contrary to generally accepted rules of corporate insolvency, which would indicate (i) an English jurisdiction (for CIHL is incorporated in England and this is where it has its centre of business) and (ii) that South Carolina is an inappropriate jurisdiction (because not only is CIHL not incorporated there, it does no business there either).

H. Mr Protopapas as the First Defendant in these proceedings

- 21. It is convenient, at this point, to deal with this court’s jurisdiction over Mr Protopapas. Mr Protopapas is the First Defendant in these proceedings. The Part 8 Claim initiating these proceedings was issued on 24 June 2025, permission for service out of the jurisdiction on Mr Protopapas was granted by Master Pester on an expedited basis by orders dated 25 June 2025 and 2 July 2025, and service was duly effected on Mr Protopapas on 2 July 2025.
- 22. Mr Protopapas has not acknowledged service nor filed any evidence. Nor has he sought to contest jurisdiction in these proceedings or to aver, in these proceedings, that this court has no jurisdiction over him.
- 23. I therefore hold that this court has personal jurisdiction over Mr Protopapas.
- 24. There is one point that (had he appeared before me on the question of jurisdiction) Mr Protopapas might have deployed, which is the provision at the end of the Receivership Order which provides:

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.

- 25. Properly, the Claimants in these proceedings drew this provision to my attention. Clearly, Mr Protopapas has not consented to these proceedings being brought against himself (or, for that matter, CIHL). The provision in the Receivership Order reflects the doctrine articulated in Barton v. Barbour, 104 US 126 (1881)), on which Mr Protopapas would doubtless rely. The Claimants contended, and I agree, that this “Barton” provision in the Receivership Order does not assist Mr Protopapas for reasons given by Mann J (Mann J Judgment/[124]):

One of the points that he [Mr Protopapas, in the South Carolina proceedings] takes is that the “Barton doctrine” requires that the permission of the court be obtained before suing a receiver in respect of his acts, and that therefore no

action can be taken against him without the permission of the South Carolina court. Judge Wilkins [a US-law expert retained by the Claimants before Mann J] has given his opinion on the extent of the application of this doctrine, and his report is uncertain on the extent of its application. However, assuming it does apply in South Carolina, I consider that it does not stand in the way of the present proceedings because the present proceedings are governed by English law, and the whole premise of the proceedings is that the receiver has no recognition under English law. Accordingly it does not recognize the office which would otherwise give him protection. It is therefore not a bar to the relief claimed against him in these proceedings.

26. As I shall come to describe, Mann J held that the Receivership Order was not capable of recognition in this jurisdiction. That being the case, this non-recognition is a complete answer to the “Barton” provision. Accordingly, the “Barton” provision cannot affect my holding at [23] as to this court’s personal jurisdiction over Mr Protopapas.

I. The Tibbs Proceedings

27. On 5 April 2023, a Mr and Mrs Tibbs commenced proceedings in the South Carolina courts (the “Tibbs Proceedings”). The claims advanced are similar to those made in the Park Proceedings and a similarly broad, scattergun, approach has been taken to the naming of defendants. One of these defendants is “Cape plc”: Mann J Judgment/[51]. Precisely the same confusion as to defendant identity arises here. For the reasons I have given, it is appropriate to refer to CIHL as the primary Cape group target, and not Cape Jersey.
28. The Tibbs Proceedings have, apparently, been dismissed by consent: Mann J Judgment/[52]-[53]. Like the Park Proceedings, it is thus difficult to understand how the Tibbs Proceedings can continue. Yet (as I shall describe) that is what appears to be happening.

J. Third party claims

29. Relying upon the Receivership Order made in the Park Proceedings, Mr Protopapas, on 30 June 2023, initiated (by way of a “summons”) third party proceedings on behalf of CIHL within the Tibbs Proceedings (the “Third Party Claim”). The Third Party Claim is advanced (to quote from the Mann J Judgment/[54]) “...against a number of companies, including a number of Cape group companies...The Cape related companies included Altrad companies (the group that had acquired the Cape group in 2017), and the Sparrows entities that were brought within the group much more recently (despite its being hard to see how they can be held responsible for acts done before they were brought into the group). Mr Mohed Altrad, founder of the Altrad group, is also sued personally...”.
30. A number of points need to be made in relation to the Third Party Claim:
- i) Subsequent to the Mann J Judgment, Mr Protopapas produced a draft amended Third Party Claim, to which I propose to refer. A motion to amend the Third Party Claim is due to be heard by Chief Justice Toal

at a pre-trial hearing due to take place on 6 October 2025: see the Notice of Pretrial Hearing in the Tibbs Proceedings.

- ii) It is the Third Party Claim that provides the basis for my statements (in [11] and [28]) that both the Park Proceedings and the Tibbs Proceedings are (in some way) on-going, contrary to the plaintiffs in those proceedings not actually pursuing their claims. The Park Proceedings are on-going because Mr Protopapas is, in the Tibbs Proceedings, deploying the Receivership Order made in the Park Proceedings. To the eyes of an English lawyer this would appear to be irregular, but this is a matter of South Carolina procedural law on which I cannot and do not comment further.
- iii) Self-evidently, by virtue of the Third Party Claim, the Tibbs Proceedings are progressing, but again in what would appear to be an irregular way. Whilst this is again a procedural matter for the South Carolina courts, it is a matter that is of some relevance to the matters before me in these proceedings, and it is therefore necessary to say more.
- iv) Receivers are agents of the company in respect of which they are appointed, and they have a basic duty “to act in its proper interests” (Mann J Judgment/[120]). In this case, Mr Protopapas appears to be doing the very reverse of this. As I have described, the plaintiffs in the Tibbs Proceedings do not have a judgment in their favour against CIHL, and do not appear to be pursuing their claims against CIHL. The Tibbs Proceedings have been dismissed by consent (Mann J Judgment/[52]). The trial before Chief Toal is not the trial of the plaintiff’s allegations in the Tibbs Proceedings, but the trial of the Third Party Claim. It is – self-evidently – extremely odd for a third party claim to be tried in advance of the main action. This is very much “putting the cart before the horse”.
- v) What is more, the “defence” pleaded by Mr Protopapas on behalf of CIHL in the Tibbs Proceedings contains a denial in these terms (Mann J Judgment/[53]):

To the extent that it is not inconsistent with the allegations of the Third Party Complaint, Cape hereby denies each and every allegation contained in the Amended Complaint.

Since the Third Party Claim effectively accepts that CIHL is liable to the plaintiffs in the Tibbs Proceedings and seeks to reflect those allegations or pass them on to the defendants to the Third Party Claim the “defence” of CIHL is no defence at all, but in fact a disguised set of admissions made contrary to the interests of CIHL in circumstances where the plaintiffs to the action are not pursuing their claims. It is to be inferred that Mr Protopapas is seeking to hide the fact that he is acting in disregard of his duties as receiver, for the allegations made in the Third Party Claim are extreme and extremely damaging to CIHL (as well as to the Claimants in these proceedings). Thus, by way of

example, the opening paragraph of the unamended Third Party Claim states:

This lawsuit seeks to finally hold accountable three groups of Third Party Defendants (including their predecessors in interest) who are responsible for the sale and use of asbestos or asbestos containing products throughout the United States, including 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 of Third Party Defendants have wreaked havoc in the United States, padding 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 is their reckoning.

Perhaps belatedly recognizing that this immoderation is inconsistent with a receiver's duties, Mr Protopapas now seeks to delete this passage from the Third Party Claim and to substitute for it language that is less (but nevertheless still) immoderate.

- vi) Mann J's conclusions as to Mr Protopapas' conduct is one in which I respectfully concur (Mann J Judgment/[120]):

This is a case where the law of England and Wales, where CIHL is incorporated, plainly will not recognise the receivership. It is also quite apparent that the receiver will not himself recognise that fact, and that he is pursuing his receivership vigorously and beyond what one would normally expect of a receiver. He has purported to make admissions, and to run a positive case, which is positively damaging to the legitimate interests of the company over whose assets he has been appointed, despite the fact that one of his obligations is to act in its proper interests. Instead, he has been utilising his appointment as a vehicle which some of the Third Party Defendants have aptly described as a "crusade". All this is without the consent of the legitimately appointed board of CIHL and, for the reasons given above, is potentially and unjustifiably damaging to the legitimate interests of the company...

K. “Single economic unit”: the factual basis for the Receivership Order and the Third Party Claim

31. The various parties in what can loosely be called the Cape group were described at [6] (including in particular the status and position of CIHL) and [13]-[16] (dealing with NAAC and CPC). An understanding of the legal and factual relationship between CIHL and NAAC (and, to a limited extent, CPC) is critical to understanding the basis for both the Receivership Order and the Third Party Claim. The basis for making of the Receivership Order was briefly described in [16(i)]. It is now necessary to expand on this, and to explain how the same point drives the Third Party Claim.
32. Both the Receivership Order and the Third Party Claim are founded upon a theory that NAAC is part of a “single economic unit” that includes not only CIHL but later acquirers of the Cape group like Altrad UK Ltd (the Second Claimant), Altrad Investment Authority SAS (the First Claimant) and Mr Altrad (the Seventh Claimant).
33. These parties, and their acquisition of the share capital in Cape Jersey in 2017, were described in [6(vii)]. It is now appropriate, before coming to the single economic unit point, to describe the nature of the acquisition of Cape Jersey in greater detail. This is best done by quoting from the evidence of Mr Alcock in “Alcock 1”/[63]-[69]:

[63] In 2017, Altrad UK acquired Cape Jersey through a public tender offer, which resulted in Cape Jersey becoming a wholly owned subsidiary of Altrad UK.

[64] In late 2016 the Altrad Group entered discussions with the board of directors of Cape Jersey about a potential acquisition of the Cape Group.

[65] 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 Jersey was a publicly listed company on the London Stock Exchange. The terms of the PTO are set out in a Bid Conduct Agreement dated 7 July 2017. In this regard, the PTO stated that:

[65.1] The cash offer for each share in Cape plc was 265 pence, which valued the entire issued share capital at £332.3 million.

[65.2] The cash consideration would be financed by acquisition debt provided by BNP Paribas SA.

[66] As part of the Bid Conduct Agreement, the Altrad Group confirmed an intention to procure that each member of the Cape Group honours its obligations under, or in connection with, the Cape Scheme.

[67] 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 Jersey

(the 90% trigger entitled Altrad to complete a “squeeze out” of the minority who either did not consent or did not respond).

[68] As a result of this transaction, Altrad UK purchased Cape Jersey (and so the Cape Group as a whole) in an arm’s length transaction and at an arm’s length price.

[69] In operational terms, the companies within the Cape Group have their own boards of directors and corporate governance.

34. I was shown a great deal more evidence than this summary, including in particular the rest of Alcock 1 and also “Oren 1” and “Alcock 2”, as well as voluminous exhibits to these statements. On the basis of this evidence – which is helpfully encapsulated in the paragraphs quoted at [33] – I make the following findings of fact:

- i) The Altrad group has itself had no involvement in the sale or distribution of asbestos or asbestos-related products in any part of the world, including in particular in the US. That is implicit in Alcock 1, but is explicitly stated in Oren 1/[54].
- ii) The acquisition of the shares in Cape Jersey by Altrad UK Ltd was on an arms’ length basis, where a commercial or market price for those shares was agreed between a willing buyer and willing sellers (or at least 90% willing sellers, based on Alcock 1/[67] as quoted above).
- iii) The value paid by Altrad UK Ltd reflected or took into account the Cape group’s exposure to asbestos claims. Every arms’ length corporate acquisition involves an assessment (as part of the due diligence process) of the liabilities (actual and potential) of the to-be-acquired company. Altrad UK Ltd’s acquisition of the shares in Cape Jersey expressly involved an evaluation of the Cape group’s exposure to asbestos claims, which had been the subject of significant (and binding on me) judicial consideration in England. It will be necessary in due course to refer to and describe (i) the decision of Scott J and the Court of Appeal in Adams v. Cape Industries [1990] Ch 433 (“Adams v. Cape”), (ii) the “Cape Scheme” referred to in Alcock 1/[68] and (iii) the sanctioning of the Cape Scheme by David Richards J in an order dated 9 June 2006 (the “David Richards J Order”). For the present I confine myself to finding that the acquisition of the shares in Cape Jersey and the price that was paid for those shares was informed by each of Adams v. Cape, the Cape Scheme and the David Richards J Order. Doubtless there were many other factors informing the decisions of Altrad UK Ltd, but these three factors were all (both individually and in the aggregate) material to the decisions of Altrad UK Ltd and the wider Altrad group.

35. The basis for the making of the Receivership Order against CIHL was its corporate relationship with NAAC. Thus, the Receivership Motion states (at 4-5):

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. 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.”

36. The basis for the allegations against the various “Cape” defendants in the Third Party Claim is similarly NAAC. Referring to the proposed draft amendments to the Third Party Claim (which represent the latest expression of Mr Protopapas’ thinking, albeit unapproved by the court as yet):

Today, the assets of Cape are effectively with others. This case seeks declarations to establish that the historical entities intertwined with Cape – Anglo American plc, ESAB, Altrad, and certain De Beers entities – are together responsible for the historical and ongoing fraud perpetrated on the US market. Such a finding will allow the Receiver to administer the full assets of Cape, including all insurance coverage for these amalgamated entities. This litigation, squarely within the Receiver’s charge, ultimately will marshal assets for the payment of legitimate claims brought by US workers against Cape. This Receivership, and particularly this third party action, represents the last opportunity for these entities to be held to account for their fraud on the US market. [at 8-9]

...

23. Specifically, on information and belief, each of the third party defendants is subject to this Court’s jurisdiction because each entity is part of an amalgamation with, part of a single business enterprise with, or an alter ego of North American Asbestos Company (“NAAC”), over which this court has personal jurisdiction. NAAC purposefully availed itself of the South Carolina market through direct sales of asbestos fiber into South Carolina...

37. The basis for the alleged liability of the Claimants in these proceedings who are defendants to the Third Party Claim is the same as the basis on which the Receivership Order was made: namely the operation of NAAC in the US. This conclusion accords with the similar conclusion of Mann J: Mann J Judgment/[55]. Although Mr Protopapas uses a variety of labels to tie CIHL and the Claimants in these proceedings to NAAC (“amalgamation with”, “single business enterprise”, “alter ego”) I shall use the label “single economic unit” compendiously to describe the various ways in which the operations of

NAAC in the US are used as a device to ensnare in US litigation CIHL and the Claimants in these proceedings.

L. Declarations and orders made by Mann J in the proceedings before him

38. The trial of the Part 8 Claim before Mann J sought declaratory and injunctive relief as to Mr Protopapas' status as receiver as a matter of English law. As Mann J noted (Mann J Judgment/[6]), "...it is not part of my function to sit as some sort of appellate court from the South Carolina judge, and overrule her decisions...". Mann J's duty was to consider the position under English law and (as appropriate) ensure that the claimants before him (CIHL and Cape Jersey) received due process and justice according to the laws of this jurisdiction.
39. By an order dated 22 November 2024 (the "Mann J Order"), Mann J made the following declarations and orders:

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 Richmond ("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 paragraphs 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 of behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and the Tibbs Claim...and has or 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...
 9. Mr Protopapas be restrained from continuing to prosecute the 3P Complaint...
 10. Mr Protopapas be restrained from purporting to act of 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.
40. The reasons for the Mann J Order are fully set out in the Mann J Judgment. That Judgment stands for itself and it would be inappropriate for me to repeat Mann J's reasoning in any detail. However, a summary is both appropriate and necessary for the purposes of this Judgment:
- i) The basis for making the Receivership Order against CIHL was the operation of NAAC (and possibly CPC) in the US in circumstances where CIHL was operating through NAAC and CPC.
 - ii) This precise question was brought before the English courts and resolved by them in Adams v. Cape when a Mr Adams sought to enforce a default judgment in his favour obtained in the Federal Courts of Texas based on injuries said to have been caused by asbestos. One of the defendants against whom Mr Adams sought to enforce was CIHL: Mann J Judgment/[18].
 - iii) A court of a foreign country (here: the Texas courts) has jurisdiction to give a judgment in personam capable of enforcement or recognition as against the person against whom it was given where (in the only case relevant here: Mann J Judgment/[19]) the person against whom the judgment was given was, at the time the proceedings were instituted, present in the foreign country. For a natural person, this requires physical presence in the territory, and for a legal person it requires a fixed place of business in the territory: Mann J Judgment/[18].
 - iv) After a trial on the merits, Scott J held in Adams v. Cape that CIHL did not have a fixed place of business in the US, whether by itself or through the operations of NAAC or CPC: Mann J Judgment/[32]. As a consequence, there was no basis upon which Mr Adams could enforce

his judgment in default against CIHL. It is to be stressed that these findings were findings of fact made by an English court of competent jurisdiction after an extensive trial on the merits. None of these factual findings was successfully challenged by Mr Adams in the Court of Appeal: Mann J Judgment/[33].

- v) Mann J identified a fundamental inconsistency between the (unreasoned) Receivership Order and the (evidence and merits-based) decision in Adams v. Cape (Mann J Judgment/[90]:

...At the heart of the receiver's case in his Third Party proceedings, and underpinning his appointment, is the proposition that NAAC and CPC were essentially to be treated as being one with CIHL for the purposes of founding liability and getting into the rest of the group. That encapsulation is flat contrary to the findings of the courts in Adams v. Cape when they found that they were not effectively one entity, there was no justification for piercing the corporate veil and that CIHL did not operate through NAAC or CPC. CIHL did not control NAAC in any meaningful sense, and the participation of CPC was not a ruse or a sham. The receiver (and the applicant for the receivership, who may well have been motivated and prompted by the receiver) simply ignores this and advances the opposite case.

- vi) All matters concerning the constitution of a corporation are governed by the law of the place of incorporation: Mann J Judgment/[93]. That in the case of CIHL is England. But the question before Mann J was not whether an English court could appoint a receiver over CIHL, but whether and to what extent a foreign receiver, such as Mr Protopapas, will be recognised in this jurisdiction: Mann J Judgment/[93]. In order to recognise a foreign receivership, the English court must be satisfied of a sufficient connection between the company and the jurisdiction in which the foreign receiver was appointed so as to justify recognition of the foreign court's order, on English conflict principles, as having effect outside such jurisdiction: Mann J Judgment/[94], citing Schemmer v. Property Resources Ltd [1975] 1 Ch 273.

- vii) Mann J held (Mann J Judgment/[98]):

Applying the "sufficient connection" principle, it is quite clear that the South Carolina receivership would not, should not and could not be recognised here for all the reasons which led to the US judgment in Adams v. Cape not being enforceable here. All the facts which led to the conclusion that CIHL did not have a presence in the US in that case mean that there is no sufficient connection for the purposes of recognition of the receivership. As a matter of private international law, CIHL did not have a presence in South Carolina (or anywhere in the United States) at the time which was relevant in Adams v. Cape and it has not had one since. Nothing in the facts alleged in any of the court documents relating to the receivership demonstrate a change in the facts between then and now. They tend to ignore the facts as found at great length in Adams v. Cape.

41. Mann J concluded (Mann J Judgment/[100]:

...in the present case, the receiver is not currently seeking recognition of his receivership in this jurisdiction, so this decision is not in the nature of an actual refusal of recognition. Rather, mine is a decision at a higher level to the effect 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. This goes to the question of the relief that should be afforded to the claimant, which I deal with in a later section of this judgment. As will appear, the fact that the receiver is not seeking recognition in this jurisdiction does not mean that this judgment is pointless.

42. Mann J then explained why the orders I have set out at [39] were appropriate in this case. I do not need to set out his reasoning in this regard, which appears at Mann J Judgment/[113] ff.

43. Drawing the threads together:

- i) Recognition of a foreign receivership such as that made in the Receivership Order requires a “sufficient connection” between the company over whom a receiver has been appointed and the jurisdiction in which the appointment is made.
- ii) In this case for the reasons articulated by Mann J in Mann Judgment/[101] ff (on what may loosely be called “judicial estoppel”) the facts found in Adams v. Cape were binding on CIHL and Mr Protopapas (as soi-disant receiver) – see Mann Judgment/[110].
- iii) Applying the law (i.e. the “sufficient connection” test) to the facts (i.e. the absence of a connection between NAAC and CIHL found in Adams v. Cape) Mann J was compelled to conclude that there was no sufficient connection to justify the recognition of the Receivership Order.

M. The Cape Scheme and the David Richards J Order

44. The judgment in Adams v. Cape – after a hearing on the merits, and affirmed on appeal before the Court of Appeal – is that the Cape group had so structured its corporate affairs as to ring-fence the rest of the group from the conduct, in selling asbestos in the US, of its US subsidiaries. The effect was that only NAAC and CPC were liable as defendants in the US. NAAC has long since closed its doors (see [14]) – and I anticipate the same is true of CPC.

45. It is worth noting that various plaintiffs in the US successfully recovered from NAAC in regard to asbestos-related claims. The payments made by NAAC to such plaintiffs are described by Scott J in Adams v. Cape at [1990] Ch 433 at 446-449. To the extent that Mr Protopapas insinuates that US plaintiffs have been deprived of all compensation, that is wrong. NAAC has paid significant monies (including to the exhaustion of its insurance cover) to such plaintiffs.

The problem for such US plaintiffs is that NAAC has run out of money and was dissolved long ago (see [14]).

46. Mr Protopapas chooses to characterise this shortfall in the assets of NAAC as a form of “moral fraud”, but in reality it is no such thing. The question of whether a parent is liable for the acts of its subsidiary is a question of fact and law, and one with which the US courts are very familiar. On 3 December 1984, over 500,000 people in the vicinity of the Union Carbide India Ltd pesticide plant in Bhopal, India were exposed to the toxic gas methyl isocyanate. The accident caused around 16,000 deaths and over half a million injuries. The Indian company responsible for the accident was majority-owned by a US corporation, the Union Carbide Corporation. Although civil cases seeking compensation were filed in the US, they were dismissed by the US courts on the basis that the Indian company was a separate entity and that there was no “single economic unit” to enable US proceedings against US parents.
47. It was precisely this question that was before the English courts in Adams v. Cape. As I have described, Mr Adams was seeking to enforce a judgment in default obtained in his favour against NAAC in Texas against CIHL in England. The Court of Appeal held that NAAC (and indeed CPC) were not a “single economic unit” and that Mr Adams’ enforcement action must therefore fail. In dismissing Mr Adams’ appeal, the Court of Appeal said this in Adams v. Cape ([1990] Ch 433 at 544:

Mr Morison [leading counsel for Mr Adams] submitted that the court will lift the corporate veil where a defendant by the device of a corporate structure attempts to evade (i) limitations imposed on his conduct by law; (ii) such rights of relief against him as third parties already possess; and (iii) such rights of relief as third parties may in the future acquire. Assuming that the first and second of these three conditions will suffice in law to justify such a course, neither of them apply in the present case. It is not suggested that the arrangements involved any actual or potential illegality or were intended to deprive anyone of their existing rights. Whether or not such a course deserves moral approval, there was nothing illegal as such in Cape arranging its affairs (whether by the use of subsidiaries or otherwise) so as to attract the minimum publicity to its involvement in the sale of Cape asbestos in the United States of America. As to condition (iii), we do not accept as a matter of law that the court is entitled to lift the corporate veil as against a defendant company which is the member of a corporate group merely because the corporate structure has been used so as to ensure that the legal liability (if any) in respect of particular future activities of the group (and correspondingly the risk of enforcement of that liability) will fall on another member of the group rather than the defendant company. Whether or not this is desirable, the right to use a corporate structure in this manner is inherent in our corporate law. Mr Morison urged on us that the purpose of the operation was in substance that Cape would have the practical benefit of the group’s asbestos trade in the United States of America without the risks of tortious liability. This may be so. However, in our judgment, Cape was in law entitled to organise the group’s affairs in that manner and (save in the case of AMC to which special considerations apply)

tom expect that the court would apply the principle of Saloman v. A Saloman & Co Ltd [1897] AC 22 in the ordinary way.

The plaintiffs submitted (paragraph 7 of their notice of appeal) that the motive of the defendants in setting up the arrangements regarding NAAC, AMC and CPC as revealed in the documentary evidence were “consistent only with an acceptance by Cape that they were present in the United States through NAAC and CPC”. We think there is no substance in this point. These arrangements at most indicated an apprehension on the part of the defendants that they might be held to be so present and a desire that they should not be. They involved no admission or acceptance of such presence.

48. It is worth stressing (as Mann J did – Mann J Judgment/[39]) that the Court of Appeal reached this conclusion after a careful consideration of the facts that had been before the trial judge (Scott J):

The Adams v. Cape notice of appeal listed 25 findings of fact (some of them multiple) which it was said Scott J should have made but did not make, and which were said to go to the main questions in the case. The Court of Appeal dealt with that part of the appellant’s case in a separate Appendix to its judgment, again not published in the report. The Appendix runs to 40 pages and I will not reproduce it here. It can appropriately be summarised by saying it is a thorough consideration of each of the “facts” in question, and it either accepts them as being true but not affecting the decisions on the main points or rejects them as being inconsistent with actual findings of Scott J as being unsustainable on the evidence. Overall it shows the comprehensiveness of the case advanced by Mr Adams, the comprehensiveness of its consideration and the clarity and firmness of the rejection of that case. When put together with the first instance and appeal judgments, it effectively covers the same ground as the claims as to the effect of relationships and trade made in South Carolina and firmly rejects them on the facts and the attempt to tie the claims to the US in terms of jurisdiction.

49. The unequivocal position (i) under English law (ii) on the facts of this case (iii) as found on the merits by a competent court of record in this jurisdiction and affirmed on appeal is that US plaintiffs are confined in their remedies to claims against NAAC as opposed to the wider Cape group.
50. The Cape Scheme described by Mann J in Mann J Judgment/[14]-[17] is predicated on the correctness and bindingness of the Court of Appeal’s decision in Adams v. Cape. As a direct result of the decision in Adams v. Cape the Cape Scheme is limited to the compensation of UK claims against UK entities like CIHL.
51. The “Scheme of Arrangement” by which the Cape Scheme was implemented is very clear on this point. There is no need to set out the Scheme in detail. It is sufficient to refer to the definition, in the Scheme of Arrangement, of “Asbestos Personal Injury Claim”, which means:

...any claim (not being an Asbestos Contribution Claim or an Excluded Claim) against one or more of the Scheme Companies, whenever brought, of

which the governing law is the law of any of England and Wales, Scotland or Northern Ireland brought either:

- (a) by an individual resident in the United Kingdom on the Record Date; or
- (b) by an individual not resident in the United Kingdom on the Record Date but whose claim is attributable or is alleged to be attributable to his exposure to Asbestos in the United Kingdom in the course of his employment by any Scheme Company or any Additional Company,

in either case for debt, damages or other relief in respect of death or personal injury or in respect of a Financial Dependency Claim arising out of or connected in any way with exposure to Asbestos attributable, or alleged to be attributable, wholly or in part to any act or omission on the part of any Scheme Company (or for which any Scheme Company is liable or is alleged to be liable) occurring prior to the Record Date...

- 52. To be clear, neither NAAC nor CPC is a “Scheme Company” within the meaning of the Scheme of Arrangement. The Scheme of Arrangement articulating the Cape Scheme was approved by the David Richards J Order.
- 53. The Scheme of Arrangement is still running (Mann J Judgment/[14]). Indeed, it remains subject to the supervision of this Court, and (as I have described) the Altrad group committed to supporting the Cape Scheme when the group acquired Cape Jersey.

N. The Settlement Agreement

- 54. Proceedings and procedural steps based upon the Receivership Order continue in the US. The adverse effects of these steps as described by Mann J (Mann J Judgment/[113] ff) thus continue, notwithstanding the Mann J Order (which has been disregarded by Mr Protopapas).
- 55. On 11 April 2025, a “Settlement Agreement” was concluded between (i) the targets of the litigation in the US, as evinced by the Park Proceedings and the Tibbs Proceedings), namely CIHL and (for the avoidance of doubt) Cape Jersey and (ii) various the defendants to the Third Party Claim brought by Mr Protopapas. The parties to the Settlement Agreement are (without differentiation) referred to by me as the “Parties”.
- 56. Following a series of detailed recitals (which I do not set out) the Settlement Agreement provides for the compromise and release of any and all disputes subsisting between the Parties and to dismiss all proceedings in respect of the “Allegations”. The Allegations are broadly defined as meaning:

...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 on the right to pierce the corporate veil of CIHL.

57. The Settlement Agreement is governed by English law and there is an exclusive jurisdiction clause in favour of England.

O. The claims in the present proceedings

58. By this Part 8 Claim, the Claimants and the Second and Third Defendants seek the following declarations and orders. I quote from the draft order that was prepared by these parties, as presented to me before the commencement of oral submissions as a convenient way to set out what orders are sought. Whether I am prepared to make these orders is, of course, an altogether different matter. The operative parts of the draft order read as follows:

IT IS DECLARED THAT

1. The Settlement Agreement has been entered into by lawfully authorised officers of the Claimants and of the Cape Parties and is lawfully binding on the parties to it.
2. 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 of any such claims).
3. 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

4. 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).
5. 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 CIHL, including (but without prejudice to the generality of the foregoing) in any Settled Claims.

AND IT IS ORDERED THAT

6. CIHL shall not take any step in the proceedings in the Third-Party Complaint (or in relation to any Settled Claims).
 7. 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.
 8. 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.
59. The orders and declarations sought in this draft can be grouped under the following heads:
- i) Declarations as to the effect of the Settlement Agreement: see paragraphs 1 to 3 of the draft order.
 - ii) Declarations as to the status or powers vesting in (respectively) CIHL and Mr Protopapas so far as their power to act for CIHL is concerned: see paragraphs 4 and 5 of the draft order.
 - iii) Orders obliging a party (either CIHL or Mr Protopapas) to do or not do something: see paragraphs 6 to 8 of the draft order.
60. I shall consider these groups of orders and declarations in the order set out above, beginning with the declarations as to the effect of the Settlement Agreement.

P. The power in this court to make declarations

61. This court has a discretionary jurisdiction to grant declaratory relief under section 19 of the Senior Courts Act 1981 and rule 40.20 of the English Civil Procedure Rules or “CPR”. In Rolls Royce plc v. Unite the Union [2009] EWCA Civ 387 at [120], the Court of Appeal summarised the approach to be taken in regard to the granting of declarations as follows:
- i) The power of the court to grant declaratory relief is discretionary.
 - ii) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant.
 - iii) Each party must, in general, be affected by the court’s determination of the issues concerning the legal right in question.
 - iv) The fact that the claimant is not a party to the relevant contract in respect of which a declaration is sought is not fatal to an application for a declaration, provided that it is directly affected by the issue.

- v) The court will be prepared to give declaratory relief in respect of a “friendly action” or where there is an “academic question” if all parties so wish, even on “private law” issues. This may particularly be so if it is a “test case”, or it may affect a significant number of other cases, and it is in the public interest to decide the issue concerned.
- vi) However, the court must be satisfied that all sides of the argument will be fully and properly put. It must, therefore, ensure that all those affected are either before it or will have their arguments put before the court.
- vii) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised? In answering that question it must consider the other options of resolving this issue.

I shall refer to these points as Rolls Royce Principles (i) to (vii).

Q. Is this a case where it is appropriate for this court to consider making declarations?

(i) The effect of the declarations (if granted)

- 62. Generally speaking, a court will consider whether the declarations sought are correct in law before turning to consider whether the court should exercise its discretion to make those declarations. In this case, because the declarations are so intrusive into the processes of a foreign court, it is appropriate to consider the question of whether the court should exercise its discretion to make declarations at all first.
- 63. The first declaration sought (paragraph 1 of the draft order: the Settlement Agreement has been lawfully entered into) can be regarded as merely an articulation of a specific consequence of the Mann J Judgment and the Mann J Order. That is not the case so far as the second declaration sought (paragraph 2 of the draft order: the claims on which the Third Party Claim rests have been compromised/released/settled) nor of the third declaration sought (paragraph 3 of the draft order: the Claimants are under no liability in respect of the Third Party Claim) are concerned. Quite clearly, the declarations have the effect of extinguishing the very subject-matter of the dispute that will be considered by Chief Justice Toal at the trial of Third Party Claim. Given that the declarations have such an effect on proceedings in another jurisdiction, they must be closely considered and be justifiable as a matter of international law, and having due regard to questions of comity.
- 64. Although there are considerations that point in different directions, I have reached the firm conclusion that (assuming the points of law articulated by the Claimants are correct) it is appropriate for me to make the declarations sought. I set out the various factors that have informed this conclusion in the paragraphs below.

(ii) The absence of Mr Protopapas

65. The fact that Mr Protopapas failed to appear before me is a relevant factor against the granting of declarations, but one of limited weight. As I have described (see Section H), Mr Protopapas is properly before the court (i.e. this court has personal jurisdiction over him). Mr Protopapas has not sought to challenge this court's jurisdiction.
66. Of course, I have not had the benefit of argument from Mr Protopapas, but I have a very good sense of the points that Mr Protopapas would make if he were before me from my consideration of the papers in the South Carolina proceedings, in particular (but not limited to) the Receivership Motion, the Receivership Order and the Third Party Claim. The Claimants and the Second and Third Defendants have been assiduous in putting before me the sort of points that Mr Protopapas might be inclined to take. I am satisfied (see Rolls Royce Principle (vi)) that all sides of the argument have been fully and properly put in the written and oral submissions that I have received.

(iii) A “friendly action”

67. Mr Protopapas' absence does mean that the hearing before me had aspects of a “friendly action” (Rolls Royce Principle (v)). The Claimants and the Second and Third Defendants were united in urging that I make the declarations sought. As Rolls Royce makes clear, there is no reason why a declaration may not be given in a “friendly action”. What matters are the reasons why the declarations are sought. I will be coming to such considerations in due course. I consider the fact that these proceedings might be classed as a “friendly action” to be entirely neutral as to whether the declarations should or should not be made.

(iv) Comity

68. The strongest indicator against declaratory relief is the fact that the declarations (as I have described) are materially interfering with the processes of a foreign court. The reaction in the US to the Mann J Order has been strong. In Welch v. Advance Auto Parts, the Supreme Court of South Carolina said (of the Mann J Order):

...The English court went so far as to issue an injunction against the Receiver, purporting to bar him from action even in South Carolina.

The English court reasoned that English law may restrain a foreign court to prevent “injustice”. It quoted a decree that gave as an example a foreign court whose standard for personal jurisdiction was so wide as to be against accepted international law principles. The English court then proceeded to note that the powers given to the Receiver stretched worldwide. It reasoned that the English company could not risk fighting its case in South Carolina because it would then be submitting to the jurisdiction here.

Shocking to American eyes, the English court enjoined the Receiver “from acting or purporting to act for or on behalf of” the English company in default, even in a South Carolina court.

We appreciate that the laws of different countries may differ, even countries that have a special relationship with each other. Our respect and spirit of commit – not to mention our duty to follow the law – does not permit us to enjoin a court of another sovereign nation from interfering with our rulings on the propriety of a Receivership. As it would with any court, such a ruling by us would be in the words of Lord Scarman, a *brutum fulmen* (an empty noise).

69. English courts do not interfere lightly with the jurisdiction of foreign courts. Although the law in this area has mainly been stated in the context of anti-suit injunctions, the points made in these cases have as much force in the case of a declaration that interferes with the processes of a foreign court. Thus, in a statement that has been approved many times in the English courts, Hoffmann J said this in Re Maxwell Communications Corp plc (No 2) [1992] BCC 757 at 762:

In the last 20 years, however, there has been a shift in the attitude of the English court to foreign jurisdictions...Today the normal assumption is that an English court has no superiority over a foreign court in deciding what justice between the parties requires and in particular that both comity and common sense suggest that the foreign judge is usually the best person to decide whether in his own court he should accept or decline jurisdiction, stay proceedings or allow them to continue. The principle, as Lord Scarman said in Laker...is that:

“[The] equitable right not to be sued abroad arises only if the inequity is such that the English court must intervene to prevent injustice.” (emphasis added)

In other words, there must be a good reason why the decision to stop the foreign proceedings should be made here rather than there. Although the injustice which can justify an anti-suit injunction must inevitably be judged according to English notions of justice, it will usually be assumed that a similar quality of justice is available in the foreign court. So the fact that the proceedings would, if brought in England, be struck out as vexatious or oppressive in the domestic sense, will not ordinarily in itself justify the grant of an injunction to restrain their prosecution in a foreign court. The defendant will be left to avail himself of the foreign procedure for dealing with vexation or oppression: Midland Bank plc v. Laker Airlines Ltd [1986] 1 QB 689 per Lawton LJ at 700.

It is the exceptional cases in which justice requires the English court to intervene which cannot be categorised or restricted. But a theme common to certain recent decisions is that the foreign court is, judged by its own jurisprudence, likely to assert a jurisdiction so wide either as to persons or to subject-matter that to English notions it appears contrary to accepted principles of international law. In such cases the English court has sometimes felt it necessary to intervene by injunction to protect a party from the injustice of having to litigate in a jurisdiction with which he had little, if any,

connection, or in relation to subject-matter which had insufficient contact with that jurisdiction, or both. Since the foreign court is per hypothesi likely to accept jurisdiction, this is a decision which has to be made here if it is to be made at all. These are cases in which the judicial or legislative policies of England and the foreign court are so at variance the comity is overridden by the need to protect British national interests or prevent what it regards as a violation of the principles of customary international law.

70. Applying these considerations by analogy to the discretion that I have in regard to declarations, it is incumbent upon me to set out why I must, in this case, set aside the important question of comity and (assuming they are well founded) make the declarations sought.
- (v) Reasons why the South Carolina proceedings must be interfered with: interests of the Claimants and the Second and Third Defendants
71. The shock expressed by the Supreme Court of South Carolina in Welch v. Advance Auto Parts at the infringement of comity apparently committed by the Mann J Order would (in my judgment) abate on a proper understanding of the facts and matters lying behind the Mann J Order. These facts and matters, in my judgment, entirely justify the Mann J Order. They also – together with other facts and matters relevant to these proceedings – justify the jurisdiction to make declarations that I am minded to exercise, provided of course the declarations sought are otherwise sound in law.
72. The Receivership Order is (for the reasons stated in [19]-[20]) exorbitant in nature. It has a “long-arm” effect that is highly unusual in receivership orders. Indeed, the Receivership Order appears to be more like a half-baked form of insolvency process, operating in clear disregard of internationally accepted standards of corporate insolvency. The reference in the draft amended Third Party Claim (see [36]) to administering and marshalling the full assets of Cape is particularly troubling.
73. Mr Protopapas has asserted a connection between NAAC and CIHL so as to justify the making of the Receivership Order in terms which are both bombastic and immoderate and very far from the objective parsing of the facts that a court is entitled to expect. The Receivership Motion (see [35]) makes sweeping and subjective allegations in regard to this connection.
74. It is a matter of serious concern that Mr Protopapas has failed to draw to the attention of Chief Justice Toal (or, if he has, Chief Justice Toal has failed to consider the point) the significance of the decision of the English Court of Appeal in Adams v. Cape. It appears to be common ground between the English and the South Carolina jurisdictions that some form of connection must exist between the company over which a receiver is appointed and the jurisdiction ordering the receivership. That being the case, a decision on the merits of a court of competent jurisdiction deciding this very issue of “connection” ought to have been placed before Chief Justice Toal by Mr Protopapas. The decision of the Court of Appeal in Adams v. Cape could then have received the careful and respectful consideration by the South Carolina court at the outset. That would have afforded the opportunity at the relevant

time (i.e. when the Receivership Order was made) to have considered the comity issues involved in this case.

75. In these circumstances, one can see exactly why CIHL and Cape Jersey took the view that the court in South Carolina was purporting to exercise a jurisdiction so wide as to be an affront to notions of comity between courts of cognate jurisdiction. For the reasons outlined in the Mann J Judgment, and summarised in this Judgment, the Mann J Order was entirely justified and (if I may respectfully say so) the only order that Mann J could have made in these circumstances.
76. Moreover, there are a number of procedural concerns in regard to the conduct of the South Carolina receivership (in addition to the failure properly to consider the question of “connection”) so as to justify CIHL and Cape Jersey in applying to the English courts for protection. They are clearly described in the Mann J Judgment and I have summarised them in this Judgment. Specifically:
- i) Mr Protopapas appears to be acting in breach of the basic duties of a receiver: see [30(iv)]. Indeed, Mr Protopapas is expressing himself with an immoderation that is regrettable, to say the least: see the content of the Third Party Complaint set out at [30(vi)].
 - ii) Mr Protopapas is litigating the Third Party Claim without having established whether any liability exists against CIHL. Neither the claim in the Park Proceedings nor the claim in the Tibbs Proceedings has resulted in any judgment on the merits as against CIHL: see [11] and [28].
 - iii) Mr Protopapas is not properly defending proceedings brought against CIHL. I have referred to the disingenuous “defence” of CIHL in the Tibbs Proceedings at [30(v)]. This is no defence, but rather a conduit by which the immoderate assertions made in the Third Party Claim can operate as disguised admissions by CIHL vis-à-vis the plaintiffs in the Tibbs Proceedings: see [30(vi)].
 - iv) It is not understood how the Receivership Order made in the Park Proceedings can be deployed in the Tibbs Proceedings: see [30(ii)].
77. The Mann J Order has not been respected in South Carolina: instead, it has been characterised as a *brutum fulmen*, an empty noise: see [68]. Thus, it is no surprise that Mr Protopapas is pressing on with the Third Party Claim and that the courts in South Carolina are indulging him in this regard. This is quite plainly the sort of exceptional case considered in Re Maxwell Communications Corp plc (No 2) (see [69]) where the English court must intervene.
78. The progression of the Third Party Claim is doing real harm to the Claimants. They are faced with a claim – the Third Party Claim – which overtly threatens their financial standing, makes reputationally damaging (and unfounded) allegations, and threatens the Cape Scheme by which a class of victims of

asbestosis related disease are being compensated. This is a case where there is a real and present dispute which the proposed declarations will assist to resolve (Rolls Royce Principle (ii)), where all of the parties before the court will be affected by the court's determination (Rolls Royce Principle (iii)) and where all are party to the relevant contract (viz, the Settlement Agreement, Rolls Royce Principle (iv)).

79. I consider the declarations sought to be an extremely effective way of controlling the conduct of Mr Protopapas: for the declarations, if made, will have the effect of extinguishing the very claims Mr Protopapas seeks to advance by way of the Third Party Claim. I bear in mind that – as yet – the Claimants have received no protection from the English court. I consider that if the declarations can properly be made, they should for this reason alone be made. Although the Second and Third Defendants have the benefit of the Mann J Order, I consider that the declarations, if made, will confer substantial and necessary additional protection on these parties.
80. For these reasons, I conclude that if they can appropriately be made, I should exercise my discretion to give the declarations sought, notwithstanding the interference with the South Carolina proceedings that those declarations would give rise to.
81. So far, I have been considering the important need to protect the position of the Claimants and of the Second and Third Defendants. There is, however, an even weightier consideration in favour of exercising the discretion to make the declarations (if they can appropriately be made), to which I now turn.

(vi) Protecting the integrity of the English jurisdiction

82. One of the justifications for the grant of an anti-suit injunction is that such an injunction can serve to protect the jurisdiction of the English court. That justification applies with equal force to the declarations sought in the present case. This rationale in support of anti-suit injunctions is well-established in English law: see, for example, Raphael, The Anti-Suit Injunction, 2nd edition at [5.32]-[5.34].
83. The liability issues raised by the Third Party Claim constitute a collateral attack on the decision of the Court of Appeal in Adams v. Cape. As I have described, the question of “single economic unit” that lies at the heart of the Third Party Claim, whereby it is alleged that the Claimants and CIHL can be dragged into US proceedings by virtue of their connection with NAAC, is a matter that has already been decided by the English Court of Appeal in Adams v. Cape. The Third Party Claim thus constitutes the clearest possible collateral attack on a prior decision of a court of competent jurisdiction and thus constitutes a clear abuse of court process: see e.g. the decisions in Hunter v. Chief Constable of the West Midlands Police [1982] AC 529; Arthur JS Hall & Co v. Simons [2002] 1 AC 615; Secretary of State for Trade and Industry v. Bairstow [2003] EWCA Civ 321; Laing v. Taylor Walton (a firm) [2007] EWCA Civ 1147; Allsop v. Banner Jones Limited [2021] EWCA Civ 7. Although these cases concerned collateral attacks by the bringing of later English cases by a party, the anti-suit jurisdiction shows that the same

principle operates where the collateral attack arises out the bringing of foreign proceedings.

84. The Court of Appeal not only articulated the law in regard to “single economic unit” but (much more importantly for present purposes) decided on the facts that NAAC and CIHL were not part of the same “single economic unit”. That point remains true of CIHL, and is a fortiori so far as subsequent joiners of the group (such as the Altrad parties) are concerned. The effect of the factual decision in Adams v. Cape is that liability for US claims for asbestos related disease begins and ends with NAAC. The re-litigation of this factual point in South Carolina is an attack on the English jurisdiction which the declarations sought will, if granted, protect.

(vii) Conclusion

85. I conclude that (i) if they are soundly based and (ii) subject to reviewing the drafting, the declarations sought by the Claimants should be granted. I now turn to the logically anterior question of whether the declarations sought are soundly based in law. Obviously, I can only make the declarations if I find them to be properly and soundly based.

R. Are the declarations properly and soundly based?

(i) General points as to validity

86. A settlement agreement is a contract, and so the ordinary principles of contract law apply. Consideration must exist. The agreement must be complete and certain. The parties to the contract must intend to create legal relations. Having considered the Settlement Agreement, it clear (as a matter of English law) that consideration exists in the mutual releases and other promises (going in all directions between the parties) made. The Settlement Agreement is formally drafted, clear on its face, and expressed to be entire. It is thus complete, and certain and intended to create legal relations.

87. I have dealt with these points quickly because (i) they are obvious (far greater detail on the law appears in the written submissions of the Claimants, which I accept) and (ii) because although Mr Protopapas has asserted that “no consideration” was given for this “farcical and self-dealing agreement”, the assertion is unparticularised and unevidenced. The mutuality of the releases in the Settlement Agreement clearly (as a matter of English law) constitutes consideration. I reject the suggestion that the Settlement Agreement is ineffective for any of the (unparticularised) reasons advanced by Mr Protopapas.

(ii) Points taken by Mr Protopapas

88. It is more important to focus on the points that Mr Protopapas would take had he chosen to appear before me. There are three such points:

- i) First, and most obviously, Mr Protopapas would contend that the Settlement Agreement was concluded without authority because the

Receivership Order deprived CIHL of any power or authority to enter into the Settlement Agreement. It is very possible that he would assert that, in concluding the Settlement Agreement, the board of CIHL was usurping his functions.

- ii) Secondly and thirdly, Mr Protopapas has asserted in the South Carolina proceedings that the Settlement Agreement is both a “sham” and a “fraudulent device”. In their written submissions, the Second and Third Defendants summarise Mr Protopapas’ position in the following terms (D2/D3 Written Submissions/[89]):

In his recent court filings, Mr Protopapas has “doubled-down” on his previous position and has made a series of further allegations about the Cape Parties which are simply inaccurate...By way of example:

- (1) First, he maintains that the commencement of the CIHL Declaratory Claim (and the proceedings/judgment arising out of it [which resulted in the Mann J Judgment] are a further example of “moral fraud” (which justify the continuance of the Receivership Order). This is misconceived (and seriously misunderstands/misstates the clear legal principles and purpose upon which the Mann Judgment is based).
- (2) Second, he alleges that CIHL is a “shell” company which acts as a mere conduit (or “pass through entity”) to channel dividends/profits to its ultimate parent, AIA SAS (which is registered/located in France) – such that it is insolvent/at imminent risk of insolvency (such that it should be the subject of an insolvent receivership). Again, this is completely misplaced. The risk to the Cape Parties’ financial position – and any potential cause of their insolvency -is Mr Protopapas (and his unprincipled/unreasonable conduct, and any other claims which his conduct has encouraged).

He asserts, based on these sorts of points, but without any particularity, that the Settlement Agreement is both a “device” and a “sham”. I will consider these three points in turn below.

(iii) Authority to conclude the Settlement Agreement

89. I do not understand Mr Protopapas to be contending that absent the Receivership Order the Settlement Agreement was concluded without proper authority. However, the Parties in the evidence before me demonstrated that the Settlement Agreement – apart from the question of the Receivership Order, to which I will come – was duly and properly concluded by persons with the authority to do so: see the Claimants’ written submissions/[145]-[151]; the written submissions of the Second and Third Defendants/[82]-[87], as well as the references to the evidence set out in these paragraphs, which I accept.
90. The significance of the Receivership Order on those otherwise authorised to enter into the Settlement Agreement is shortly dealt with. The Mann J

Judgment and the Mann J Order make clear, in a manner binding on me, that the Receivership Order is not capable of recognition in this jurisdiction. As is plain from the detailed consideration I have given to the Mann J Judgment and the Mann J Order in this Judgment, I should say (to the extent that it matters) that I am completely satisfied that the Mann J Order was correctly made.

(iv) Sham

91. In Snook v. London and West Riding Investments Ltd [1967] 2 QB 786 at 802, Diplock LJ defined a “sham” as “acts done or documents executed by the parties to the “sham” which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create”.
92. I do not consider it to be seriously arguable that the Settlement Agreement is a “sham” in this sense. I am in no doubt that the Parties’ intentions are exactly in line with the effect of the Settlement Agreement, namely to extinguish the causes of action on which the Third Party Claim relies. I am sure that the Parties’ intentions are exactly in line with what the Settlement Agreement in fact and in law achieves.
93. If, as I rather suspect, Mr Protopapas is using the term “sham” to make the point that the Settlement Agreement is done without authority because of the Receivership Order, the “sham” point makes more sense. But, for the reasons I have given, the point is a bad one. The Receivership Order is entirely ineffective before this court, applying (as it must) the relevant law, which is English law as the law determining CIHL’s corporate functions and operation.

(v) Device

94. Mr Protopapas is obviously using this term pejoratively, to suggest that the Settlement Agreement is a part of the “moral fraud” whereby persons entitled to compensation from the Cape group are having that compensation illegitimately taken away. This is no more than another example of the collateral attack being made on Adams v. Cape. The fact is that the Cape group is properly compensating those entitled by way of the Cape Scheme. It is Mr Protopapas who is – through his conduct in the US – causing prejudice to CIHL, the Cape group, the Altrad group and anyone seeking to claim under the Cape Scheme.
95. I reject any suggestion that the Settlement Agreement is an illegitimate device. It is in fact an attempt by the Parties to mitigate the consequences of Mr Protopapas’ conduct in the US.

(vi) Other points

96. It is difficult to prove a negative. The Claimants assert (see their written Submissions/[152] ff) that there is no other basis for seeking to impeach the Settlement Agreement. I have considered the matter, and for what it is worth,

can identify no arguable basis for contending that the Settlement Agreement is of no effect.

97. I hold that the Settlement Agreement has the effect of extinguishing the claims articulated on behalf of CIHL in the Third Party Claim.

S. Conclusion in relation to declaratory relief

98. I conclude that declarations along the lines of those set out at paragraphs 1 to 3 of the draft order (see [58]) can and should be made.

T. Declarations at paragraphs 4 and 5 of the draft order

99. I can deal with these two declarations (set out at [58]) very quickly in light of the foregoing analysis:

- i) For the reasons that I have given, it is appropriate to exercise this court's power to make declarations, even though they have (and are intended to have) extraterritorial effect and interfere (and are intended to interfere) with the processes of a court in another jurisdiction. The courts of this jurisdiction – like the US courts – place an extremely high value on comity between courts of different jurisdictions. However, those considerations are comprehensively outweighed by the need to ensure that (i) the interests of this jurisdiction, (ii) the interests of the Parties, the Claimants, the First and Second Defendants and those of the wider Cape and Altrad groups and (iii) the interests of existing and future claimants under the Cape Scheme are protected.
- ii) The declarations at paragraphs 4 and 5 of the draft order really do no more than articulate the consequences of the Mann J Judgment and the Mann J Order. The proceedings before Mann J involved only CIHL and Cape Jersey, and only they have the benefits of the Mann J Order. It is appropriate, given their interests, that the benefits of the Mann J Order extend to the Claimants, and I can see no harm in these declarations being repeated in the case of CIHL and Cape Jersey.

100. Accordingly, I am prepared to make declarations along the lines of these framed at paragraphs 4 and 5 of the draft order.

U. The injunctions at paragraph 6, 7 and 8 of the draft order

101. I would be prepared to make the order at paragraph 6 of the draft order, save for the prudential considerations that I raised with the Parties during the course of the hearing, and which they accepted. Paragraph 6 seeks to enjoin CIHL, preventing it from taking any step in the proceedings in the Third Party Claim.
102. To be clear, I consider that I have the jurisdiction to make an order of this sort, but it seems to me that the draft order at paragraph 6 should not be made, for pragmatic reasons. Mr Protopapas has shown a disregard of comity between nations, failing even to draw the implications of the anterior Cape litigation (specifically Adams v. Cape, the Cape Scheme and the David Richard J Order)

to the proper attention of the South Carolina courts. I have every expectation that Mr Protopapas will continue in this conduct, and there is every risk that he will cause CIHL to take steps in the proceedings in South Carolina. Were that to occur, there would be a potential for arguing that CIHL was in breach of the very order that I am being invited to make by the Claimants. The capacity for mischief is considerable. Whilst I have every sympathy for the parties before me, this is an order I am not prepared to make, but for this reason only.

103. Paragraphs 7 and 8 seek to enjoin Mr Protopapas from taking steps in the South Carolina proceedings. The effect of these orders is (at least indirectly) to inform the courts in South Carolina as to what is now required of Mr Protopapas. Mr Protopapas is, after all, the beneficiary of the Receivership Order, and there is obviously an expectation in the South Carolina courts that he act pursuant to that receivership. This is, therefore, a highly unusual form of anti-suit injunction because it is maintained not against an ordinary litigant but against a receiver appointed by a foreign court. Nevertheless, it is my conclusion that these orders should be made:

- i) Mr Protopapas is properly before this court – although he has chosen not to exercise his right to be heard. Notwithstanding his choice in this regard, this court has personal jurisdiction over him.
- ii) I do not need to rehearse the reasons why an anti-suit injunction is appropriate in this case, because those reasons are exactly the same as the remedy of the declarations at paragraphs 1-3 of the draft order. I refer to my earlier consideration.
- iii) Whereas the declarations regarding the Settlement Agreement extinguish the subject-matter of the Third Party Claim, the injunctions at paragraphs 7 and 8 merely personally restrain Mr Protopapas from continuing with a claim that actually has no substance, because it has been extinguished by the Settlement Agreement.

That is why these orders are less aggressive than the orders I have already stated I am prepared to make. I have considered whether – pragmatically – it is painful to make these orders in support of the other orders I am prepared to make. It seems to me that these orders do appropriately reinforce each other, and so I conclude that these orders too ought to be made along the lines of those articulated in the draft order at [58].

- iv) Mr Protopapas is properly before this court – although he has not chosen to exercise his right to be heard. Notwithstanding his choice in this regard, this court has personal jurisdiction over him.
- v) I do not need to rehearse the reasons why an anti-suit injunction is appropriate in this case, because those reasons are exactly the same as the somewhat more aggressive remedy of the declarations at paragraphs 1-3 of the draft order. I refer to my earlier consideration.
- vi) Whereas the declarations regarding the Settlement Agreement extinguish the subject-matter of the Third Party Claim, the injunctions

at paragraphs 7 and 8 merely personally restrain Mr Protopapas from continuing with a claim that actually has no substance, because it has been extinguished by the Settlement Agreement.

- vii) That is why these orders are less aggressive than the orders I have already stated I am prepared to make. I have considered whether – pragmatically – it is pointful to make these orders in support of the other orders I am prepared to make. It seems to me that these orders do appropriately reinforce each other, and so I conclude that these orders too ought to be made along the lines of those articulated in the draft order at [58].

V. Disposition

104. For the reasons, I have given, I am going to make an order along the lines of the draft order, except for paragraph 6 of the draft.

Annex 1

TERMS AND ABBREVIATIONS USED IN THE JUDGMENT

([2] of the Judgment)

Adams v. Cape	The decision of Scott J and the English Court of Appeal in <u>Adams v. Cape Industries</u> [1990] Ch 433	[34(iii)]
Alcock 1	Evidence of Mr Alcock in these proceedings.	[33]
Alcock 2	Evidence of Mr Alcock in these proceedings.	[34]
Allegations	A term of art defined in the Settlement Agreement.	[57]
Cape Jersey	Another – and better – reference to Cape plc.	[6(iv)]
Cape plc	A claimant in the proceedings before Mann J and the Second Defendant in the proceedings before me. For reasons given in [6(iv)], Cape plc is better referred to as Cape Jersey.	[6]
Cape Scheme	A compensation scheme based upon the findings and holdings made in <u>Adams v. Cape</u> .	[34(iii)]
CIHL	The England-incorporated company, whose full title is Cape Intermediate Holdings Ltd. CIHL was a claimant in the proceedings before Mann J and the Second Defendant in the proceedings before me.	[5]
CPC	A company whose full title is Continental Productions Corporation.	[15]
CPR	The English Civil Procedure Rules.	[61]

David Richards J Order	An order of David Richards J approving the scheme of arrangement whereby the Cape Scheme is implemented.	[34(iii)]
Mann J Judgment	Judgment of Mann J (sitting in retirement) dated 22 November 2024 in <u>Cape Intermediate Holdings Ltd v. Protopapas</u> [2024] EWHC 2999 (Ch).	[2]
Mann J Order	Mann J’s order dated 22 November 2024, made consequential on the Mann J Judgment.	[39]
NAAC	An Illinois-incorporated company and former subsidiary of CIHL, whose full title is North American Asbestos Corporation.	[13]
Oren 1	Evidence of Mr Oren in these proceedings.	[34]
Park Proceedings	Proceedings commenced in the courts of South Carolina by Ms Isabella Park.	[4]
Parties	The parties to the Settlement Agreement.	[55]
Receivership Motion	A motion made by the plaintiffs in the Park Proceedings seeking the appointment of a receiver over “Cape plc”.	[12]
Receivership Order	The order made by Chief Justice Toal consequential upon the Receivership Motion.	[17]
Rolls Royce Principles	Principles as to the granting of declarations stated in the decision of <u>Rolls Royce plc v. Unite the Union</u> [2009] EWCA Civ 387.	[61]
Scheme of Arrangement	The scheme of arrangement implementing the Cape Scheme	[51]
Settlement Agreement	An agreement between the Claimants and the Second and Third Defendants in these proceedings causing the causes of action relied upon in the Third Party Claim to be extinguished.	[55]
Third Party Claim	A claim initiated by summons by Mr Protopapas in the Tibbs Proceedings, relying upon the Receivership Order made in the Park Proceedings.	[29]
Tibbs Proceedings	Proceedings commenced by Mr and Mrs Tibbs in the South Carolina courts.	[27]



Claim No.: BL-2025-000785

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

BEFORE THE HON MR JUSTICE MARCUS SMITH

BL-2025-000785

30 SEPTEMBER 2025

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

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 24 June 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 in those proceedings of Mr Justice Mann, sitting in retirement, 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 Settlement Agreement has been entered into by lawfully authorised officers of the Claimants and of the Cape Parties and is lawfully binding on the parties to it.
2. 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 of any such claims).
3. 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

4. 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).
5. 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 CIHL, including (but without prejudice to the generality of the foregoing) in any Settled Claims.

AND IT IS ORDERED THAT

6. 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) against the Claimants in the name of or on behalf of CIHL.
7. 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.

Liberty to apply

8. The parties shall have liberty to apply for further or related relief if necessary.

Costs

9. The Claimants, Mr Protopapas and the Cape Parties shall (if so advised) file and serve written submissions on the issue of costs by 4pm on Tuesday 7 October 2025.

Service

10. The Claimants shall serve this order and the judgment of the Court (the “**Order and Judgment**”) on the Defendants.
11. The Claimants may serve the Order and Judgment on Mr Protopapas by email to pdp@rplegalgroup.com or otherwise in accordance with the service orders of Master Pester dated 25 June 2025 and 2 July 2025, and service by any of these methods shall

be regarded as valid and sufficient service for all matters of English law and procedure (but without prejudice to the position as a matter of South Carolina law and procedure).

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 ~~AA April~~ ¹⁹ 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

<https://www.wsj.com/articles/asbestos-bankruptcies-test-reach-of-frequent-south-carolina-receiver-2fb3b665>

BANKRUPTCY

Asbestos Bankruptcies Test Reach of Frequent South Carolina Receiver

Asbestos defendants and their insurers use bankruptcy to fend off Peter Protopapas's pursuit of insurance assets

By Akiko Matsuda

Sept. 22, 2025 5:30 am ET | **WSJ PRO**



The South Carolina Supreme Court has said that a receiver's scope of authority shouldn't include a company's "boardroom" activities. PHOTO: JAMES POLLARD/ASSOCIATED PRESS

A South Carolina plaintiffs' lawyer who is frequently appointed as a receiver for asbestos manufacturers sued in the state is having his authority tested, following the defendants' efforts to dislodge him through federal bankruptcy filings.

Asbestos Corp. Ltd., a subsidiary of the Quebecois natural resource firm Mazarin, recently filed for bankruptcy protection in the U.S. to try to retake control over its insurance assets from Peter Protopapas, a South Carolina personal-injury lawyer acting as its receiver. Protopapas was given control in 2023 over ACL's insurance assets and its defense of dozens of asbestos-related lawsuits filed in the state court, 3d Supp. App. 108

one of some 20 asbestos defendants for which he was appointed as receiver in recent years by the same South Carolina judge.

In general, receivers are appointed to preserve the value of assets in a legal dispute. But Protopapas “has taken steps that resulted in increased liability and damages for ACL, rather than protecting ACL’s interests and those of its stakeholders,” a company representative said in recent court papers in New York. The same year Protopapas was appointed, he settled five injury lawsuits that awarded plaintiffs an amount that was 45 times higher on average than ACL’s nationwide settlement average in 2023, according to ACL.

ACL, acting at the request of its insurers, recently petitioned a U.S. court to extend its bankruptcy protections to insurers that have been sued directly by the receiver. Lawyers representing Protopapas have argued in court papers that he was appointed as receiver because ACL was unwilling to share information with asbestos plaintiffs about its insurance assets and refused to participate in U.S. asbestos litigation.

Personal-injury claimants are objecting to ACL’s request for bankruptcy protection, arguing that the company isn’t actually insolvent. “There’s plenty of money,” said Trey Branham, a lawyer for the claimants. He said that if ACL and its insurers are granted bankruptcy protection, it would deprive his clients of due process and a fair hearing, circumventing U.S. laws for claims that originated in the U.S.

Protopapas was appointed receiver by Judge Jean Toal, a former chief justice of the South Carolina Supreme Court who has overseen all asbestos-related litigation in the state since 2017. Most of those defendant entities are defunct zombie businesses with insurance coverage that Protopapas has been trying to unlock.

ACL stopped mining asbestos in the 1980s but continues to extract minerals from the waste materials in the mines. It faces thousands of asbestos-related personal-injury lawsuits by patients who argue that exposure to asbestos, allegedly connected to ACL, caused cancer. Protopapas is now putting pressure on the insurance assets by settling injury lawsuits without the company’s consent, according to ACL’s filings.

ACL said in its filings that the company can’t share information on its insurance because the Québec Business Concerns Records Act prohibits Québec corporations from sharing their internal documents in foreign proceedings. ACL’s inability to share the information caused tension elsewhere, including in a Washington state court that sanctioned the company before issuing a \$16.2 million judgment for asbestos claimants.

Other asbestos defendants over which Protopapas was appointed have taken steps to counter him. Cape Intermediate Holdings, an English company formerly involved in the mining and manufacturing of asbestos, sued Protopapas in London last year and won a ruling that his appointment has no legal effect in the U.K. and worldwide.

A representative of Cape said the company respects U.S. courts and the rule of law, but the receiverships unjustly placed on companies like Cape in South Carolina “pose serious constitutional issues” and “chill the investment environment.”

The South Carolina Supreme Court, the state’s highest court overseeing Toal, later instructed her to limit the receiver’s scope of authority to exclude a company’s “boardroom” activities. Toal didn’t respond to a request for comment.

Protopapas was also named a receiver over Whittaker Clark & Daniels, a defunct talc supplier owned by Berkshire Hathaway that filed for bankruptcy in 2023 following his appointment.

Last week, a federal appeals court [kept Whittaker in chapter 11](#), rejecting Protopapas’s argument that the company’s board lacked the authority to file for chapter 11 after he was empowered to administer its assets. Third Circuit Judge Thomas Ambro said in his opinion that the receiver couldn’t on his own divest Whittaker’s board of its corporate authority.

The South Carolina Court of Common Pleas where Toal sits is a destination for asbestos-related lawsuits. The number of asbestos-related personal-injury lawsuits in Toal’s court more than tripled from 2018 to 2024, while nationwide, the number of such lawsuits declined by about 4% in the same period, according to consulting firm KCIC, which tracks asbestos injury lawsuits.

Write to Akiko Matsuda at akiko.matsuda@wsj.com

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, *et al.*,)

Defendants.)

RESPONSE TO THE COURT'S FIRST
REPORT REGARDING THE
CURRENT STATUS OF PARK

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, *et al.*,)

Third-Party Defendants.)

RICHLAND COUNTY
FILED
2025 JUL 31 PM 2:52
JEANETTE W. McBRIDE
C.R. 9.2.2 & F.C.

We appreciate this Court considering this response and the additional information discussed herein, which is directly responsive to the Supreme Court's instructions in its June 26, 2025 *Tibbs* Order. As the Court is aware, the below-signed counsel were in a hearing with Judge William Brown of the District of South Carolina on July 23, 2025, when the Court circulated its proposed First Report to the Supreme Court and requested feedback from them that same afternoon. Because they were in that hearing, counsel were unable to provide immediate feedback to the Court's proposed draft, and therefore are providing this response to ensure that the record is complete. Counsel appreciates this Court soliciting comments, apologizes that they were unable to return comments within the timeframe requested due to the hearing before Judge Brown, and,

also in accordance with the reporting process contemplated by the June 26, 2025 *Tibbs* Order, request that the Court transmit this response to the Supreme Court so that it has a complete record against which to evaluate the *Park* proceedings.¹

The Supreme Court's June 26, 2025 Order stated as follows: "We ask that the circuit court provide this Court with a report on its progress on matters (A) and (B), *including the current status of Park* and all asbestos cases in which a receiver has been appointed, every 30 days until further order of this Court." *Tibbs* Order ¶ (C) (emphasis added).

On this point, this Court's First Report to the Supreme Court stated as follows:

With respect to the *Park* matter, there was some question raised in the hearing before me on July 22, 2025, about whether or not the *Park* case is still a viable and open case. The Public Index of the Fifth Judicial Circuit in Richland County, and my own records, indicate the *Park* case is still open and on my docket. I am advised that Cape, and its related entities, is the only Defendant left in the *Park* case. There is some question raised about the status of the Estate of Park, which was made a Plaintiff when the principal Plaintiff died. Defendant Altrad's Counsel contends that the Park Estate has been closed. Counsel for the Plaintiffs in *Park* stated that they were unaware that the Estate had been closed until Counsel for Altrad raised this issue. Counsel for Park have moved to reopen the Estate. I will continue to report to the Court as to my progress in hearing these matters.

First Report at 4 (signed July 23, 2025, and file-stamped July 24, 2025).

The below-signed respectfully submit that there are additional material details germane to "the current status of *Park*" of which this Court and the Supreme Court should be aware. They are as follows, all of which appear in the Public Index or the transcript resulting from the July 22, 2025 hearing, which is attached as well for reference:

¹ The undersigned counsels' respective clients expressly preserve all of their objections, including to personal jurisdiction, that have appeared in their filings to this Court and to the appellate courts. Counsel for the Altrad Defendants submits this response in connection with the *Tibbs* matter. Counsel for Certain Insurers submits this in connection with the *Park* matter. We submit this response jointly to avoid burdening the e-filing system and Public Index with repetitious filings.

Pleadings in *Park*

1. The *Park* case was commenced on June 4, 2021, by the filing of a summons and complaint. The original plaintiff was Isabella Park. No “Cape” entity was sued in that pleading. (Complaint (June 4, 2021).)

2. Ms. Park passed away on June 9, 2021. On August 4, 2021, the Spartanburg County Probate Court appointed Keith Park, Ms. Park’s son, as the personal representative of her estate, which was Probate Court Case No. 2021-ES-42-01296. A copy of Ms. Park’s death certificate and the August 4, 2021 Certificate of Appointment from the Spartanburg County Probate Court are attached as Exhibit B to the November 8, 2021 Motion to Amend the complaint to substitute Mr. Park as the personal representative of Ms. Park’s estate as the plaintiff. (Exhibit B to Motion to Amend (Nov. 8, 2021).) The circuit court granted the motion to amend by order entered on November 12, 2021.

3. On November 17, 2021, Mr. Park filed a First Amended Complaint. The caption of that complaint indicates that Mr. Park is the plaintiff in both his individual and representative capacity. There are no claims alleged in Mr. Park’s individual capacity, such as loss of consortium, in the First Amended Complaint. (First Am. Compl. (Nov. 17, 2021).)

4. The First Amended Complaint was the first pleading to assert claims against any “Cape” entity. It identified two new defendants: (i) Cape Intermediate Holdings Limited, and (ii) Cape plc. (*Id.* ¶¶ 26–27.)²

5. On December 13, 2021, Mr. Park filed a petition for approval of wrongful death and survival settlements. That filing stated: “That Petitioner is the duly appointed Personal

² It is therefore unclear to what entity the Court was referring in its report to the Supreme Court when it stated as follows: “I am advised that Cape, and its related entities, is the only Defendant left in the *Park* case.” First Report at 4.

Representative of the Estate described above, which Estate was administered in Spartanburg County, South Carolina, the county in which decedent Isabella Park has a right and has a legal action pending.” (Petition for Approval ¶ 2 (Dec. 13, 2021).) The circuit court approved that settlement by order entered on December 22, 2021.

6. On December 17, 2021, Mr. Park moved to amend the complaint again to add Honeywell International and FMC Corporation as defendants. (Mot. to Amend (Dec. 17, 2021).) The circuit court granted the second motion to amend by order entered on December 23, 2021.

7. On December 23, 2021, Mr. Park filed a Second Amended Complaint. It did not allege any claims in Mr. Park’s individual capacity, such as loss of consortium. (Second Am. Compl. (Dec. 23, 2021).) Like the First Amended Complaint, the Second Amended Complaint identified both Cape Intermediate Holdings Limited and Cape plc as defendants. (*Id.* ¶¶ 26–27.)

Trial is Scheduled/Case is Reported as “Fully Resolved” in June 2022

8. The *Park* case was set to begin trial on June 20, 2022. (Asbestos Trial Docketing Order (Dec. 1, 2021).)

9. On Friday, June 3, 2022, plaintiffs’ counsel in *Park* sent an email to the circuit court, copying counsel of record who had appeared in the *Park* case. It was titled: “June Pretrial Hearing.” That email stated: “By way of update, the *Park* and *Garren* cases have ***both fully resolved***. The remaining Defendants in *Wannamaker* and *Wilson* are listed below.” (emphasis added). A copy of that email is attached as Exhibit B to Certain Insurers’ Response filing of July 18, 2025, in *Park*.

Park Estate Closed/Personal Representative Appointment Terminated in August 2022

10. On Monday, June 6, 2022, Mr. Park filed a notarized Application for Settlement with the Spartanburg County Probate Court. In that filing, Mr. Park attested that he had performed

all acts “pertaining to Estate of Decedent” and that “[t]he time period for submission of claims has expired.” He then requested that the Probate Court discharge him as personal representative for the estate. A copy of that notarized Application for Settlement in Probate Court Case No. 2021-ES-42-01296 is attached as Exhibit C to Certain Insurers’ Response filing of July 18, 2025, in *Park*.

11. On August 26, 2022, Judge Caldwell of the Spartanburg County Probate Court granted Mr. Park’s motion, held “the estate is closed,” and declared “the appointment is hereby terminated.” A copy of Judge Caldwell’s Order Closing Estate in Probate Court Case No. 2021-ES-42-01296 is attached as Exhibit D to Certain Insurers’ Response filing of July 18, 2025, in *Park*.

12. Also on August 26, 2022, Judge Caldwell of the Spartanburg County Probate Court issued a Termination of Appointment that memorialized Mr. Park’s status as personal representative of Ms. Park’s estate was being terminated for “satisfactory completion of assigned duties.” A copy of Judge Caldwell’s Termination of Appointment in Probate Court Case No. 2021-ES-42-01296 is attached as Exhibit E to Certain Insurers’ Response filing of July 18, 2025, in *Park*.

Receivership Motion Filed in March 2023

13. Over six months after the Spartanburg County Probate Court terminated Mr. Park’s appointment as personal representative, on March 6, 2023, plaintiffs’ counsel in *Park* filed a motion to appoint a receiver over Cape plc. (Motion to Appoint Receiver (Mar. 6, 2023).) That filing made no mention of Cape Intermediate Holdings Limited. (*Id.*)

14. At the time the Motion to Appoint a Receiver was filed, Mr. Park was no longer a personal representative for Ms. Park’s estate, as the “estate [was] closed” and Mr. Park’s

appointment had been “terminated” by the Spartanburg County Probate Court. During a hearing before the circuit court on July 22, 2025, plaintiffs’ counsel in *Park* conceded not knowing that the appointment had been terminated almost three years earlier: “What I didn’t know until Friday is that apparently the probate court has closed the personal representative. In other words, he [sic: she] has absolved the personal representative of any authority at the moment going forward. And what they want to say is that means everything is done. You cannot do anything about that. Now, number one, I had no idea that it happened. No one had told me. We weren’t copied on it. Didn’t do the probate. I didn’t know.” (Hr’g Tr. 154:1–12 (July 22, 2025) (comments of Ms. McVey).)

15. On March 17, 2023, the circuit court granted the Motion to Appoint a Receiver over Cape plc only, stating that Cape plc has “dissolved” and “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.” (Order Appointing Receiver at 1 (Mar. 17, 2023).) The circuit court did not hold a hearing prior to entering this order, as confirmed during the July 22, 2025 hearing: “And I generally, if it’s a motion to appoint a receiver, under circumstances like this, whether they’re in default, then I don’t give them any chance to reply, I just appoint the receiver.” (Hr’g Tr. 149:17–21 (July 22, 2025) (statements of Chief Justice Toal).)

No Record of Service on Any Cape Entity in *Park*

16. At the time the Motion to Appoint a Receiver was filed and granted, no proof of service existed in the Public Index showing that either Cape Intermediate Holdings Limited or Cape plc had been served with any materials in the *Park* case.

17. On August 28, 2023, plaintiffs’ counsel in *Park* filed a document captioned “Notice of Filing of Ommitted [sic] Exhibit.” Attached to that filing was an “affirmation” from an English solicitor, Andrew Morgan, who affirmed: “On 14 December 2021, I did serve copies of the First

Amended Summons in this matter on Cape PLC and Cape Intermediate Holdings Limited at the aforementioned registered address and I did so by Royal Mail First Class post.” (Affirmation of Morgan ¶ 5 (attached as Exhibit A to Notice of Filing of Omitted [sic] Exhibit (Aug. 28, 2023).)

18. Mr. Morgan also attached copies of his letters to Cape Intermediate Holdings Limited and Cape plc, both of which state: “We enclose herewith by way of service the First Amended Summons in this matter which is proceeding in the Court of Common Pleas for the Fifth Judicial Circuit in the County of Richland in the State of South Carolina, one of the United States of America, with C/A No. 2021-CP-40-02727.” Those letters also identify the only enclosure as: “First Amended Summons.” (Exhibit AGM1 to Affirmation of Morgan.)

19. Mr. Morgan also attached photographs of his mailings, which show that they required only £1 of postage. (Exhibit AGM4 to Affirmation of Morgan.)

20. The Public Index does not contain any record of any complaint in *Park*—the initial Complaint, the First Amended Complaint, or the Second Amended Complaint—being mailed to either Cape Intermediate Holdings Limited or Cape plc.

No Cape Entity in Default in *Park*

21. The Public Index does not contain any record of any entry of default, request for any entry of default, default judgment, or motion for default judgment against Cape Intermediate Holdings Limited or Cape plc, as no such default or default judgment was ever sought.

22. During the July 22, 2025 hearing, the circuit court inquired about this. In response, plaintiffs’ counsel in *Park* stated as follows: “We did not move for a default in Cape because what we didn’t want to do is get some judgment and then not be able to do anything with it.” (Hr’g Tr. 148:16–19 (July 22, 2025) (statement of Ms. McVey).)

23. During that hearing, plaintiffs' counsel in *Park* explained the statement in counsel's June 3, 2022 email to the circuit court that the *Park* case was "fully resolved" as follows: "So the case had—they keep making this huge deal about me saying to the court the *Park* case is fully resolved. And what I meant by that is we had total [sic: tolling] agreement with the receiver and that the Cape was up for trial." (Hr'g Tr. 150:6–10 (July 22, 2025) (statement of Ms. McVey).)

Counsel continued:

Ms. McVey: Because the *Park* case, the underlying *Park* case that had many defendants in it had been up for trial.

The Court: Right.

Ms. McVey: And we had resolved with everybody but Cape.

The Court: But Cape.

Ms. McVey: The receiver had not finished doing his work so we didn't want to go get any kind of judgment that couldn't be collected.

(Hr'g Tr. 150:23–151:7 (July 22, 2025) (exchange between Ms. McVey and Chief Justice Toal).)

24. During that hearing, each of the below-signed counsel, as well as counsel for the Charter Third-Party Defendants, attempted to address the statements that, in June 2022, plaintiffs' counsel reported *Park* as being "fully resolved" due to a "total [sic: tolling] agreement with the receiver." The receiver was not appointed until March 17, 2023, which was (i) more than nine months after plaintiffs' counsel reported the case as "fully resolved" (June 3, 2022); and (ii) more than six months after Mr. Park's appointment as personal representative had been terminated and Ms. Park's estate was closed by the Spartanburg County Probate Court at Mr. Park's request (August 26, 2022). The circuit court did not allow responses. (Hr'g Tr. 157:13–161:4 (July 22, 2025) (exchanges among below-signed counsel and Chief Justice Toal).)

No Cape Entity Served in Tibbs

25. During the July 22, 2025 hearing, plaintiffs' counsel in *Park* stated that they "served the receiver as Cape in the *Tibbs* case." (Hr'g Tr. 156:23–24 (July 22, 2025) (statement of Ms. McVey).)

* * * * *

As stated above, we appreciate this Court's invitation for comments. We believe that the listing above is critical to provide a complete procedural history and current status of *Park*. We apologize again for being unable to return these points to the Court within the timeframe requested due to our presence at a hearing in federal court before Judge Brown. We would appreciate the Court supplementing its required report to the Supreme Court with this submission so that the Supreme Court has before it a complete understanding of the current status of *Park*, as it requested in its June 26, 2025 Order.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

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*Attorneys for Mohed Altrad and
Altrad Investment Authority SAS in Tibbs*

July 29, 2025

MURPHY & GRANTLAND, P.A.

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*Attorneys for Certain Underwriters at Lloyd's,
London, Continental Casualty Company, and
Liberty Mutual Insurance Company in Park*



EXHIBIT A

Last Will and Testament

I, ISABELLA F. D. R. PARK, of Spartanburg County, South Carolina, declare this to be my Last Will and Testament, and I revoke all prior Wills and Codicils that I have made.

ITEM I

I direct that all my legally enforceable debts, secured and unsecured, including funeral expenses, any expenses of my last illness, and all expenses of the administration of my estate, be paid as soon after my death as is practicable. This provision shall not be construed to require the payment of any debt which may be barred by the statute of limitations or by a non-claim statute.

ITEM II

Except as may otherwise be provided herein, all estate, inheritance, succession or transfer taxes imposed by the laws of any domestic or foreign taxing authority at the time of or by reason of my death, including interest and penalties, if any (collectively, "death taxes"), including those death taxes payable with respect to assets which do not pass under this Will, shall be paid out of and charged generally against the principal of my residuary estate passing under Item V herein, without apportionment. In no event shall any amount not otherwise includable in my gross estate for federal estate tax purposes, nor any property traceable to any such amount, be used to pay death taxes.

ITEM III

I hereby make the following disposition of my tangible personal property:

A. I give and bequeath all of the tangible personal property that I own at my death, including any household furniture and furnishings, automobiles, boats, books, pictures, art objects, hobby equipment and collections, jewelry, wearing apparel and other articles of household or personal use or ornament, together with any airline frequent flier miles to my credit, in accordance with the terms of any written memorandum or list which I may attach to this Will, which list or memorandum shall be incorporated herein by reference. In default of a written memorandum or list, or to the extent that such list or memorandum does not completely dispose of my tangible personal property, then I give and bequeath said property to such of my children, FIONA R. WILEY, KEITH W. PARK, and ALASTAIR C. PARK, as shall survive me, in shares of substantially equal value, provided, however, the then living issue of a deceased child of mine shall take *per stirpes* the share their parent would have taken had he or she survived me.

B. If any beneficiary herein has not reached legal age under the law of the jurisdiction in which the child is domiciled at the time of my death, then the person having legal custody of the child (i) shall represent the child in any division of the property, (ii) may give a binding receipt for and hold the child's share for his or her benefit, (iii) may sell any part or all of the share, and (iv) shall deliver the share or sale proceeds to the child before or when the child reaches legal age, all as that person considers advisable.

C. All costs of safeguarding, insuring, packing and storing my tangible personal property before its distribution and of delivering each item to the place of residence of the beneficiary of that item shall be deemed to be an expense of administration of my estate.

ITEM IV

I give and devise to my husband, ANDREW D. PARK, if he shall survive me, to have and to hold for and during his natural life, any interest which I own in the house and lot located at 244 Mills Avenue, Spartanburg, South Carolina, or in any other real property which I occupy as my primary residence at the time of my death, together with all policies of casualty insurance on such property, and I give and devise a vested remainder interest in said property in equal shares to such of my children as shall survive me, the then living issue of a deceased child of mine to take *per stirpes* the share their parent would have taken had he or she survived me.

ITEM V

I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, but not including any property over which I have a power of appointment, in equal shares to such of my children as shall survive me, the then living issue of a deceased child of mine to take *per stirpes* the share their parent would have taken had he or she survived me.

ITEM VI

I hereby nominate, constitute and appoint my son, KEITH W. PARK, of Central, South Carolina, as Executor of this my Last Will and Testament. If my said son predeceases me or elects not to accept this appointment or is for any reason ineligible or precluded from accepting this appointment, then I appoint my son, ALASTAIR C. PARK, of Alvin, Texas, as Executor. No Executor serving hereunder shall be required to provide a bond or other security.

ITEM VII

By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Executors generally, my Executor is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of

21-12-2024

this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general to exercise all of the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his own right, upon such terms and conditions as to my Executor may seem best, and to make disclaimers and renunciations of any inheritance or other interest in property on behalf of me, my estate or any trust, to execute and deliver any and all instruments and to do all acts which my Executor may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, without being limited by § 62-3-711(b) of the Code of Laws of South Carolina (1976), as amended, and without the necessity of a court order. All of the powers enumerated in § 62-3-715 of the Code of Laws of South Carolina (1976), as amended, are hereby incorporated by reference and granted to my Executor.

ITEM VIII

Despite the preceding provisions of this instrument, my Executor may elect to withhold any property otherwise distributable to a beneficiary who has not reached the age of twenty-one (21) years and may retain the property for that beneficiary in a separate trust named for the beneficiary, to be distributed to the beneficiary when he or she reaches the age of twenty-one (21) years, or before then if my Executor so elects, or my Executor may distribute any such property to a custodian to be designated by my Executor for such beneficiary under a Uniform Transfers or Gifts to Minors Act or similar applicable law. My Executor shall apply as much of the net income and principal of the trust so retained as my Executor believes desirable for the health, support in reasonable comfort, education, best interests, and welfare of the beneficiary for whom the trust is named, considering all circumstances and factors deemed pertinent by my Executor. Any undistributed net income shall be accumulated and added to principal, as from time to time determined by my Executor. If the beneficiary for whom the trust is named dies before complete distribution of the trust, the remaining net income and principal of the trust shall be distributed to the beneficiary's estate.

ITEM IX

Any person may irrevocably disclaim and renounce any part or all of my estate, including any life estate, whether or not passing under this Will, to which such person is entitled. Any future interest in the property that takes possession or enjoyment following the interest disclaimed shall take effect as if the person making the disclaimer predeceased me, including the determination of subsequent takers and the vesting of their interest. This right to disclaim may also be exercised by the executor, administrator, guardian, committee, attorney-in-fact, or other legal representative of any person entitled to disclaim under this Will. In the event that any person disclaims any part or all of any bequest or devise, then I direct that such disclaimed property shall be disposed of as if such

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person had not survived me. In such event, the provisions of this Will shall control, and South Carolina Code § 62-2-603 (the "anti-lapse" statute) shall not apply in the construction of this Will.

ITEM X

If any beneficiary and I should die under such circumstances as would render it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed that said beneficiary predeceased me. For all purposes hereunder, if a descendant of mine shall not survive me by ninety (90) days, such descendant shall be deemed to have predeceased me.

ITEM XI

In applying the provisions of this my Will, the following shall govern:

A. My husband's name is ANDREW D. PARK, and all references in this Will to my husband are to him only.

B. I have three (3) children, FIONA R. WILEY, KEITH W. PARK, and ALASTAIR C. PARK, and all references herein to my children are to them only.

C. For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" means all persons who are the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of the adopting parent and the adopted child and any issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or parents, provided that legal adoption occurred before the person adopted attained legal age. For purposes of determining who is an issue of mine, a person born out of wedlock and those claiming through that person shall be deemed to be issue (1) of the natural mother and her ancestors, and (2) if the natural father acknowledges paternity, of the natural father and his ancestors, in each case unless a decree of adoption terminates such parent's parental rights. Half blood relations shall be treated as whole blood relations.

D. The term "*per stirpes*," as used herein, means in equal shares among living children of the person whose descendants are referred to and the descendants (taken collectively) of each deceased child of such person, with each deceased child's descendants taking by right of representation the share of such deceased child, and is intended to describe "taking by representation," as defined in the South Carolina Probate Code; except, however, that the division of shares shall be made at each generation regardless of whether there is surviving issue representing that generation. If no issue representing a generation are surviving, the number of shares for that generation shall equal the number of predeceased issue of that generation leaving surviving issue. If issue representing a generation are surviving, the number of shares for that generation shall equal the number of issue of that generation surviving, plus the number of predeceased issue of that generation leaving surviving issue. This definition of "*per stirpes*" is intended to state the common

law definition of such term prior to the adoption of the South Carolina Probate Code in 1986, so that representation shall be calculated from the first generation below that of the person whose descendants are referred to, whether or not there is anyone in that generation living at the time of calculation.

E. A person in gestation who is later born alive shall be treated as alive during the period of gestation for purposes of determining (1) whether any person has died without leaving issue surviving him or her; (2) the right to distributions on the termination of a trust created under this instrument; and (3) any person's right to share in required principal distributions, though for all other purposes such person's rights accrue only from the date of birth.

F. The term "Executor" shall include the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Executor named herein, and to any successor or substitute Executor acting hereunder, and such successor or substitute Executor shall possess all the rights, powers and duties, authority and responsibility conferred upon the Executor originally named herein. The term "Executor" shall have the same meaning as the term "Personal Representative," as defined by the South Carolina Probate Code.

G. Any property devised or bequeathed to a beneficiary under this Will who does not survive me and for whom no effective alternative provision has been made shall pass as part of my residuary estate and shall not pass pursuant to the anti-lapse statute of any state.

H. Reference to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

I. Whenever the context requires, the masculine gender includes the feminine or neuter, and vice versa, and the singular number includes the plural, and vice versa.

ITEM XII

This Will and any trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in the County of Spartanburg, State of South Carolina, this 12 day of September, 2002, in the presence of two witnesses whose signatures hereinafter appear and who, at my request and in my presence, and in the presence of each other, have affixed their signatures as witnesses to this Will.

Isabella F. D. R. Park (SEAL)
ISABELLA F. D. R. PARK

Signed, sealed, declared and published by ISABELLA F. D. R. PARK as her Last Will and Testament, in the presence of us, the subscribing witnesses, who, at her instance and request, and in the presence of each other, have hereunto set our hands and seals the day and year aforesaid.

John W. Mac of Spartanburg, S.C.
Theresa B. Lasciter of Spartanburg, S.C.

21-1296

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

PROOF OF WILL

We, ISABELLA F. D. R. PARK and JAMES W. SHAW, the testatrix and at least one of the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testatrix signed and executed this instrument as her Last Will and Testament and that she signed willingly (or willingly directed another to sign for her), and she executed it as her free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testatrix, signed the Will as witness and to the best of the witness's knowledge, the testatrix was at that time eighteen years or older, of sound mind, and under no constraint or undue influence.

Isabella F. D. R. Park
 ISABELLA F. D. R. PARK

James W. Shaw
 JAMES W. SHAW

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by ISABELLA F. D. R. PARK, the testatrix, and SUBSCRIBED AND SWORN TO before me by JAMES W. SHAW, witness, this 12th day of September, 2002.

Theresa H. Lassiter
 Notary Public for South Carolina
 My commission expires: 6-30-03

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

In Re: Estate of Isabella F. D. R. Park,
deceased

Keith W. Park,

Petitioner,

vs.

Fiona R. Wiley and Alastair C. Park,

Respondents.

IN THE PROBATE COURT

SUMMONS

Probate File No. 2021ES42 01296



To the above-named Respondents in this action:

YOU ARE HEREBY SUMMONED and required to answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Petition on the undersigned at its office at Spartanburg, SC, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Petition within the time aforesaid, the Petitioner in this action will apply to the Court for the relief demanded in the Petition.

DENNIS, SHAW, DRENNAN & PACK, LLC

By:

Heather G. Hunter
Heather G. Hunter
P.O. Box 891 (103 Lafayette Street)
Spartanburg, SC 29304-0891
(864) 582-0708
Attorneys for Petitioner

June 17, 2021

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

In Re: Estate of Isabella F. D. R. Park,
deceased

Keith W. Park,

Petitioner,

vs.

Fiona R. Wiley and Alastair C. Park,

Respondents.

IN THE PROBATE COURT

PETITION

Probate File No. 2021ES42 01296



PETITIONER would respectfully show unto the Court:

1. Isabella F. D. R. Park (the "Decedent") died testate a resident of Spartanburg County, South Carolina on June 9, 2021, leaving a Last Will and Testament dated September 12, 2002 (the "Will"), a copy of which is attached hereto and made a part hereof as Exhibit A.
2. Petitioner Keith W. Park is a surviving adult child of the Decedent. Respondents Fiona R. Wiley and Alastair C. Park are also surviving adult children of the Decedent. The Decedent has no predeceased children. The Decedent was predeceased by her spouse, Andrew D. Park. The Decedent's children constitute all of the intestate heirs of the Decedent.
3. The Decedent named her son, Keith W. Park, as Personal Representative and he has applied to the Spartanburg County Probate Court to be named as Personal Representative of Decedent's estate.
4. The devisees under the Decedent's Will are her adult children, Keith W. Park, Fiona R. Wiley, and Alastair C. Park.
5. Despite diligent efforts, Petitioner has been unable to locate the original Will of Decedent. Petitioner is informed and believes that the Decedent's original Will was kept in her home, where she has lived since 1972, but he has been unable to locate the original. Petitioner is further informed and believes that the original Will has been inadvertently misplaced or lost.
6. Petitioner is informed and believes that Decedent did not intend to revoke or destroy her Will but that the original Will was destroyed, misplaced or otherwise lost inadvertently without the knowledge of Decedent.

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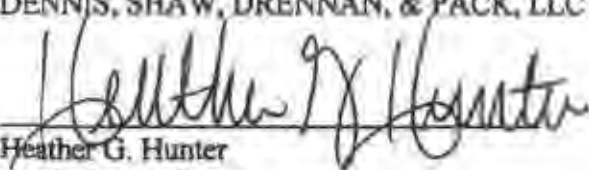
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WHEREFORE, Petitioner prays that this Court:

- a. Issue its Order admitting the photocopy of Decedent's Will as the Decedent's Last Will and Testament and duly appoint Keith W. Park as Personal Representative of the Estate of Isabella F. D. R. Park.
- b. For such other and further relief as this Court deems just and proper.

DENNIS, SHAW, DRENNAN, & PACK, LLC

By:



Heather G. Hunter
103 Lafayette Street
P.O. Box 891
Spartanburg, SC 29304-0891
(864) 582-0708
Attorneys for Petitioner

June 17, 2021

21-1298

EXHIBIT A

Last Will and Testament

I, ISABELLA F. D. R. PARK, of Spartanburg County, South Carolina, declare this to be my Last Will and Testament, and I revoke all prior Wills and Codicils that I have made.

ITEM I

I direct that all my legally enforceable debts, secured and unsecured, including funeral expenses, any expenses of my last illness, and all expenses of the administration of my estate, be paid as soon after my death as is practicable. This provision shall not be construed to require the payment of any debt which may be barred by the statute of limitations or by a non-claim statute.

ITEM II

Except as may otherwise be provided herein, all estate, inheritance, succession or transfer taxes imposed by the laws of any domestic or foreign taxing authority at the time of or by reason of my death, including interest and penalties, if any (collectively, "death taxes"), including those death taxes payable with respect to assets which do not pass under this Will, shall be paid out of and charged generally against the principal of my residuary estate passing under Item V herein, without apportionment. In no event shall any amount not otherwise includable in my gross estate for federal estate tax purposes, nor any property traceable to any such amount, be used to pay death taxes.

ITEM III

I hereby make the following disposition of my tangible personal property:

A. I give and bequeath all of the tangible personal property that I own at my death, including any household furniture and furnishings, automobiles, boats, books, pictures, art objects, hobby equipment and collections, jewelry, wearing apparel and other articles of household or personal use or ornament, together with any airline frequent flier miles to my credit, in accordance with the terms of any written memorandum or list which I may attach to this Will, which list or memorandum shall be incorporated herein by reference. In default of a written memorandum or list, or to the extent that such list or memorandum does not completely dispose of my tangible personal property, then I give and bequeath said property to such of my children, FIONA R. WILEY, KEITH W. PARK, and ALASTAIR C. PARK, as shall survive me, in shares of substantially equal value, provided, however, the then living issue of a deceased child of mine shall take *per stirpes* the share their parent would have taken had he or she survived me.

B. If any beneficiary herein has not reached legal age under the law of the jurisdiction in which the child is domiciled at the time of my death, then the person having legal custody of the child (i) shall represent the child in any division of the property, (ii) may give a binding receipt for and hold the child's share for his or her benefit, (iii) may sell any part or all of the share, and (iv) shall deliver the share or sale proceeds to the child before or when the child reaches legal age, all as that person considers advisable.

C. All costs of safeguarding, insuring, packing and storing my tangible personal property before its distribution and of delivering each item to the place of residence of the beneficiary of that item shall be deemed to be an expense of administration of my estate.

ITEM IV

I give and devise to my husband, ANDREW D. PARK, if he shall survive me, to have and to hold for and during his natural life, any interest which I own in the house and lot located at 244 Mills Avenue, Spartanburg, South Carolina, or in any other real property which I occupy as my primary residence at the time of my death, together with all policies of casualty insurance on such property, and I give and devise a vested remainder interest in said property in equal shares to such of my children as shall survive me, the then living issue of a deceased child of mine to take *per stirpes* the share their parent would have taken had he or she survived me.

ITEM V

I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, but not including any property over which I have a power of appointment, in equal shares to such of my children as shall survive me, the then living issue of a deceased child of mine to take *per stirpes* the share their parent would have taken had he or she survived me.

ITEM VI

I hereby nominate, constitute and appoint my son, KEITH W. PARK, of Central, South Carolina, as Executor of this my Last Will and Testament. If my said son predeceases me or elects not to accept this appointment or is for any reason ineligible or precluded from accepting this appointment, then I appoint my son, ALASTAIR C. PARK, of Alvin, Texas, as Executor. No Executor serving hereunder shall be required to provide a bond or other security.

ITEM VII

By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Executors generally, my Executor is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of

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this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general to exercise all of the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his own right, upon such terms and conditions as to my Executor may seem best, and to make disclaimers and renunciations of any inheritance or other interest in property on behalf of me, my estate or any trust, to execute and deliver any and all instruments and to do all acts which my Executor may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, without being limited by § 62-3-711(b) of the Code of Laws of South Carolina (1976), as amended, and without the necessity of a court order. All of the powers enumerated in § 62-3-715 of the Code of Laws of South Carolina (1976), as amended, are hereby incorporated by reference and granted to my Executor.

ITEM VIII

Despite the preceding provisions of this instrument, my Executor may elect to withhold any property otherwise distributable to a beneficiary who has not reached the age of twenty-one (21) years and may retain the property for that beneficiary in a separate trust named for the beneficiary, to be distributed to the beneficiary when he or she reaches the age of twenty-one (21) years, or before then if my Executor so elects, or my Executor may distribute any such property to a custodian to be designated by my Executor for such beneficiary under a Uniform Transfers or Gifts to Minors Act or similar applicable law. My Executor shall apply as much of the net income and principal of the trust so retained as my Executor believes desirable for the health, support in reasonable comfort, education, best interests, and welfare of the beneficiary for whom the trust is named, considering all circumstances and factors deemed pertinent by my Executor. Any undistributed net income shall be accumulated and added to principal, as from time to time determined by my Executor. If the beneficiary for whom the trust is named dies before complete distribution of the trust, the remaining net income and principal of the trust shall be distributed to the beneficiary's estate.

ITEM IX

Any person may irrevocably disclaim and renounce any part or all of my estate, including any life estate, whether or not passing under this Will, to which such person is entitled. Any future interest in the property that takes possession or enjoyment following the interest disclaimed shall take effect as if the person making the disclaimer predeceased me, including the determination of subsequent takers and the vesting of their interest. This right to disclaim may also be exercised by the executor, administrator, guardian, committee, attorney-in-fact, or other legal representative of any person entitled to disclaim under this Will. In the event that any person disclaims any part or all of any bequest or devise, then I direct that such disclaimed property shall be disposed of as if such

21-1200

person had not survived me. In such event, the provisions of this Will shall control, and South Carolina Code § 62-2-603 (the "anti-lapse" statute) shall not apply in the construction of this Will.

ITEM X

If any beneficiary and I should die under such circumstances as would render it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed that said beneficiary predeceased me. For all purposes hereunder, if a descendant of mine shall not survive me by ninety (90) days, such descendant shall be deemed to have predeceased me.

ITEM XI

In applying the provisions of this my Will, the following shall govern:

A. My husband's name is ANDREW D. PARK, and all references in this Will to my husband are to him only.

B. I have three (3) children, FIONA R. WILEY, KEITH W. PARK, and ALASTAIR C. PARK, and all references herein to my children are to them only.

C. For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" means all persons who are the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of the adopting parent and the adopted child and any issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or parents, provided that legal adoption occurred before the person adopted attained legal age. For purposes of determining who is an issue of mine, a person born out of wedlock and those claiming through that person shall be deemed to be issue (1) of the natural mother and her ancestors, and (2) if the natural father acknowledges paternity, of the natural father and his ancestors, in each case unless a decree of adoption terminates such parent's parental rights. Half blood relations shall be treated as whole blood relations.

D. The term "*per stirpes*," as used herein, means in equal shares among living children of the person whose descendants are referred to and the descendants (taken collectively) of each deceased child of such person, with each deceased child's descendants taking by right of representation the share of such deceased child, and is intended to describe "taking by representation," as defined in the South Carolina Probate Code; except, however, that the division of shares shall be made at each generation regardless of whether there is surviving issue representing that generation. If no issue representing a generation are surviving, the number of shares for that generation shall equal the number of predeceased issue of that generation leaving surviving issue. If issue representing a generation are surviving, the number of shares for that generation shall equal the number of issue of that generation surviving, plus the number of predeceased issue of that generation leaving surviving issue. This definition of "*per stirpes*" is intended to state the common

law definition of such term prior to the adoption of the South Carolina Probate Code in 1986, so that representation shall be calculated from the first generation below that of the person whose descendants are referred to, whether or not there is anyone in that generation living at the time of calculation.

E. A person in gestation who is later born alive shall be treated as alive during the period of gestation for purposes of determining (1) whether any person has died without leaving issue surviving him or her; (2) the right to distributions on the termination of a trust created under this instrument; and (3) any person's right to share in required principal distributions, though for all other purposes such person's rights accrue only from the date of birth.

F. The term "Executor" shall include the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Executor named herein, and to any successor or substitute Executor acting hereunder, and such successor or substitute Executor shall possess all the rights, powers and duties, authority and responsibility conferred upon the Executor originally named herein. The term "Executor" shall have the same meaning as the term "Personal Representative," as defined by the South Carolina Probate Code.

G. Any property devised or bequeathed to a beneficiary under this Will who does not survive me and for whom no effective alternative provision has been made shall pass as part of my residuary estate and shall not pass pursuant to the anti-lapse statute of any state.

H. Reference to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

I. Whenever the context requires, the masculine gender includes the feminine or neuter, and vice versa, and the singular number includes the plural, and vice versa.

ITEM XII

This Will and any trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in the County of Spartanburg, State of South Carolina, this 12 day of September, 2002, in the presence of two witnesses whose signatures hereinafter appear and who, at my request and in my presence, and in the presence of each other, have affixed their signatures as witnesses to this Will.

Isabella F. D. R. Park (SEAL)
ISABELLA F. D. R. PARK

Signed, sealed, declared and published by ISABELLA F. D. R. PARK as her Last Will and Testament, in the presence of us, the subscribing witnesses, who, at her instance and request, and in the presence of each other, have hereunto set our hands and seals the day and year aforesaid.

John W. Mac of Spartanburg, S.C.
Theresa B. Lassiter of Spartanburg, S.C.

21-1296

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

PROOF OF WILL

We, ISABELLA F. D. R. PARK and JAMES W. SHAW, the testatrix and at least one of the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testatrix signed and executed this instrument as her Last Will and Testament and that she signed willingly (or willingly directed another to sign for her), and she executed it as her free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testatrix, signed the Will as witness and to the best of the witness's knowledge, the testatrix was at that time eighteen years or older, of sound mind, and under no constraint or undue influence.

Isabella F. D. R. Park
 ISABELLA F. D. R. PARK

James W. Shaw
 JAMES W. SHAW

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by ISABELLA F. D. R. PARK, the testatrix, and SUBSCRIBED AND SWORN TO before me by JAMES W. SHAW, witness, this 10th day of September, 2002.

Theresa A. Lassiter
 Notary Public for South Carolina
 My commission expires: 6-30-03

STATE OF SOUTH CAROLINA

COUNTY OF: SPARTANBURG

IN THE MATTER OF:
ISABELLA F. D. R. PARK
(Decedent)

IN THE PROBATE COURT

CASE NUMBER: 2021ES42

***COMPLETE THIS SECTION ONLY IF FILING PETITION
FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT**

*Keith W. Park,

Petitioner(s)

vs.

*Fiona R. Wiley and Alastair C. Park,
Respondent(s)



APPLICATION FOR INFORMAL

- ☐ PROBATE OF WILL
☒ APPOINTMENT

(check any that apply)

***PETITION FOR FORMAL**

- ☒ TESTACY
☐ APPOINTMENT

If this is a formal filing, please explain on page 4 or attach pleadings pursuant to SC Rules of Civil Procedure.

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC), AND PAY THE STATUTORY FILING FEE OF \$150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Applicant/Petitioner(s): Keith W. Park

Address: 109 S. Spring Street, Central, SC 29630

Telephone (Work):

(Home):

(Cell): (864) 710-8970

Email:

Relationship to Decedent: Son; named as Primary Personal Representative

2. Decedent Information:

Full Legal Name

(including all known names): Isabella F. D. R. Park

Date of Birth: [REDACTED] 1931

Date of Death: June 9, 2021

Age at Date of Death: 90

3. Venue for this proceeding is proper in this County because:

- ☒ Decedent was domiciled in this County at date of death:
Address: 200 Fortress Drive, Inman, SC 29349 County: Spartanburg State: South Carolina
- ☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this County at date of death at:
Address: County: State: South Carolina
- ☐ Decedent has a right to take legal action in this County because:

If the above address is the address of a nursing home, prison, or other residential facility, please give the last address of the Decedent prior to entering a facility: 244 Mills Avenue, Spartanburg, SC 29302

21-1296

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Email Address	Relationship to Decedent
Andrew D. Park				Predeceased Spouse
Fiona R. Wiley	Over 18	PO Box 28642 Greenville, SC 29616		Daughter
Keith W. Park	Over 18	109 S. Spring Street Central, SC 29630		Son
Alastair C. Park	Over 18	4925 FM 517 Road Alvin, TX 77611		Son

☐ See attached for additional devisees (check if applicable).

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Email Address	Relationship to Decedent
None				

☐ See attached for additional intestate heirs (check if applicable).

4(c). Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

☒ YES ☐ NO If no, please explain on page 4.

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

☒ NO ☐ YES If yes, please explain, on page 4.

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 4.

7. Has a Guardian or Conservator ever been appointed by a Court for this person?

☒ NO ☐ YES If yes, please explain on page 4.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 4.

9. Have you received or are you aware of any Demands for Notice (FORM #111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses on page 4.

10. Have more than ten (10) years passed since the Decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 4.

11(a). Did the Decedent own probate real estate?

☐ NO ☒ YES If yes, an approximate value of \$TBD (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

11(b). Did the Decedent own probate personal property?

☐ NO ☒ YES If yes, an approximate value of \$TBD (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

11(c). Are you seeking appointment as Personal Representative in order to pursue civil litigation on behalf of the Decedent's estate? Is there a civil litigation attorney?

☒ NO ☐ YES If yes, please provide the name of the civil litigation attorney: _____

11(d). At the time of Decedent's death, was he or she involved in any pending civil litigation? Is there a civil litigation attorney?

☒ NO ☐ YES If yes, please state the circumstances and name of attorney on page 4.

11(e). If you answered NO to questions 11(a) - 11(d) above, but are seeking the appointment of a Personal Representative, please explain why the appointment is requested on page 4.

12. Have you made a diligent search for a Will of the Decedent?

☒ YES
☐ NO If no, please explain on page 4.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

- ☐ The original is attached.
☐ The original is in the Court's possession.
☐ An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
☐ An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
☒ The original of the Will is lost, destroyed, or otherwise unavailable, however, a copy or a description of its contents is attached. (for formal proceeding, explain below or attach supplemental pleadings)

2. The execution date of the Will was: September 12, 2002

Codicil(s): _____

3. Is there a memorandum that disposes of tangible personal property pursuant to 62-2-512?

☒ NO ☐ YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

☒ YES ☐ NO If no, please explain on page 4.

5. To the best of your knowledge, is any witness to the will an "interested witness" (i.e., does the will make any devise to a witness, a witness's spouse, or a witness's issue)?

☒ NO ☐ YES If yes, please explain on page 4.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.

(If more space is required, use additional sheets.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:

- ☒ named as Primary Personal Representative in Will
- ☐ named as Alternate Personal Representative in Will
- ☐ nominee of Primary Personal Representative in Will
- ☐ nominee of Alternate Personal Representative in Will
- ☐ surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
- ☐ other devisee of Decedent (describe): _____ or nominee of said devisee
- ☐ surviving spouse of Decedent or nominee of said spouse
- ☐ other heir of Decedent (describe): _____ or nominee of said heir
- ☐ creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
- ☐ other (describe): _____

3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:

None

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 17 day
of June, 2021

Signature of
Applicant/Petitioner: [Signature]

[Signature]
Notary Public for South Carolina
My Commission Expires: 1-11-28

SWORN to before me this _____ day
of _____, 20____

Signature of Co-
Applicant/Co-Petitioner: _____

Notary Public for South Carolina
My Commission Expires: _____

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed [redacted] and

- ☐ Codicil executed [redacted] and
☐ Memorandum

be informally ☒ GRANTED ☐ DENIED.

Executed this [redacted] day of [redacted]

_____, Probate Court Judge

☒ For formal probate of Will, see separate order executed 7/14/21

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

Bond

- ☐ Fiduciary Bond in the amount of \$ _____
☒ Bond not required for Personal Representative nominated by Will
☐ Bond not required as Personal Representative is sole heir or sole devisee
☐ Bond not required as Personal Representative is state agency, bank, or trust company
☐ Bond waivers filed
☐ See order dated _____
☐ Other: _____

Notice to Creditors

- ☐ Required
☒ Not Required

Executed this [redacted] day of [redacted], 2021.

_____, Probate Court Judge

☒ For formal appointment of Personal Representative, see separate order executed 7/14/21

21-1296

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: 
Print Name: Keith W. Park
Address: 109 S. Spring Street
Central, SC 29630
Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____

Signature: _____
Print Name: _____
Address: _____
Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____

*Attorney: Heather G. Hunter
Address: PO Box 891
Spartanburg, SC 29304
Telephone: (864) 582-0708
Email: hhunter@dsdlegal.com

*By completing this information, attorney is designated as attorney of record for assisting Personal Representative until proper withdrawal.

DENNIS, SHAW, DRENNAN & PACK, LLC

ATTORNEYS AT LAW
103 LAFAYETTE STREET
REPLY TO: POST OFFICE BOX 891
SPARTANBURG, S.C. 29304-0891
TELEPHONE (864) 582-0708
FAX (864) 582-0934

June 18, 2021

JAMES W. SHAW, P.A.*
JAMES B. DRENNAN, III, P.A.*
S. MICHAEL PACK, JR., P.A.**
HEATHER G. HUNTER
VIRGINIA HAYES WOOD
* CERTIFIED SPECIALIST IN ESTATE PLANNING & PROBATE LAW
** CERTIFIED SPECIALIST IN TAXATION LAW

R. RAY DENNIS
RETIRED

Tabitha Byrum
Spartanburg County Probate Court
Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306

Re: Isabella F. D. R. Park
2021ES42 01296
DOD: June 9, 2021



Dear Tabitha:

Enclosed please find the original and two (2) copies of the following in regards to the above-referenced Estate:

1. Application for Informal Appointment and Formal Testacy
2. Summons and Petition to admit photocopy of Will.

Also enclosed is our check in the amount of \$150.00 for the filing fee. Please clock the copies and let me know when they are ready to be picked up from the basket. The parties plan to submit a Consent Order in lieu of a hearing in this matter.

Please let me know if you should need anything further.

With kindest regards,

Sincerely yours,

DENNIS, SHAW, DRENNAN & PACK, LLC

Heather G. Hunter
Heather G. Hunter

enclosures

Clocked copies returned to atty

21-1296
ELECTRONICALLY FILED - 2025 Aug 07 5:36 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

DENNIS, SHAW, DRENNAN & PACK, LLC

ATTORNEYS AT LAW
103 LAFAYETTE STREET
REPLY TO: POST OFFICE BOX 891
SPARTANBURG, S.C. 29304-0891
TELEPHONE (864) 582-0708
FAX (864) 582-0934

July 12, 2021

JAMES W. SHAW, P.A.*
JAMES B. DRENNAN, III, P.A.*
S. MICHAEL PACK, JR., P.A.**
HEATHER G. HUNTER
VIRGINIA HAYES WOOD
* CERTIFIED SPECIALIST IN ESTATE PLANNING & PROBATE
** CERTIFIED SPECIALIST IN TAXATION LAW

R. RAY DENNIS
RETIRED

Tabitha Byrum
Spartanburg County Probate Court
Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306

Re: Isabella F. D. R. Park
2021ES42 01296
DOD: June 9, 2021



Dear Tabitha:

Enclosed please find the original and two (2) copies of the following in regards to the above-referenced Estate:

1. ✓ Acceptance of Service from Alastair C. Park and Fiona R. Wiley.
2. ✓ Affidavit of Keith W. Park.
3. ✓ Proposed Consent Order signed by the parties.

Please let me know if you should need anything further.

With kindest regards,

Sincerely yours,

DENNIS, SHAW, DRENNAN & PACK, LLC


Heather G. Hunter

enclosures

pwak processed & copies returned to all parties.
JB

211296

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

In Re: Estate of Isabella F. D. R. Park,
deceased

Keith W. Park,

Petitioner,

VS:

Fiona R. Wiley and Alastair C. Park,

Respondents.

IN THE PROBATE COURT

ACCEPTANCE OF SERVICE
Probate File No. 2021ES42 01296

Due and legal service of the within and foregoing Summons and Petition and Application for Informal Appointment and Formal Testacy is accepted and a copy retained by me at Alvin, Texas, on the date hereof.

7 JULY, 2021

Alastair C. Park
Alastair C. Park



STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

In Re: Estate of Isabella F. D. R. Park,
deceased

Keith W. Park,

Petitioner,

vs.

Fiona R. Wiley and Alastair C. Park,

Respondents.

IN THE PROBATE COURT

ACCEPTANCE OF SERVICE
Probate File No. 2021ES42 01296

Due and legal service of the within and foregoing Summons and Petition and Application for Informal Appointment and Formal Testacy is accepted and a copy retained by me at Greenville, South Carolina, on the date hereof.

July 7, 2021

Fiona R. Wiley
Fiona R. Wiley



STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

AFFIDAVIT

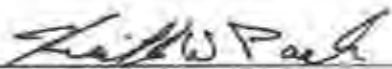
Probate File No.: 2021ES42 01296



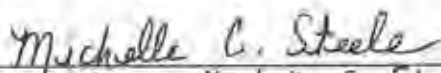
IN RE: Estate of Isabella F.D.R. Park

Personally appeared before me Keith W. Park, who, being first duly sworn, deposes and says that:

1. I am the son of Isabella F.D.R. Park and Andrew D. Park.
2. My father died on August 16, 2020. After his death, his original Will could not be located and a copy was admitted to Spartanburg County Probate Court as will appear by reference to File No. 2020ES4201744.
3. My mother executed a Will on September 12, 2002.
4. After my father's death, I assisted my mother in searching for my father's original Will which could not be located. My mother also could not locate her original Will at that time.
5. I believe that my mother kept her Will at her home at 244 Mills Avenue, Spartanburg, South Carolina.
6. I, along with other family members, conducted a diligent search of my parents home and have not been able to locate the original Will of my mother. I have also inquired at the law firm Dennis, Shaw, Drennan & Pack, LLC who prepared the Will and they are not holding the original. My mother does not have a safe deposit box. To my knowledge, my mother did not have another Will prepared nor did she amend her September 12, 2002 Will.
7. Upon information and belief, my mother did not intentionally destroy her Will but it has been lost or misplaced without her knowledge.


Keith W. Park

SWORN TO before me this
8th day of July, 2021.

 (SEAL)
Name of Notary: Michelle C. Steele
Notary Public for South Carolina
My Commission Expires: 06-13-2027



21-1798

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

In Re: Estate of Isabella F. D. R. Park,
deceased

Keith W. Park,

Petitioner,

vs.

Fiona R. Wiley and Alastair C. Park,

Respondents.

IN THE PROBATE COURT

CONSENT ORDER

Probate File No. 2021ES42 01296



This action was commenced by the filing of a Summons and Petition on or about June 21, 2021. By his Petition, the Petitioner, who is a surviving child of Isabella F. D. R. Park (sometimes hereinafter referred to as "the Decedent") and is named as Personal Representative, requests that the Court admit a photocopy of the Decedent's Will as the Decedent's Last Will and Testament, due to the fact that the original has been lost or inadvertently destroyed, and to appoint Petitioner, Keith W. Park, as Personal Representative.

Isabella F. D. R. Park died testate on June 9, 2021 a resident of Spartanburg County, South Carolina, leaving a Last Will and Testament dated September 12, 2002 ("the Will"), a copy of which is attached to the Summons and Petition herein. The Decedent was survived by her adult children, Fiona R. Wiley, Keith W. Park, and Alastair C. Park. The Decedent has no predeceased children. The Decedent was predeceased by her spouse and was not remarried. I find that the Decedent's adult children constitute all of the intestate heirs of the Decedent.

The Decedent named her son, Keith W. Park, as Personal Representative, and he has applied to the Spartanburg County Probate Court to be appointed as Personal Representative.

PAR
#1

21-1296

The Decedent's children are equal devisees under the Will.

By Affidavit, Petitioner testified that he believes his mother's original Will was kept in her home since its execution. Petitioner further testified that he believes that the original Will has been inadvertently misplaced or lost. Petitioner believes that his mother did in fact intend to leave a valid Last Will and Testament, that she did not intend to revoke or destroy her Will, but that the original has been destroyed, misplaced, or otherwise lost inadvertently without the knowledge of the Decedent. By signature hereto, the Decedent's adult children have consented to admitting the photocopy of the Will of their mother.

I find that the photocopy of the Last Will and Testament of Isabella F. D. R. Park dated September 12, 2002 should be formally admitted to Probate as the Last Will and Testament of the Decedent, and that Petitioner, Keith W. Park, should be appointed as Personal Representative of the Estate of Isabella F. D. R. Park. I further find that the intestate heirs of the Decedent are her adult children, Keith W. Park, Fiona R. Wiley, and Alastair C. Park.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the photocopy of the Last Will and Testament of Isabella F. D. R. Park dated September 12, 2002 is hereby admitted to Probate as the Last Will and Testament of Isabella F. D. R. Park, and Petitioner, Keith W. Park, is hereby appointed as the Personal Representative of the Estate of Isabella F. D. R. Park. I further find that a hearing is not necessary and that the parties have executed this Consent Order using multiple signature pages rather than circulating the original to each party and that this Court considers the counterparts of this document to be the original.

PAC

#2

Page 2 of 3

12.1298

IT IS SO ORDERED.

Given under my hand and seal of office this 14th day of July, 2021.

Ponda A. Caldwell
PONDA A. CALDWELL
Probate Judge

WE CONSENT:

Keith W. Park
Keith W. Park
Petitioner

Fiona R. Wiley
Fiona R. Wiley
Respondent

Alastair C. Park
Alastair C. Park
Respondent

3

21-1206

ELECTRONICALLY FILED - 2025 Aug 07 5:36 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

IT IS SO ORDERED.

Given under my hand and seal of office this _____ day of _____, 2021.

PONDA A. CALDWELL
Probate Judge

WE CONSENT:

Keith W. Park
Petitioner

Fiona R. Wiley
Fiona R. Wiley
Respondent

Alastair C. Park
Respondent

page
#4

21-1296

ELECTRONICALLY FILED - 2025 Aug 07 5:36 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

IT IS SO ORDERED.

Given under my hand and seal of office this _____ day of _____, 2021.

PONDA A. CALDWELL
Probate Judge

WE CONSENT:

Keith W. Park
Petitioner

Fiona R. Wiley
Respondent

Alastair C. Park
Alastair C. Park
Respondent

7/7/2021

4pa e
#5

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
PROBATE COURT

JUDGMENT IN A CIVIL CASE

CASE NO. 2021ES4201296

KEITH W. PARK, PETITIONER,

VS

FIONA R. WILEY AND ALASTAIR C.
PARK, RESPONDENTS.

☐ Jury Verdict. This action came before the court for a trial by jury.
The issues have been tried and the verdict rendered.

☒ Decision by court. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

☐ Action Dismissed. ☐ Rule 12(b), SCRCP ☐ Rule 40(c)(3), SCRCP
☐ Rule 41(a), SCRCP (Vol. Nonsuit) ☐ Settled
☐ Other, Explain: _____

IT IS ORDERED AND ADJUDGED: ☒ See attached CONSENT ORDER
☐ Statement of Judgment by Court

Dated at SPARTANBURG, South Carolina, this 14th day of
JULY, 2021.

PONDA A. CALDWELL
Probate Judge

This judgment was entered on the 14th day of JULY, 2021, and a copy mailed
first class this 15th Day of JULY, 2021, to the attorneys of record or to
the parties (when appearing pro se) as follows:

HEATHER HUNTER, ESQ.
PO BOX 891
SPARTANBURG, SC 29304

FIONA R. WILEY
PO BOX 26642
GREENVILLE, SC 29616

ALASTAIR C. PARK
4925 FM 517 ROAD
ALVIN, TX 77511

Ponda A. Caldwell
Probate Judge

SCRCP Form 4

ELECTRONICALLY FILED - 2025 Aug 07 5:36 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

STATE OF SOUTH CAROLINA

COUNTY OF: SPARTANBURG

IN THE MATTER OF:
ISABELLA F.D.R. PARK

IN THE PROBATE COURT

FIDUCIARY LETTERS

CASE NUMBER: 2021ES4201296

☒ PERSONAL REPRESENTATIVE☐ GUARDIANSHIP☐ CONSERVATORSHIP☐ TRUSTEESHIP☐ _____

On the 4th day of August, 2021,

Mr. Keith W. Park

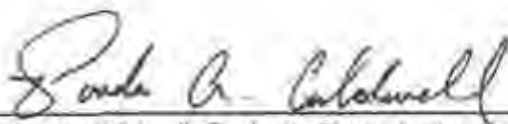
was/were appointed and qualified as Fiduciary(ies) of the above matter by this Court, with all the authority granted to a fiduciary by law.

NOW, THEREFORE, LETTERS are issued as evidence of such appointment, qualification, and authority of the above Fiduciary(ies) to do and to perform all acts, which may be authorized by law.

RESTRICTIONS:

None

Executed this 4th day of August, 2021.


Ponda A. Caldwell, Probate Court Judge

STATE OF SOUTH CAROLINA

COUNTY OF: SPARTANBURG

IN THE MATTER OF:
ISABELLA F.D.R. PARK
(Decedent)

IN THE PROBATE COURT

NOTICE TO CREDITORS

CASE NUMBER: 2021ES4201296

21-1296

***NOTICE TO CREDITORS OF ESTATES**

All persons having claims against the following estates **MUST** file their claims on FORM #371ES with the Probate Court of Spartanburg County, the address of which is 180 Magnolia Street Room 302, Spartanburg, SC 29306, within eight (8) months after the date of the first publication of this Notice to Creditors or within one (1) year from date of death, whichever is earlier (SCPC 62-3-801, et seq.), or such persons shall be forever barred as to their claims. All claims are required to be presented in written statement on the prescribed form (FORM #371ES) indicating the name and address of the claimant, the basis of the claim, the amount claimed, the date when the claim will become due, the nature of any uncertainty as to the claim, and a description of any security as to the claim.

Estate: Isabella F.D.R. Park

Date of Death: June 9, 2021

Case Number: 2021ES4201296

Personal Representative: Mr. Keith W. Park

Address: 109 S. Spring St, Central, SC 29630

Personal Representative:

Address:

Attorney, if applicable: Heather G. Hunter

Address: P.O. Box 891, Spartanburg, SC 29304*

INSTRUCTIONS: Publication to be in Spartan Weekly, a newspaper of general circulation in Spartanburg County. Publish only this (*) portion of this form. Notices may be combined by listing individualized statements of the information concerning each of the estates under one heading consisting of the notice text. Publish once a week for three successive weeks.

File a copy of this form with proof of its publication with the Probate Court.

August 4, 2021

CERTIFICATE OF PUBLICATION

I hereby certify that on these dates, _____,
and _____, I did publish the Notice to Creditors in _____,
a newspaper of general circulation in Spartanburg County, South Carolina, in accordance with law.

SWORN to before me this _____ day of _____,
20____.

Notary Public for South Carolina

My Commission Expires: _____

Newspaper Representative Signature: _____

Print Name: _____

Address: _____

Telephone: _____

Email: _____

FORM #370ES (1/2014)

62-3-704, 62-3-801, 62-3-803, 62-3-804

DENNIS, SHAW, DRENNAN & PACK, LLC

ATTORNEYS AT LAW
103 LAFAYETTE STREET
REPLY TO: POST OFFICE BOX 891
SPARTANBURG, S.C. 29304-0891
TELEPHONE (864) 582-0708
FAX (864) 582-0934

21-1290

August 19, 2021

R. RAY DENNIS
RETIRED

JAMES W. SHAW, P.A.*
JAMES B. DRENNAN, III, P.A.*
S. MICHAEL PACK, JR., P.A.**
HEATHER G. HUNTER
VIRGINIA HAYES WOOD
* CERTIFIED SPECIALIST IN ESTATE PLANNING & TRUSTS LAW
** CERTIFIED SPECIALIST IN TAXATION LAW

Sarah Edney
Spartanburg County Probate Court
Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306

Re: Estate of Isabella F.D.R. Park
2021ES42 01296



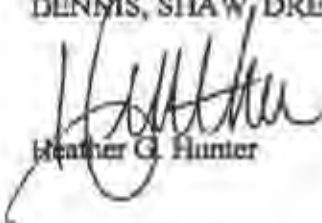
Dear Sarah:

Enclosed please find the original and one (1) copy of a Proof of Delivery along with information to Heirs and Devisees in regards to the above-referenced matter. Please clock the copy and return the same to me by mail.

With kindest regards,

Sincerely yours,

DENNIS, SHAW, DRENNAN & PACK, LLC


Heather G. Hunter

enclosure

cc:

Keith W. Park
109 S. Spring Street
Central, SC 29630

Returned clocked copy to attorney

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE MATTER OF:
ISABELLA F.D.R. PARK
(Decedent)

21-1294
IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2021EB42 01298

On the 19 day of August, 2021, I mailed or delivered the following document(s):

Information to Heirs and devisees:

- ☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery ☒ ordinary first-class mail
☐ certified mail ☐ registered mail
☐ commercial delivery ☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME

ADDRESS

Fiona R. Wilay PO Box 26642, Greenville, SC 29616

Alastair C. Park 4925 FM 517 Road, Alvin, TX 77511

SWORN to before me this 19 day of
August, 2021

Mary Stewart Loring
Notary Public for South Carolina
My Commission Expires: 2-1-31



Relationship to
Decedent/Estate:

Signature: [Handwritten Signature]
Print Name: Heather G. Hunter
Address: PO Box 891
Spartanburg, SC 29304
Telephone (Work): (864) 582-0708
(Home): _____
(Cell): _____
E-mail: hhunter@dsdlegal.com

Attorneys for Personal Representative



STATE OF SOUTH CAROLINA

COUNTY OF: SPARTANBURG

IN THE MATTER OF:
ISABELLA F.D.R. PARK
(Decedent)

IN THE PROBATE COURT

21-1294

INFORMATION TO HEIRS AND DEVISEES

CASE NUMBER: 2021ES42 01296

On June 21, 2021, Application/Petition was made to the Probate Court of Spartanburg County at (address), 180 Magnolia Street, Spartanburg, SC 29306, for the (check all that apply):

INFORMAL

☐ PROBATE OF WILL
☒ APPOINTMENT

FORMAL

☒ TESTACY
☐ APPOINTMENT

In the above matter:

(Complete if applicable) The Decedent's Will dated September 12, 2002, Codicil(s) dated N/A, and Memorandum(s) dated N/A was/were presented.

Bond HAS ☐ HAS NOT ☒ been filed.

This notice is being sent to persons who have or may have some interest in the estate.

Please note: This form is required to be sent to all potential devisees and heirs of the Decedent. Receipt of this form does not mean that you will inherit from the Decedent. You may review the files in the Probate Court or see an attorney if you desire further information.

My application/petition was granted within the past thirty (30) days August 4, 2021
on

Applicant/Personal Representative Name: Keith W. Park

Address: 108 S. Spring Street
Central, SC 29630

Telephone (Work): _____
(Home): (864) 710-8970
(Cell): _____
Email: _____

Co-Applcant/Co-Personal Representative Name: _____

Address: _____

Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____

Attorney: Heather G. Hunter

Address: PO Box 891
Spartanburg, SC 29304

Telephone: (864) 582-0708
Email: hhunter@dsdlegal.com



Probate Court County of Spartanburg

21-12916

ESTATE DIVISION:

KATE KENDALL
ASSOCIATE PROBATE JUDGE
DARLETT M. OWENS
COURT SUPERVISOR

Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, South Carolina 29306-2392

Telephone: (864) 596-2556 • Fax: (864) 596-2011

PONDA A. CALDWELL
PROBATE JUDGE
November 5, 2021

COMMITMENT DIVISION:

DAVID F. ANDERSON
ASSOCIATE PROBATE JUDGE
GEORGIA J. BENNETT
COURT SUPERVISOR

Mr. Keith W. Park
109 S. Spring St
Central, SC 29630

Re: Estate of Isabella F.D.R. Park, Deceased
Probate Court File No. 2021ES4201296

Dear Mr. Park:

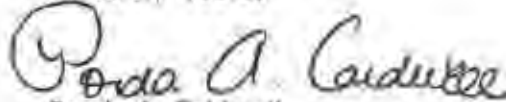
The appraisal in the above estate was due in this office on November 4, 2021.

The law requires that all documents be promptly filed within the statutory time provided, and the South Carolina Court Administration audits our files periodically to determine compliance. It is therefore imperative that you file your appraisal immediately. If you feel that you have a legal reason for failure to file, you must contact this court upon receipt of this letter.

My staff will be happy to assist you with this matter.

Thanking you, I am

Sincerely Yours,


Ponda A. Caldwell
Judge, Probate Court

PAC:sc

cc: Heather G. Hunter
P.O. Box 891
Spartanburg, SC 29304

LE01



Probate Court County of Spartanburg

21-1296

Spartanburg County Judicial Center

180 Magnolia Street
Spartanburg, South Carolina 29306-2392

Telephone: (864) 596-2556 • Fax: (864) 596-2031

PONDA A. CALDWELL

PROBATE JUDGE
November 19, 2021

ESTATE DIVISION:

KATE KENDALL
ASSOCIATE PROBATE JUDGE

DARLETT M. OWENS
COURT SUPERVISOR

COMMITMENT DIVISION:

DAVID F. ANDERSON
ASSOCIATE PROBATE JUDGE

GEORGIA J. BENNETT
COURT SUPERVISOR

Mr. Keith W. Park
109 S. Spring St
Central, SC 29630

Re: Estate of Isabella F.D.R. Park, Deceased
Probate Court File No. 2021ES4201296

Dear Mr. Park:

You did not respond to our letter dated November 5, 2021, requesting that you file the Inventory and Appraisement, Form 350PC, in the above estate. Section 62-3-706, Code of Laws of South Carolina, requires such filing which, in your case, was due on November 4, 2021, and is now past due. Unless you file the appraisal or petition the court for an extension of time in which to file it within fifteen (15) days from the date of this letter, I will have no alternative but to order you before the court to show cause why you should not be held in contempt.

Please do not make this sort of legal action necessary by your failure to comply with the above-cited law. If a summons has to be issued and served by the Sheriff's office, a \$50.00 fine will be charged.

If you have any questions, please call Sarah Edney.

Sincerely yours,

Ponda A. Caldwell
Judge, Probate Court

PAC:sce

cc: Heather G. Hunter
P.O. Box 891
Spartanburg, SC 29304

LE0)

DENNIS, SHAW, DRENNAN & PACK, LLC

ATTORNEYS AT LAW
103 LAFAYETTE STREET
REPLY TO: POST OFFICE BOX 891
SPARTANBURG, S.C. 29304-0891
TELEPHONE (864) 582-0708
FAX (864) 582-0934

November 29, 2021

JAMES W. SHAW, P.A.*
JAMES B. DRENNAN, III, P.A.*
S. MICHAEL PACK, JR., P.A.**
HEATHER G. HUNTER
VIRGINIA HAYES WOOD
* CERTIFIED SPECIALIST IN ESTATE PLANNING & PROBATE LAW
** CERTIFIED SPECIALIST IN TAXATION LAW

R. RAY DENNIS
RETIRED

Sarah Edney
Spartanburg County Probate Court
Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306

Re: Estate of Isabella F.D.R. Park
2021ES42 01296

Dear Sarah:

Enclosed please find the original and one (1) copy of a Motion for Extension in regards to the above-referenced matter. Please clock the copy and return the same to me by mail.

With kindest regards,

Sincerely yours,

DENNIS, SHAW, DRENNAN & PACK, LLC


Heather G. Hunter

enclosure



Returned clocked copy to atty

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE MATTER OF:
ISABELLA F.D.R. PARK
(Decedent)

IN THE PROBATE COURT
MOTION FOR EXTENSION
Request #1

CASE NUMBER: 2021ES42 01298

- ☒ INVENTORY AND APPRAISEMENT
☐ ACCOUNTING
☐ ALLOWANCE AND/OR DISALLOWANCE OF CLAIMS
☐ CLOSING DOCUMENT(S)
☐ OTHER: _____

Keith W. Park is/are the duly qualified and acting Personal Representative(s) of the above estate.

I/We request an extension of 90 days to allow the Personal Representative(s) to complete and/or file the above referenced document or action for the following reason(s):

Additional time is needed to identify and value assets of the estate.

Executed this 29 day of November, 2021.

Attorney for the Personal Representative / Personal Representative

Signature: Heather G. Hunter

Print Name: Heather G. Hunter

Address: PO Box 891
Spartanburg, SC 29304

Telephone (Work): (864) 582-0708

(Home): _____

(Cell): _____

Email: hhunter@dsdlegal.com

Co-Personal Representative Signature: _____

Print Name: _____

Address: _____

Telephone (Work): _____

(Home): _____

(Cell): _____

Email: _____



21-1296
500

ELECTRONICALLY FILED - 2025 Aug 07 5:36 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE PROBATE COURT

IN THE MATTER OF:
ISABELLA F.D.R. PARK
(Decedent)

ORDER FOR EXTENSION

CASE NUMBER: 2021ES42 01296

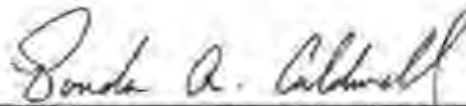
After reviewing the foregoing request and the record, it appears that the request should be:

- ☒ Granted
- ☐ Final Extension; _____ prior extensions granted for same reason recited on Motion; no new information
- ☐ Granted for a shorter extension of _____ days
- ☐ Granted for a longer extension of _____ days
- ☐ Denied and refer for Summons
- ☐ Personal Representative / Court to copy all interested parties with copy of Motion for Extension; Proof of Delivery to be filed within ten (10) days of date of this Order
- ☐ Final Extension due to timeframe imposed by SC Court Administration
- ☐ Denied / Hearing scheduled for _____
- ☐ Denied - see explanation below

Filing(s) are now due on or before the 2nd day of March, 2021, at _____ o'clock _____ M.

IT IS SO ORDERED:

Executed this 2nd day of December, 2021



Ponda A. Caldwell, Probate Court Judge

STATE OF SOUTH CAROLINA

COUNTY OF: SPARTANBURG

IN THE PROBATE COURT

INVENTORY AND APPRAISEMENT: PROBATE PROPERTY

☒ ORIGINAL
☐ AMENDED #

(must restate the unchanged information from the original inventory)

 IN THE MATTER OF:
 ISABELLA F.D.R. PARK
 (Decedent)

CASE NUMBER: 2021ES42 01298

File the original inventory and Appraisement with the Probate Court within ninety (90) days following the fiduciary appointment. A copy shall be sent to each interested person who has demanded it. A Proof of Delivery must be filed with the Court. The gross fair market value of all probate assets, regardless of location (whether in this state or elsewhere), should be listed as of the date of death. Continue on additional sheets if necessary. An Amended Inventory should be utilized for correcting, adjusting or adding to an original inventory, and must restate the unchanged information from the original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset. If an appraiser is employed, his/her name and address must be indicated with the item or items he/she appraised.

RECAPITULATION

Schedule A - Real Estate	\$259,300
Schedule B - Stocks and Bonds	\$1,264.38
Schedule C - Notes Due Decedent and Cash	\$27,966
Schedule D - Insurance on Decedent's Life - Payable to the Estate	\$0
Schedule E - Jointly Owned Property	NA
Schedule F - Other Miscellaneous Assets	\$4,376
Schedule G - Transfers During Decedent's Life Payable to the Estate	\$0
Schedule H - Powers of Appointment Payable to the Estate	\$0
Schedule I - Annuities and Retirement Accounts Payable to the Estate	\$0
GROSS VALUE OF PROBATE ESTATE	\$292,906.38

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisement of all probate real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

 SWORN to before me this 14th day of March 2022
Michelle C. Steele
 Notary Public for South Carolina
 My Commission Expires: 06-13-2027

Personal Representative

Signature: [Signature]Print Name: Keith W. ParkAddress: 109 S. Spring StreetCentral, SC 29630

Telephone (Work):

(Home):

(Cell): (864) 710-8970

(Email):

Co-Personal Representative

Signature

Name:

Address:

Telephone (Work):

(Home):

(Cell):

(Email):

 Attorney: Heather G. Hunter
 Address: PO Box 891
Spartanburg, SC 29304
 Telephone: (864) 582-0708
 Email: hhunter@dsdlegal.com


A. REAL ESTATE in Decedent's name alone or tenants in common (not as joint with right of survivorship). Describe each property by listing its full address, tax map number, deed book and page and description consistently (house, lot, buildings, acreage). Also list oil / mineral rights and time shares, if it is real property. If the property is encumbered, list the full fair market value of the property here and the encumbrance on Encumbrance section below		% Owned by Decedent	Fair Market Value of Decedent's Interest
1. house and lot(s), 244 Mills Avenue, Spartanburg, SC; Tax Map No. 7-12-12-082.00; Deed Book 39-Z, at Page 261, and Deed Book 135-P, at Page 520		100%	259,300
2.			
3.			
B. STOCKS, BONDS in Decedent's name alone or tenants in common (not as joint with right of survivorship). List each type of security and number of shares.			
1. treasury bonds		100%	1,284.36
2.			
3.			
C. CASH, BANK ACCOUNTS, NOTES RECEIVABLES in Decedent's name alone or as tenants in common. List each separate account type and institution and the last two digits of each account. List all bank accounts owned by Decedent alone or as joint with survivorship, savings, CDs, money market, brokerage, employment bonus, cash award, final paycheck etc.), cash on hand, notes payable to Decedent, and survival action proceeds.			
1. cash on hand		100%	27,960
2.			
3.			
D. LIFE INSURANCE payable to the Decedent's estate.			
1. None			0
2.			
E. JOINTLY OWNED PROPERTY – REPORTING IS NOT REQUIRED			
			N/A
F. ALL OTHER MISCELLANEOUS PERSONAL PROPERTY in Decedent's name alone or as tenants in common. List below any tangible personal property, including household goods & furnishings, vehicles, boats/motors/trailers, mobile homes that are not de-titled (Include year/make/model/VIN, if applicable), airplanes, equipment, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, including coins, guns, artwork, jewelry, etc., and any other miscellaneous probate items not listed elsewhere, including any digital assets			
1. furniture and appliances		100%	2,455
2. miscellaneous personal property		100%	1,919
3.			
4.			
G. TRANSFERS DURING DECEDENT'S LIFE PAYABLE TO ESTATE ONLY Any transfers intended to take effect at death if payable to the Estate shall be reported. A trust created by Decedent in which income for life was retained by the Decedent, power to revoke or other incidents of ownership retained by the Decedent, lifetime transfers of real property in which Decedent retained life estate, etc.			
1. None			0
2.			
H. POWERS OF APPOINTMENT PAYABLE TO THE ESTATE ONLY List property, both real and personal, over which Decedent possessed a Power of Appointment whether testamentary or otherwise, if such property is payable to the Estate.			
1. None			0
I. ANNUITIES AND IRA, ETC. PAYABLE TO THE ESTATE ONLY List any annuities or retirement accounts owned by the Decedent and payable to the Estate.			
1. None			0
2.			
TOTAL PROBATE ESTATE VALUE		\$	292,908.36
ENCUMBRANCES (e.g., mortgages, liens, judgments, etc., but not general debts of the estate). List debts of the Decedent secured by assets on the above schedule and describe the debt and the specific asset encumbered.			
1. mortgage, Schedule A Item 1			76,459
2.			
TOTAL ENCUMBRANCES		\$	76,459



Probate Court County of Spartanburg

Spartanburg County Judicial Center

180 Magnolia Street
Spartanburg, South Carolina 29306-2392

Telephone: (864) 596-2556 • Fax: (864) 596-2011

ESTATE DIVISION:

KATE KENDALL
ASSOCIATE PROBATE JUDGE

DARLETT M. OWENS
COURT SUPERVISOR

PONDA A. CALDWELL
PROBATE JUDGE
March 3, 2022

COMMITMENT DIVISION:

DAVID P. ANDERSON
ASSOCIATE PROBATE JUDGE

GEORGIA J. BENNETT
COURT SUPERVISOR

Mr. Keith W. Park
109 S. Spring St
Central, SC 29630

Re: Estate of Isabella F.D.R. Park, Deceased
Probate Court File No. 2021ES4201296

Dear Mr. Park:

This court granted an extension for the filing of the Inventory and Appraisement in regard to the above estate. Section 62-3-706, Code of Laws of South Carolina, requires such filing which was due on March 2, 2022, and is now past due. Unless you file the appraisal within fifteen (15) days from the date of this letter, I will have no alternative but to order you before the court to show cause why you should not be held in contempt.

If a summons has to be issued and served by the Sheriff's office, a \$50.00 fine will be charged. Please do not make this sort of legal action necessary by your failure to comply with the above-cited law.

If you have any questions, please call Sarah Edney.

Sincerely yours,

Ponda A. Caldwell
Judge, Probate Court

PAC:sce

cc: Heather G. Hunter
P.O. Box 891
Spartanburg, SC 29304

LE41

DENNIS, SHAW, DRENNAN & PACK, LLC

ATTORNEYS AT LAW
103 LAFAYETTE STREET
REPLY TO: POST OFFICE BOX #71
SPARTANBURG, S.C. 29304-0891
TELEPHONE (864) 582-0708
FAX (864) 582-0934

21-1296

March 17, 2022

JAMES W. SHAW, P.A.*
JAMES B. DRENNAN, III, P.A.*
S. MICHAEL PACK, JR., P.A.**
HEATHER G. HUNTER
VIRGINIA HAYES WOOD
* CERTIFIED SPECIALIST IN ESTATE PLANNING & PROBATE LAW
** CERTIFIED SPECIALIST IN PROBATE LAW

R. RAY DENNIS
RETIRED

Sarah Edney
Spartanburg County Probate Court
Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306

Re: Estate of Isabella F.D.R. Park
2021ES42 01296

Dear Sarah:

Enclosed please find the original and one (1) copy of an Inventory and Appraisal in the above-referenced matter. Please check the copy and return the same to me by mail.

With kindest regards,

Sincerely yours,

DENNIS, SHAW, DRENNAN & PACK, LLC


Heather G. Hunter

enclosure



Returned clocked copy to atty

Evert | Weathersby | Houff
ATTORNEYS AT LAW

21-1296

3455 Peachtree Road NE, Suite 1550
Atlanta, GA 30326
Tel: 678.651.1200
Fax: 678.651.1201

Patricia A. McGrath
Direct: 678.651.1261
PAAMcGrath@ewhlaw.com

Other Offices:
Athens, Georgia
Baltimore, Maryland

February 9, 2022



Via FedEx
Clerk of Court
Spartanburg County Probate Court
180 Magnolia St
Spartanburg, SC 29306

Re: *Isabella F.D.R. Park* – Spartanburg Probate Court No. 2021ES4201296
Ronnie Clyde DeYoung – Spartanburg Probate Court No. Unknown

Dear Clerk:

I am writing to request complete copies of the probate court files with regard to Isabella Park and Ronnie DeYoung. Enclosed are money orders for the total estimated costs, \$44 and \$32, and a FedEx mailing slip and envelope to use in shipping the copies. Please also e-mail scanned copies upon receipt of payment.

Thank you.

Best regards,

Patricia A. McGrath

Patricia A. McGrath



Probate Court County of Spartanburg

Spartanburg County Judicial Center

180 Magnolia Street
Spartanburg, South Carolina 29306-2392

Telephone: (864) 596-2556 • Fax: (864) 596-2011

PONDA A. CALDWELL

PROBATE JUDGE

February 11, 2022

ESTATE DIVISION:

KATE KENDALL

ASSOCIATE PROBATE JUDGE

DARLETT M. OWENS

COURT SUPERVISOR

COMMITMENT DIVISION:

DAVID F. ANDERSON

ASSOCIATE PROBATE JUDGE

GEORGIA J. BENNETT

COURT SUPERVISOR

Evert Weathersby & Houff
Attn: Patricia A. McGrath
3455 Peachtree Road NE Ste 1550
Atlanta, GA 30326

Re: Estate of Isabella F.D.R. Park, Deceased
Probate Court File No. 2021ES4201296

Dear Ms. McGrath:

Pursuant to your request, the documents checked below are enclosed and your cost, if any, is also indicated. If your request specified certified copies, we have complied with your direction.

- () Copy of Last Will and Testament.
- () Copy of Application/Petition for Informal/Formal Appointment.
- () Copy of Inventory and Appraisement.
- (XXX) Other: Copy of File as of 02/11/22.
- () The cost is \$. Please remit a cashier's check or money order made payable to Ponda A. Caldwell, Probate Judge for Spartanburg County, South Carolina.
- () Pursuant to statute, there is no charge for the enclosed.

If we may be of further assistance, please let us know.

Sincerely yours,

Ponda A. Caldwell
Judge, Probate Court

PAC:mlb

Enclosure(s)

LE45

21-1296

OFFICIAL RECEIPT

Ponda A. Caldwell, Judge
Probate Court of Spartanburg County
Spartanburg, South Carolina

DATE: 02112022 08 TRANS #: 58161
RECEIPTED: 44.00 ISABELLA FFDR PARK COPIES
44.00 010-020-00026- XEROX COPIES

DUPLICATE



Probate Court County of Spartanburg

Spartanburg County Judicial Center

180 Magnolia Street
Spartanburg, South Carolina 29306-2392

Telephone: (864) 596-2556 • Fax: (864) 596-2011

PONDA A. CALDWELL
PROBATE JUDGE

March 21, 2022

ESTATE DIVISION:

KATE KENDALL
ASSOCIATE PROBATE JUDGE

DARLETT M. OWENS
COURT SUPERVISOR

COMMITMENT DIVISION:

DAVID P. ANDERSON
ASSOCIATE PROBATE JUDGE

GEORGIA J. BENNETT
COURT SUPERVISOR

Mr. Keith W. Park
109 S. Spring St
Central, SC 29630

Re: Estate of Isabella F.D.R. Park, Deceased
Probate Court File No. 2021ES4201296

Dear Mr. Park:

We are in receipt of the Inventory and Appraisement, Form 350ES, in regard to the above estate.

A review of the estate file reveals that additional court cost is due in the amount of \$359.36. Please make your check payable to me, as Probate Judge, and remit as soon as possible. If you have employed an attorney to represent the estate, a copy of this letter is being furnished to him/her as information only.

Thanking you for your prompt attention to this matter, I am

Sincerely yours,

Ponda A. Caldwell
Judge, Probate Court

PAC:sce

cc: Heather G. Hunter
P.O. Box 891
Spartanburg, SC 29304

LE07



Probate Court County of Spartanburg

21-1296

ESTATE DIVISION:

KATE KENDALL
ASSOCIATE PROBATE JUDGE
DARLETT M. OWENS
COURT SUPERVISOR

Spartanburg County Judicial Center

180 Magnolia Street
Spartanburg, South Carolina 29306-2382

Telephone: (864) 596-2556 • Fax: (864) 596-2011

PONDA A. CALDWELL
PROBATE JUDGE
May 5, 2022

COMMITMENT DIVISION:

DAVID F. ANDERSON
ASSOCIATE PROBATE JUDGE
GEORGINA J. BENNETT
COURT SUPERVISOR

Mr. Keith W. Park
109 S. Spring St
Central, SC 29630

Re: Estate of Isabella F.D.R. Park, Deceased
Probate Court File No. 2021ES4201296

Dear Mr. Park:

On the previously scheduled appointment date, you failed to appear or to mail in documentation concerning the filing of an accounting in regard to the above estate. I have rescheduled August 26, 2022, at 11:00 o'clock for you to do so. If you have a conflict with this new date and time, please let us know as soon as possible so that we can set a date and time that is more convenient for you. Because our schedules are booked several weeks out and there are so many people needing appointments, it is important that you come in at the scheduled time. We are enclosing an appointment slip containing all the information needed by us in order to file the accounting.

In the event you do not appear as stated above, it will be necessary to issue a summons to require your appearance. If a summons has to be issued and served by the Sheriff's office, a \$50.00 fine will be charged. Please do not make this action necessary by your failure to appear.

Sincerely yours,

Ponda A. Caldwell
Judge, Probate Court

PAC:sce

cc: Heather G. Hunter
P.O. Box 891
Spartanburg, SC 29304

LE02

21-1784

PROBATE COURT FOR SPARTANBURG COUNTY, S.C.**PONDA A. CALDWELL, Probate Judge**

180 Magnolia Street, Room 302

Spartanburg, SC 29306

Telephone Number: 864-596-2556

NAME OF ESTATE: Isabella ParkAPPOINTMENT: August 26, 2022 AT 11:00 P.M.ESTATE SPECIALIST: Sarah Edney 562-4495

PURPOSE OF APPOINTMENT:

(AS CHECKED)

- ☐ TO BE APPOINTED PERSONAL REPRESENTATIVE
☐ TO BE APPOINTED SPECIAL ADMINISTRATOR
☐ TO PROBATE THE WILL
☐ TO BE APPOINTED CONSERVATOR FOR MINOR
☒ FOR APPROVAL OF ACCOUNTING
☐ FINAL SETTLEMENT OF ESTATE

BAGS OR PURSES ARE NOT ALLOWED TO BE BROUGHT INTO THE SPARTANBURG COUNTY COURTHOUSE.

NOTE: IF YOU ARE UNABLE TO KEEP THIS APPOINTMENT FOR ANY REASON, PLEASE CALL THE ABOVE NUMBER AS SOON AS POSSIBLE TO CANCEL YOUR APPOINTMENT AND RESCHEDULE A MORE CONVENIENT DATE.

ITEM(S) REQUIRED ARE MARKED BELOW:

- ☒ Accounting with Supporting Documentation (i.e. All Bank Statements, Bills, Receipts, and Cancelled Checks, etc.)

21-1296

May 26, 2022

Probate Court
Attn: Margaret
180 Magnolia Street
Spartanburg, South Carolina 29306



To Margaret,

Per instruction from your office, I am submitting payment [\$38] and [\$53] for copies of the below cases.

Case: 2020 ES42 01744
Estate of Andrew Park

Case: 2021 ES42 01296
Estate of Isabella Park

Please feel free to contact me with any questions and/or concerns you may have in regards to my request. Thank you for your assistance.

Sincerely,

Laura Gillette
5755 North Point Pkwy
Suite 278
Alpharetta, GA 30022
lmaddux@smithbarson.com
423-605-2630

5755 North Point Parkway • Suite 278 • Alpharetta, GA 30022 •
Tel 770-350-2550 • Fax 877-349-0267



Probate Court County of Spartanburg

Spartanburg County Judicial Center

180 Magnolia Street
Spartanburg, South Carolina 29305-2392

Telephone: (864) 596-2556 • Fax: (864) 596-1021

PONDA A. CALDWELL

PROBATE JUDGE

May 31, 2022

ESTATE DIVISION:

KATE KENDALL

ASSOCIATE PROBATE JUDGE

DARLETT M. OWENS

COURT SUPERVISOR

COMMITMENT DIVISION:

DAVID F. ANDERSON

ASSOCIATE PROBATE JUDGE

GEORGIA J. BENNETT

COURT SUPERVISOR

Ms. Laura Gillette
5755 North Point Pkwy Ste 278
Alpharetta, GA 30022

Re: Estate of Isabella F. D. R. Park, Deceased
Probate Court File No. 2021ES4201296

Dear Ms. Gillette:

Pursuant to your request, the documents checked below are enclosed and your cost, if any, is also indicated. If your request specified certified copies, we have complied with your direction.

- () Copy of Last Will and Testament.
- () Copy of Application/Petition for Informal/Formal Appointment.
- () Copy of Inventory and Appraisalment.
- (XXX) Other: Copy of File as of 05/31/22.
- () The cost is \$. Please remit a cashier's check or money order made payable to Ponda A. Caldwell, Probate Judge for Spartanburg County, South Carolina.
- () Pursuant to statute, there is no charge for the enclosed.

If we may be of further assistance, please let us know.

Sincerely yours,

Ponda A. Caldwell
Judge, Probate Court

PAC:mib

Enclosure(s)

LE40

21-1296

OFFICIAL RECEIPT

Ponda A. Caldwell, Judge
Probate Court of Spartanburg County
Spartanburg, South Carolina

DATE: 05312022 11 TRANS #: 61055
RECEIPTED: 53.00 ISABELLA F D R PARK COPIES
53.00 010-020-00026- XEROX COPIES

DUPLICATE

DENNIS, SHAW, DRENNAN & PACK, LLC

ATTORNEYS AT LAW
103 LAFAYETTE STREET
REPLY TO: POST OFFICE BOX 891
SPARTANBURG, S.C. 29304-0891
TELEPHONE (864) 582-0708
FAX (864) 582-0934

June 8, 2022

JAMES W. SHAW, P.A.*
JAMES B. DRENNAN, III, P.A.*
S. MICHAEL PACK, JR., P.A.**
HEATHER G. HUNTER
VIRGINIA HAYES WOOD
* CERTIFIED SPECIALIST IN SOUTH CAROLINA PROBATE LAW
** CERTIFIED SPECIALIST IN TAXATION LAW

R. RAY DENNIS
RETIRED

Sarah Edney
Spartanburg County Probate Court
Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306

Re: Estate of Isabella F.D.R. Park
2021ES42 01296

Dear Sarah:

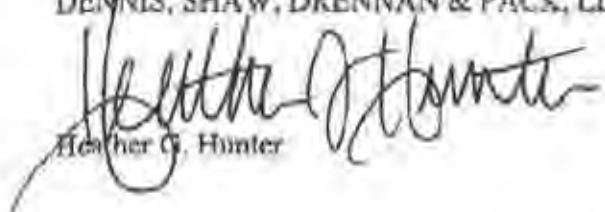
Enclosed please find two (2) copies of a recorded deed of distribution, along with the original and one (1) copy of three Receipts and Releases and an Application for Settlement in the above-referenced matter. Please clock the copies and return the same to me by mail.

If anything further is needed to close this estate, please let me know.

With kindest regards,

Sincerely yours,

DENNIS, SHAW, DRENNAN & PACK, LLC


Heather G. Hunter

enclosure



21-1296



DEE-2022030007
 Recorded 3 on 06/07/2022 03:23:26 PM
 Recording Fee: \$15.00
 Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
 DOROTHY SABLE REGISTER OF DEEDS
 BK:DEE 137-N PG:309-311

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG
 IN THE MATTER OF:
 ISABELLA F.D.R. PARK
 (Decedent)

IN THE PROBATE COURT
 DEED OF DISTRIBUTION
 (Real Property Only)
 NOT A WARRANTY DEED
 CASE NUMBER: 2021ES42 01296

The undersigned states as follows:

Decedent died on June 9, 2021; and probate of the Estate is being administered in the Probate Court for Spartanburg County, South Carolina, in File #2021ES42 01296.

I/We was/were appointed Personal Representative (s) on August 4, 2021.

Decedent owned real property described as follows:

Tax Map Number: 7-12-12-082.00

Street/Property Address: 244 Mills Avenue, Spartanburg, SC 29302

Legal Description:

All that lot or parcel of land in the City of Spartanburg, County of Spartanburg, State of South Carolina, fronting 75.0 feet on the west side of Mills Avenue, with a rear width of 75.0 feet, and a uniform depth of 136.8 feet, and being shown on a plat of a Survey for Andrew D. Park dated September 8, 1972, by J. R. Smith, R.L.S., recorded in Plat Book 68, at Page 671, Office of the Register of Deeds for Spartanburg County. For a more full and particular description, reference is hereby specifically made to said plat.

This being the same property conveyed to Isabella F.D.R. Park by deed of distribution in the Estate of Andrew D. Park, dated January 27, 2022, and recorded January 31, 2022, in Deed Book 135-P, at Page 620, Office of the Register of Deeds for Spartanburg County. Reference is also made to deed of Sara Anne Shea Ransdell, formerly Sara Anne Shea, to Andrew D. Park and Isabella F.D.R. Park, dated September 18, 1972, and recorded September 21, 1972, in Deed Book 39-Z, at Page 281, said Register of Deeds Office.

LESS AND EXCEPT, all that piece or parcel of land in the City and County of Spartanburg, State of South Carolina, being a portion of Lot 3, Block 20, on a plat of Converse Heights recorded in Plat Book 2, at Pages 84 and 85, Office of the Register of Deeds for Spartanburg County, and more particularly described as follows: BEGINNING at an iron pin on the western side of Mills Avenue 80 feet northwest of its intersection with Norwood Street and running thence S. 54-05 W. 136.8 feet to an iron pin on the edge of a 15 foot alley; thence along with the alley N. 85-55 W. 5 feet to a point; thence N. 54-05 E. 136.8 feet to a point on the edge of Mills Avenue; thence along and with Mills Avenue S. 35-55 E. 5 feet to the point of beginning. This being the same property conveyed to W. McA. Davis by deed of Andrew D. Park and Isabel F.D.R. Park, dated September 21, 1972, and recorded October 2, 1972, in Deed Book 40-A, at Page 232, Office of the Register of Deeds for Spartanburg County.

☐ Additional sheet(s) for additional property(ies) is attached (check if applicable)

21-1290

This transfer is made pursuant to:

- ☒ Decedent's Will
☐ Intestacy Statute: SCPC 62-2-103
☐ Private Family Agreement: SCPC 62-3-912
☐ Disclaimer by: _____
☐ Probate Court Order issued on: _____
☐ Other: _____

In accordance with the laws of the State of South Carolina, the Personal Representative(s) does/do hereby release all of the Personal Representative's(s') right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries named below

Kelth W. Park
 109 S. Spring Street
 Central, SC 29630

Fiona R. Willey
 PO Box 28842
 Greenville, SC 29616

Alastair G. Park
 4925 FM 517 Road
 Alvin, TX 77511

☐ Additional sheet(s) for names of additional beneficiaries is attached (check, if applicable)

IN WITNESS WHEREOF the undersigned, as Personal Representative(s) of the above Estate, has executed this Deed of Distribution, on this 6 day of JUNE, 2022

SIGNED, SEALED AND DELIVERED
 IN THE PRESENCE OF:

Witness: Cynthia Hutchinson
 Print Name: Cynthia Hutchinson
 Witness: Ann P Gwin
 Print Name: ANN P GWIN

Estate of: Isabella F.D.R. Park
 Signature of Personal Representative: [Signature]

Print Name: Kelth W. Park

If applicable,
 Signature of Co-Personal Representative: _____

Print Name: _____

21-1296

STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF SPARTANBURG

I, ANN POWERS GUNAW, Notary Public, a notary for the State of South Carolina do hereby certify that Kelth W. Park, as Personal Representative(s) of the Estate of Isabella F.D.R. Park, personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the 6 day of JUNE, 2022.

Ann Powers Gunaw (SEAL)
(Signature of Notary Public)

ANN POWERS GUNAW
(Print Name of Notary Public)

Notary Public for South Carolina
My Commission Expires: 11 21 26

Note: It is recommended that an attorney prepare this document and determine if a title examination is necessary.

21-1290

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF SPARTANBURG

IN THE MATTER OF Estate of Isabella F.D.R. Park

CASE NUMBER 2021 ES42 01296

RECEIPT AND RELEASE

The undersigned hereby acknowledges receipt from the Personal Representative in this matter of the following property:

All of the property to which I am entitled under The Last Will and Testament of Isabella F.D.R. Park. I am totally familiar with the assets in this estate, their disposition, and the manner in which the administration has taken place, and I desire that the estate be closed without the filing of an interim or final formal accounting. The undersigned also waives notice of right to demand a hearing on all accountings, proposal for distribution and petition for discharge.

In consideration of the distribution, the undersigned releases and forever discharges the estate and the Personal Representative from any and all rights and claims which the undersigned may have relating to the estate.

Executed this 21 day of May, 2022.

Witness:

Beneficiary:

Laura Brock Beale

Fiona R. Wiley
Fiona R. Wiley

Form #403C (7/87)
SCPC administrative



21-1256

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF SPARTANBURG

IN THE MATTER OF Estate of Isabella F.D.R. Park

CASE NUMBER 2021ES42 01296

RECEIPT AND RELEASE

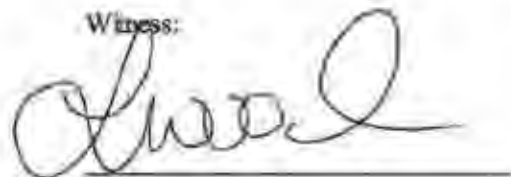
The undersigned hereby acknowledges receipt from the Personal Representative in this matter of the following property:

All of the property to which I am entitled under The Last Will and Testament of Isabella F.D.R. Park. I am totally familiar with the assets in this estate, their disposition, and the manner in which the administration has taken place, and I desire that the estate be closed without the filing of an interim or final formal accounting. The undersigned also waives notice of right to demand a hearing on all accountings, proposal for distribution and petition for discharge.

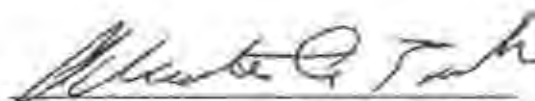
In consideration of the distribution, the undersigned releases and forever discharges the estate and the Personal Representative from any and all rights and claims which the undersigned may have relating to the estate.

Executed this 22 day of MAY, 2022.

Witness:



Beneficiary:


Alastair C. Park

Form #403C (7/87)
SCPC administrative



21-1296

ELECTRONICALLY FILED - 2025 Aug 07 5:36 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF SPARTANBURG

IN THE MATTER OF Estate of Isabella F.D.R. Park

CASE NUMBER 2021ES42 01296

RECEIPT AND RELEASE

The undersigned hereby acknowledges receipt from the Personal Representative in this matter of the following property:

All of the property to which I am entitled under The Last Will and Testament of Isabella F.D.R. Park. I am totally familiar with the assets in this estate, their disposition, and the manner in which the administration has taken place, and I desire that the estate be closed without the filing of an interim or final formal accounting. The undersigned also waives notice of right to demand a hearing on all accountings, proposal for distribution and petition for discharge.

In consideration of the distribution, the undersigned releases and forever discharges the estate and the Personal Representative from any and all rights and claims which the undersigned may have relating to the estate.

Executed this 6 day of June, 2022.

Witness:

Beneficiary:


Keith W. Park

Form #403C (7/87)
SCPC administrative



STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE MATTER OF:
ISABELLA F.D.R. PARK
(Decedent)

IN THE PROBATE COURT

21-1296

APPLICATION FOR SETTLEMENT

CASE NUMBER: 2021ES42 01296

1. The undersigned as the Personal Representative(s) has/have collected and managed the assets of the Estate; has/have paid all lawful claims against the Estate; either has/have distributed assets or propose(s) to distribute as designated on the Proposal for Distribution; and has/have performed all other required acts pertaining to Estate of Decedent.
2. The Personal Representative(s) has/have filed:
☒ Proof of Publication ☐ No Publication required
☒ Inventory and Appraisalment(s)
☐ Proposal for Distribution for assets not yet distributed
☐ Final Accounting ☒ Accounting waived by all required parties
* ☐ Proof of Delivery that all required documents have been sent to interested persons as required by law
☒ All required tax returns (including final income tax return, fiduciary income tax return, Estate tax return) and any taxes due have been paid. If not, please explain:
☐ Documents with IRS electing portability
3. The time period for submission of claims has expired.
4. I request that the Court issue Orders as appropriate together with such other Orders as the law may require and as the Court may deem applicable and proper.
5. I request that the Court (check all that apply)
☐ A. Consider or approve the Personal Representative's Accounting and, if applicable, the Proposal for Distribution for assets not yet distributed.
☐ B. Approve the distributions previously made and authorize the Personal Representative(s) to transfer title to the assets and distribute them to the distributees in the amount and manner set forth in the Proposal for Distribution (FORM 410ES).
☒ C. Discharge, or set forth the conditions of the termination of the appointment of the Personal Representative, and the release of the Personal Representative's bond, if any.
☐ D. (Other:) * Proof should have been checked

Executed this 6 day of June, 2022.

SWORN to before me this 6 day of
JUNE 20 22

[Signature]
Notary Public for South Carolina
My Commission Expires: 11 21 26

Personal
Representative
Signature: [Signature]

Print Name: Keith W. Park

Address: 109 S. Spring Street
Central, SC 29630

Telephone (Work): _____

(Home): _____

(Cell): (864) 710-8970

Email: _____

SWORN to before me this _____ day of
_____, 2022

Notary Public for _____
My commission expires: _____

Co-Personal
Representative
Signature: _____

Print Name: _____

Address: _____

Telephone (Work): _____

(Home): _____

(Cell): _____

Email: _____



STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE MATTER OF:
ISABELLA F.D.R. PARK
(Decedent)

MR. KEITH W. PARK
Personal Representative(s)

IN THE PROBATE COURT
ORDER CLOSING ESTATE

CASE NUMBER: 2021ES4201298

21-1298

Upon consideration of the Application for Settlement, it appears to the court that the allegations in the Application are true. All required notices have been given/waived. The asset(s) has/have been administered according to the laws of South Carolina.

The final closing documents have been considered and/or waived.

The Personal Representative(s) in the above estate appear(s) to have completed the administration, and the appointment is hereby terminated.

It is appropriate that the sureties on the bond, if any, in this estate be released. If applicable, the security instrument recorded in the Office of the Clerk of Court (or ROD) in Book N/A, at Page N/A, shall be and is hereby released, and cancellation of said instrument is authorized.

Therefore, the estate is closed.

IT IS SO ORDERED.

Executed this 26th day of August, 2022.



Ponda A. Caldwell, Probate Court Judge



Probate Court County of Spartanburg

Spartanburg County Judicial Center

180 Magnolia Street
Spartanburg, South Carolina 29306-2392

Telephone: (864) 596-2556 • Fax: (864) 595-3331

PONDA A. CALDWELL
PROBATE JUDGE
August 26, 2022

ESTATE DIVISION:

KATE KENDALL
ASSOCIATE PROBATE JUDGE

DARLETT M. OWENS
COURT SUPERVISOR

COMMITMENT DIVISION:

DAVID F. ANDERSON
ASSOCIATE PROBATE JUDGE

GEORGIA J. BENNETT
COURT SUPERVISOR

Mr. Keith W. Park
109 S. Spring St
Central, SC 29630

Re: Estate of Isabella F.D.R. Park, Deceased
Probate Court File No. 2021ES4201296

Dear Mr. Park:

Enclosed is your copy of Termination of Appointment (Form 414ES) in regard to the above estate.

There are numerous laws which must be complied with in order to insure proper and complete administration in every estate. It is our desire to assist those whom we aid in compliance with these laws, and I hope your task has been made easier by the help of this office.

Please let me know if we can be of assistance to you. I welcome your comments and suggestions so that this office may serve the public better and more efficiently.

Sincerely yours,

Ponda A. Caldwell
Ponda A. Caldwell
Judge, Probate Court

PAC:scs

Enclosure

cc: Heather G. Hunter
P.O. Box 891
Spartanburg, SC 29304

LE15

STATE OF SOUTH CAROLINA

COUNTY OF: SPARTANBURG

IN THE MATTER OF:
ISABELLA F.D.R. PARK
(Decedent)

IN THE PROBATE COURT

TERMINATION OF APPOINTMENT

CASE NUMBER: 2021ES4201296

The appointment of Mr. Keith W. Park Personal Representative(s) for the
above estate, is hereby terminated for the following reason(s):

☒ Satisfactory Completion of Assigned Duties

☐ Death

☐ Disability

☐ Voluntary Resignation

☐ Removal

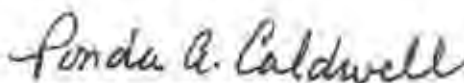
☐ Change of Testacy Status

☐ Special Administrator

☐ Other (specify): _____

Termination does not discharge a Personal Representative from liability for transactions or omissions occurring before termination or relieve him/her of the duty to preserve assets subject to his/her control, to account therefore, and to deliver the assets.

Executed this 26th day of August, 2022.



Ponda A. Caldwell, Probate Court Judge

DENNIS, SHAW, DRENNAN & PACK, LLC

ATTORNEYS AT LAW
400 E. HENRY STREET
REPLY TO: POST OFFICE BOX 891
SPARTANBURG, S.C. 29304-0891
TELEPHONE (864) 582-0708
FAX (864) 582-0934

July 25, 2025

JAMES W. SHAW, P.A.*
JAMES B. DRENNAN, III, P.A.*
S. MICHAEL PACK, JR., P.A.**
HEATHER G. HUNTER, P.A.
VIRGINIA HAYES WOOD
* CERTIFIED SPECIALIST IN ESTATE PLANNING & PROBATE LAW
** CERTIFIED SPECIALIST IN TAXATION LAW

R. RAY DENNIS
RETIRED

New Estate Clerk
Spartanburg County Probate Court
Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306

Re: Andrew D. Park Estate
Isabella F.D.R. Park Estate

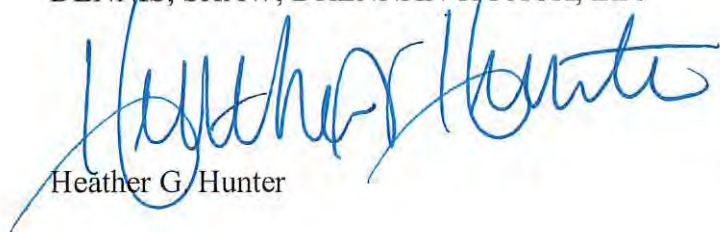
Dear Clerk:

Enclosed please find an Application for Subsequent Administration for both the Andrew D. Park Estate and the Isabella F.D.R. Park Estate along with two checks in the amount of \$22.50 each. Please process the Applications and when the Certificates of Appointment are ready, I would appreciate you providing us with five (5) Certificates for each Estate and letting us know when those will be ready to pick up from the basket.

With kindest regards,

Sincerely yours,

DENNIS, SHAW, DRENNAN & PACK, LLC



Heather G. Hunter

enclosures

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF: SPARTANBURG)

**APPLICATION/*PETITION FOR
SUBSEQUENT ADMINISTRATION**IN THE MATTER OF:
ANDREW D. PARK
(Decedent)

CASE NUMBER: 2020ES4201744-2

***ONLY COMPLETE THIS SECTION IF FILING
PETITION FOR SUBSEQUENT ADMINISTRATION**

*
Petitioner(s)
vs.
*
Respondent(s)

☒ **INFORMAL**☐ ***FORMAL**

The undersigned states as follows:

1. Subsequent administration of the above Estate is needed because:

☐ The following additional property in the above estate has been discovered. A description of the property and its approximate value at the date of Decedent's death is:☒ Other reason: POSSIBLE CIVIL LITIGATION

- 2.
- ☒
- I served as Personal Representative under the previous administration and fiduciary bond requirement:

- ☐ was waived by Decedent's Will
☒ was waived pursuant to the filing of Waivers of Bond
☐ was waived by the Court
☐ was required and an appropriate bond is attached

☐ I did not serve as Personal Representative under the previous administration; my priority for this appointment is:

- ☐ named as Primary Personal Representative in Will
☐ named as Alternate Personal Representative in Will
☐ nominee of above Primary Personal Representative in Will
☐ nominee of above Alternate Personal Representative in Will
☐ surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
☐ other devisee of Decedent (describe): _____ or nominee of said devisee
☐ surviving spouse of Decedent or nominee of said spouse
☐ other heir of Decedent (describe): _____ or nominee of said heir
☐ creditor (Forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
☐ other (describe): _____

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO A PETITION, YOU MUST ALSO FILE
A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF \$150.00.
A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statements are true to the best of the undersigned's knowledge, information and belief; and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 24th day
July, 20 25

Michelle C. Steele
 Notary Public for South Carolina
 My Commission Expires: 06-13-2027

Signature: *Keith W. Park*

Print Name: KEITH W. PARK

Address: 149 BROWNING HEIGHTS WAY
CENTRAL, SC 29630

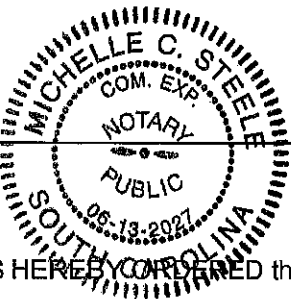
Telephone (Work): _____

(Home): _____

(Cell): 864-710-8970

Email: _____

Relationship to Decedent/Estate: SON

**ORDER FOR HEARING**

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____

TIME: _____

PLACE: _____

Pursuant to SCPC 62-1-401, Petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this _____ day of _____, 20____.

_____, Probate Court Judge

ORDER FOR SUBSEQUENT ADMINISTRATION

IT IS HEREBY ORDERED that KEITH W. PARK be appointed Personal Representative to administer property not previously administered as indicated in the above application/petition.

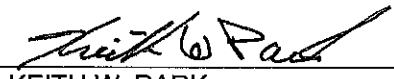
- ☐ Bond previously waived
☒ Previous bond waivers on file
☐ Other: _____

Executed this _____ day of _____, 20____.

_____, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate and to submit to the Court's jurisdiction in this matter.

Signature: 
Print Name: KEITH W. PARK
Address: 149 BROWNING HEIGHTS WAY
CENTRAL, SC 29630
Telephone (Work): _____
(Home): _____
(Cell): 864-710-8970
Email: _____

Attorney: HEATHER G. HUNTER
Address: P.O. BOX 891
SPARTANBURG, SC 29304
Telephone: 864.582.0708
Email: HHUNTER@DSDLEGAL.COM

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF: SPARTANBURG)

**APPLICATION/*PETITION FOR
SUBSEQUENT ADMINISTRATION**IN THE MATTER OF:
ISABELLA F.D.R. PARK
(Decedent)

CASE NUMBER: 2021ES4201296-2

***ONLY COMPLETE THIS SECTION IF FILING
PETITION FOR SUBSEQUENT ADMINISTRATION**

*
Petitioner(s)
vs.
*
Respondent(s)

☒ **INFORMAL**☐ ***FORMAL**

The undersigned states as follows:

1. Subsequent administration of the above Estate is needed because:

☐ The following additional property in the above estate has been discovered. A description of the property and its approximate value at the date of Decedent's death is:☒ Other reason: POSSIBLE CIVIL LITIGATION2. ☒ I served as Personal Representative under the previous administration and fiduciary bond requirement:

- ☒ was waived by Decedent's Will
☐ was waived pursuant to the filing of Waivers of Bond
☐ was waived by the Court
☐ was required and an appropriate bond is attached

☐ I did not serve as Personal Representative under the previous administration; my priority for this appointment is:

- ☐ named as Primary Personal Representative in Will
☐ named as Alternate Personal Representative in Will
☐ nominee of above Primary Personal Representative in Will
☐ nominee of above Alternate Personal Representative in Will
☐ surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
☐ other devisee of Decedent (describe): _____ or nominee of said devisee
☐ surviving spouse of Decedent or nominee of said spouse
☐ other heir of Decedent (describe): _____ or nominee of said heir
☐ creditor (Forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
☐ other (describe): _____

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO A PETITION, YOU MUST ALSO FILE
A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF \$150.00.
A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statements are true to the best of the undersigned's knowledge, information and belief; and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 24th day
of July, 2025

Michelle C. Steele
Notary Public for South Carolina
My Commission Expires: 06-13-2027



Signature: Keith W. Park

Print Name: KEITH W. PARK
Address: 149 BROWNING HEIGHTS WAY
CENTRAL, SC 29630

Telephone (Work): _____
(Home): _____
(Cell): 864-710-8970
Email: _____

Relationship to Decedent/Estate: SON

ORDER FOR HEARING

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____
TIME: _____
PLACE: _____

Pursuant to SCPC 62-1-401, Petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this _____ day of _____, 20____.

_____, Probate Court Judge

ORDER FOR SUBSEQUENT ADMINISTRATION

IT IS HEREBY ORDERED that _____ be appointed Personal Representative to administer property not previously administered as indicated in the above application/petition.

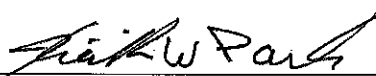
- ☒ Bond previously waived
☐ Previous bond waivers on file
☐ Other: _____

Executed this _____ day of _____, 20____.

_____, Ponda A. Caldwell, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate and to submit to the Court's jurisdiction in this matter.

Signature: 
Print Name: KEITH W. PARK
Address: 149 BROWNING HEIGHTS WAY
CENTRAL, SC 29630
Telephone (Work): _____
(Home): _____
(Cell): 864-710-8970
Email: _____

Attorney: HEATHER G. HUNTER
Address: P.O. BOX 891
SPARTANBURG, SC 29304
Telephone: 864.582.0708
Email: HHUNTER@DSDLEGAL.COM

STATE OF SOUTH CAROLINA
COUNTY OF

SPARTANBURG

PROBATE COURT

IN THE MATTER OF

ANDREW D. PARK

CASE NUMBER

2020ES4201744-2

CERTIFICATE OF APPOINTMENT

This is to certify that

MR. KEITH W. PARK

is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE
☐ GUARDIAN
☐ CONSERVATOR
☐ TRUSTEE
☐ _____

in the above matter and that this appointment, having been executed on the 30th day of July, 2025. Now in full force and effect, including authorization to receive monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

NONE.

Executed this 30th day of July, 2025.

Ponda A. Caldwell

Do not accept a copy of this certificate without
the raised seal of the Probate Court.

Ponda A. Caldwell, Probate Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

PROBATE COURT

IN THE MATTER OF ISABELLA F.D.R PARK

CASE NUMBER 2021ES4201296-2

CERTIFICATE OF APPOINTMENT

This is to certify that
MR. KEITH W. PARK

is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE
☐ GUARDIAN
☐ CONSERVATOR
☐ TRUSTEE
☐ _____

in the above matter and that this appointment, having been executed on the 30th day of July, 2025. Now in full force and effect, including authorization to receive monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

NONE.

Executed this 30th day of July, 2025.

Ponda A. Caldwell

Do not accept a copy of this certificate without
the raised seal of the Probate Court.

Ponda A. Caldwell, Probate Court Judge

Carroll, Todd

Subject: June Trial Block (Park/Wilson/Wannamaker): Mediation w/Tom Wills
Location: Zoom or Haynsworth Sinkler Boyd, P.A.- 134 Meeting Street, 3rd Floor Charleston, SC 29401 [TIme is ET]

Start: Tue 5/24/2022 10:00 AM
End: Tue 5/24/2022 5:00 PM
Show Time As: Tentative

Recurrence: (none)

Organizer: WBD.SCASBESTOS

From: WBD.SCASBESTOS
Sent: Thursday, May 19, 2022 11:24:34 AM
To: WBD.SCASBESTOS <WBD.SCASBESTOS@wbd-us.com>; Baker, Charles <Chuck.Baker@wbd-us.com>; Richmond, Scott <Scott.Richmond@wbd-us.com>; O'Neill, Elizabeth <Elizabeth.ONeill@wbd-us.com>; Sullivan, Kimberly <Kimberly.Sullivan@wbd-us.com>; Robusto, Matt <Matt.Robusto@wbd-us.com>; Rubenstein, Rosa <Rosa.Rubenstein@wbd-us.com>; Wallace, Julie <Julie.Wallace@wbd-us.com>
Subject: June Trial Block (Park/Wilson/Wannamaker): Mediation w/Tom Wills
When: Tuesday, May 24, 2022 10:00 AM-5:00 PM.
Where: Zoom or Haynsworth Sinkler Boyd, P.A.- 134 Meeting Street, 3rd Floor Charleston, SC 29401 [TIme is ET]

Join Zoom Meeting
<https://zoom.us/j/2411888578>

Meeting ID: 241 188 8578

Telephone Number: +19292056099

5/19/22 – Time, Zoom and location per Julia Wills email (see attached)

Rosa Rubenstein
Paralegal
Womble Bond Dickinson (US) LLP

d: 336-747-2680
m: 336-549-1302
e: Rosa.Rubenstein@wbd-us.com

One West Fourth Street
Winston-Salem, NC 27101



womblebonddickinson.com



<< Attachments: Wannamaker/Wilson/Park v. Armstrong International, Inc., et al. Mediation Confirmation Letter and Agreement to Mediate (WMA File No. 622-045) (257.3KB) image2be1c6.PNG (11.4KB) imagef4b242.PNG (0.8KB) image1d02ab.PNG (0.8KB) imagebf49e7.PNG (0.8KB) >>

From: Theile McVey <tmcvey@kassellaw.com>
Sent: Friday, June 3, 2022 8:24 AM
To: Weeks, Maya J.; Devon Martinez-Rector; Ben Braly; Jason Johnson; Melissa Varela; Elizabeth Moultrie; angela.strickland@bowmanandbrooke.com; Brianna.Arnone@bowmanandbrooke.com; Ashley Lord; wac@roecassidy.com; Dmoore@RoeCassidy.com; vsheets@roecassidy.com; SingewaldC@WhiteandWilliams.com; ccollier@hpylaw.com; spugh@richardsonplowden.com; CMcQueen@RichardsonPlowden.com; jthoensen@RichardsonPlowden.com; wharte@richardsonplowden.com; mwhite@richardsonplowden.com; djones@richardsonplowden.com; louis@milliganlawfirm.com; Jackie@milliganlawfirm.com; TPeck@foxrothschild.com; sgflynn@foxrothschild.com; Ncherry@foxrothschild.com; Dcarnes@foxrothschild.com; kkolb@foxrothschild.com; atwilley@foxrothschild.com; JLee@rshc-law.com; drheney@gwblawfirm.com; wmaurides@gwblawfirm.com; dwhite@gwblawfirm.com; rtate@gwblawfirm.com; ctowers@gwblawfirm.com; Robert.meriwether@nelsonmullins.com; Jase.glenn@nelsonmullins.com; Mark.phillips@nelsonmullins.com; David.traylor@nelsonmullins.com; Susan.collings@nelsonmullins.com; Carolyn.blackwell@nelsonmullins.com; Linda.wilson@nelsonmullins.com; Mitch.brown@nelsonmullins.com; Matt.bogan@nelsonmullins.com; Nick.charles@nelsonmullins.com; O'Neill, Elizabeth; McLeod, Yancey; Carroll, Todd; Baker, Charles; Sullivan, Kimberly; WBD.SCASBESTOS; ashley.brathwaite@elliswinters.com; CovilParalegal@elliswinters.com; Tara.Sullivan@klgates.com; KLgates_SC_Asbestos@klgates.com; skozick@kernodelaw.com; mmcdonald@hsblawfirm.com; dconner@hsblawfirm.com; sfrick@hsblawfirm.com; tfreedle@hsblawfirm.com; angela.strickland@bowmanandbrooke.com; Brianna.arnone@bowmanandbrooke.com; Ashley.Lord@bowmanandbrooke.com; Kim.Rothrock@bowmanandbrooke.com; wac@roecassidy.com; Dmoore@RoeCassidy.com; vsheets@roecassidy.com; SingewaldC@WhiteandWilliams.com; Ryanh@whiteandwilliams.com; Chris.Collier@lewisbrisbois.com; spugh@richardsonplowden.com; CMcQueen@RichardsonPlowden.com; jthoensen@RichardsonPlowden.com; MWhite@RichardsonPlowden.com; louis@milliganlawfirm.com; Jackie@milliganlawfirm.com; tdougall@dougallfirm.com; wcollins@dougallfirm.com; mkalwajtys@dougallfirm.com; JLee@rshc-law.com; drheney@gwblawfirm.com; wmaurides@gwblawfirm.com; kpredersoli@gwblawfirm.com; dwhite@gwblawfirm.com; rtate@gwblawfirm.com; jlaffitte@gwblawfirm.com; ctowers@gwblawfirm.com; amillerosborne@gwblawfirm.com; jdedman@gwblawfirm.com; ejones@gwblawfirm.com; pholland@gwblawfirm.com; Robert.meriwether@nelsonmullins.com; Jase.glenn@nelsonmullins.com; David.traylor@nelsonmullins.com; Mark.phillips@nelsonmullins.com; Deirdre.mccool@nelsonmullins.com; Susan.collings@nelsonmullins.com; Kelli.eargle@nelsonmullins.com; Trish.koester@nelsonmullins.com; Carolyn.blackwell@nelsonmullins.com; Linda.wilson@nelsonmullins.com; Jo.lyons@nelsonmullins.com; mitch.brown@nelsonmullins.com; matt.bogan@nelsonmullins.com; nick.charles@nelsonmullins.com; jenny.jordan@nelsonmullins.com; erika.fedellini@nelsonmullins.com; jack.slosson@nelsonmullins.com; O'Neill, Elizabeth; McLeod, Yancey; Carroll, Todd; Baker, Charles; WBD.SCASBESTOS; Wells, Sarah; Robusto, Matt; leslie.packer@elliswinters.com; ashley.brathwaite@elliswinters.com; curtis.shipley@elliswinters.com; joe.hammond@elliswinters.com; CovilParalegal@elliswinters.com; Tara.Sullivan@klgates.com; Kim.Taylor@klgates.com; skozick@kernodelaw.com; mmcdonald@hsblawfirm.com; dconner@hsblawfirm.com; sfrick@hsblawfirm.com; tfreedle@hsblawfirm.com; sturner@hsblawfirm.com; cshytle@mcguirewoods.com; bchubb@mcguirewoods.com; edimond@mcguirewoods.com; ckiger@smithlaw.com; aries@smithlaw.com; cbona@smithlaw.com; mmontgomery@robinsongray.com; rhutchens@robinsongray.com; BLaffitte@robinsongray.com; carlpierce@piercesloan.com; pattiwilliams@piercesloan.com; bensmoot@piercesloan.com; carsonparker@piercesloan.com; Jameskennedy@piercesloan.com; elizabethtaylor@piercesloan.com;

To:

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To:

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Subject:

RE: June Pretrial Hearing

Attachments:

Proposed Agenda for Motions Hearing for June 2022 Block.docx

Chief Justice Toal: This morning we are delivering to you and Maya notebooks for the hearing on Monday, June 6th. The notebooks contain the motions for summary judgment and responses, the Plaintiffs' External (tmcvey@kassellaw.com<mailto:tmcvey@kassellaw.com>)

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Chief Justice Toal:

This morning we are delivering to you and Maya notebooks for the hearing on Monday, June 6th. The notebooks contain the motions for summary judgment and responses, the Plaintiffs' motions in limine and the Nash motion. By way of update, the Park and Garren cases have both fully resolved. The remaining Defendants in Wannamaker and Wilson are listed below. I am also attaching a proposed agenda. Please let me know if you have any questions or concerns. Best, Theile

1. Wannamaker

- * Ethyl
- * Santee Cooper (South Carolina Public Service Authority)

1. Wilson

- * Research Cottrell
- * Whittaker, Clark & Daniel

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Subject: June Pretrial Hearing

Hi All:

The pretrial hearing for the June trial block, including Wannamaker v. 3M Company et. al., will be held on June 6th, 2022 at the Richland County courthouse. An agenda will be sent out prior to the hearing that will confirm time and courtroom.

Please send a copy of all motions to Chief Justice Toal and I. Chief Justice Toal prefers that motions binders be sent to her home address (please reach out to me individually for her home address if needed) and motions can be sent to me at the Senate Street address below my signature.

The court is providing a court reporter for this hearing.

Thank you,

Maya J. Weeks, M.A., J.D.
Circuit Court Law Clerk- Floater
South Carolina Judicial Branch

1220 Senate Street, Suite 221

Columbia, SC 29201

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ELECTRONICALLY FILED - 2023 Sep 01 4:41 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

**Re: Amended Cape PLC Tolling Agreement**

This agreement amends the tolling agreement entered into on June 6, 2013. This is a confidential agreement between and among the lawyers and clients of Dean, Omar, Branham, & Shirley, LLP (collectively referred to as "Dean Omar") and the Reciever for Cape PLC and its successors and predecessors (hereinafter referred to as "Cape"). The purpose of this agreement is to allow the parties to this agreement to avoid the uncertainties and expense of litigation. Specifically, the parties intend to enter into an agreement whereby all current malignant asbestos claims (collectively "the Malignant Claims") filed by Dean Omar against Cape will be dismissed without prejudice (using dismissal documents provided by Cape's counsel), pursuant to this tolling agreement. In exchange for Dean Omar's dismissal of the Malignant Claims, Cape hereby agrees to toll the operation of the applicable statute of limitations and !aches to allow the parties to evaluate these Malignant Claims outside of the tort system. At such time as these cases are called to trial against the remaining defendants, Cape agrees to evaluate these cases under the framework of its prior dealings with Dean Omar in good faith.

Future Dean Omar asbestos Malignant Claims filed against other defendants may also avail themselves of this tolling agreement and need not include Cape in any future lawsuit filing against other asbestos defendants to do so.

In the event that a settlement agreement is not reached outside of the tort system:

1. Dean Omar agrees to re-file such cases in the same court from which each Malignant Claim originally was dismissed (or was originally filed against other defendants);
2. Cape agrees not to remove any re-filed Malignant Claim to Federal Court provided that the case was not removable as of the date of this agreement and that grounds for such removal arose as a result of this Agreement; and
3. The Parties agree that Cape shall be entitled to avail itself of all remedies for purposes of establishing other shares and/or settlement credits as would have been available to it had this Agreement never existed.



4. The Parties agree that Cape will not and may not assert that it was not present for any discovery, fact, expert, or otherwise and thus that that evidence may not be used against it. Any contemporaneous objections lodged to such discovery by any other party may be exerted by either party.

In the event that any Malignant lawsuit is closed as to all other defendants, this tolling shall terminate as to that case two years following such closure and the statute of limitations for that case from that date.

Nothing in this agreement shall operate to revise or reset the applicable limitations or laches periods for claims where limitations have already expired.

This Agreement may be terminated upon ninety (90) days written notice. The termination notice must be sent by certified mail return receipt requested by sending it to Cape's counsel as identified below or Dean Omar's counsel, Trey Branham, at the address below.

The Parties agree to maintain the confidentiality of this agreement from other asbestos counsel.

So Agreed:



Trey Branham  
Dean Omar Branham Shirley, LLP  
302 N. Market Street, Suite 300  
Dallas, Texas 75202

FOR DEAN OMAR AND ITS CUENTS

sl Peter D. Protopapas  
RECEIVER

For CAPEPLC and its successors, predecessors and assigns

**Peter D. Protopapas, Receiver**

2110 N Beltline Blvd – Columbia, South Carolina 29204 – 803.978.6111 – [pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)

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June 12, 2023

**VIA ELECTRONIC MAIL**

Mr. Trey Branham  
DEAN OMAR BRANHAM & SHIRLEY, LLP  
302 N. Market Street, Suite 300  
Dallas, Texas 75202

**Re: Cape PLC Tolling Agreement**

This is a confidential agreement between and among the lawyers and clients of Dean, Omar, Branham, & Shirley, LLP (collectively referred to as “Dean Omar”) and Cape PLC (hereinafter referred to as “Cape”). The purpose of this agreement is to allow the parties to this agreement to avoid the uncertainties and expense of litigation. Specifically, the parties intend to enter into an agreement whereby all current malignant asbestos claims (collectively “the Malignant Claims”) filed by Dean Omar against Cape will be dismissed without prejudice (using dismissal documents provided by Cape’s counsel), pursuant to this tolling agreement. In exchange for Dean Omar’s dismissal of the Malignant Claims, Cape hereby agrees to toll the operation of the applicable statute of limitations and laches to allow the parties to evaluate these Malignant Claims outside of the tort system. At such time as these cases are called to trial against the remaining defendants, Cape agrees to evaluate these cases under the framework of its prior dealings with Dean Omar in good faith.

Future Dean Omar asbestos Malignant Claims filed against other defendants may also avail themselves of this tolling agreement and need not include Cape in any future lawsuit filing against other asbestos defendants to do so.

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2. Cape agrees not to remove any re-filed Malignant Claim to Federal Court provided that the case was not removable as of the date of this agreement and that grounds for such removal arose as a result of this Agreement; and
3. The Parties agree that Cape shall be entitled to avail itself of all remedies for purposes of establishing other shares and/or settlement credits as would have been available to it had this Agreement never existed.

4. The Parties agree that Cape will not and may not assert that it was not present for any discovery, fact, expert, or otherwise and thus that that evidence may not be used against it. Any contemporaneous objections lodged to such discovery by any other party may be exerted by either party.

In the event that any Malignant lawsuit is closed as to all other defendants, this tolling shall terminate as to that case 90 days following such closure and the statute of limitations for that case shall proceed from the date of this Agreement.

Nothing in this agreement shall operate to revise or reset the applicable limitations or laches periods for claims where limitations have already expired.

This Agreement may be terminated upon ninety (90) days written notice. The termination notice must be sent by certified mail return receipt requested by sending it to Cape's counsel as identified below or Dean Omar's counsel, Trey Branham, at the address below.

The Parties agree to maintain the confidentiality of this agreement from other asbestos counsel.

So Agreed:



Trey Branham  
DEAN OMAR BRANHAM & SHIRLEY, LLP  
302 N. Market Street, Suite 300  
Dallas, Texas 75202

FOR DEAN OMAR AND ITS CLIENTS

s/ Peter D. Protopapas  
RECEIVER

FOR CAPE PLC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

JOHN A. TIBBS AND  
MARGARITE B. TIBBS,

Plaintiffs,

vs.

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

3M COMPANY, ET AL.,

Defendants.

(Caption continued on the following page.)

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H E A R I N G  
BEFORE THE HONORABLE  
CHIEF JUSTICE (RET.) JEAN TOAL

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DATE TAKEN: Tuesday, July 22, 2025

TIME START: 9:24 a.m.

TIME END: 1:38 p.m.

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

REPORTED BY: SHERI L. BYERS, RPR  
EVERYWORD, INC.  
P.O. Box 1459  
Columbia, South Carolina 29202

CAPTION CONTINUED:

CAPE PLC, INDIVIDUALLY AND AS  
SUCCESSOR IN INTEREST TO CAPE  
ASBESTOS COMPANY LIMITED, BY  
AND THROUGH ITS DULY APPOINTED  
RECEIVER PETER D. PROTOPAPAS,

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, INDIVIDUALLY  
AND AS SUCCESSOR IN INTEREST TO  
ANGLO AMERICAN CORPORATION OF  
SOUTH AFRICA LTD., ET AL.,

Third-Party Defendants.



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E X H I B I T S

(None were proffered.)

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P R O C E E D I N G S

THE COURT: All right. Ladies and gentlemen, this is a status conference, to begin with, to discuss the order of the South Carolina Supreme Court remanding seven different matters back to this court dated June 26, 2025.

The cases are described as petitions filed by some combination of petitioners Mohed Altrad, Altrad Investment Authority, SAS, Charter Consolidated Limited, ESAB Corporation, and Central Mining and Investment Corporation Limited, arising from orders of the Court of Appeals dismissing those cases on the grounds that the appellate grounds is not immediately appealable.

The order then goes on to describe some of the things that were placed before consideration before the court, all of which they decided to decline to rule on and dispense with any further briefing and remanded those cases back to this court with certain instructions.

And I want to develop today a satisfactory means without putting this court through the

1 same thing that appellate courts were put  
2 through, which is thousands and thousands of  
3 pages of materials, with all kind of  
4 cross-discussions about each other and this  
5 court and the courts of South Carolina, et  
6 cetera. I don't want to get into all of that.  
7 I want to take a very targeted look at what the  
8 court has asked me to look at about these seven  
9 cases.

10 Then I have listed in the agenda for today  
11 everything that my law clerk, Tasha Bridenback,  
12 and myself think is pending in connection with  
13 the third-party cause of action which was filed  
14 in the Tibbs matter.

15 And I want to take a look at those matters  
16 and see how best we can proceed on them. Some  
17 of which are impacted by the order involving the  
18 Altrad corporations that have implications for  
19 other receiverships.

20 What the receiver did in response to that  
21 remand was to prepare a detailed report of all  
22 the activities of the receivership because, of  
23 course, all the matters that were remanded to me  
24 targeted an individual group of related  
25 defendants in the third-party action brought by



1           the receiver.

2           They impact all kinds of other  
3 receiverships that have been set up, and they  
4 refer very freely in the complaints to these  
5 other receiverships. Sometimes in an effort to  
6 disparage the activities of this court and of  
7 the receiver.

8           But nevertheless, I want to take some kind  
9 of organized, sensible approach to how we talk  
10 about these matters and then move forward.

11           I've got pending still trials on the merits  
12 that involve many of these things, and I intend  
13 to get those things accomplished. All of those  
14 were put on hold by this enormous flurry of  
15 activity, much of which circulated around the  
16 seven remands that I received today, but also  
17 involve many other things that came before the  
18 Court of Appeals. Some resulting in dispositive  
19 decisions, some which have been reviewed by the  
20 Supreme Court in such cases as Welch, which  
21 bears very heavily on what we're talking about  
22 today.

23           But today the first thing I want to do is  
24 talk about the status of the matters that have  
25 been remanded to me and how we can best move

1 forward to satisfy the directives the court gave  
2 me that are really based on activity that  
3 surrounded the opinion it filed in the Welch  
4 case.

5 So with that kind of introductory  
6 explanation of why this agenda looks like it  
7 does, what I'd like kind of to begin with is  
8 again to get away from all the heat and light  
9 generated very unproductively by the appellate  
10 activity in these matters.

11 And now that they are back in front of me,  
12 I want to have each side talk about how we move  
13 forward with a discussion of the propriety of  
14 these receiverships. That's what's at play  
15 centrally in this.

16 The contention is made that the  
17 receiverships -- in many of the receiverships  
18 that have been set up, and all of them have been  
19 set up in a similar way, as third-party requests  
20 made in connection with a particular piece of  
21 asbestos litigation. But one big question that  
22 looms right to begin with, that the receiver and  
23 the opposing parties spent a good deal of time  
24 talking about in the materials filed before me  
25 is whether or not it is proper for a

1        receivership of a particular entity to continue  
2        beyond the claims made in the case in which the  
3        receivership, by means of third-party complaint,  
4        was appointed.

5            The contention that is made by some  
6        defendants is that you can only -- that if you  
7        appoint a receiver in a particular case, that  
8        receiver can only deal with that asbestos case  
9        and no other.

10           I will tell you that that is at odds with  
11        the very first receivership I established about  
12        which no one has fussed or complained one bit,  
13        and that's the Covil case. It was the ground  
14        under which this whole asbestos docket changed.  
15        And it came about as the result of a practice by  
16        the insurance companies for years of appointing  
17        lawyers to represent Covil in various asbestos  
18        cases.

19           Covil was a defunct thermal engineering  
20        company that operated broadly in North and  
21        South Carolina and many other places. And by  
22        the time many of these asbestos claims were  
23        made, primarily mesothelioma claims, which has a  
24        long latency period, longer than almost any  
25        other asbestos-related disease that has found

1 its way to my court, by the time those claims  
2 started to reach South Carolina courts involving  
3 Covil, Covil had long since gone defunct.

4 And so these insurance companies for Covil  
5 would appoint lawyers to represent Covil. They  
6 devised a system of having the defunct  
7 corporation, one of the Covils, one of the  
8 younger Covils, accept service on various  
9 complaints that were filed and then tender them  
10 to the insurance company to follow through.

11 And the insurance companies did that,  
12 appointed lawyers, and the lawyers would  
13 basically take the position in mediations and  
14 other appearances before the court that Covil  
15 was defunct. It had no assets. It had no  
16 insurance. And in the end would settle claims  
17 against Covil, and there were hundreds of them  
18 by the time the matter got to me, for small  
19 amounts of money. Negligent, kind of nuisance  
20 value, and they would get Covil dismissed.

21 It paid out insurance companies on Covil's  
22 behalf, primarily one, but there were several  
23 involved, paid out over \$500,000 over the period  
24 I'm talking about in nuisance value payments.  
25 Most of it which made under the representation

1       that Covil had no assets, including any  
2       insurance assets that would provide coverage.

3           Then came before my court issues involving  
4       the enforcement of a \$32 million judgment that  
5       Ms. Ann Finch had obtained on behalf of her  
6       deceased husband's estate in North Carolina in a  
7       suit against Covil. And in addition, Covil had  
8       defaulted on two other cases pending in front of  
9       me in South Carolina.

10           So Ms. Finch sought to track down the  
11       insurance assets of Covil. As we know, regular  
12       South Carolina law says that insurance assets  
13       are present in the state where the coverage is  
14       provided. It does happen, though, that in the  
15       case of Covil, Covil was a South Carolina  
16       corporation.

17           But it would not have had to be a  
18       South Carolina corporation if you had caused  
19       damage to someone in this state and had  
20       insurance that covered that event, you would be  
21       present in the state as a corporation because of  
22       the tort you had committed and your insurance  
23       assets would be present in the state because  
24       they provided coverage for those matters.

25           So it was against that understanding by



1       yours truly of the landscape that I appointed a  
2       receiver for Covil. I did not concede from the  
3       very beginning that the receiver's duties would  
4       only involve marshaling assets by way of  
5       insurance policies for Ms. Finch.

6               And from the very beginning, it turned out  
7       that the receiver I appointed, Mr. Peter  
8       Protopapas, a very well-known lawyer in  
9       Columbia, who had handled other similar matters,  
10      and in addition certain ethics matters that made  
11      him uniquely qualified to take on what was the  
12      role of a receiver as an arm of the court.

13             Quickly, investigation -- very aggressive  
14      investigation turned up a good deal of coverage  
15      for Covil. Lots of different companies. And  
16      ultimately, those -- many of those insurance  
17      companies, including some who today contest what  
18      we're doing in these other receiverships, these  
19      companies decided to buy peace, and they asked  
20      the court to set up a qualified settlement fund,  
21      a device known under tax law to allow for the  
22      settlement proceeds or the proceeds of future  
23      coverage on insurance policies to be placed if  
24      the sums are agreed and approved by the court  
25      into a qualified settlement fund, which is

1 administered generally by the receiver, and used  
2 to satisfy future obligations against the  
3 receivership corporation.

4 And that's what was done in Covil, and it's  
5 worked great. And there are letters that are  
6 even in the file of these proceedings today by  
7 people who dealt with Covil. I was particularly  
8 heartened to see one by New Indy Catawba, which  
9 took over the Bowater operation, and I tried a  
10 good many cases involving Bowater and involving  
11 Covil.

12 And what they pointed out is something that  
13 is very central to the reason that to me  
14 completely justifies receiverships being used  
15 for more than just a case in which the  
16 third-party receivership request was made.

17 New Indy points out we bought Bowater's  
18 property having no idea of what the dimension of  
19 these asbestos claims would be, and but for the  
20 receivership that was created in Covil, we,  
21 because of the joint and several liability rules  
22 in South Carolina, would be forced to shoulder  
23 all the responsibility for activity that took  
24 place years and years and years before we ever  
25 bought Bowater's property and turned it into New

1           Indy Catawba.

2           That observation is also borne out by some  
3           other letters that have come in to me and  
4           including one by Peter McCoy, who is the current  
5           receiver for the assets of convicted Alex  
6           Murdaugh, whose case is very well-known, very  
7           infamous, and who had assets that were in grave  
8           danger of being concealed or disposed of.

9           McCoy and a co-receiver were appointed to  
10          attempt to marshal those assets, and they did so  
11          in a lot of matters other than the matter which  
12          brought first to the attentions of Judge Hall  
13          the need to appoint a receiver.

14          But again, there are two other states that  
15          are a very well-known as desired states for  
16          incorporation by leading corporations in America  
17          who use these receiverships just as I have done,  
18          and that is the state of Delaware and the state  
19          of New York.

20          And the reason illustrates another aspect  
21          of the beneficial use of receiverships. If you  
22          used the blunt instrument of a bankruptcy, you  
23          interfere with the tort litigation tremendously.  
24          You end up deferring the final coming to  
25          conclusion of a lot of litigation that involves

1 the bankrupt corporation. And you end up not  
2 having anything like the ability to create  
3 things like qualified settlement funds or other  
4 things or negotiate settlements of pending  
5 litigation.

6 A receivership is a different animal. You  
7 don't have to use the blunt force of bankruptcy  
8 with all the peculiarities and interference it  
9 brings to other litigation involving the  
10 company. And that is why for years in  
11 South Carolina business lawyers have used  
12 receiverships to marshal assets of defunct or  
13 in-trouble corporations without the use of  
14 bankruptcy so that the asset could emerge, if  
15 it's still a going concern, with some ability to  
16 produce income on a going-forward basis and  
17 produce assets on a going-forward basis.

18 So that is another reason that has been  
19 known to me from my earliest years of practice,  
20 both with the Haynsworth firm and the Belser  
21 firm, as something that was often used in  
22 connection with their work. And both those  
23 firms were primarily defense firms, and I did a  
24 lot of defense work for them. And we employed  
25 the use of receiverships in that regard as I

1 have described for you all.

2 So that will give you at least a little bit  
3 of history of my background in dealing with  
4 this. That is not intended to negate the  
5 ability to argue that the receivership's  
6 improper. I think we need to get into much more  
7 of the specifics about the law that governs this  
8 thing, and I have no preconceived notions about  
9 that.

10 I think the court wants me to do that,  
11 indicated the June 26 order that I should do  
12 that. And I don't think the court had any  
13 notion that I would do that today immediately in  
14 the first 30 days that I had this matter. And I  
15 certainly won't.

16 I will submit regular reports to the court  
17 explaining the intricacies of what they've asked  
18 me to do. But I think the Welch case does deal  
19 with some kind of broad outlines of what the  
20 court thinks of receiverships.

21 I also think that it and the Tibbs case and  
22 its third-party receivership is the subject of  
23 all this illustrates that the court is not  
24 completely aware of how receiverships are used  
25 in South Carolina. And that is, I think, one



1 reason why the receiver went to great lengths in  
2 the report that was sent to all of us to explain  
3 the breadth of the receivership.

4 And I consider that a legitimate part of  
5 the discussion we're going to have because it  
6 affects a lot of receiverships that are ongoing  
7 at this time. And we need to have a  
8 comprehensive ruling by myself on these matters  
9 that will be a good platform for the court to  
10 then take this up in a normal way.

11 I hope and pray as we move through this  
12 that the tactic of appealing everything back  
13 through the appellate chain comes to a halt for  
14 now. Because I don't know what to do when those  
15 things are filed, whether they preclude me.  
16 They say everything I'm doing on a particular  
17 case or a particular aspect that deals with why  
18 the appeal was lodged, and I don't think the  
19 Supreme Court of South Carolina is at all  
20 enamored with that kind of piecemeal approach to  
21 talking about issues that purvey this  
22 receivership matter on a more global basis.

23 So I want to set up a methodology that  
24 allows us to take an orderly approach to looking  
25 at this issue and setting up the arguments in

1       such a way since the final stop will not be  
2       yours truly, by any means, but set them up in  
3       such a way that the appellate court will have  
4       full advantage of the reasoning behind what the  
5       circuit court has done with this issue of  
6       receiverships used to marshal assets in asbestos  
7       cases. So that's kind of my mindset.

8               What I would like to do, there are some  
9       kind of principal filers here, and they mainly  
10      are the receiver and its attorneys on the one  
11      hand, and Altrad and its allied conspiracies on  
12      the other, as the matter was teed up for my  
13      consideration today.

14             And I would like to turn first to the  
15      receiver and then to the attorneys for the  
16      Altrad group. And what I'd like for you to do,  
17      I've got your papers that say one side is right  
18      and the other side is wrong. But what I want  
19      from you is some suggestions as to how we  
20      proceed in an orderly matter on the seven  
21      matters that have been remanded to me. So I  
22      start first with the receiver.

23             Mr. Carroll, I see you walking down here.  
24      Let's get everybody who's going to be here on  
25      the other side down here.

1           MR. CARROLL: Might want to take the rope  
2 down for the first row.

3           THE COURT: Well, I think we're going to  
4 get the first row up here if that's who's going  
5 to participate. Come on up. There are plenty  
6 of seats here.

7           All the lawyers who are going to  
8 participate in this part of the discussion about  
9 Altrad come on forward.

10          MR SAWYER: Your Honor, this is as to the  
11 Tibbs specific case, correct? There's also a  
12 the motion in Park which -- I just want to know  
13 whether you want me up.

14          THE COURT: You know, the Tibbs case is the  
15 Tibbs case. I think I tried, Wes, to indicate  
16 in the preliminary remarks I've made that I  
17 consider this something that involves the  
18 propriety of third-party receiverships being  
19 created and dealing with more than just the  
20 complaints or claims in the particular case.

21          MR SAWYER: Thank you. I just want to make  
22 sure I knew whether I needed to be up or not.  
23 I'll step up, Your Honor. Thanks so much.

24          THE COURT: That has been raised first and  
25 most vociferously by the so-called Altrad folks.

1           So they're the one who will be heard first.

2           MR. BALBER: Your Honor, we don't consider  
3 ourselves among the Altrad folks.

4           THE COURT: What's that?

5           MR. BALBER: We are not among the Altrad  
6 folks; however, we do represent the Anglo  
7 American-De Beers entities.

8           THE COURT: Well, that, you know, is all  
9 kind of in one big family right now. You all  
10 don't say that they're related, but they say  
11 they're related. So anybody that's got anything  
12 to do with anybody from any point here has been  
13 claiming to be part of this group, you need to  
14 come up on.

15          MR. BALBER: It's a dysfunctional family.

16          THE COURT: I couldn't agree with that  
17 more.

18          MR. ROBINSON: May I proceed?

19          THE COURT: Let me guide you a little bit  
20 to begin with, Mr. Robinson, because we're here  
21 in a framework. We're not here just kind of  
22 generally to talk about everything that's been  
23 filed back and forth.

24               This piece of what we're going to do today,  
25 we're in here on a framework that is dictated by

1 the order of the court for June 26. And that  
2 order describes the seven petitions for cert  
3 that they have granted way briefing and return  
4 the issues to me. And they all deal with Altrad  
5 and the allied Altrad-Cape situation.

6 But they reference Welch, and they direct  
7 the circuit court to do three things: One,  
8 ensure the receiver has been authorized to  
9 conduct the work by an order filed in the  
10 specific case to which the work is to take  
11 place. The receiver is not authorized to  
12 conduct work as to a case in which no receiver  
13 appointment has been -- order has been filed.  
14 That's the first thing.

15 Second: Ensure that such an order is based  
16 on findings of fact sufficient under Welch to  
17 justify the order.

18 Three: To the extent the circuit court  
19 intends to authorize the work of receiver based  
20 on facts not found -- on facts not found  
21 sufficient in Welch or to authorize the scope of  
22 work not approved in Welch, the circuit court  
23 should make specific findings of fact and  
24 conclusion of law the circuit court finds to  
25 justify its actions.

1           So what they simply say is a very narrow  
2 understanding they have of receiverships but  
3 emphasize if there's not an order in place  
4 appointing a receiver in every specific case,  
5 look at signing such an order on findings  
6 sufficient under Welch to justify that  
7 receivership; and two, to the extent the --  
8 three, to the extent the circuit court intends  
9 to authorize the work of the receiver based on  
10 facts not found sufficient in Welch or to  
11 authorize scope of work not approved in Welch,  
12 the circuit court should make specific findings  
13 of fact.

14           In other words, I understand that to leave  
15 it to me to explore more broadly this  
16 receivership issue and what the law is in regard  
17 to the appointment of a receiver and whether a  
18 receiver must -- can act on matters other than  
19 the claim in the case in which the receiver was  
20 first appointed.

21           MR. ROBINSON: And so, Your Honor, in  
22 response to that --

23           THE COURT: Now, there's a little wrinkle  
24 on that here, and the wrinkle is this: With  
25 Altrad defendants, the Altrad defendants claim



1       that they're not in any of these cases, but  
2       they -- not only is it not legitimate to sue  
3       them in South Carolina, they haven't been sued  
4       in South Carolina. Nor has any entity that  
5       they've got anything to do with.

6             And so you all take a completely different  
7       position. You claim that the suits have been  
8       brought against Cape include them because of the  
9       corporate succession and amalgamation of  
10      interest, I think is also an argument used. But  
11      basically the argument used is a normal argument  
12      of corporate succession, is how I understand it.

13            So with that as your background, kind of  
14      what I'm looking for to start to answer some of  
15      the questions of the Supreme Court, you tell me  
16      how we should proceed.

17           MR. ROBINSON: So, Your Honor, I plan to  
18      address, with the Court's permission, and if I'm  
19      going in a direction that the Court is not  
20      prepared at this stage to go, I'll be happy to  
21      redirect. But I plan to address first the  
22      issues in Tibbs and the framework that we would  
23      propose moving forward to address the questions  
24      that you just read into the record from the  
25      Tibbs order.

1 I think that we can all agree, I hope, that  
2 the Supreme Court has determined and found that  
3 this trial court really is the fact finder. The  
4 fact finder. And so I don't think anything has  
5 happened that changes that. The fact they have  
6 sent this case back to you to be the fact  
7 finder. So part of our framework will be trying  
8 to accomplish findings of fact that the court  
9 has asked you to look into and report back to.

10 So we start with, you know, the premise  
11 that the Supreme Court is not nor have they  
12 volunteered to be in this case the fact finder,  
13 so they sent it back to you. And so I think  
14 that kind of starts the framework.

15 So the next question is what facts need to  
16 be found and what orders would be appropriate to  
17 address the Supreme Court's request of you to  
18 ensure that what is going on in this courtroom  
19 complies with what they understand the law to  
20 be -- or what they have stated the law to be,  
21 rather in Welch and in other cases.

22 And so I think that's the threshold issue  
23 of getting findings of facts and making sure  
24 that the orders in this court comply with what  
25 the Supreme Court expects in a receivership

1 case. And to do that, I think there are certain  
2 motions.

3 I believe we'll talk about them today.  
4 Mr. Lay is going to talk about some of the  
5 motions that are on your list that may go to the  
6 heart of those issues. And it's a couple. I  
7 think there are three motions specifically. The  
8 motion to dissolve. There's a motion to  
9 dissolve that has been pending the receivership.  
10 There's a motion to confirm the appointment, and  
11 then there's a motion --

12 THE COURT: Hang on for a minute. There  
13 are a lot of motions to dissolve. Which one are  
14 you talking about?

15 MR. ROBINSON: Well, on the -- on the --  
16 it's your tab 13, 14, and 15. Well, tab 13 --  
17 I'm sorry. Tab 15 -- tab 14, they're  
18 consolidated motions to dismiss and dissolve.  
19 So that's your tab 14.

20 And in your agenda, it is --

21 THE COURT: Of course, that's a very recent  
22 one. That was filed right after Welch and  
23 within two days of the time the Supreme Court  
24 filed its order in Tibbs. That's De Beers and  
25 all the De Beers entities' motion to dissolve

1           and dismiss. And I guess it's filed in Tibbs,  
2           right?

3           MR. ROBINSON: Yes, Your Honor. I believe  
4           it was filed in Tibbs. And so when you ask --  
5           and, of course, I think Your Honor has already  
6           stated that the idea is to create a framework  
7           and not necessarily one that's going to be  
8           accomplished in the next six days or seven days  
9           before your first report is due.

10          But the motions that appear to jump out and  
11          really go to the heart of what the court has  
12          asked would be the receiver's motion to confirm  
13          the appointment in the Tibbs case. And that is  
14          your tab --

15          THE COURT: 15.

16          MR. ROBINSON: -- 15. And that was filed  
17          July 11th. And then the long -- there's a  
18          motion to amend the complaint that has been  
19          pending for some time, and I think being able to  
20          determine the operative complaint that we're  
21          dealing with in this case also goes to the heart  
22          of the issues.

23          That's the motion and that is --

24          THE COURT: 13?

25          MR. ROBINSON: Yes, Your Honor.

1           THE COURT: That's an amended motion we'll  
2 need to amend.

3           MR. ROBINSON: That's right, Your Honor.

4           THE COURT: The first one was filed  
5 sometime ago, right?

6           MR. ROBINSON: I believe in late 2024.  
7 October of 2024.

8           THE COURT: Yeah.

9           MR. ROBINSON: So, you know, in asking our  
10 proposed framework, we believe that knowing what  
11 the operative complaint is in this case is  
12 certainly a reasonable issue to have resolved so  
13 that when you report back to the Supreme Court  
14 at some point, whether it be this month or next  
15 month, the court knows what the operative  
16 complaint is.

17           I mean, we have a complaint that was in  
18 place, but if the court is inclined to have that  
19 complaint amended, then we would all be working  
20 off an operative complaint.

21           THE COURT: So as I understand your  
22 argument here is if I look at the order of the  
23 Supreme Court of June 26, which is kind of my  
24 guideline at this stage of our proceeding,  
25 answering the three numbered directives to me as

1 a circuit court, in your view is most  
2 beneficially done by taking up these motions to  
3 dissolve.

4 MR. ROBINSON: So -- and the order that you  
5 choose, I think, one, because quite frankly the  
6 questions that were presented is the motion to  
7 confirm the appointment deals really with the  
8 primary issue that you talk about.

9 Is there, number one, a need to issue an  
10 order to confirm the appointment? And if so,  
11 what does that order look like? I think that  
12 probably based on your comments and really --

13 THE COURT: Okay. So the big framework to  
14 answer questions 1, 2, and 3, in your view, is  
15 to set a hearing on your motion to confirm the  
16 receiver's appointment and your motions to amend  
17 the third-party complaint?

18 MR. ROBINSON: Yes, Your Honor.

19 THE COURT: And the De Beers, for one, and  
20 maybe others, motions to dissolve the Cape  
21 receivership.

22 MR. ROBINSON: Yes, Your Honor.

23 THE COURT: All right.

24 MR. ROBINSON: And so with the Court's  
25 permission, I'd kind of like to talk about what



1 we would -- and I understand the Court will be  
2 certainly setting hearings as it sees fit and  
3 scheduling these motions as it sees fit.

4 But what I'd like to do, because the other  
5 thing that you've asked and kind of on the  
6 agenda is just a -- I'm not going through my  
7 report. I'm not going through all the  
8 receiverships. I'm talking about Tibbs and the  
9 Supreme Court order still.

10 THE COURT: Well, it kind of got beyond  
11 Tibbs because what it said was --

12 MR. ROBINSON: I'm prepared to address  
13 that.

14 THE COURT: I mean, it says, "Ensure that  
15 the receiver has been authorized to conduct its  
16 work by an order filed in a specific case in  
17 which the work is to take place."

18 MR. ROBINSON: Yes, Your Honor. So I will  
19 address that.

20 So, Your Honor, I'd like to --

21 THE COURT: Do you think that means in the  
22 Tibbs case only, or do you think that means in  
23 all the cases -- all the receivership cases?

24 MR. ROBINSON: Well, Your Honor, I think  
25 that if we --

1           THE COURT: They think it means in all the  
2 receivership cases. They've taken that as a  
3 platform to attack everything. That's why all  
4 these other people have chimed in, as I  
5 understand it.

6           MR. ROBINSON: Your Honor, I think we're  
7 often told to read the words the court put. The  
8 court says that the receiver should not be  
9 acting in a case in which a receivership order  
10 has not been filed.

11          THE COURT: Right.

12          MR. ROBINSON: It does not say a new order  
13 has not been entered, a new petition has not  
14 been made to appoint a receiver, it says "has  
15 not been filed."

16          So the short answer to your question is I  
17 don't think there are any receivership cases in  
18 which there has not been an order filed.

19          THE COURT: I understand that. But  
20 particularly number 3 directs that if I think  
21 Welch does not indicate a complete understanding  
22 of what it is I'm trying to do to make specific  
23 findings of facts and conclusions of law to  
24 justify what I'm doing and --

25          MR. ROBINSON: So, Your Honor, if I may

1       just address. You're asking some very specific  
2       questions, and I think I can address them all at  
3       one time.

4               THE COURT: Okay.

5               MR. ROBINSON: Okay. First, Your Honor, I  
6       would like to point out that since the  
7       appointment in 2018 of Mr. Protopapas, that you  
8       talked about in your capacity as chief judge for  
9       the asbestos docket, that not one U.S. court,  
10      state or federal, has issued any decision,  
11      dispositive decision finding that the facts,  
12      circumstances, and law did not merit the  
13      appointment of a receivership order. So that's  
14      where we start.

15              Since 2018, not one of your appointment  
16      orders has been reversed. And we do not have  
17      any dispositive decisions on any of your  
18      appointments that has instructed this court to  
19      dissolve or dismiss a receivership. And I think  
20      we all know the number of appeals that have been  
21      involved over -- since 2018.

22              In fact, in the last 18 months, two  
23      published opinions from our appellate courts  
24      have been issued that have confirmed your  
25      decisions regarding Covil and permitted that

1 receiver to continue his work in multiple cases  
2 outside of the original case that he was  
3 appointed in. Last 18 months. One was the  
4 Supreme Court opinion of Covil v. Penn.

5 THE COURT: Covil v. Penn National and  
6 Covil v. Travelers, right?

7 MR. ROBINSON: With SF&G, which the Court  
8 of Appeals issued an opinion very much that  
9 dealt with the Covil's -- the entity of the  
10 receivership and the Supreme Court denied cert  
11 on that. So we have two published opinions in  
12 the last 18 months.

13 And following the latest, of course, you  
14 have our reports. But I want to talk about --  
15 what I'd like to talk about is Tibbs and the  
16 context of those orders.

17 As you've pointed out, Your Honor, the  
18 Tibbs cases involve seven petitions for cert. A  
19 motion to compel discovery, an order granting  
20 the first one was an order granting Motion to  
21 Compel discovery, the order relating to your  
22 ruling on adverse inferences, the order granting  
23 the motion to preadmit exhibits, and two  
24 scheduling orders.

25 That's what the Supreme Court had in front

1 of it the first time. They dismissed those as  
2 interlocutory, and they have remanded them to  
3 you.

4 The other two orders -- well, the other two  
5 appeals involve one order, which was an order  
6 denying the motion to dismiss or dissolve. Now,  
7 of course, this court remembers in Childers, the  
8 Supreme Court said motions denying orders to  
9 dismiss and dissolve are not immediately  
10 appealable.

11 And the Supreme Court hasn't changed that  
12 in Tibbs. What they did do is they took the  
13 original jurisdiction, not appellate, but the  
14 original jurisdiction of those -- of your order  
15 and they have remanded that order back to you,  
16 along with all the cases, and the words they  
17 used were "for all purposes," and then they gave  
18 a list of questions and asked you to report  
19 back.

20 What they did not do is dismiss or dissolve  
21 the receivership. They did not do that. And  
22 the court certainly had the issues in front of  
23 them and could have done it. They had the  
24 orders in front of them and could have done it.  
25 But again, they're not the fact finder.

1           So they had before them, what immediately  
2           preceded that order remanding was something that  
3           was styled as a Notice of Supplemental Authority  
4           that made a number of factual allegations. And  
5           the Supreme Court said, stop, we're sending this  
6           back to the fact finder to determine what the  
7           facts are.

8           So, Your Honor, as you pointed out, one of  
9           the things, and I won't go back through the list  
10          because you've already put them on the record of  
11          what the Supreme Court asks, but one of the  
12          things is that they want you to make sure that  
13          there's an order filed in any case.

14          And I want to talk about that specifically  
15          because that's a question that is -- you've  
16          indicated is on your mind and certainly on the  
17          Supreme Court's mind.

18          They also asked you -- just to put it on  
19          the record, I think this has been communicated  
20          to you, there were two pending motions in Park.  
21          They listed those motions specifically. Those  
22          motions have been resolved, and they are no  
23          longer pending. So when we go back to framework  
24          of report back, those motions have been resolved  
25          and are no longer pending. There were two



1 specific motions that the court referenced in  
2 its remand order.

3 And, Your Honor, of course, the court  
4 remanded the case back to you, but they did keep  
5 jurisdiction over one matter, and that was the  
6 matter for sanctions and frivolous appeals. And  
7 that matter is still under advisement. They did  
8 not grant the motion. They didn't deny. They  
9 said they are going to rule on it at a later  
10 date.

11 And so, Your Honor, that is the landscape  
12 that we walk into. So what I'd like to talk  
13 about is this issue about a receivership  
14 appointed in each case.

15 While a receiver certainly is only  
16 authorized to act pursuant to the statute of the  
17 rules and the orders of appointment, we know --  
18 we know that the Supreme Court does not now nor  
19 has it ever required a separate and new  
20 appointment order in every single case in which  
21 a receiver is fulfilling and effectuating his  
22 duties.

23 And we know that because the Supreme Court  
24 has told us that. They told us that in the last  
25 18 months.

1           The first case, Your Honor, Covil v. Penn,  
2           as you well know, was pending for many years,  
3           and ended in a published opinion in July 24th of  
4           2024. I believe the opinion was written by Few  
5           and joined by the Court. That was an order that  
6           this Court issued. That was an appeal and order  
7           this Court issued regarding summary judgment in  
8           a coverage case brought by Covil against Penn  
9           National.

10           Now, Covil was a prejudgment appointment.  
11           As the Court might remember, there was a  
12           default, not a judgment, not a complete trial.  
13           There was a default in the Taylor case, and this  
14           Court appointed Mr. Protopapas as the receiver  
15           in Taylor.

16           The Taylor case was not in Covil v. Penn.  
17           There was no new order filed in Covil v. Penn.  
18           Of course, the order of appointment was part of  
19           the record and was filed in Covil v. Penn  
20           because what Mr. Protopapas does, and I believe  
21           what the statute does and what the Supreme Court  
22           has allowed in the other case that they have  
23           adjudicated, is that when he files a new action,  
24           when he files an answer to a new action, he  
25           begins with his order of appointment. And if

1 not in every single case, and I believe it is in  
2 every single case, certainly the ones that we're  
3 talking about today, he files a copy of the  
4 order of appointment. And that makes sense.

5 He would need to file the copy so that  
6 everybody is put on notice that he is the  
7 receiver for that company and is acting as the  
8 receiver. So he does file a copy of the  
9 appointment order in every case.

10 And this idea that he needs a new order in  
11 every single case -- the idea, unless the  
12 Supreme Court changes or reverses its prior  
13 orders, the idea has to be that a new order  
14 is needed in every single case.

15 THE COURT: Back up for a minute. The way  
16 the receiver often gets involved in other cases  
17 is that as the receiver, he is sued by other  
18 claimants in asbestos cases.

19 MR. ROBINSON: Correct, Your Honor.

20 THE COURT: Claimants that didn't exist and  
21 lawsuits that did not exist against Covil at the  
22 time he was first appointed.

23 MR. ROBINSON: Correct.

24 THE COURT: And he then tenders -- he then  
25 searches for insurance assets and tenders to

1 insurance companies and works with the lawyers  
2 the insurance companies provide for his defense  
3 in the case in which he was sued on behalf of  
4 claimants against Covil, right?

5 MR. ROBINSON: That's correct, Your Honor.  
6 This is not new. This has been a practice that  
7 is --

8 THE COURT: In Covil v. Penn National, he  
9 had been appointed as a receiver before the  
10 existence of the Taylor case, as I understand  
11 it.

12 MR. ROBINSON: So Your Honor, the -- I said  
13 Taylor, the receiver was acting --

14 THE COURT: He was then appointed in the  
15 Taylor -- he was then appointed in the Taylor  
16 case.

17 MR. ROBINSON: That's correct. The initial  
18 appointment was in Taylor, and from that, there  
19 was a clarifying order that came out sometime  
20 later.

21 THE COURT: Right.

22 MR. ROBINSON: From that, all of the  
23 litigation, including the two published opinions  
24 that I have discussed, in the last 18 months,  
25 Mr. Protopapas was acting in an action other

1           than Taylor --

2           THE COURT: That's correct.

3           MR. ROBINSON: -- in his capacity --

4           THE COURT: Penn National is a prime  
5 example of that. In Penn National -- Covil was  
6 suing Penn National, not for coverage specific  
7 to the Taylor case, but for coverage generally  
8 in asbestos claims against it. And it started  
9 by trying to find out what kind of policies  
10 Covil had with Penn National. That was a bloody  
11 battle for several years.

12          MR. ROBINSON: It was.

13          THE COURT: And that was coverage for  
14 things well beyond any involvement just in  
15 Taylor, right?

16          MR. ROBINSON: Your Honor, Taylor was not a  
17 party to the case. This was Covil versus Penn  
18 National and Covil acting pursuant to your  
19 order, pursuant to the statute that allows you  
20 and any court to appoint a receiver over a  
21 dissolved or defunct company.

22                 And I think that's a key -- it is a key  
23 point that as a dissolved or defunct company has  
24 no one to answer anything because they are  
25 dissolved or defunct. In fact, in the case that

1 we're talking about, and in -- I want to say  
2 that so the Tibbs case, nor Welch, for that  
3 matter, mentioned that it was overturning Covil  
4 v. Penn in any way or modifying Covil v. Penn.  
5 It has not said that.

6 So we have to assume that Covil v. Penn is  
7 still precedent in this state and is still  
8 binding.

9 So also, the Tibbs case nor the Welch in  
10 any way said that they were repealing Rule 66 of  
11 the South Carolina Rules of Civil Procedure.  
12 And Rule 66 is the receivership rule that  
13 specifically states in addition to the powers  
14 conferred by law, every receiver of the property  
15 in effects of a debtor shall, unless restricted  
16 by order of the court, have general power and  
17 authority to sue and collect debts, demands and  
18 rents belonging to the debtor and compromise and  
19 settle such as or doubtful value. He may also  
20 sue and defend in the name of the debtor where  
21 it's necessary and proper for him to do so.

22 That rule has not been repealed. It has  
23 not been abrogated. It is in -- it is in place  
24 and it is being used today in receiverships  
25 across this state.



1           So what the Supreme Court noted in Covil v.  
2           Penn, the appointment order empowered Protopapas  
3           with the right and obligation to administer any  
4           insurance assets of Covil Corporation as well as  
5           any claims related to the actions or failure to  
6           act of Covil's insurance carriers.

7           Since Mr. Protopapas was appointed as a  
8           receiver, numerous plaintiffs have filed  
9           lawsuits against Covil alleging the company's  
10          operations cause their asbestos-related  
11          diseases.

12          And that hasn't changed. It was true at  
13          the time this opinion was written in July of  
14          '24 -- 2024. And, again, that case involved  
15          Penn National's refusal to contribute to a  
16          settlement. In an underlying case, this  
17          particular case was Rawlings, again, not the  
18          case that had the appointment.

19          THE COURT: Not Taylor. Not Taylor.

20          MR. ROBINSON: Not Taylor. That's right.

21          THE COURT: And not Finch.

22          MR. ROBINSON: That's right. And whether  
23          the receiver's tender in the Rawlings case,  
24          which did not have a new or separate appointment  
25          in it, but did have the original appointment in

1           it, was timely or material to the breach.

2           And so, you know, that opinion, of course,  
3           reiterates that the receiver may tender suits.  
4           He may access responsive policies and act in the  
5           place of the defunct or dissolved entity for the  
6           claims being brought by the entity. And he may  
7           initiate new actions, which this was.

8           The other case, Your Honor, is the USF&G  
9           versus Covil. And that was issued by the Court  
10          of Appeals. And cert was denied in February of  
11          last year. And there, the Court of Appeals  
12          upheld your grant of summary judgment again in a  
13          stand-alone case. Because the order of  
14          appointment, as we recall, was in the Taylor  
15          case.

16          This was USF&G versus Covil. There was no  
17          order in that case -- new order. Of course, the  
18          order of appointment, as I said before, has been  
19          filed in the cases. It's part of the record.  
20          The Supreme Court had it as part of the record.  
21          They saw the order of appointment in that case.  
22          There was no question it was not a new order  
23          that allowed Mr. Protopapas to defend and  
24          prosecute the USF&G case.

25          It was a stand-alone case by Covil. The

1 receiver against USF&G and others, while  
2 Templeton was in that case, for bad faith,  
3 malpractice, and breach of judiciary duty. All  
4 initiated pursuant to the original appointment  
5 order, which charged Mr. Protopapas with  
6 identifying and marshaling the assets of a  
7 defunct company, a dissolved company.

8 There the Court of Appeals noted that the  
9 receiver clearly has an interest in determining  
10 whether Covil is subject to future claims as it  
11 seeks to fulfill the requirements of the  
12 appointment order.

13 As a result of your initial appointment,  
14 and I think the Court is well aware this has  
15 been said publicly many times, the receiver has  
16 been able to marshal more than \$50 million in  
17 previously fit or undisclosed insurance assets  
18 for this company. You mention one of those  
19 cases involving Ms. Finch, which is not part of  
20 that. Some of it might be part of it. But one  
21 of the cases involving Finch was a 30-something-  
22 million-dollar verdict in North Carolina that  
23 but for the appointment of the receivership, and  
24 but for the receiver's pursuit of identity and  
25 identification of those assets, that verdict

1 would have gone unpaid and unjustly unpaid  
2 because the assets existed and it took a  
3 receiver to go find them.

4 So, Your Honor, then we go to Welch. Which  
5 the Supreme Court issued, as you know, a  
6 published opinion in Welch regarding the  
7 Atlas Turner receivership. I think despite  
8 perhaps some of the arguments to the contrary,  
9 the Supreme Court affirmed your appointment of  
10 Mr. Protopapas as a receiver for Atlas Turner in  
11 the Welch case.

12 You appointed Mr. Protopapas as a receiver  
13 for insurance assets. Your order talks at  
14 length about the insurance assets. In fact,  
15 Justice Few, in his comments in the oral  
16 argument which we'll go ahead in talking about  
17 the last -- or a line in your order which dealt  
18 with assets outside of insurance in that  
19 particular case, and we conceded this was an  
20 insurance asset receivership, Justice Few stated  
21 that if I get penalized for all the unclear  
22 stuff I've written over the years, I'd never pay  
23 it off.

24 And so they determined that there was a  
25 line in your order that related to things

1 outside of the insurance assets.

2 We have never contended that we were trying  
3 to take over the board of Atlas Turner. And so  
4 the court revised the order and upheld your  
5 appointment and at the same time gave some  
6 guidelines. Well, I say guidelines. They  
7 affirmed guidelines that had been previously  
8 stated in the Virginia Chemical Company, which  
9 was about a hundred years old, that case. They  
10 stated guidelines of what courts should look to  
11 when dealing with a Subsection 5 appointment.

12 This is not a dissolved entity. This is  
13 not a defunct entity. It was an entity that was  
14 ongoing but that this Court had made factual  
15 findings had committed fraud.

16 And what the Supreme Court said in that  
17 case, is that as I said it was specifically  
18 limited to insurance. They said we conclude  
19 Atlas Turner's conduct justified the appointment  
20 of a receiver before judgment. They said that  
21 the evidence supports the finding that Atlas  
22 Turner engaged in moral fraud against the trial  
23 court, the state of South Carolina, and the  
24 respondent.

25 And they cited Virginia Chemical and Wright

1 and Miller as factors that courts have  
2 considered relevant to establishing the  
3 requisite need for a receivership include  
4 fraudulent conduct on the part of the defendant.

5 Of course, they also talked at great  
6 lengths about Atlas Turner's refusal to abide by  
7 its responsibilities under our process of law  
8 and abide by court orders that were being  
9 issued.

10 So, Your Honor, where that leaves us, and  
11 really I think that background is so critical to  
12 this idea that a new appointment order has to be  
13 in every receivership. The Supreme Court has  
14 not said that. An order needs to be filed in  
15 every receivership. People need to be put on  
16 notice of the receiver and that has happened.

17 When dealing with the Section 5, the  
18 Supreme Court has said that you have to make  
19 factual findings related to an entity, an  
20 ongoing entity. And so while we have filed the  
21 order, the original order, and your clarifying  
22 order, which begins in the Park case. As you  
23 may recall, there was initial order in Park.

24 And then when Altrad and other groups began  
25 proceeding with litigation in Europe, you issued



1 a subsequent order in Park and specifically  
2 cross-referenced in your order that the actions  
3 of Mr. Protopapas was taken pursuant to your  
4 order in the Tibbs case were authorized by you.  
5 And that order has been filed in the Tibbs case.

6 So, Your Honor, I think that when we look  
7 at what the court did, we also have to look at  
8 what the court did not do. They did not dismiss  
9 or dissolve the case. They received a  
10 supplemental authority that makes wild  
11 accusations and factual accusations, which, of  
12 course, we have contended were not appropriate  
13 as a supplemental authority filing. That issue  
14 has not been resolved yet, whether that was an  
15 appropriate filing. But the court sent it back  
16 to you to make some factual findings.

17 And, Judge, we have -- I'm not going to go  
18 at length with -- over the report itself  
19 regarding all of the receiverships or the  
20 difference between the Subsection 4 or  
21 Subsection 5 receiverships, but I'll just simply  
22 say that the idea -- well, there's one other  
23 allegation that has been made -- or claim. I  
24 will say claim that has been made in multiple  
25 filings, including one yesterday in the Supreme

1 Court. I believe Mr. Carroll filed a petition  
2 for cert on the Starr Davis case.

3 There have been claims made that somehow  
4 Welch and Tibbs voids every receivership in this  
5 case, in your docket, the asbestos docket,  
6 including the Starr Davis one that the Supreme  
7 Court recently affirmed.

8 THE COURT: Starr Davis, Payne Keller,  
9 Heath, Frost, et cetera.

10 MR. ROBINSON: And including the  
11 Starr Davis, which is now -- if the Supreme  
12 Court takes the petition for cert. It was just  
13 filed yesterday.

14 One of the first rounds that Welch and  
15 Tibbs required the dismissal of Starr Davis and  
16 the voiding of any actions of the receiver  
17 across the board in every case.

18 Number one, we look at the cases that have  
19 already been decided that contradict that and in  
20 fact say that that is not the case because  
21 they've already been upheld by the Supreme  
22 Court.

23 The second thing, and it's an interesting  
24 claim, in addition to a reading of Welch and  
25 Tibbs, that there has to be an appointment order

1 in each case, that there is this new argument or  
2 claim being made that there actually has to be a  
3 finding of fraud in every single receivership  
4 before an appointment could be made regardless  
5 of the statutory provision.

6 And that receivership -- a receiver, based  
7 on their understanding of Tibbs and Welch, can  
8 only be appointed in the rarest and most  
9 extraordinary circumstances.

10 Now, Justice Kittredge asked me in the oral  
11 argument did I agree that this should not be  
12 commonplace, the appointment of a receiver of an  
13 ongoing entity. And my response was it should  
14 not be commonplace but neither should fraud and  
15 neither should this type of activity with the  
16 courts.

17 But where it is found and where the facts  
18 support it, the legislature has given a remedy  
19 for that, and it's the appointment of a  
20 receiver. And that's as to Section 5.

21 But this idea that the court cannot appoint  
22 a receiver over any entity, whether it be  
23 defunct, whether it be dissolved, whether it be  
24 one engaged in fraud as in Welch, really, if you  
25 walk back through, its natural, its end, and

1 we've seen this because it got touched on in the  
2 Covil v. Penn case.

3 If a defunct entity is sued by Covil, and  
4 you cannot appoint a receiver prejudgment, you  
5 cannot appoint a receiver unless there's  
6 evidence that Covil itself had committed fraud,  
7 and you cannot appoint a receiver unless it is a  
8 rare and extraordinary circumstance, which that  
9 is now the new laundry list of requirements  
10 based on the interpretations that have been made  
11 of Welch, this is what happens: A judgment is  
12 entered against Covil.

13 Now, of course, the defense case had alter  
14 ego and other issues involved.

15 A judgment is entered against we'll call it  
16 the dissolved entity. And then a receiver is  
17 appointed. And the receiver says, hey, there  
18 are insurance policies out there. I have been  
19 appointed the receiver over a defunct entity who  
20 has a judgment entered against it.

21 Guess what the carriers get to say? Our  
22 insured breached its duty because it didn't  
23 tender the lawsuit to us; therefore, there's no  
24 coverage.

25 And I say it was touched on in Covil v.

1 Penn because in that case Mr. Protopapas  
2 tendered the lawsuit to Penn, and they claimed  
3 it was too late because it was too close to  
4 mediation or too close to trial. To think that  
5 the carriers would not take the next step and  
6 say if it's not tendered to them at all before  
7 trial, therefore there is no coverage, defies  
8 both the activity that has occurred in this  
9 litigation, the history of what had actually  
10 been litigated, and it's completely contrary to  
11 the statute in the Supreme Court.

12 So with that, Your Honor, that was a --  
13 hopefully a background that gives the Court some  
14 framework as to how we view the questions that  
15 the court -- Supreme Court has submitted to you.  
16 I am happy to answer any questions.

17 Mr. Lay is here to discuss any specifics  
18 regarding the motions in Cape that are listed on  
19 your list. And I believe we also have other  
20 counsel from Morgan Lewis, I believe, here to  
21 address issues that are specific to the actual  
22 items you have listed on your agenda.

23 THE COURT: Well, all right.

24 MR. ROBINSON: If we get to those.

25 THE COURT: We are certainly going to get

1 to these various items after we talk generally  
2 about how to proceed.

3 But your answer to how to proceed is let  
4 this play out in all the matters that we have  
5 amongst which, first of all, is the thing that  
6 the seven matters that were remanded to me, it  
7 involved Altrad, conduct a hearing on those, and  
8 let the issues play out in the context of fact  
9 finding specific to the things that are pending  
10 before me. Amongst which are those seven Altrad  
11 matters.

12 MR. ROBINSON: Yes, Your Honor. And I  
13 think it is important, as you've noted, to let  
14 the Supreme Court know the breadth of the  
15 receiverships and what they have done under --  
16 under your administration as the chief judge of  
17 the asbestos docket.

18 And also, you know, with that -- that was  
19 in mind when we submitted the reports to the  
20 Court. So that you would have a full -- because  
21 that order in Tibbs sometimes says all asbestos  
22 cases, sometimes talks about just the Tibbs  
23 case.

24 The Welch opinion, as they have pointed  
25 out, cross-references the Tibbs matter and talks



1 about the shocking activities that were going on  
2 in Europe.

3 So I think the Supreme Court is certainly  
4 aware there are multiple receiverships in this  
5 court. I think that every appointment order is  
6 created for the circumstances of that situation.  
7 This is not a one-size-fits-all situation.  
8 There are different statutes that relate to  
9 receiverships. There are rules and there are  
10 certainly orders.

11 And there are, as Virginia Chemical pointed  
12 out, and now Welch, factors that have to be  
13 firmly established in order for a case to move  
14 forward or receivership to be established over  
15 an ongoing entity. And one of those factors, of  
16 course, is the engagement of fraud. And this  
17 Court made that finding.

18 Well, I point this out, and I think Mr. Lay  
19 is going to mention this. The petition to  
20 appoint the receiver in Park alleged the fraud.  
21 The order that you issued in response to that  
22 petition, I'm not sure made factual findings  
23 regarding the fraud that had been alleged.

24 And I think that's important, Your Honor.  
25 That you certainly had the information before

1       you relating to the fraud that Cape was involved  
2       in. I don't know that the factual findings  
3       actually got into the appointment order. So  
4       that might be something that this Court may want  
5       to address as it reports back to the Supreme  
6       Court that certainly there is evidence of fraud  
7       with Cape that there have been mounds of --

8           THE COURT: Well, you say that Park's off  
9       the books now. It's been resolved. Am I right?

10       MR. ROBINSON: Say that again.

11       THE COURT: You say that Park is off the  
12       book -- off the books and it's been resolved.  
13       It is --

14       MR. ROBINSON: Well, the motion.

15       THE COURT: Just the motion. And he is  
16       talking about Park is still viable and active  
17       case?

18       MR. ROBINSON: That's correct, Your Honor.  
19       There was against Locke Lord. I'm sorry, there  
20       was an order, a complaint against Locke Lord --

21       THE COURT: Yes.

22       MR. ROBINSON: -- for documents and  
23       information. A new complaint. There were  
24       motions pending relating to that new action that  
25       I think it might have even been a third-party

1           action, but it was Locke Lord was brought in as  
2           a defendant either in the original Park case or  
3           a new case. I think it was a third-party --  
4           third-party case in the original action  
5           against --

6           THE COURT: The motion they are talking  
7           about related to that third-party action?

8           MR. ROBINSON: That's correct.

9           THE COURT: So essentially the Locke Lord  
10          things has been resolved.

11          MR. ROBINSON: It has. That case has been  
12          dismissed.

13          THE COURT: All that needs to be said about  
14          answering that question is that third-party  
15          matter has been resolved.

16          MR. ROBINSON: It's been dismissed.

17          THE COURT: Dismissed.

18          MR. ROBINSON: But the underlying Park case  
19          has not.

20          THE COURT: The underlying Park case  
21          continues?

22          MR. ROBINSON: Correct, Your Honor.

23          THE COURT: And that's not what they were  
24          asking about here.

25          MR. ROBINSON: Not in that provision,

1           that's correct.

2           THE COURT: Right.

3           MR. ROBINSON: They were asking about the  
4 mention pending in the third-party complaint  
5 against Park.

6           THE COURT: Now, I don't have it right here  
7 at hand, but one of the arguments that is made  
8 is that there are receiverships and then there  
9 are receiverships. And there's a difference  
10 between the application of Rule 66, for example,  
11 and the authorities it talks about, and the  
12 statutory framework under which receiverships  
13 are created.

14          What do you say to that?

15          MR. ROBINSON: Well, Your Honor, I don't --  
16 I think that there are several statutes. The  
17 main one that this Court has dealt with is  
18 15-65-10. There are other statutory provisions  
19 that allow situations for a receivership. But  
20 in the context of this docket, we -- this Court  
21 has dealt with dissolved entities, defunct  
22 entities, and ongoing entities.

23          THE COURT: Under Title 15.

24          MR. ROBINSON: Under Title 15. There are  
25 18, I believe, defunct or dissolved entities.

1           THE COURT: Well, all three that are active  
2 are Cape entities, are they not?

3           MR. ROBINSON: So the three active entities  
4 would be ACL, which is now in bankruptcy. So  
5 that case, as you may recall, was argued to the  
6 Supreme Court and before the court issued an  
7 opinion, ACL filed bankruptcy. So ACL.

8           THE COURT: Right.

9           MR. ROBINSON: And then we have Atlas  
10 Turner is the ongoing entity that the Court  
11 affirmed. Mr. Protopapas remains the receiver  
12 for Atlas Turner. And then we have Cape, which  
13 is an ongoing entity and -- that is the subject  
14 of the Tibbs seven remands.

15           There is another case, it's the Whittaker  
16 Clark & Daniel. But that case is in bankruptcy.

17           THE COURT: That's in Plant and it stayed.

18           MR. ROBINSON: It stayed. That's correct,  
19 Your Honor.

20           In fact, I think this Court, when it was  
21 appointing the receiver in Cape, perhaps even  
22 mentioned that I'm appointing it because this  
23 company is in danger of going bankrupt, and  
24 within ten days, they filed bankruptcy. So that  
25 case is stayed.

1           And so those -- I believe that covers all  
2           the receiverships.

3           But I do think as far as getting back to  
4           the framework, the factual findings, and this is  
5           just -- we will submit this just as an  
6           observation, the factual findings that were in  
7           the Welch case, and the fraud in the appointment  
8           order, could be relevant to the Court's question  
9           regarding you making the factual findings. They  
10          clearly asked you to make factual findings on  
11          something.

12          THE COURT: Yeah.

13          MR. ROBINSON: That's the words they use  
14          and the conclusion of law. To confirm that the  
15          appointment order complies with Welch.

16          So if we look at the appointment order in  
17          Park, as I said, certainly the petition to  
18          appoint included allegations of fraud so it's in  
19          the record. And so when we get back to the  
20          motion to confirm the appointment, which was in  
21          that original list that we talked about, that  
22          may be one of the things that could be relevant  
23          to response to the Court that are actually  
24          factual findings on what this Court determined  
25          in ordering a receiver in the face of the



1           allegations and the evidence that was presented  
2           for fraud.

3           THE COURT: I note with interest two other  
4           filings that were submitted by or on you all's  
5           behalf. One is a letter from Amy Hill, a  
6           prominent business and tort litigator in  
7           Columbia. She apparently represents a good many  
8           municipal water companies in the big batch of  
9           PFAS cases that are pending. Many of them  
10          before Judge Knie in Spartanburg, who's destined  
11          to do for PFAS what I've had to try to do for  
12          asbestos.

13          But what Ms. Hill points out in discussing  
14          the beneficial aspect of having a receiver is  
15          that it would be a very difficult thing to  
16          impose the requirement that once a receiver is  
17          appointed for a defendant, that you have to  
18          reappoint the receiver every time you bring a  
19          new claim by a new water company. And that that  
20          would lead to some endless squabbles that eat up  
21          the money they've got available to try to find  
22          some coverage that will take some of the  
23          financial burden off of the municipalities in  
24          trying to fix the mess that is the PFAS bunch of  
25          litigation.

1           She's got most of the state and Richard  
2 Burrow has got most of the federal litigation on  
3 that subject.

4           But, again, we paint with a real broad  
5 brush here when we get to settling requirements  
6 that might interfere with those two batches of  
7 litigation. The argument she makes.

8           You agree with that?

9           MR. ROBINSON: Well, yes, Your Honor,  
10 except for the fact we did not file. The  
11 plaintiff filed it. And we have seen the letter  
12 that she filed. But the receiver did not file  
13 that.

14           We think certainly the letter is  
15 appropriate. There were some unfortunate and  
16 disparaging remarks about her yesterday filed in  
17 the Supreme Court regarding that letter and how  
18 it was transmitted to the court. The substance  
19 of the letter certainly I think encapsulates the  
20 working -- of the actual working of the  
21 receiverships in all avenues. Not just the  
22 asbestos docket.

23           You know, we discussed the Murdaugh  
24 situation.

25           THE COURT: Murdaugh is another example

1       that was rendered if you had had to reappoint  
2       the receiver any time another claim was made in  
3       connection with trying to marshal the Murdaugh  
4       assets, that would have been quite something.

5           MR. ROBINSON: Well, and now just trying to  
6       go back and undo all of those things, which is  
7       what some of our colleagues on -- to my left,  
8       not on the left, but some of the colleagues to  
9       my left would propose we do, go undo all of the  
10      receiverships or declare all of the  
11      receiverships void based on what we certainly  
12      believe is a misreading of the law in this state  
13      and certainly contrary to two recent published  
14      opinions would make no sense at all.

15           And again, it would create a situation  
16      because you would -- this idea that fraud has to  
17      be present in every receivership of where  
18      entities such as New Indy would never have the  
19      opportunity to allow others who may have  
20      contributed to some of the damages there or some  
21      of the injuries that occurred to have others --  
22      insurance carriers respond to those because it  
23      would be a -- it would be a circular argument  
24      that never got out of the circle because the  
25      carrier, you know, you can't appoint a receiver

1           because prejudice. But if you appoint one  
2           after the judgment, we don't have to pay.

3           So there's never a scenario in which the  
4           carrier actually has to fulfill its  
5           obligation -- their obligations to the insured  
6           in that scenario. And I don't think any court  
7           has ruled that in the state, nor I would dare to  
8           say certainly the Supreme Court will do what  
9           they will do. I would find it difficult to  
10          believe that that's the law.

11          THE COURT: Thank you, Mr. Robinson.  
12          Ms. McVey.

13          MS. MCVEY: Your Honor, I just wanted to  
14          make mention of the framework of two quick  
15          issues.

16          THE COURT: Come a little closer.

17          MS. MCVEY: I'm going to take two minutes.  
18          As you're navigating the day and what it should  
19          look like, I wanted to remind the Court that a  
20          lot of the Section 4 receiverships that Starr  
21          Davis, the Davis Mechanical, the Covils are  
22          coming up in your August and September blocks.

23          THE COURT: That's correct.

24          MS. MCVEY: And so this idea that those  
25          cases cannot go forward because an order wasn't

1 entered is silly.

2 And so our position is that these cases  
3 move forward that they -- the orders have been  
4 filed in each and every case. And those cases  
5 should go forward, they must go forward. And  
6 the carriers, to the extent the receiver -- need  
7 to cooperate with the receiver in his duties  
8 going forward.

9 THE COURT: Well, many carriers of these  
10 cases are already cooperating, as I understand  
11 it, because I've already receiving information  
12 about some settlements in these very cases.

13 MS. MCVEY: That's right.

14 THE COURT: And that's what -- now what am  
15 I supposed to do? Void those approvals of those  
16 settlements, or how is that supposed to be  
17 handled?

18 MS. MCVEY: That's right.

19 THE COURT: That is certainly not the way  
20 receiverships have operated in this state for a  
21 good long time.

22 MS. MCVEY: That's right. So I want to  
23 remind the Court of that. It's a silly thing  
24 for them to be arguing, but I anticipate it's  
25 coming up. And I know in particular with

1           Stafford Insulation, which is in Mr. Ledlie's  
2           cases, which he has in August, that's going to  
3           be an issue coming up. Just as that's being  
4           addressed today, I want to raise it.

5           THE COURT: Right.

6           MS. MCVEY: The last thing I want to say is  
7           you mentioned Ms. Hill, very well respected  
8           lawyer here in South Carolina, sent you a  
9           letter, which I then filed. She -- Mr. Carroll  
10          filed something in the Supreme Court yesterday  
11          which accused her ex parte communication.

12          THE COURT: Accused who?

13          MS. MCVEY: Ms. Hill of ex parte  
14          communication. And I want to make it -- and  
15          using it to benefit her in a case in front of  
16          Judge Brown in federal court. And I just want  
17          to say for the record -- a couple of things:  
18          One, that letter was filed by me. She is not in  
19          this case. She has nothing to benefit from any  
20          of these cases. And I just confirmed with her  
21          today that she is not in the PFAS case that has  
22          a hearing in front of federal court,  
23          Judge Brown.

24          So to the extent that needs to be corrected  
25          in the Supreme Court, it certainly should be



1 corrected because it's obviously a disparaging  
2 remark about an ethical and appropriate lawyer  
3 here in South Carolina. I want to make sure  
4 that's clear on the record.

5 THE COURT: There wasn't any accusation  
6 she's had any ex parte communication with me or  
7 what?

8 MS. MCVEY: Yeah, they're saying that since  
9 she emailed you or maybe the law clerk the  
10 letter.

11 THE COURT: Oh, that that was an ex parte  
12 communication. I got you.

13 MS. MCVEY: And so that's been obviously  
14 publicly filed. And if I didn't file it soon  
15 enough, that's on me. That's certainly not on  
16 her.

17 THE COURT: Right.

18 MS. MCVEY: But she has nothing to do with  
19 this case. She doesn't represent any party in  
20 this case. And so certainly if it was done  
21 inappropriately, it was not anything scary or  
22 benign or any of that stuff.

23 So I just want to make sure that's clear on  
24 the record. And I also want to make sure these  
25 guys are going to clean up. That she somehow

1 represents somebody in this PFAS litigation.  
2 And I'll show you the footnote at some point  
3 today so you can see that.

4 THE COURT: Thank you.

5 MR. CARROLL: Your Honor, I'm glad to  
6 address everybody now, if you would like.

7 THE COURT: How about we do that.

8 MR. CARROLL: On that issue, my clients  
9 think that all these letters from random law  
10 firms in the state regarding the receivership  
11 situation are just inappropriate. If any of  
12 them want to speak to the Court, they should  
13 file a motion for leave to speak as an amicus  
14 party. No such motions have been filed.

15 But with regard to Ms. Hill's letter, we  
16 didn't know about it until Ms. McVey filed it on  
17 Friday. It was addressed to Your Honor.

18 THE COURT: I didn't see it until today.

19 MR. CARROLL: I understand, but I didn't  
20 see it until Friday, and it was dated July 10th.  
21 That letter asks Your Honor to disregard in  
22 these cases what the Supreme Court said in Welch  
23 and Tibbs because it would be unhelpful for her.  
24 I think she said like an administrative  
25 nightmare or something like that in the PFAS

1 cases.

2 THE COURT: Right.

3 MR. CARROLL: So tomorrow, Judge Brown, in  
4 Greenville, is going to be hearing a motion to  
5 remand filed by the receiver for Burlington  
6 Industries. That is an alleged coverage action  
7 that arises out of PFAS litigation.

8 In the receiver's complaint that has been  
9 removed to federal court, he identifies two  
10 lawsuits that he says are at issue that he wants  
11 coverage declarations for. One of them is on  
12 behalf of the City of Columbia. Ms. Hill is the  
13 lawyer of record in that case.

14 So when I see --

15 THE COURT: Well, that's not something --

16 MR. CARROLL: Your Honor, when I see --

17 THE COURT: I don't -- and I don't know the  
18 particulars of what you're going to be arguing  
19 about in front of Judge Brown, but let me just  
20 say I don't consider any of these letters,  
21 whether it's from Ms. Finch or from Amy Hill or  
22 from Peter McCoy to be anything other than  
23 informational material for me in connection with  
24 this matter.

25 I don't think they're ex parte

1           communications because they are communications  
2           sent to me and to you all at the same time.

3           MR. CARROLL: They were not sent to me and  
4           you at the same time. And that is what we  
5           find --

6           THE COURT: I got them today. When did you  
7           get them? Last Friday?

8           MR. CARROLL: The letter from Ms. Hill?

9           THE COURT: Yeah.

10          MR. CARROLL: It's dated July 10th. And  
11          Ms. McVey represented was --

12          THE COURT: I saw it the first time today.

13          MR. CARROLL: I saw it Friday, July 18th.

14          THE COURT: Well, it's no ex parte  
15          communication as far as I'm concerned because I  
16          saw it at a time when it was indicated to me  
17          that it was an attachment to something filed by  
18          Mr. Robinson's group and that was it.

19          MR. CARROLL: Yes, ma'am.

20          THE COURT: And I assume, and I think  
21          rightly so, that everything that he sent me, he  
22          sent you. So I don't regard it as some kind of  
23          ex parte material submitted simply for my  
24          benefit.

25          MR. CARROLL: Yes, ma'am.

1           THE COURT: The arguments you have in front  
2 of somebody else, I think are sad. This thing  
3 of attacking lawyers rather than arguing the  
4 merits is something the Court has spoken to  
5 directly in this case.

6           MR. CARROLL: I'm well aware of.

7           THE COURT: I don't want to hear anything  
8 more about that.

9           MR. CARROLL: Your Honor, I didn't intend  
10 to address it today, but I was given no --

11          THE COURT: Your reply to Ms. McVey, and  
12 that's fine.

13          MR. CARROLL: Yes, ma'am. Thank you.

14          THE COURT: Mr. Protopapas.

15          MR. PROTOPAPAS: Your Honor, I have good  
16 news, and it stems off of Ms. McVey's mentioning  
17 the August --

18          THE COURT: Speak up a little bit.

19          MR. PROTOPAPAS: Yes, Your Honor. We have  
20 good news. Ms. McVey was mentioning the  
21 Stafford cases and the August block which are  
22 the last items on your agenda today.

23          THE COURT: Yes.

24          MR. PROTOPAPAS: Since Friday, my friends  
25 at Travelers, and it gets lost in some of the

1       acrimony, but we do work together a lot. And so  
2       my friends at Travelers and I have been working  
3       hard since Friday, and a couple of good things  
4       happened.

5               We also talked with the plaintiffs,  
6       Mr. Ledlie and his colleagues, and what we would  
7       propose to the Court, Mr. Ledlie has agreed to a  
8       dismissal without prejudice, a tolling agreement  
9       for those three cases on your docket.

10              Travelers and I have agreed to a global  
11      mediation, not for just Stafford, but also for  
12      some of these other issues, be it Starr Davis,  
13      be it whatever, all the things because outside  
14      of this courtroom and the filings, the  
15      professional adjusters at Travelers, their  
16      senior claims folks, and even when the lawyers  
17      participate, we speak collectively, collegially  
18      to resolve claims, and it becomes acrimonious  
19      when we come to this courtroom, and I hate that.

20              And I think there's a recommitment in part  
21      from the Tibbs order and its last paragraph  
22      saying we're sick and tired of seeing the  
23      sniping. There's a recommitment between the  
24      folks at Travelers and I to bring the  
25      temperature down and find solutions.



1           And so one solution we would propose to the  
2           court is the Stafford dissolution motion does  
3           not need to be heard today, and it does not need  
4           to be heard for the August block because we have  
5           a solution to the August block if the Court  
6           feels it's appropriate.

7           Let us go at the end of July. It's been  
8           scheduled for the 29th, if I'm not mistaken.

9           THE COURT: Right.

10          MR. PROTOPAPAS: Let us enter into this  
11          more global dialogue with my friends at  
12          Travelers and bring, just like we did to Covil  
13          or to Southern or to Keaton Frost or to so many  
14          of these other receiverships where there are 18  
15          of them, six of them have maybe some chaos or  
16          some findings that are hot, but the other 12  
17          just march along and in order. And we're going  
18          to get those other six in order as well.

19          I think we are committed to it, and I'm  
20          going to reach out today to my friends at  
21          Resolute and try to create that same dialogue we  
22          have with Travelers.

23          But for purposes of today, I did want to  
24          alert the Court, with my friends Motley Rice in  
25          here, my friends from Traveler's, Mr. Lee,

1 Mr. Carroll here, that we have a solution for  
2 the Court, which is those three cases, the last  
3 defendant in Stafford. We have reached an  
4 agreement to dismissal without prejudice.

5 If a moment comes where a qualified  
6 settlement fund is operated, we do not need to  
7 go through a new claims file, I will take up  
8 those three cases, my reports from defense  
9 counsel, and engage in an honest settlement  
10 discussion with them.

11 And we would ask that those last motions  
12 where my friends at Traveler's want to argue  
13 that the Stafford company shouldn't be in  
14 receivership, we ask the Court not hear those  
15 today. Schedule them in August or when the  
16 Court deems appropriate.

17 Let us go to this mediation in July. Let's  
18 make progress that we have -- we take those two  
19 steps forward and then, my gosh, the filing  
20 get --

21 THE COURT: That, as I say, is the irony of  
22 much of this really disagreeable back and forth  
23 that's taking place primarily, unfortunately, in  
24 this Atlas, Cape, ACL dimension that is infected  
25 some of the rest of the docket. But the

1 solutions they call for to satisfy their clients  
2 would destroy the good cooperation that you just  
3 described in so many of these other asbestos  
4 cases.

5 And there are so many that my docket would  
6 be completely overwhelmed if every one of them  
7 had to have judicial attention at the very  
8 beginning and throughout. To be able to resolve  
9 so many of them through very hard-fought and  
10 heart-felt dialogue between the receiver, again,  
11 given the defendant, and the insurance companies  
12 and others that have the kind of assets  
13 necessary to resolve it. That's just exactly  
14 what we want to have happen.

15 MR. PROTOPAPAS: In the Stafford --

16 THE COURT: And it's, to me, mind-boggling  
17 that the same people who get up here and argue,  
18 accuse the other side of everything in the world  
19 that's terrible. Their insurance companies at  
20 the same time are moving -- are very happily  
21 working with the receiver to settle so many of  
22 these cases.

23 But the solution that they ask for from  
24 this court and the Supreme Court is to abolish  
25 all the receivers, including the ones in which

1           they have cooperated to set up qualified  
2           settlement funds. Doesn't make any sense to me.

3           MR. PROTOPAPAS: It doesn't, Your Honor.  
4           We are going to bring a very confident and  
5           optimistic -- we're going to bring better order,  
6           especially with my friends at Travelers. And  
7           I'll work just as hard for my friends at  
8           Resolute.

9           And I think it should be mentioned, Your  
10          Honor, that the civil defense firms defending  
11          these receiverships before you are amongst the  
12          best in the state.

13          THE COURT: They are.

14          MR. PROTOPAPAS: Be it Maynard Nexsen, be  
15          it Nelson Mullins, be it Pierce Sloan. And  
16          Mr. Melling, who is the attorney, who is the one  
17          tasked with defending plaintiffs' claims has had  
18          amazing amount of research and investigation at  
19          Stafford, has fought the August block cases, has  
20          made his recommendations that we will not share  
21          in open court.

22          And I have the material I need to engage  
23          with the plaintiffs' counsel. We would ask a  
24          little bit of runway to allow us to accomplish  
25          that, rather than to deepen perhaps the divide

1           between Travelers and I by hearing the Stafford  
2           dissolution motion.

3           THE COURT: We'll put that off until the  
4           end of July when that hearing is already  
5           scheduled, for sure.

6           MR. PROTOPAPAS: Thank you, Your Honor.

7           THE COURT: All right. Now, Mr. Carroll.

8           MR. CARROLL: Yes, ma'am. Is this my turn  
9           to respond to the overall framework?

10          THE COURT: Yes. Yes.

11          MR. CARROLL: We got sidetracked, Judge. I  
12          kind of lost my place in where we are.

13          Your Honor, Todd Carroll on behalf of Mohed  
14          Altrad and the Altrad Investment Authority.

15          I know when counsel was getting arranged,  
16          there were some comments that I understand that  
17          there were --

18          THE COURT: Speak up now, Mr. Carroll.

19          MR. CARROLL: When we were sitting down, I  
20          understand that there were some informal  
21          comments about all of us being one big family.  
22          I want to be clear, I don't represent Mr. Rawl's  
23          clients. I don't have Mr. Elliott and his  
24          colleagues' clients. I have two clients, Mohed  
25          Altrad, Altrad Investment Authority. Those are

1 my clients in the Tibbs case.

2 Your Honor, I think that what the Supreme  
3 Court -- I heard Mr. Robinson talk for half an  
4 hour. He didn't talk about Welch. He talked  
5 about a Covil case against Penn National and a  
6 Covil case against USF&G. And said, Well, those  
7 cases happened. Those cases didn't involve  
8 cases where the receiver -- in which the  
9 receiver was actually appointed, so we should  
10 just continue business as usual.

11 Your Honor, the world changed with Welch.  
12 Welch may have been a reaffirmation of  
13 long-standing principles, but the Supreme Court  
14 put a very fine point on what a receiver is  
15 supposed to do. And that is the --

16 THE COURT: In what document?

17 MR. CARROLL: The Welch decision.

18 THE COURT: Right.

19 MR. CARROLL: Particularly pages 29 and 30  
20 of the clerk's advance sheet.

21 THE COURT: All right.

22 MR. CARROLL: There's a heading called  
23 Scope of Receivership. In that, the Supreme  
24 Court, while it affirmed Your Honor's general  
25 appointment of a receiver over Atlas Turner, it



1 reversed this Court in one very critical aspect.  
2 And it said that the receiver can only marshal  
3 assets to pay Mr. Welch's claim.

4 And then it said to the extent that the  
5 appointment goes beyond this claim, that order  
6 is hereby reversed.

7 And, Your Honor, that is entirely  
8 consistent with the receivership statute. A  
9 receiver only comes into existence at the  
10 request of a creditor who has a known debt, and  
11 there is concern that property that could be  
12 used to satisfy that debt is in peril.

13 Under our receivership statute, 15-65, I'm  
14 going to point to Section 90.

15 THE COURT: Give me a statutory cite you  
16 make.

17 MR. CARROLL: 15-65-90. It says that a  
18 party has to ask for a receiver. Now, Section  
19 10 tells you the circumstances under which the  
20 court could grant that motion. But Section 90  
21 says a party must be the one requesting a  
22 receiver and that that request comes with very  
23 significant consequences, namely, if you are  
24 wrong, if you have put the property of somebody  
25 else in peril by trying to put it in the hands

1 of a receiver, and your request is wrong, you  
2 are on the hook for all the costs, all the  
3 expenses, and all the actual damages that come  
4 from your improper request.

5 Just like the Tiffany versus Smith and in  
6 the Machin case, or however you say it, case say  
7 that only a defendant can appear on the verdict  
8 form because the General Assembly used the word  
9 defendant in the joint and several liability  
10 statute.

11 So to here, 15-65-90 uses the word party.  
12 Only a party can ask for receiver and that's  
13 because a receiver, unlike a custodian, which  
14 the shipmaster's case talks about from the Court  
15 of Appeals. And a custodian can actually be  
16 appointed to run a business and to take over a  
17 business and make business decisions like  
18 whether to file a lawsuit, whether to assert  
19 certain defenses. A custodian can only happen  
20 to a domestic company and that process is under  
21 Title 33 of the state code.

22 A receiver, by contrast, has a very  
23 specific and very limited function. And that's  
24 what Welch says.

25 THE COURT: Let me ask you this,

1 Mr. Carroll.

2 MR. CARROLL: Yes, ma'am.

3 THE COURT: Number one, does the receiver  
4 have the ability, once appointed, to be served  
5 by another claimant with a claim against the  
6 corporation of which the receiver is appointed  
7 as a receiver?

8 MR. CARROLL: No, ma'am.

9 THE COURT: So --

10 MR. CARROLL: Because that is not  
11 marshaling an asset. That would be the order.

12 THE COURT: Well, there's some other things  
13 that the statute says about what a receiver does  
14 and what a receiver's authority is, and you say  
15 those do not allow a receiver to be served with  
16 any kind of claim.

17 MR. CARROLL: Your Honor, let me answer  
18 this in the context of the Tibbs case because  
19 that's what I'm here --

20 THE COURT: I'm asking generally. You say  
21 that the Welch case has made a broad statement  
22 that applies to all receiverships in the  
23 asbestos world that we're dealing with. And the  
24 one of the things you say is that a receiver has  
25 to be appointed in every case in which a claim

1 is made against the company. But you also have  
2 just made the claim that the receiver cannot  
3 be -- cannot be served with a claim, a lawsuit.

4 MR. CARROLL: I suppose if the claim is  
5 about the specific piece of property. Like if I  
6 have a car and somebody --

7 THE COURT: No, this is a tort claim. What  
8 language is it that limits it to being served  
9 with a claim about an asset?

10 MR. CARROLL: Because the receiver's  
11 function is limited to the asset in which he was  
12 appointed.

13 THE COURT: Is that by statute that you're  
14 saying that?

15 MR. CARROLL: Your Honor, that's what Welch  
16 says. That's what it reversed this court on.  
17 It said we hold the trial -- this is page 30 of  
18 the advance sheet. "We hold the trial court  
19 properly gave the receiver power to pursue  
20 claims in South Carolina's jurisdiction to bring  
21 insurance assets to be bear.

22 "In covering Mr. Welch's injuries, however"  
23 -- because he's the one who got the appointment.  
24 "-- however, we hold that power does not  
25 properly extend to reach every claim relating to

1 Atlas Turner's asset in business activities."

2 Welch says the receivership is limited to a  
3 property for which a party has asked for the  
4 appointment. Which is why we take the position  
5 that I think the Supreme Court said in Welch and  
6 then confirmed in the Tibbs order that brought  
7 us back here today. The Supreme Court --

8 THE COURT: So you say that the receiver --  
9 the receiver's authority by Welch is limited to  
10 dealing with insurance assets, that's it?

11 MR. CARROLL: No, ma'am. In Welch --

12 THE COURT: That's the question I asked  
13 you. Just slow down for a second.

14 MR. CARROLL: Yes, ma'am.

15 THE COURT: Listen to the question. My  
16 question is this: I understand that what you're  
17 saying is that a receiver, per the Welch  
18 opinion, is limited in authority to marshaling  
19 insurance assets and not any other activity on  
20 behalf of the corporation of which it is a  
21 receiver.

22 MR. CARROLL: No, ma'am.

23 THE COURT: What are the other activities  
24 and where does the authority come from?

25 MR. CARROLL: I was reading to you what the

1 court said in that case.

2 THE COURT: That's what I'm asking you.

3 Let's not do --

4 MR. CARROLL: I'm not trying to --

5 THE COURT: You're saying the Supreme Court  
6 in Welch, despite what the statute may say or  
7 anything else, has limited the authority of a  
8 receiver to only marshaling insurance assets,  
9 correct?

10 MR. CARROLL: No, ma'am. I'm saying that  
11 the Supreme Court in Welch has limited the  
12 receiver's authority to only marshaling assets.  
13 They happen to be insurance asset in Atlas  
14 Turner and in Welch, but the Supreme Court in  
15 Welch limited a receiver's authority to  
16 marshaling assets needed to pay the claim of the  
17 person responsible for the receivership  
18 appointment. In Welch it was limited to  
19 insurance assets. But --

20 THE COURT: I understand what you're  
21 saying.

22 MR. CARROLL: Yes, ma'am.

23 THE COURT: Why in the world would not the  
24 Supreme Court have taken a different view of the  
25 Covil/Penn National litigation if you are right



1 in what you say about the authority of a  
2 receiver?

3 MR. CARROLL: Well, let me answer that two  
4 ways: Number one, they were never asked that  
5 question; number two, why didn't the receiver  
6 ask for a rehearing in Welch in its 15 days to  
7 say, hey, wait a minute, your order says I can't  
8 marshal assets to pay any other claims, and I  
9 can only marshal assets to pay --

10 THE COURT: I think because --

11 MR. CARROLL: I'm going to have a broken  
12 receivership.

13 THE COURT: I think, Mr. Carroll, is  
14 because the receiver doesn't interpret that  
15 decision as you do.

16 MR. ROBINSON: I can confirm that, Your  
17 Honor.

18 THE COURT: Wait a minute. No, sir,  
19 Mr. Robinson. You can't interrupt his argument.  
20 I forbid that.

21 MR. CARROLL: Your Honor.

22 THE COURT: But that's what I'm saying to  
23 you, you castigate the receiver for not asking  
24 for a rehearing on this point. My guess is it's  
25 because the receivership doesn't agree with your

1 analysis of the words of Welch that we're  
2 talking about.

3 MR. CARROLL: Okay.

4 THE COURT: You say it's a limitation of  
5 receiver's authority in the Welch case to only  
6 dealing with insurance assets or other assets  
7 that might relate to satisfying the Welch claim.

8 MR. CARROLL: That's what I'm saying.

9 THE COURT: That's what you say the court  
10 said. And my response to that was to ask you  
11 why in the world the Supreme Court would have  
12 made the decision it made in the Penn  
13 National/Covil case?

14 MR. CARROLL: Your Honor, I don't know.  
15 But I do know that that question was never asked  
16 to them. Now, we have raised it in the Starr  
17 Davis cert petition that we filed just  
18 yesterday. Because the Starr Davis appointment  
19 comes from the Hopper case, and the Hopper case  
20 was dismissed with prejudice as it relates to  
21 Starr Davis before the complaint that spawn that  
22 appeal was even filed.

23 THE COURT: That's a little different  
24 question. I'm trying to concentrate on one  
25 thing at a time here.

1 MR. CARROLL: I understand.

2 THE COURT: Let's assume that the receiver  
3 is properly appointed, and that's where we are  
4 right now. Appointed in the case that the claim  
5 against your defendant arises in. You're saying  
6 that the receiver's authority has got  
7 limitations on it. And that's per Welch.

8 MR. CARROLL: Absolutely.

9 THE COURT: I understand that's your --

10 MR. CARROLL: Yes, ma'am.

11 THE COURT: That's your reading of Welch.

12 MR. CARROLL: Yes, ma'am. There's a page  
13 29 of the advance sheet has a heading called  
14 Scope of Receiver's Authority. And that section  
15 is two pages long. And three times in that  
16 one --

17 THE COURT: I'm very familiar with the  
18 Welch case.

19 MR. CARROLL: Three times in that one  
20 section, the Supreme Court makes the point that  
21 I am making.

22 THE COURT: I understand your argument.

23 MR. CARROLL: Now, the Tibbs case -- the  
24 Tibbs order says, among other things, that the  
25 court has to ensure that the receiver has been

1 authorized to conduct its work in the case that  
2 is before the court. There's no such order  
3 here. That's Section A1.

4 But then section A2 says that this court is  
5 required to ensure that such an order, an order  
6 authorizing the receiver in the specific case at  
7 hand, ensure that such an order is based on  
8 findings of fact sufficient under Welch to  
9 justify the order and that the receiver's scope  
10 of authority is limited as set forth in Welch.

11 That phrase "scope of authority" in Tibbs  
12 matches the heading that -- on page 29 of the  
13 advance sheet from which my argument flows.

14 THE COURT: All right.

15 MR. CARROLL: These orders link up  
16 entirely.

17 THE COURT: What do you do with section 3?

18 MR. CARROLL: My understanding is that the  
19 court is to --

20 THE COURT: Well, what does it say?

21 MR. CARROLL: We ask that the circuit court  
22 provide this court with a report on the progress  
23 as to matters A and B, including the status of  
24 Park, which I'll get to, and all asbestos cases  
25 in which a receiver has been appointed every 30

1 days.

2 THE COURT: It says or to -- it says to the  
3 extent the circuit court intends to authorize  
4 the work of the receiver --

5 MR. CARROLL: I'm sorry, I was reading --

6 THE COURT: -- not found sufficient in  
7 Welch, or to authorize a scope of work not  
8 approved in Welch, the circuit court should make  
9 specific findings of facts and conclusions of  
10 law the circuit court finds justify its actions.

11 MR. CARROLL: Yes, ma'am. I'm sorry. I  
12 was reading Section C, not A3.

13 The last sentence of number 1, though, A1,  
14 limits any such order. The Supreme Court  
15 specifically says the receiver is not to be  
16 authorized to conduct work as to a case in which  
17 no receiver appointment has been filed.

18 So that part of Welch is the law.

19 Now, if I can talk about --

20 THE COURT: But what does 3 mean then? Is  
21 it referring to one and all? I believe it is.  
22 It says to the extent circuit court intends to  
23 authorize work based on facts not found  
24 sufficient in Welch involved or scope of work  
25 not approved in Welch.

1 MR. CARROLL: Yes, ma'am.

2 THE COURT: Then the circuit could make  
3 specific findings of fact and conclusions of,  
4 law the circuit court finds justify its actions.

5 MR. CARROLL: That's right. But the  
6 receiver is not -- when you're doing that, the  
7 receiver is not to be authorized to conduct work  
8 as to a case in which --

9 THE COURT: Well, we just read the order  
10 differently.

11 MR. CARROLL: But, Your Honor, my reading  
12 jives with the statute because under the statute  
13 a party has to ask for a receiver to go after a  
14 specific asset to pay a debt owed to that party.

15 THE COURT: But if that were so, the two  
16 decisions -- two appellate decisions that are  
17 final in this area would not have been made.  
18 And you say it's because nobody asked them about  
19 that. Let me tell you something, they had  
20 people on your side of the fence that were  
21 very -- including you, that very aggressively  
22 argued those points.

23 MR. CARROLL: We didn't argue -- Your  
24 Honor, this point has never been --

25 THE COURT: Why not? If this turns out to



1 be the heart and sole of what you're now  
2 arguing.

3 MR. CARROLL: Your Honor, that's why you  
4 have this litany of people in the room who are  
5 making this argument and have said Welch says  
6 that what the --

7 THE COURT: Well, you've been making this  
8 argument a long time before the Welch decision  
9 came out, Mr. Carroll.

10 MR. CARROLL: Oh, no, ma'am.

11 THE COURT: A long time before this  
12 decision came out. This is nothing new in terms  
13 of the contention that you made on behalf of  
14 your client.

15 MR. CARROLL: Well, I disagree with that,  
16 but let's apply this ruling to the actual Tibbs  
17 case.

18 THE COURT: Well, I'm going to do that.  
19 I've been directed to do that and I'm going to  
20 do that.

21 MR. CARROLL: Yes, ma'am.

22 THE COURT: Whether I end up applying it as  
23 you think it reads or as Mr. Robinson thinks it  
24 reads or somewhere in between remains to be  
25 seen.

1 MR. CARROLL: Yes, ma'am.

2 THE COURT: But I'm certainly going to do  
3 that.

4 MR. CARROLL: Well, there's no dispute that  
5 there is no order appointing the receiver in the  
6 Tibbs case. Which is why our notice that we  
7 filed -- my clients filed on Friday says that  
8 everything that the receiver has said should be  
9 stricken from the record.

10 The whole third-party proceeding is a  
11 nullity because there is no order authorizing  
12 the receiver to do anything in the Tibbs case.  
13 And that's for several reasons, not the least of  
14 which is that the Tibbs have never asked for  
15 such an order, and they never asked for such an  
16 order because they have not actually sued the  
17 entity that they want to have in receivership.  
18 My client is not the defendant to the Tibbs  
19 case.

20 THE COURT: Is that a request, then, for  
21 the Supreme Court to revisit this remand back to  
22 me? Because they wouldn't be asking me to do  
23 what they're asking me to do if you were right  
24 in what you just said.

25 MR. CARROLL: Your Honor --

1           THE COURT: Just the whole thing is a  
2 nullity to begin with. That would be an easy  
3 call for them to make. But they didn't make  
4 that call. In fact, quite to the contrary, they  
5 retained the ability to sanction your client  
6 with them, but they sent the rest of it back to  
7 me.

8           MR. CARROLL: Your Honor, I think they have  
9 given the court a very easy and gracious way of  
10 resolving this whole situation. The receiver  
11 has no standing to make any argument in this  
12 case. He definitely has no standing to make an  
13 argument to be heard, ever to be -- to now be  
14 appointed as a receiver in the Tibbs case. And  
15 that goes back to 15-65-90.

16           He's not a party. He's not a creditor of  
17 any of these third-party defendants. He has  
18 retreated back in his motion to -- I want the  
19 record to reflect, I'm putting quotes on it, in  
20 his motion to confirm his appointment, he points  
21 back to the Park case and says, well, gee-whiz,  
22 was appointed there so that should be good  
23 enough.

24           Your Honor, the Park appointment order is a  
25 nullity on its own. I hope that you have read

1           our papers on this point.

2           THE COURT: I have.

3           MR. CARROLL: There was no order appointing  
4 Mr. Park as the personal representative, and  
5 there had not been for more than six months.  
6 And Ms. Parks' estate had been closed. At the  
7 time that the motion was filed, which, of  
8 course, as Your Honor also knows, was nine  
9 months after the Park family's counsel reported  
10 to the court that the case was, quote, fully  
11 resolved.

12           Nine months after the case was fully  
13 resolved, six months after the estate is closed  
14 and its personal representative appointment was  
15 terminated, a motion got filed supposedly on  
16 behalf of the estate asking for the receiver to  
17 be appointed.

18           That is -- that filing is a nullity. The  
19 Park appointment order is a nullity. It cannot  
20 possibly be imported into this case, not the  
21 least of which because Welch and Tibbs say it  
22 can't, but also bring -- dragging a nullity from  
23 one case into another is, of course, a futile  
24 effort.

25           Cape --

1 THE COURT: Let me understand something.

2 MR. CARROLL: Yes, ma'am.

3 THE COURT: All right. The seven matters  
4 that have been sent back to me are matters -- in  
5 terms of your client are matters involving the  
6 Tibbs case, right?

7 MR. CARROLL: Yes, ma'am.

8 THE COURT: So tell me, the court has given  
9 me some directives about pending motions in  
10 Park. And what I've been advised is that those  
11 pending motions have now been resolved and  
12 withdrawn.

13 MR. CARROLL: Yes, ma'am.

14 THE COURT: So tell me what the pertinence  
15 is of this argument that you're making right now  
16 about the Park case.

17 MR. CARROLL: Of course. The receiver  
18 says, hey, I was appointed in Park so you should  
19 recognize it in Tibbs. And I'm telling you that  
20 the order in Park is annulled. That's why I'm  
21 talking about Park.

22 He brings it up, and I, in response, am  
23 telling you that what he's relying on, the  
24 foundation for which his whole argument to be  
25 confirmed, quote, confirmed in this case, his

1 whole argument is based on a foundation of sand  
2 that has been washed out to sea. The order is a  
3 nullity. It was a nullity the moment it was  
4 entered.

5 The Tibbs case was fully resolved, as  
6 counsel -- pardon me -- the Park case was fully  
7 resolved as counsel reported to the court. If  
8 Your Honor saw the timeline that we included  
9 with our exhibit, counsel reports that Park is  
10 fully resolved on June 3rd.

11 Three days later Mr. Park goes to the  
12 probate court in Spartanburg County and says  
13 please terminate my appointment as personal  
14 representative and close this estate.

15 In August, the probate court grants that  
16 motion, closes the estate, terminates his PR  
17 appointment. And there's silence and peace for  
18 more than six months in a case that's fully  
19 resolved. And then out of nowhere a motion to  
20 appoint a receiver over a company that was never  
21 even served with process in the Park case comes  
22 to Your Honor and that order is entered.

23 I heard Mr. Robinson say, hey, there was  
24 some fraud told to you in that case about Cape,  
25 but I don't think it made in your appointment



1           order so you ought to revisit that appointment  
2           order.

3           On that point, Your Honor, the Welch court  
4           did not -- it talked about moral fraud and said  
5           Atlas Turner is subject to a receivership  
6           because of, quote, moral fraud. But it didn't  
7           say selling asbestos is moral fraud. What it  
8           talked about is on page 25 of the advance sheet,  
9           and all of the moral -- the quote, moral fraud  
10          that was at play in Welch by Atlas Turner was  
11          Atlas Turner's litigation conduct.

12          Your Honor ordered them to respond to  
13          discovery. They said we don't have anybody who  
14          can answer discovery. Your Honor said bring  
15          your insurance asset to bear. They said, What  
16          are you talking about? We don't have any  
17          insurance. And Your Honor got to the bottom of  
18          that and realized that wasn't true.

19          And so the Supreme Court, they identified  
20          page 25 of the advance sheet, they identified  
21          three things that justified the moral fraud  
22          finding that resulted in the appointment of the  
23          receiver. Number one, ignoring Your Honor's  
24          discovery orders.

25          Number two, false statements regarding

1 insurance coverage.

2 And number three, refusing to tender the  
3 claims to its insurance carriers. All of which  
4 was in litigation conduct from the Welch case  
5 itself. There's no such thing regarding Cape  
6 LPLC, or Cape Intermediate Holdings Limited in  
7 the Park case.

8 And Your Honor knows that because they were  
9 never served with process in the very first  
10 place. There's no default. There's no default  
11 judgment. I know the receiver likes to say,  
12 well, gee-whiz, he never answered the complaint.  
13 Well, of course, they didn't answer the  
14 complaint. They were never served with the  
15 complaint. But that's not my client. This is  
16 just what I concede from reading the public  
17 index.

18 So, Your Honor, the application of Welch  
19 and Tibbs as it relates to the purported Cape  
20 receivership, the answer is easy. The Supreme  
21 Court has given this court an easy way to unwind  
22 this whole rotten situation. The Park  
23 appointment order is nullity. The Cape -- the  
24 purported Cape receivership is a nullity.

25 There's never been any service of Cape

1 Intermediate Holdings Limited or Cape PLC,  
2 itself, in the Tibbs case without them actually  
3 having been served or even named as real  
4 defendants instead of defendants owed through  
5 the receiver. Without that ever happening, this  
6 court can never even attempt to appoint a  
7 receiver, if the Tibbs family even asked for  
8 one, which they have not. All they've done is  
9 tried to adjoin a filing that itself is void.

10 Your Honor, I appreciate you giving me some  
11 latitude to air my talking points. I'm glad to  
12 answer any other questions you might have.

13 THE COURT: All right, sir.

14 MR. CARROLL: Thank you.

15 MR. RAWL: Your Honor, it's always nice to  
16 see you. I'm Vic Rawl. I'm with the law firm  
17 of Gordon Rees. I represent ESAB, Charter, and  
18 Central Mining, that are named third-party  
19 defendants in this Tibbs matter.

20 I'm not going to repeat everything that  
21 Mr. Carroll just said, but we do incorporate  
22 that. We also incorporate the brief that was  
23 filed on behalf of London, you know, in the Park  
24 matter, which is in opposition to a motion to  
25 compel filed by the receiver in Park. I just

1 want to make sure I put that on the record.

2 Your Honor, I have it in my brief just to  
3 make sure you know these arguments are not  
4 waiving our personal jurisdiction arguments.

5 Your Honor, basically, Your Honor, on  
6 behalf of the Charter defendants, I want to make  
7 sure that, you know, we make our objections  
8 clear. But what I would like to point out is a  
9 lot of the issues that we are dealing with in  
10 these receiverships.

11 And as Your Honor knows, Tibbs doesn't have  
12 anything to do with insurance or insurance  
13 carriers. It's separate. All the other  
14 receiverships do, so Tibbs is a little bit of in  
15 a different position.

16 But what strikes me whenever I hear these  
17 arguments is that right now what we're dealing  
18 with is the Supreme Court has asked Your Honor  
19 to review the underlying appointment and  
20 appointment orders, one for the Cape receiver  
21 and others. But it's the underlying plaintiff  
22 in those cases, as Mr. Carroll pointed out, that  
23 has to make that motion to appoint the receiver.

24 And so it is that the plaintiff in the  
25 underlying case that makes the motion to appoint

1 the receiver that gives the evidence of why the  
2 receiver should be appointed that -- and they're  
3 all ex parte. But that evidence is put before  
4 you to make the determination as to whether or  
5 not receivership should be appointed.

6 Those decisions and what happens there are  
7 the purview of the underlying plaintiff and what  
8 those plaintiffs argued and whether or not it  
9 was sufficient to support an order.

10 THE COURT: Let me stop you right there.

11 MR. RAWL: Of course.

12 THE COURT: You say that it's the  
13 underlying plaintiff and only the underlying  
14 plaintiff who can ask for the appointment of a  
15 receiver for a party defendant. And only for a  
16 party defendant in their case.

17 MR. RAWL: Correct.

18 THE COURT: So there can never be a third  
19 party complaint in a normal asbestos case even  
20 when coverage questions are raised. Because  
21 that's how these receivers end up being  
22 appointed is through a third-party complaint in  
23 an underlying plaintiff's action. And you're  
24 saying that underlying plaintiff has to be the  
25 initiating party.

1 MR. RAWL: Yes.

2 THE COURT: Let me ask you this as a  
3 practical matter. You're here -- let's start  
4 with the one that started it all, the granddaddy  
5 of them all, Covil. For years, Covil was a  
6 defunct corporation, but its insurers developed  
7 a process of using one of the Covils to accept  
8 service as if Covil was still an active  
9 corporation and then tender those suits to the  
10 insurance company for defense.

11 The plaintiff never knew any of that, and  
12 when the underlying insurer lawyer would go on  
13 behalf of the defendant to the mediation, it  
14 would say the defendant's defunct, doesn't have  
15 any assets, we might be able to scrape up  
16 something, implication the Covils might be  
17 willing to stick something in the pot as a  
18 nuisance thing.

19 That's how those cases were settled all  
20 those years until both Judge Eagles in the  
21 federal case that involved the Finches resulted  
22 in the \$32 million verdict, she had been told  
23 consistently by the lawyers no insurance. Then  
24 at the last, they finally said, oh, there may be  
25 some insurance, but what you have to settle



1           within the limits of it, 300,000 or 200,000,  
2           whatever it was.

3           They couldn't -- Covil would not allow  
4           settlement within that limit. Again, the  
5           plaintiff knows nothing about the specific  
6           insurance policies or anything else.

7           How did the Covil insurance get discovered?

8           MR. RAWL: Your Honor, I apologize. I'm  
9           not in the Covil case.

10          THE COURT: Well, let me explain to you.  
11          You sat here and listened so I think you  
12          probably know. It got discovered after I  
13          appointed a receiver for Covil, and Covil  
14          discovered an enormous amount, that the receiver  
15          uncovered an enormous amount of coverage for  
16          Covil in not just the case in which it was  
17          originally appointed, but insurance that could  
18          apply in the cases Covil was being sued in. Not  
19          the case that it was initially appointed on.

20          And that situation was then -- the coverage  
21          situation was then litigated extensively in the  
22          Court of Appeals and in the South Carolina  
23          Supreme Court. And the activities were affirmed  
24          in every respect.

25          MR. RAWL: Your Honor, I've heard --

1           THE COURT: You know, how would that result  
2 have ever come about if you're right and  
3 Mr. Carroll is right and the only way a  
4 defendant in an asbestos case can ever be  
5 required to respond when it refuses to accept  
6 service, refuse to admit the authority of the  
7 court or anything else is for a specific  
8 receiver and the specific case to be appointed,  
9 and then that appointment is made only if the  
10 plaintiff asks that it be made, when they don't  
11 even know there's insurance out there.

12           That's the argument you're making to me. I  
13 don't understand that.

14           MR. RAWL: And without going back to Covil,  
15 I don't know all the facts. What I do know is  
16 that having read the Supreme Court's opinions on  
17 Covil, the receivership appointments were not  
18 challenged. So nobody said these appointment --  
19 these receiver appointments are improper for  
20 these specific reasons. The carriers -- the  
21 parties, they all accepted the appointment.  
22 They didn't challenge them for whatever reason.  
23 Maybe they did not have a problem with them.  
24 But they were not challenged. So we don't have  
25 a Supreme Court order that is upholding the

1 appointment of the receiver in Covil.

2 But to answer your question, yes, if  
3 there's a party that wants to put a defendant or  
4 plaintiff put a defendant into receivership, the  
5 receivership statutes require that plaintiff to  
6 make a motion to say, you know, why this entity  
7 should be in receivership, what assets are at  
8 issue, or, you know, in some of your other cases  
9 they say we think there's insurance and you  
10 should have marshaled those insurance assets.

11 But, yes, a plaintiff has to make a  
12 showing. Now we know more about what the  
13 showing has to be pursuant to both the Tibbs  
14 order and the Covil opinion -- I mean, the Welch  
15 opinion as to what the plaintiff has to show to  
16 the judge in that case in order to have a  
17 receiver appointed.

18 But the receivership statute, it's a  
19 remedy. As Mr. Robinson said earlier, this is a  
20 remedy. A remedy in a specific case. And why  
21 would the Supreme Court just assume that there  
22 will be several more cases that --

23 THE COURT: They discussed them. They  
24 referred specifically to the many cases that the  
25 receiver was involved in. The Supreme Court,

1 Court of Appeals are not unaware of this. They  
2 were very much aware.

3 MR. RAWL: But I think that the Supreme  
4 Court is looking back at the actual receivership  
5 statute that says in numerous areas that it's  
6 limited to that case. I mean --

7 THE COURT: That language limited to that  
8 case does not appear in any of those statutes.  
9 You make the interpretation based on the  
10 statutory language. And I understand your  
11 arguments in that regard. But the words you  
12 just used do not appear anywhere in the statute.

13 MR. RAWL: In numerous sections of the  
14 statute says in this cause, in this cause, and  
15 it's in the singular cause. It also -- that  
16 statute also says that the -- for a receiver  
17 appointed under any portion of that statute,  
18 that a bond has to be -- an amount of a bond has  
19 to be --

20 THE COURT: There's a lot of argument about  
21 that too, of course.

22 MR. RAWL: And that if the party in that  
23 case pays the bond, then the receiver in that  
24 case has to be terminated. So, I mean, how  
25 would a party in a different case pay a bond in

1 an unrelated case in order to terminate a  
2 receiver?

3 If a receiver can act in more than one  
4 case, if they are appointed in only one case, by  
5 one plaintiff, and starts acting in another  
6 case, how can the parties that are being  
7 affected in that other case be able to pay a  
8 bond --

9 THE COURT: Once the receiver is appointed,  
10 can the receiver be served with claims against  
11 the corporation for which the receiver has been  
12 appointed that are not involved in the original  
13 appointment of the receiver?

14 MR. RAWL: Not if the receiver is appointed  
15 pursuant to the receivership statute issued in  
16 this case, which is a remedy statute. If the  
17 receiver is appointed under the South Carolina  
18 corporate section, which is different than an  
19 asset -- a receiver or prejudgment asset  
20 receiver, what we're dealing with in the Tibbs  
21 case, then you run into the Rule 66 that gives  
22 certain authority.

23 But the Rule 66, you can't contradict the  
24 statutory language that's in 15-65-10 et. seq.,  
25 which limits the request. It has to be the

1 plaintiff in the case, the receiver's actions  
2 have to be in that case for the benefit of, you  
3 know, collecting assets for that receiver.

4 And I think that it's very clear what the  
5 Supreme Court said in the Tibbs order, which is,  
6 you know, the receiver can't be allowed to act  
7 in any case where he was not appointed as  
8 receiver. Where all of a sudden he's been doing  
9 what he was told that he can't do in Welch,  
10 which is act on behalf of somebody else other  
11 than the person on whom he was appointed.

12 THE COURT: How about you refer to the  
13 Model Business Corporation Act. I'm real  
14 familiar with that.

15 MR. RAWL: Thank you, Your Honor.

16 THE COURT: What does it about the  
17 appointment of receiver? What is the authority  
18 of the receiver once appointed?

19 MR. RAWL: You know, it basically says that  
20 it's more in the line of a general receiver.  
21 But the -- I believe it has to already be -- I  
22 apologize, I don't know off the top my head. I  
23 don't want to guess.

24 THE COURT: Okay. All right.

25 MR. RAWL: Again, I don't want to rehash



1 all the arguments, but I do want to go back to  
2 my original point, which is if -- in any case  
3 where the issue is was the appointment  
4 sufficient? Well, that appointment order in the  
5 motion, you know, for the appointment was made  
6 by the underlying plaintiff.

7 You know, the receiver was not there --  
8 let's take the Park case, for example. You  
9 know, Mr. Protopapas was not acting in the Park  
10 case prior to the time Your Honor issued the  
11 order appointing him as the receiver. He wasn't  
12 there saying, Your Honor, you should appoint me  
13 as a receiver in this Park case for all these  
14 reasons. You know, it was the Park plaintiff.

15 We now have a different understanding now  
16 because that we know there was actually no  
17 plaintiff at the time of the case. There was no  
18 case in controversy. You have to have at least  
19 two parties to have a case in controversy. So  
20 it is my client's position as well that that  
21 case was over and that there would be no proper  
22 appointment.

23 Even if the plaintiff at the time, you  
24 know, was still appointed PR and still had  
25 authority to act on behalf of the Park estate,

1 and that case was not -- have already been fully  
2 resolved, by making the motion, he is making the  
3 argument as to why our receiver should be  
4 appointed. If that becomes in question again,  
5 it's not up to the receiver who is the arm of  
6 the court, who is supposed to be a neutral and  
7 not have, you know, an advocate of any party, it  
8 is not up to the receiver to go then stand in  
9 the shoes of Mr. Park and say, well, Mr. Park  
10 should have argued this, or he meant to argue  
11 this but he didn't.

12 THE COURT: I don't understand that to be  
13 what the receiver is doing at all. The receiver  
14 is acting as the representative of the defendant  
15 not as the -- he's acting as a receiver for a  
16 specific defendant party. He's not acting as a  
17 representative for the plaintiff at all.

18 MR. RAWL: Your Honor, respectfully, the  
19 receiver made a motion to confirm the  
20 receivership. He made a motion to confirm his  
21 own authority and suggesting that this Court --

22 THE COURT: Right. That's not a motion  
23 made by the plaintiff in any case.

24 MR. RAWL: No. And that's my point,  
25 Your Honor.

1           THE COURT: So none of these appointments  
2 or even appointments where you -- you want to  
3 invalidate them all, including those that where  
4 a receiver is appointed pursuant to an order  
5 initially issued in Taylor, for example, for  
6 Covil. Unless the plaintiff did the requesting,  
7 no third-party request would be valid, in your  
8 opinion?

9           MR. RAWL: I don't think that any action of  
10 a receiver appointed in one case pursuant to  
11 15-65-10, et. seq., you know, any action would  
12 be appropriate in another case.

13          THE COURT: Okay. Well, now you're talking  
14 another case. You're not asking for the  
15 invalidation of every receiver appointment?

16          MR. RAWL: I'm only here in regard to the  
17 Tibbs case. I represent ESAB, Charter --

18          THE COURT: I understand who you represent.

19          MR. RAWL: Yes. And so it is -- I do think  
20 that --

21          THE COURT: But you're making a pretty  
22 broad argument about the authority of the  
23 receiver appointed in any of these cases. And  
24 pursuant to the argument you make, all these  
25 receiverships, except those that pertain to the

1 specific case in which a receiver was initially  
2 appointed, would be invalid.

3 MR. RAWL: I believe that, yes.

4 THE COURT: And a case in which he's  
5 appointed unless the plaintiff asks for the  
6 appointment, they would be invalid.

7 MR. RAWL: If a plaintiff gets an  
8 appointment of a receiver in a certain case, if  
9 the receiver acts beyond that case, if it's  
10 under this statute, then he would not have the  
11 authority to act in that other case, is my  
12 client's reading of this case.

13 THE COURT: I understand.

14 MR. RAWL: But again --

15 THE COURT: That would have gotten rid of a  
16 lot of litigation that's already gone over the  
17 dam and been resolved and gone even as high as  
18 the Supreme Court.

19 MR. RAWL: And I don't know why different  
20 parties did not challenge the appointment of the  
21 receiver at those times. I notice there were  
22 some challenges, but the appeals were not  
23 accepted as immediately appealable. This is the  
24 first, you know --

25 THE COURT: That's clearly something wrong

1           that was done in this case. That the court has  
2           recognized. These were not immediately  
3           appealable orders, and the court has made that  
4           very clear.

5           MR. RAWL: I did read the Tibbs opinion or  
6           Tibbs order, yes, ma'am, Your Honor.

7           THE COURT: What's that?

8           MR. RAWL: I said, yes, Your Honor, I did  
9           read the Tibbs order. So I do understand what  
10          they said?

11          THE COURT: Some parts you like other parts  
12          you don't like?

13          MR. RAWL: Isn't that every case?

14          THE COURT: Yeah, well, it is. That's what  
15          I'm all about.

16          MR. RAWL: Your Honor, but in this, the  
17          Tibbs case that I'm standing here for today, my  
18          client objects that the receiver does not have  
19          standing to act in this case. But further --

20          THE COURT: That's an underlying argument.

21          MR. RAWL: Doesn't have standing to try and  
22          argue for his own appointment. You know,  
23          whether or not the appointment was appropriate  
24          or not or enough evidence or not,  
25          Mr. Protopapas, he didn't have anything to do

1 with getting himself appointed. The order was  
2 made, he was appointed. So whatever happened  
3 before his appointment, whether that appointment  
4 order was appropriate or whether the evidence  
5 that was provided to the court was sufficient,  
6 you know, under Welch, that is not the receiver  
7 standing to make this argument.

8 For example, we made this argument when we  
9 made a motion to resolve the receivership in  
10 this case. And there was an issue, if Your  
11 Honor remembers, with -- we pointed out that the  
12 Cape entity, the motion to appoint the receiver  
13 had all this information, but what it did not  
14 provide to the court was any evidence that there  
15 was personal jurisdiction over the Cape entity.

16 Later in the briefing, there was a receiver  
17 provided a copy of reported service. There was  
18 an affidavit that said the summons had been  
19 filed or had been served but no summons and  
20 complaint.

21 And we make the argument that that --  
22 you -- whatever happened in the underlying  
23 appointment would be the argument of Mr. Park  
24 that said, yes, I did it the right way, and not  
25 for Mr. Protopapas or his lawyers to say, oh,



1 no, Park did it the right way, and we're going  
2 to try and supplement and make some arguments  
3 that Park did not make in the underlying case.

4 I'm saying the same thing here, Your Honor.  
5 I don't think it's appropriate for the receiver  
6 to argue, hey, you should go back and maybe  
7 include some of these facts because Mr. Park  
8 didn't make them. If Mr. Park thinks that the  
9 appointment order was correct, then he should be  
10 here arguing that -- what was argued and then  
11 the underlying appointment order is correct.

12 Not Your Honor's arm of the court,  
13 Mr. Protopapas, which should be -- I don't think  
14 it should be argued in furtherance of his own  
15 authority. His authority comes through you. It  
16 would be up to the person seeking the  
17 appointment to say whether or not if there's a  
18 challenge to the appointment and that under --

19 THE COURT: That's the same argument you  
20 made before, right?

21 MR. RAWL: It is similar. It is not the  
22 same because we have different evidence now.  
23 Because right now, Park can't come back. Park  
24 is no longer a plaintiff. There is no plaintiff  
25 in the Park case. That probably explains why he

1 may not have come back earlier because it's  
2 definitely not back now.

3 I have just a couple of objections unless,  
4 of course, Your Honor wants to ask me some more  
5 questions. I want to make sure that on the  
6 record that, you know, my client does object to,  
7 you know, Mr. Protopapas' assertion that he has  
8 standing to make any of these arguments because  
9 the -- I think that the receivership, his  
10 ability to act in Tibbs is a nullity. There is  
11 no order appointing the receiver in the Tibbs  
12 case. And that the order in Park was a nullity  
13 to begin with because there was no case in  
14 controversy.

15 The -- we also object to --

16 THE COURT: Okay. Well, let me just ask  
17 you this: The main thrust of all of you all's  
18 arguments has been the appointment of Protopapas  
19 was not proper because it wasn't in the Tibbs  
20 case. I got that. I don't think you need to  
21 plow that ground anymore.

22 But all the other issues about why a  
23 receiver can't be appointed for your clients.  
24 So let's say for reasons beyond what I'm  
25 prepared to decide today it's decided that his

1 appointment was proper. Now what is your  
2 argument?

3 MR. RAWL: If Your Honor was to decide that  
4 the only appointment order regarding any Cape  
5 entity was the appointment order in the Park  
6 case.

7 THE COURT: I understand that. I  
8 understand that, Mr. Rawl. I'm trying to -- I  
9 understand that completely, and I understand you  
10 would like to resolve the whole thing on that  
11 basis alone.

12 MR. RAWL: Yes.

13 THE COURT: I am asking you a little bit  
14 different question right now.

15 MR. RAWL: Okay.

16 THE COURT: Which is assume for a moment  
17 the appointment is not the problem, but there  
18 are other issues about whether any receiver  
19 should have been appointed over your client  
20 because your client is not a defendant or  
21 related to a defendant, et cetera, et cetera. I  
22 would like to at least hear a little bit about  
23 that.

24 MR. RAWL: I apologize, Your Honor. I want  
25 to make sure we're on the same page. There is

1 no receiver appointed over my client.

2 THE COURT: Right.

3 MR. RAWL: A receiver was -- a receiver  
4 order was appointed. Well, in the Park case to  
5 put an --

6 THE COURT: Let's not go to the Park case.  
7 How did your client get in here at all?

8 MR. RAWL: The receiver -- Mr. Protopapas  
9 purports to be a receiver for an entity called  
10 Cape PLC.

11 THE COURT: Exactly. That's where I want  
12 to go now. He says he's a receiver for Cape  
13 PLC. And you say, well, he hasn't been  
14 appointed as a receiver for Cape PLC in the  
15 Tibbs case, therefore, his authority is null to  
16 begin with. I got that argument.

17 MR. RAWL: Okay.

18 THE COURT: But I'm looking for a little  
19 bit different argument, which is let's assume  
20 for a moment that he was properly appointed to  
21 be the receiver and act for Cape as the  
22 receiver. Your clients get hooked into this  
23 thing because of their alleged relationship to  
24 Cape, correct?

25 MR. RAWL: Well, I'll say --

1           THE COURT: That's the area I would like to  
2           at least have addressed to some extent instead  
3           of keep going on a doom scroll about this one  
4           issue, there is the validity of his appointment  
5           at all. I got what your argument is there. I  
6           got the argument that Mr. Carroll has made about  
7           that. It's an argument based on Welch. It's an  
8           argument based on statute. Argument based on  
9           the order of June the 26th. I got all that.

10          But in addition, there was an underlying  
11          dispute as the case left me with a determination  
12          about the relationship between Cape and Altrad  
13          and the other defendants that are now in this  
14          thing. I want you to talk about that for a  
15          minute.

16          You represent ESAB, Central Mining, other  
17          insurers of London, insureds, Charter, et  
18          cetera, right?

19          MR. RAWL: I represent ESAB, Charter, and  
20          Central Mining.

21          THE COURT: Okay.

22          MR. RAWL: Your Honor, my clients --

23          THE COURT: They are in this case why?

24          MR. RAWL: They are in this case because  
25          what we claim is, of course, an improperly

1 appointed receiver brought a third-party action  
2 in a case where he was not appointed receiver.

3 THE COURT: He brought a third-party case.  
4 We've talked at length about the fact he can't  
5 do that. But let's go to the merits of the case  
6 he did bring.

7 MR. RAWL: Sure.

8 THE COURT: How it originally got to me.  
9 And that is your claim that he can't make a  
10 claim against you.

11 MR. RAWL: Well --

12 THE COURT: What is his claim based on?

13 MR. RAWL: If you go to the actual claim he  
14 makes. I'll take one of my clients, for  
15 example, ESAB. ESAB is a company who's only  
16 been in business for a couple of years. There's  
17 only I think one paragraph in the entire  
18 90-something-page complaint. And in what we  
19 said is there is no personal jurisdiction --  
20 even if you have the authority to act, there's  
21 no personal jurisdiction.

22 You show no connection whatsoever between  
23 this historic, what they claim to be a terrible  
24 actor from South Africa and my client, which is  
25 a U.S. corporation that has nothing to do with



1 asbestos.

2 And so we made a motion to dismiss for lack  
3 of personal jurisdiction, and then have been  
4 challenging the authority of the receiver and  
5 the standing on personal jurisdiction issue  
6 since. So what I would say is the underlying  
7 case, what it is about is the receiver did not  
8 seek -- did not go and try to marshal some kind  
9 of insurance asset. They did not identify any  
10 asset of any entity that are presented in  
11 South Carolina.

12 They said, oh, we think that there are some  
13 relationship between these clients, and they  
14 brought one cause of action, which is the unjust  
15 enrichment cause of action, which they think  
16 that somehow my client was unjustly enriched by  
17 the actions of this entity from fifty-something  
18 years ago.

19 That's basically what the underlying case  
20 is. But until very recently, we've had all  
21 these issuance on appeal. And from my client's  
22 standpoint and what happened the Supreme Court  
23 pointed out and the Tibbs order is all of my  
24 client's appellate activity challenged the  
25 authority of the receiver to act in the

1           underlying appointment of Mr. Protopapas as a  
2           receiver.

3           THE COURT: I got that. I got that,  
4           Mr. Rawl.

5           MR. RAWL: That's where we are.

6           THE COURT: Mr. Rawl, settle just for a  
7           minute, please, sir. I'm not dismissing those  
8           arguments by saying that they may not be good  
9           arguments. I get the basic Park appointment  
10          can't help in the Tibbs case. I got that.

11          I'm just trying to probe for a little bit  
12          the specifics of how they claim you -- your  
13          client is related to Cape and therefore becomes  
14          a legitimate defendant if all -- the appointment  
15          thing is not a problem.

16          MR. RAWL: Even if every bit of the  
17          appointment was proper --

18          THE COURT: Right.

19          MR. RAWL: -- there's no merit whatsoever  
20          to the underlying case against my client.

21          THE COURT: Okay. And what is that  
22          underlying case? What is their claim?

23          MR. RAWL: Again, they're claiming that  
24          somehow my client, who is a relatively  
25          newly-formed corporation, somehow has something

1 to do with Cape from fifty years ago. There's  
2 no connection. I'm sorry.

3 THE COURT: I think you know more than what  
4 you're answering here. I'm frustrated that you  
5 keep kind of going in vague circles.

6 But what I understand your client's  
7 position in this case to be is that there's a  
8 claim that it ended up with the assets or part  
9 of the assets of the corporations that  
10 distributed South African asbestos to  
11 South Carolina and injured South Carolina  
12 plaintiffs.

13 MR. RAWL: No, Your Honor.

14 THE COURT: Then what is the claim? What  
15 is the relationship claim claimed between your  
16 client and Cape?

17 MR. RAWL: That somehow my client was  
18 unjustly enriched by Cape's bad acts.

19 THE COURT: Bad acts in what? Selling off  
20 its assets or distributing these assets or  
21 closing down one company and putting the assets  
22 in the name of another shell corporation?

23 MR. RAWL: I mean, the complaint says that  
24 this underlying Cape entity, you know, was a  
25 large miner of asbestos. That its products were

1 distributed, and it would be in a lot of other  
2 products maybe in South Carolina. That they  
3 allege that there is a company called NAAC that  
4 was a subsidiary.

5 THE COURT: Right. That's a big part of  
6 their claim is that when Cape decided, hey, we  
7 don't like this litigation environment in the  
8 United States even though we've distributed  
9 asbestos here for years, so we are going to get  
10 out of the United States and put our affairs in  
11 the hands of NAAC. The receiver's contention is  
12 that NAAC is just a shell corporation that Cape  
13 continues to control. But it was the named  
14 distributor. In fact, it even had an office in  
15 South Carolina.

16 And so what is the claim about the  
17 relationship between that entity or any other  
18 Cape entity and your claims?

19 MR. RAWL: There is no claim that my  
20 clients, at least not in the complaint, that my  
21 clients have any relation whatsoever to NAAC.

22 THE COURT: What is the -- what corporation  
23 in the Cape chain do they say your client was  
24 either related to or received the assets of?

25 MR. RAWL: I think they did allege at one

1 point that my client was a small shareholder of  
2 one related Cape entity. But there's no  
3 allegation that any assets of Cape were put into  
4 the hands of my client. That is -- those are  
5 not the allegations.

6 THE COURT: Okay. If that's the case,  
7 doesn't that solve your problem completely?  
8 Shouldn't you be out just on that without  
9 getting into all this other complexity?

10 MR. RAWL: Well, Your Honor, when we argue  
11 personal jurisdiction, I thought you were  
12 actually going to -- were with me.

13 THE COURT: Yeah.

14 MR. RAWL: I thought that you were going to  
15 find that there was no link and there was  
16 nothing. But we did make that argument, but you  
17 did deny my motion and at this point we are  
18 still in the case.

19 But also I believe that NAAC never had any  
20 connection. There's no allegation there's a  
21 connection with South Carolina, is my  
22 understanding. I think they said there was one  
23 employee of NAAC that was in Chicago.

24 THE COURT: Well, the allegation is that  
25 NAAC actually had an office in South Carolina.

1           MR. RAWL: Not in this complaint,  
2           Your Honor.

3           THE COURT: Huh?

4           MR. RAWL: Not in this complaint, I don't  
5           believe. I've read it so many times because  
6           it's somewhat of a struggle for me to discern  
7           what's being alleged against my client. It  
8           is -- I am pretty confident that the allegation  
9           is that NAAC had an office only in Chicago. But  
10          if I'm wrong about that, it doesn't make any  
11          difference from any client's standpoint.

12          THE COURT: Your personal jurisdiction  
13          argument the thing beyond anything else, you say  
14          get your client out, right?

15          MR. RAWL: I think that at the time we made  
16          the argument, we did not know that Park was not  
17          actually still a plaintiff. So we did not have  
18          the ability to make the argument at the time.

19          THE COURT: But you don't need that if the  
20          court revisits the personal jurisdiction issue.

21          MR. RAWL: I think we should win on  
22          personal jurisdiction also, Your Honor, yes.

23          THE COURT: All right.

24          MR. RAWL: If I can put the rest of my  
25          objections on the record real quick. Your



1           patience --

2           THE COURT: The rest of your objections?

3           MR. RAWL: I have a couple of objections to  
4 make sure I have some of the stuff that the  
5 receiver has done here.

6           THE COURT: Is that going to get into kind  
7 of the personal back and forth that the court  
8 asked me to put an end to?

9           MR. RAWL: No, I'm not looking to be  
10 personal back and forth. What I do want to do  
11 on behalf of my client, I do want to object to  
12 the consideration of nonparties filing --

13          THE COURT: Are you in this the same thing  
14 that Mr. Carroll has already covered about the  
15 Amy Hill letter and other things?

16          MR. RAWL: I'm not arguing anything about  
17 ex parte communication. My only point is that,  
18 you know, as the judge in the Tibbs case, I  
19 think it is -- you know, I'm asking that  
20 Your Honor only consider the filings by the  
21 parties in the Tibbs case. And to the extent  
22 that there are filings being filed in the Tibbs  
23 case trying to sway this court on how it should  
24 rule on these receivership issues by parties  
25 that -- or by lawyers that don't represent a

1 party in a Tibbs case, or I mean, I think  
2 Mr. McCoy is a very nice person, but his view of  
3 receiverships from the Murdaugh case are not  
4 relevant to the Tibbs' decision.

5 THE COURT: Okay. So your argument is on  
6 the merits of these materials that have been  
7 submitted as exhibits not on the basis that they  
8 are ex parte? On the merits you think it  
9 shouldn't be considered.

10 MR. RAWL: I'm saying they are not  
11 considered -- I think they're improper and we  
12 would ask that the court not consider them in  
13 regard to the Tibbs case because they are not  
14 properly filed in this -- they should not have  
15 been filed in this case.

16 THE COURT: All right.

17 MR. RAWL: Also to the extent we would ask  
18 that they not be provided in any report that  
19 goes to the Supreme Court.

20 Also, similarly there are some letters that  
21 were filed that are general letters by law firms  
22 that say on behalf of our past, future, and  
23 present clients, here's our position. I don't  
24 think that a lawyer can represent, still work in  
25 the past or future client if they're going to

1           make any positions in any case on behalf of a  
2           current client.

3           THE COURT: Wait a minute. Now that does  
4           go a little beyond what I've even heard from  
5           your colleague.

6           MR. RAWL: Mr. Carroll, yes.

7           THE COURT: Are you now saying that that  
8           disqualifies them from any other participation  
9           in any other case, what's been filed in this  
10          case?

11          MR. RAWL: No, Your Honor. I'm not  
12          suggesting anything nefarious. What I'm  
13          suggesting is if this court -- if I think that  
14          counsel is going to say I'm making these  
15          arguments in this case on behalf of -- I'm  
16          standing here today on behalf of ESAB, Charter,  
17          and Consolidated Mining. But I've disclosed to  
18          the Court who I'm making arguments on behalf of.  
19          There are certain filings that were just made  
20          generally by law firms that say on behalf of my  
21          past, present, and future clients.

22          THE COURT: That's so nitpicky. I  
23          understand you don't like that. It's not going  
24          to have anything to do one way or another with  
25          what I do about the legal issues in this case.

1 But what it does suggest to me is that the  
2 receiverships are working.

3 The lawyers in various asbestos cases to  
4 file letters that start off by saying "On behalf  
5 of their past, present, and future clients,"  
6 I'll ignore that. The rest of their comments  
7 about what is happening in the receivership  
8 world in general, they file, and they are there  
9 for whatever good they do.

10 My judgments are going to be made on what I  
11 think the law is in this area.

12 MR. RAWL: Your Honor, I do appreciate  
13 that.

14 THE COURT: So I don't think you need to  
15 make any more arguments along those lines.

16 MR. RAWL: That's my only point is I do not  
17 believe those people had standing to make any  
18 arguments for how --

19 THE COURT: All right. I've heard that. I  
20 got it.

21 MR. RAWL: Your Honor, unless you have any  
22 other questions for me, I am happy to sit down.

23 THE COURT: Thank you, sir.

24 MR. RAWL: Thank you, Your Honor.

25 THE COURT: 12 o'clock is way past when I

1 normally break. Let's take a 15-minute break.  
2 Be back at 12:15.

3 - - -

4 (A recess transpired.)

5 - - -

6 THE COURT: All right. Welcome. If you  
7 don't have anything new to say, make it very  
8 brief. Thank you.

9 MR. BALBER: Thank you, Your Honor. I will  
10 be brief.

11 I am Scott Balber from Herbert Smith  
12 Freehills on behalf of the  
13 Anglo American-De Beers defendants.

14 The first thing I want to do is address a  
15 question you asked Mr. Rawl about why my clients  
16 are here and who we are. I think it's  
17 important.

18 So the Anglo American-De Beers entities are  
19 ultimately a publicly-traded company in the  
20 business of mining platinum, diamonds, and  
21 copper. Not asbestos. Never mined asbestos.  
22 Never sold asbestos. Not in South Carolina or  
23 anywhere else in the world.

24 We're also not insurance company. Never  
25 have been.

1           We are here in this case because one of my  
2           client entities owned an equity interest, a  
3           minority equity stake in one of Mr. Rawl's  
4           client-related entities, which itself ultimately  
5           owned a minority equity stake in Cape PLC. So  
6           we are the historically minority owner of a  
7           minority ownership interest in an entity that  
8           was a minority owner in Cape. That's it, Judge.

9           So to answer your question, yes, you can  
10          revisit the personal jurisdiction motions, which  
11          we continue to reserve, and the other motions to  
12          dismiss we made, and not negatively impact, I  
13          think, the good work that Your Honor has done in  
14          the insurance context.

15          This is not an insurance case. I just want  
16          to be clear about that because there are no  
17          insurance defendants. And I think very  
18          significantly, Your Honor, the receiver himself  
19          acknowledges that Cape's insurance was exhausted  
20          in 1978. That's in page 14 of the Interim  
21          Statute Report.

22          So nothing in this case has to do with  
23          insurance. And again, Your Honor can dispense  
24          with all the issues in this case without  
25          negatively impacting the insurance regime where



1 I know Your Honor has done substantial good work  
2 and which continues to progress onward.

3 THE COURT: One of the things that I'm  
4 curious about in terms of your assertion about  
5 what insurance was around, I get your basic  
6 assertion, which is we are at such a removed  
7 from the South African company and its series of  
8 more directly associated corporations that were  
9 in the asbestos business that we are at best for  
10 a minority or a minority interest, so we are two  
11 steps removed from any association. Get that  
12 argument.

13 The insurance thing, though, makes me a  
14 little bit curious. There is an issue in this  
15 part of this complex matter in which some of the  
16 lawyers and certain London insurers take the  
17 position that they should not have any  
18 involvement in the case for all kind of  
19 jurisdictional reasons, but this is the same  
20 company that's been selling liability insurance  
21 to South Carolina corporations for commercial  
22 general liability policies that cover this kind  
23 of thing for years and years and years.

24 But you're not a part of any insurance  
25 regime or anything else and your argument about

1 insurance asset is just another argument about  
2 who you are. You aren't in the insurance  
3 business, you aren't in the asbestos mining  
4 business, and you really -- that's the central  
5 argument you make.

6 You, of course, agree with all the other  
7 arguments they're making about the lack of  
8 authority or the receiver because receiver  
9 wasn't properly appointed in this matter. I get  
10 that.

11 But your basic touchstone is we ought not  
12 to be in this case at all.

13 MR. BALBER: That's right, Your Honor. One  
14 more nuance, which I would like to explain,  
15 which is I can appreciate the propriety of the  
16 receivership regime in the context of insurance  
17 cases for all the reasons Your Honor described  
18 with regard to the -- that's makes sense.

19 We are a different regime so it is, yes, we  
20 don't think we belong here at all. But  
21 particularly, the appropriateness of the  
22 receivership in this context is far less  
23 compelling than what Your Honor has articulated  
24 in the insurance.

25 THE COURT: Sure. I understand.

1 MR. BALBER: Okay. My only other point,  
2 Your Honor, is again Your Honor asked one of my  
3 colleagues the question about, well, if we  
4 assume there's a receivership order in this  
5 case, what does that mean? So I'm just going to  
6 take Your Honor's assumption and address the  
7 question, if I may.

8 The problem is not only the absence of the  
9 receivership order in this case. I'm not going  
10 to argue that again. You've heard plenty of  
11 that and been very patient. But it's also the  
12 scope of the receivership order that existed in  
13 Park that is being deployed in this case.

14 Okay. And the Supreme Court in Welch, I  
15 think made a couple of things clear, many of  
16 which have been discussed. But one of the  
17 things that haven't been given enough attention  
18 yet, which is that the receiver cannot gain  
19 entry into the boardroom or have some vague  
20 right to take over the operations of the  
21 company.

22 Now certain things we all would agree would  
23 be improper under Welch and certainly cannot  
24 fall under the purview of a receivership order.  
25 But certain things have happened in this case

1 which I respectfully submit also fall within the  
2 parameters of what has by prohibited by Welch.

3 For example, waiving jurisdictional and  
4 merit defenses, which the receiver has done on  
5 behalf of Cape. Confessing to misconduct on  
6 behalf of Cape. That's happened in the  
7 complaint and elsewhere.

8 Waiving the attorney-client privilege.  
9 Privileging documents on behalf of Cape.  
10 Entering into a tolling agreement with  
11 plaintiff's counsel. That's also happened in  
12 this case.

13 And last but by no means least, is  
14 accepting service of the complaint on behalf of  
15 Cape. And let me just explain why I think, Your  
16 Honor, that is so significant.

17 Cape, be it a good company, a bad company,  
18 or the worst company, is entitled to due  
19 process. Due process is not just for the good  
20 guys. And in this case, in the Tibbs case, Cape  
21 was deprived of due process because it was not  
22 served with the complaint by the Tibbs. Rather,  
23 this was short-cutted.

24 This, again, goes into the argument of who  
25 had the right to seek the receiver. We think it

1        was the Tibbs only, but I'm not going to  
2        reiterate that. But regardless, Cape has to be  
3        served with a complaint by the Tibbs in order  
4        for due process to be honored. And then if Cape  
5        did what it may have done in other cases, what I  
6        know the receiver claims it would have done  
7        here, defaults, engaged in bad conduct, in this  
8        case, well, then, Your Honor, we're off to the  
9        races and whatever happens happens.

10       But Cape was deprived of that due process  
11       because it was never served with the complaint.

12       Again, I don't want to reiterate anything  
13       else. I've certainly agreed with my colleagues'  
14       arguments. And I appreciate your time,  
15       Your Honor.

16       THE COURT: Thank you very much.

17       Mr. Sawyer.

18       MR SAWYER: Good afternoon, Your Honor.  
19       May it please the Court. Wesley Sawyer. I am  
20       actually here in the Park case, not in the Tibbs  
21       case.

22       THE COURT: I'm not hearing the Park case  
23       today.

24       MR SAWYER: That's why I asked about  
25       stepping up earlier, Your Honor, for

1 clarification. There's a motion to compel  
2 against my clients in the Park case agenda.

3 THE COURT: What I am told is that the one  
4 order that was discussed in the Supreme Court's  
5 order of June 26, 2025, which is the reason for  
6 this hearing -- I'm not down into motions that  
7 are also pending yet -- but that case that in  
8 Section B refers to the Park case.

9 MR SAWYER: It does refer to the Park case,  
10 Your Honor.

11 THE COURT: And what's been represented to  
12 me is that that pending motion has been settled.  
13 Is that not so?

14 MR SAWYER: My understanding, Your Honor,  
15 is that after the Supreme Court issued the Tibbs  
16 order directing that this Court rule on those  
17 pending motions from Locke Lord to dissolve the  
18 receivership, that the receiver voluntarily  
19 dismissed that case with prejudice.

20 THE COURT: There's nothing for you to  
21 worry about in terms of the Park case. Who did  
22 you represent in Park?

23 MR. SAWYER: I currently -- I'm new to  
24 Park -- represent Certain Underwriters of  
25 Lloyd's of London, Continental --



1           THE COURT: What are the certain other  
2 insurers -- that crowd gets my attention because  
3 they've been saying all along they don't have  
4 any insurance. They don't represent anybody.  
5 Lloyd's is one of the biggest insurers and  
6 directly and indirectly in South Carolina that  
7 there is in a commercial general liability  
8 field. So I'm -- but why in the world are they  
9 paying you to appear in a case when the motion  
10 they care about has been settled?

11           MR SAWYER: That's not the motion that I'm  
12 here for, Your Honor.

13           THE COURT: What are you here for?

14           MR SAWYER: May I let the court reporter  
15 know who else I represent so the record is  
16 clear?

17           THE COURT: Yes.

18           MR. SAWYER: I represent also Continental  
19 Casualty Company and Liberty Mutual Insurance  
20 Company.

21           And, Your Honor, I'm here because the  
22 receiver filed a motion to compel against my  
23 clients in connection with the subpoena while  
24 his claim -- his third-party claim against  
25 Locke Lord was still pending. That motion is on

1        your agenda for today, which is why I'm here  
2        today. So my involvement in Park is limited to  
3        opposing that motion to compel and is filed and  
4        added to the court's agenda. I'm happy to  
5        address it now or later today.

6                THE COURT: The receiver filed that motion  
7        in which case?

8                MR SAWYER: In Park. That's where the  
9        subpoenas were captured in Park and the motion  
10       to enforce the subpoenas is --

11               THE COURT: But Park has been resolved, as  
12       I understand it.

13               MR SAWYER: During our break, Your Honor, I  
14       approached the receiver's counsel to ask if this  
15       motion is resolved or not. They said it is not  
16       resolved. I did ask for clarification,  
17       Your Honor.

18               MR. PROTOPAPAS: Your Honor --

19               THE COURT: What motion are you talking  
20       about?

21               MR SAWYER: The receiver's motion to  
22       enforce the subpoenas against Continental  
23       Casualty Company.

24               THE COURT: Receiver's motion to enforce  
25       subpoenas against who?

1           MR SAWYER: Continental Casualty Company,  
2           Certain Underwrites at Lloyd's of London, and  
3           Liberty Mutual Insurance Company.

4           THE COURT: And they are parties in what  
5           case?

6           MR SAWYER: They are not parties. They  
7           were subpoenaed in the Park case and objected to  
8           the subpoena.

9           THE COURT: They were subpoenaed in the  
10          Park case?

11          MR SAWYER: Yes.

12          THE COURT: And the Park case is no more,  
13          as I understand it.

14          MR SAWYER: If it's no more, then the  
15          subpoenas are moot and that's put on the record,  
16          I'll sit down, Your Honor.

17          THE COURT: All right. Mr. Protopapas. I  
18          don't want any long-winded argument now. I just  
19          want to know specifically what's the scoop on  
20          the Park case?

21          MR. PROTOPAPAS: The Park claim is pending  
22          against Cape.

23          THE COURT: Speak up.

24          MR. PROTOPAPAS: Certainly, Your Honor.

25          The Park case is pending against Cape, and

1           it's part of a normal, if you have a normal  
2           receivership --

3           THE COURT: Park is still pending against  
4           Cape by means of the original Park versus  
5           everybody --

6           MR. PROTOPAPAS: Yes.

7           THE COURT: -- or by means of the  
8           appointment of a receiver?

9           MR. PROTOPAPAS: By the original Park  
10          versus everybody.

11          THE COURT: The original Park case had Cape  
12          as a defendant?

13          MR. PROTOPAPAS: Yes, Your Honor. The sole  
14          remaining defendant.

15          THE COURT: And -- all right. The original  
16          Park case is still in existence? It hadn't  
17          settled?

18          MR. PROTOPAPAS: It's settled as to all  
19          defendants but Cape, and I am searching to find  
20          assets available to satisfy the Park claim.

21          THE COURT: Okay. And so the demand for a  
22          subpoena is still pending?

23          MR. PROTOPAPAS: Your Honor, yes. Your  
24          Honor sent in April of 2025. A motion to compel  
25          was filed June 2nd of '25.

1           THE COURT: All right. What you want to do  
2 is talk about that, Mr. Sawyer?

3           MR SAWYER: Yes, Your Honor.

4           THE COURT: There will be a time.

5           MR SAWYER: Okay.

6           THE COURT: It's not today.

7           MR SAWYER: It was on today's agenda, so I  
8 apologize.

9           THE COURT: No problem. No problem. It's  
10 listed as one of the many pending matters that's  
11 still out there. And I just didn't understand  
12 that -- I was prepared to tell it's certainly  
13 not pending in connection with the motion that  
14 is talked about in the June 26 order.

15          MR SAWYER: That's correct, Your Honor.

16          THE COURT: That has been resolved, and I  
17 can tell the court it's been resolved and it's  
18 over with. The Park case itself is still alive  
19 and well as to Cape.

20          MR SAWYER: And a very important part of my  
21 argument is as to the propriety and the  
22 receivership in Cape, which is also why I wasn't  
23 sure if you wanted to hear from me now on that  
24 particular issue. Not the whole context in the  
25 Motion to Compel, but as to the receivership of

1 Cape in Park.

2 THE COURT: So far I'm trying to get with  
3 these Altrad defendants and the propriety in  
4 Tibbs, which is what's been projected to me to  
5 look at. So let's put that one on the shelf for  
6 a minute.

7 MR SAWYER: Okay. Thank you, Your Honor.  
8 I'll sit down.

9 THE COURT: We're going to get back to how  
10 to take up all these motions and when to take  
11 them up.

12 MR SAWYER: That would be great, Your  
13 Honor. Thank you.

14 MR. CARROLL: Your Honor, I did not want to  
15 interrupt the dialogue, but I did want to have a  
16 record before you that the Park case --

17 THE COURT: You have to speak up.

18 MR. CARROLL: Todd Carroll on behalf of the  
19 Altrad defendants.

20 According to the public index, the Park  
21 case appears to be fully resolved.

22 THE COURT: Wait a minute.

23 MR. CARROLL: According to the public  
24 index, the Park case appears to be fully  
25 resolved. That's how the Park plaintiff's

1 attorney reported it to this court more than  
2 three years ago. That is what the Spartanburg  
3 County Probate Court file also indicates.

4 THE COURT: All right. I'll find out about  
5 that, but you're not in that as far as  
6 Mr. Sawyer's clients are concerned, and I'm not  
7 going to get into a full-blown discussion. You  
8 have enough on your hands to deal with what  
9 you've got.

10 MR. CARROLL: Yes, ma'am. I just did not  
11 want my silence to be misunderstood on the  
12 record as to agreement with those cases.

13 THE COURT: I understand.

14 MR. CARROLL: Thank you.

15 THE COURT: We have a big dust-up as to  
16 whether the Park case is still alive. There  
17 must be some agreements or something out there  
18 that's keeping it alive.

19 MR SAWYER: There's a big dust-up in  
20 particular because there's no PR for the estate  
21 and the estate is closed.

22 THE COURT: I understand all that. I  
23 understand all that. I'm not going to argue  
24 that today. I understand that. They are  
25 representing things that may or may not be true.



1 I don't take them as God's-given fact written in  
2 the stars anywhere. That's their contention.  
3 And that's why we want to have a hearing on  
4 whoever motions they have. But that's all they  
5 are at this moment is contentions.

6 They do not, however, directly impact what  
7 I'm asked to do in the piece of Park that is  
8 mentioned in this remand order. The piece of  
9 Park that's mentioned in this remand order was a  
10 reconsideration of a motion to dissolve the  
11 partner -- the receivership, right?

12 MR. CARROLL: Your Honor, the two motions  
13 in Park that are --

14 THE COURT: Okay. Just a minute. We're  
15 not going to have back and forth. Hold it for a  
16 minute. Let me look at this thing one more  
17 time.

18 Here's what the court says, "It has come to  
19 our attention that there may be motions filed in  
20 this case and other asbestos cases that have not  
21 been ruled on by the circuit court.  
22 Specifically, we understand there is a pending  
23 motion to dissolve the receivership filed  
24 September the 15th, 2023, and a pending motion  
25 to reconsider a clarifying order filed November

1           the 15th, 2024, both in the Park case.

2           "To the extent that is true, we direct the  
3           Circuit Court to either rule on all the pending  
4           motions or set forth an explanation of the  
5           reasons the court determines it should not rule  
6           at this time."

7           Now, that both of those -- all of that has  
8           to do with Park. And I'm not in Park today  
9           except that it was represented to me that some  
10          parts of Park that are mentioned in this  
11          clarifying order have been resolved. But I will  
12          take that up when I deal with the Park motions.  
13          I am not getting into a duplicate argument about  
14          that today.

15          So I understand, Mr. Carroll. You don't  
16          need to say anything else. I have heard enough  
17          about the Park case.

18          All right. We've got a whole other set of  
19          documents about where did the receiver for Cape  
20          get his appointment? And I understand that's a  
21          big issue out there.

22          So, you know, was that in the Park case?  
23          That in the Tibbs case? Or where was it? I  
24          don't know. But I'm not here to resolve that  
25          today. I'm here to figure out a mechanism

1           whereby I can deal with what I've been asked to  
2           deal with by the court.

3           All right. Now, I finished with  
4           Mr. Sawyer. Anybody else?

5           All right. Mr. Robinson, I'm coming back  
6           to you for a brief response. And one of the  
7           things I would like to ask you before we get  
8           started is very simply this: In what case was  
9           Protopapas appointed as a receiver for Cape?

10          MR. ROBINSON: Park originally.

11          THE COURT: All right. Was it because of a  
12          third-party complaint? Or who made the motion  
13          for the approval of Protopapas as the receiver  
14          in the Park case? Did the plaintiff make that  
15          motion?

16          MR. ROBINSON: Your Honor, the plaintiff,  
17          Ms. McVey.

18          THE COURT: All right. Ms. McVey made that  
19          motion, that a receiver be appointed for one of  
20          the defendants that her client, Park, had sued,  
21          correct?

22          MR. ROBINSON: Correct, Your Honor.

23          THE COURT: All right. You may sit for a  
24          minute. It looks like I'm going to get into  
25          this whether I like it or not.

1 MR. ROBINSON: Your Honor, may I --

2 THE COURT: No. Keep your seat for a  
3 minute.

4 MR. ROBINSON: Okay.

5 THE COURT: Ms. McVey, how did the Park  
6 appointment of Cape's receiver come about?  
7 What's the scoop on that?

8 MS. MCVEY: So, Your Honor, we sued Cape in  
9 the Park case.

10 THE COURT: Right. I see that, and I  
11 noticed that. I know that Cape's name appears  
12 there.

13 MS. MCVEY: That's right. And as part of  
14 that, they never filed an answer.

15 THE COURT: Right. They were in default.

16 MS. MCVEY: We did not move for a default  
17 in Cape because what we didn't want to do is get  
18 some judgment and then not be able to do  
19 anything with it. Right?

20 THE COURT: Right.

21 MS. MCVEY: So what we did is we moved to a  
22 receiver. I have -- I can hand it up to you --  
23 the motion to appoint a receiver in Park.

24 THE COURT: Let me see it.

25 MS. MCVEY: And in that motion we allege

1 the worldwide fraud that Cape had engaged in.  
2 And it's pretty detailed. It's about nine  
3 pages.

4 THE COURT: Yeah, I'm familiar with the  
5 motion. This is where you allege that Cape's  
6 responsibility was projected through NAAC and --

7 MS. MCVEY: We alleged --

8 THE COURT: And then they liquidated NAAC,  
9 as further means of retiring from the fray of  
10 the United States, and a receiver could marshal  
11 Cape's asset to satisfy their claims. That's  
12 what you contend.

13 MS. MCVEY: Right.

14 THE COURT: And therefore appoint a  
15 receiver for Cape.

16 Now, at the point in which you did this --  
17 was filed in March of 2023. All right. And I  
18 generally, if it's a motion to appoint a  
19 receiver, under circumstances like this, whether  
20 they're in default, then I don't give them any  
21 chance to reply, I just appoint the receiver.

22 MS. MCVEY: That's right.

23 THE COURT: That's what I probably did  
24 here. Is that right?

25 MS. MCVEY: Yes, ma'am.

1 THE COURT: Okay. So the receiver got  
2 appointed.

3 MS. MCVEY: The receiver got appointed.

4 THE COURT: And the Park case was still  
5 alive and kicking at that point.

6 MS. MCVEY: So the case had -- they keep  
7 making this huge deal about me saying to the  
8 court the Park case is fully resolved. And what  
9 I meant by that is we had total agreement with  
10 the receiver and that the Cape was up for trial.

11 THE COURT: Hold for a minute. You asked  
12 for the receiver in March of 2023.

13 MS. MCVEY: So they --

14 THE COURT: And the receiver was appointed.  
15 When was the tolling agreement made?

16 MS. MCVEY: It was after that.

17 THE COURT: Sometime thereafter --

18 MS. MCVEY: Right.

19 THE COURT: -- with the receiver --

20 MS. MCVEY: Right.

21 THE COURT: -- you made a tolling  
22 agreement.

23 MS. MCVEY: Here's why. Because the Park  
24 case, the underlying Park case that had many  
25 defendants in it had been up for trial.

1 THE COURT: Right.

2 MS. MCVEY: And we had resolved with  
3 everybody but Cape.

4 THE COURT: But Cape.

5 MS. MCVEY: The receiver had not finished  
6 doing his work so we didn't want to go get any  
7 kind of judgment that couldn't be collected.

8 THE COURT: Right. You were trying to  
9 figure out whether there was some insurance to  
10 cover the Park or some other asset that would  
11 cover the Park case, right?

12 MS. MCVEY: That's right. That is correct.

13 THE COURT: I understand. That's typical.

14 MS. MCVEY: So that's what happened. Let  
15 me back up and address, if you will let me --

16 THE COURT: What I want to know is this.

17 MS. MCVEY: Yes.

18 THE COURT: Okay. That happened.

19 MS. MCVEY: Right.

20 THE COURT: Now, is the tolling agreement  
21 still out there?

22 MS. MCVEY: Yes, ma'am.

23 THE COURT: So you're still not settled  
24 with Cape.

25 MS. MCVEY: Right.



1           THE COURT: Cape has still not admitted any  
2 responsibility. And in the Park case, the Park  
3 case is still alive as far as Cape is concerned.

4           MS. MCVEY: Correct.

5           THE COURT: Now, tell me about the  
6 allegation that the public record says the case  
7 is over.

8           MS. MCVEY: Okay. So I don't know why in  
9 the world the case under the Spartanburg -- or  
10 I'm sorry, the Richland County Clerk of Court  
11 would say that the tort case is over. I don't  
12 know why that would say that. I mean, we enter  
13 into individual stipulations of dismissal for  
14 defendants as they settle, as you know, where  
15 they're dismissed or whatever.

16          THE COURT: Right.

17          MS. MCVEY: We didn't do that with Cape.

18          THE COURT: I have looked in the record,  
19 and I see nothing in the record that you pull up  
20 on the --

21          MS. MCVEY: Right.

22          THE COURT: -- website.

23          MS. MCVEY: The case is open. The Park --  
24 the underlying -- thank you. Ms. Valek just  
25 showed me.

1 THE COURT: The case --

2 MS. MCVEY: The Park case is open.

3 THE COURT: Yeah. I'm looking right at it.

4 That case is still an open case.

5 MS. MCVEY: That's right.

6 THE COURT: Assigned to me. And this is  
7 the case in which Protopapas was appointed as  
8 the receiver.

9 MS. MCVEY: Yes, ma'am.

10 THE COURT: All right.

11 MS. MCVEY: One other issue.

12 THE COURT: Then why are they saying that?

13 MS. MCVEY: Okay. So I don't know why they  
14 said that, but what they wanted -- here's what  
15 happened. When the Park case was filed, it was  
16 filed as Mr. Park individually and as personal  
17 representative of the estate of. Right?

18 THE COURT: Yeah.

19 MS. MCVEY: So we filed the case and when  
20 we sued Cape, there was a personal  
21 representative appointed. There was an  
22 individual case, but there was also a personal  
23 representative appointed.

24 THE COURT: Right.

25 MS. MCVEY: So the case moved along as it

1        did. What I didn't know until Friday is that  
2        apparently the probate court has closed the  
3        personal representative. In other words, he has  
4        absolved the personal representative of any  
5        authority at the moment going forward.

6            And what they want to say is that means  
7        everything is done. You cannot do anything  
8        about that.

9            Now, number one, I had no idea that it  
10       happened. No one had told me. We weren't  
11       copied on it. Didn't do the probate. I didn't  
12       know.

13           But when I went and looked at the law of  
14       this, number one, we had authority to sue Cape  
15       because he was appointed the representative at  
16       the time. But number two, when you go and look  
17       at the statute about the ability of a personal  
18       representative, and the case law that's  
19       interpreting it, all we could do is reopen,  
20       which is already in process.

21           THE COURT: Okay. That's the status of the  
22       case. The case is still alive. Probate Court  
23       closed the estate, and be a lot of reasons why  
24       that might be done, is going to be reopening to  
25       make it clear that the PR is still able to

1 function as the PR in Park.

2 MS. MCVEY: Absolutely. And when that  
3 happens again, then the statute in the case law  
4 says that it is retroactive.

5 THE COURT: It's retroactive. I'm familiar  
6 with developing and closing of the states and  
7 the reopening all that kind of thing. It all  
8 reaches back.

9 MS. MCVEY: I think that's just a red  
10 herring, but I want to make sure it's clear on  
11 the record.

12 THE COURT: I get that. Now let me ask one  
13 other question that has nothing to do with Park.  
14 It has to do with Tibbs.

15 MS. MCVEY: Yes, ma'am.

16 THE COURT: Protopapas used his authority  
17 as -- he got it in Park to also function as the  
18 receiver for Cape in the Tibbs case, as I  
19 understand it.

20 MS. MCVEY: Yes, ma'am.

21 THE COURT: That was a big issue floating  
22 around here that's going to be resolved about  
23 whether you can do that, right?

24 But what was filed in the Tibbs case was  
25 Protopapas' order of appointment in the Covil

1 case, in the Taylor or in the Covil case, at  
2 least by what I'm looking at here. I don't  
3 understand that.

4 MS. MCVEY: Well, Covil was a defendant in  
5 the Tibbs case. Is that what you're talking  
6 about?

7 THE COURT: Then Covil is a defendant and  
8 that's why that order was filed. It wasn't  
9 filed because of an attempt to say that that  
10 order authorized Cape.

11 MS. MCVEY: No. No. The Cape order was  
12 also filed.

13 THE COURT: The Cape order was filed as  
14 well.

15 MS. MCVEY: Yes.

16 THE COURT: And that is -- the Cape order  
17 in Parks was filed as an exhibit in the Tibbs  
18 case when the -- when the receiver became  
19 involved as the third-party plaintiff in the  
20 Tibbs case, right?

21 MS. MCVEY: Correct.

22 THE COURT: Okay. I got you.

23 MS. MCVEY: And we served the receiver as  
24 Cape in the Tibbs case.

25 THE COURT: Right.

1 MS. MCVEY: As we've done in every other  
2 receivership-type case.

3 THE COURT: Right. Right. Right.

4 MS. MCVEY: And you know, we look at Rule  
5 66.

6 THE COURT: The issue about whether the  
7 court has either in Welch or the most recent  
8 order or both said that's a no-no.

9 MS. MCVEY: Right.

10 THE COURT: We got it resolved. Okay.  
11 Very good. That clears it up. Thank you very  
12 much.

13 MR SAWYER: Your Honor, I think since we've  
14 gone into Cape and Park, I feel like --

15 THE COURT: No. I'm not going to get into  
16 the merits of your argument at all.

17 MR SAWYER: I want to correct statements.

18 THE COURT: I'm going to conduct a full  
19 hearing, Mr. Sawyer, on whether your client is  
20 te absolve in Park or not. All I was trying to  
21 do is look at the record and see what the record  
22 reveals and particularly what the record reveals  
23 about Park.

24 I am not going to today to hear any  
25 arguments about whether the personal

1 representative has any authority to reopen the  
2 closure of the estate of Park. That can wait  
3 until we hear the Park motions.

4 MR SAWYER: Well, Your Honor --

5 THE COURT: She is simply explaining what  
6 she understands about that and that's fine. You  
7 explained what you understood about Park.  
8 That's also fine. I'm going to have a big  
9 argument on that, and I'm not going to have it  
10 today.

11 MR SAWYER: Your Honor, just --

12 THE COURT: I'm not going to have that  
13 argument today.

14 MR SAWYER: I'll note my objections to  
15 everything she said. We didn't have a chance  
16 to --

17 THE COURT: You object to everything I  
18 said, that's fine.

19 MR SAWYER: To what Attorney McVey said.

20 THE COURT: Sir? I'm not hearing you.

21 MR. SAWYER: I was just noting I object to  
22 what Ms. McVey said because I did not get a  
23 chance to respond to it, so I want to note my  
24 objection.

25 THE COURT: I note your objection. And I



1       note that I'm going to give you a chance to file  
2       briefs on this point and argue it to your  
3       heart's content when I take up Park.

4             All I wanted to do is see whether in fact  
5       the notations that I was told by you and by  
6       Mr. Carroll that the Park case had been closed  
7       on the record is right, and that's not right.

8             It hasn't been -- the Park case is still  
9       alive and pending with me assigned as the judge.  
10      Therefore, these contentions about Park will be  
11      resolved in the due course of time by a hearing.

12            MR SAWYER: To be clear, the notations I  
13      made from exhibits from court filings, from the  
14      probate court submitted to Your Honor. We have  
15      a full brief on the Park motion that's been  
16      submitted to Your Honor as well.

17            THE COURT: That's fine. And I'm not  
18      hearing that Park motion and I'm not ruling  
19      against you on the Park motion today. I'm  
20      simply saying I wanted some clarification as to  
21      whether the Park case had been dismissed and  
22      shown on the public record as no longer an open  
23      case.

24            And the Park case is shown on the record of  
25      the Richland County Fifth Judicial Circuit's

1 Public Index as an open case.

2 MR SAWYER: And what I was noting as the  
3 probate --

4 THE COURT: I understand what you all say  
5 about Spartanburg County Probate Court. I'm not  
6 ruling on that or dealing with that today. You  
7 say one thing, she says another thing. That's  
8 why we're going to have a hearing.

9 MR SAWYER: Okay. Thank you, Your Honor.

10 THE COURT: All right.

11 MR. CARROLL: Your Honor, just for the  
12 record, I join.

13 THE COURT: I understand you join  
14 everything he says twice. Noted.

15 MR. RAWL: For ESAB --

16 THE COURT: Noted. Noted.

17 MR. RAWL: I also like just to object on  
18 behalf of ESAB and Charter that we don't  
19 believe --

20 THE COURT: You know, this is not  
21 necessary, Vic. None of it is necessary. You  
22 all are going to file voluminous briefs on the  
23 subject. Please don't do that me. I'm not  
24 hearing that case today. I told you that when  
25 we got started. I let you do a few things by

1 way of noting why you're going to be in that  
2 case. But I'm not hearing that right now.

3 MR. RAWL: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. RAWL: Objection noted. Thank you.

6 THE COURT: Okay. Now, let's get back to  
7 Mr. Robinson.

8 Mr. Robinson, I think I've got some clarity  
9 about where things stand and where Protopapas  
10 was appointed and what he did with that  
11 appointment in terms of filing it in the Tibbs  
12 case. I get that.

13 And that we are going to have to a big  
14 hearing about. A whole issue of whether a  
15 receiver's authority extends to other cases  
16 beyond an original appointment. We're going  
17 to -- that's going to be a big -- it's going  
18 back up to the Supreme Court. They are going to  
19 have a lot of looking at it, and who knows what  
20 the answer is going to be. I at least  
21 understand the landscape a little better now.

22 You got anything else you need to tell me?

23 MR. ROBINSON: Your Honor, I would like to  
24 just express my sincere apologies for  
25 interrupting Mr. Carroll when he was talking.

1 He, as the Court noted, sat quietly and listened  
2 as I argued, and I apologize for interjecting.

3 The issue that I was going to raise with  
4 the Court, I think Mr. Lay would address. I  
5 apologize.

6 THE COURT: I appreciate that,  
7 Mr. Robinson, and I assure Mr. Carroll  
8 appreciates that as well. He nods. Thank you  
9 so much.

10 Now, let's talk practical sense about how  
11 we approach this. To me, there's one big issue  
12 about how receiverships in South Carolina are  
13 handled, how appointments are handled, and what  
14 the ambit of a receiver's authority is. And I  
15 really -- I'm asking -- this is open ended --  
16 I'm searching for what the best vehicle is for  
17 dealing with this.

18 All these things continue to be raised  
19 repetitively in all these various matters,  
20 including the remanded material. And the  
21 remanded seven cases are themselves cases in  
22 which the motions that are made sometimes had  
23 only indirect validity in the case to which the  
24 matters were made.

25 So it's kind of a -- I'm trying to figure

1 out which is the case I really ought to be  
2 looking at. Is it these seven cases where it's  
3 a big old bust-up between Altrad and whether  
4 it's the Cape -- even if it were properly named  
5 would grab into Altrad, all them? Because the  
6 motions, the seven cases in which the motions  
7 were made are all wrapped up with the Altrad  
8 matter.

9 I don't want to get into the details of  
10 whether Altrad is the -- is an appropriate party  
11 to be grabbed up in the mal of Cape. There's to  
12 be a -- there ought to be a time and place on  
13 this docket about standing motions for us to  
14 explore the big issue of whether Cape can be  
15 sued at all and then whether it can drag in, by  
16 all these allegations that Mr. Lay makes in his  
17 various filings, all these other corporations  
18 like NAAC, like Altrad, like all the rest of  
19 these entities.

20 Because they all are in various pieces and  
21 parts of what's before me because of the initial  
22 contention of liability on the part of Cape and  
23 its related companies.

24 So that's one thing. And is that an  
25 exploration that would be best done through the

1 vehicle of the remanded motion? The remanded  
2 seven cases or seven really petitions, or is  
3 there another and better vehicle? And I suspect  
4 there is, which is one of the substantive cases  
5 being tried that's not got that as a part of its  
6 activity.

7 So I'm going to turn to you for a minute,  
8 Mr. Lay. What would your --

9 MR. PROTOPAPAS: Your Honor, may I?

10 THE COURT: Well, I'll let you, yeah,  
11 Mr. Protopapas. What are you all -- you all are  
12 kind of in this thing together. So what do you  
13 think an appropriate vehicle would be? And I'm  
14 not going to necessarily agree with you because  
15 I'm going to ask the same question of these  
16 other folks. But what is an appropriate vehicle  
17 for exploring the Cape and its extended  
18 relationship allegedly with other organizations?

19 Some of these folks say they don't even  
20 have enough to get closely to what would  
21 proximate personal jurisdiction. Others say  
22 it's all a bunch of stuff made up by all these  
23 mean books that have been written about us and  
24 it doesn't have any factual predicate to it and  
25 it ought to be thrown out for that reason. That

1           may be a pretty good reason to do it.

2                   What's the case and controversy I've got  
3 before me that would most effectively explore  
4 the Cape situation? I've done it once with  
5 these motions on personal jurisdiction, but that  
6 apparently is -- doesn't satisfy anybody,  
7 including the Supreme Court. So you tell me.

8           MR. PROTOPAPAS: Tibbs, the case remanded  
9 to you by the Supreme Court, where it retained  
10 original jurisdiction over to is the appropriate  
11 vehicle for the Cape matter.

12           THE COURT: Okay. Now, let's talk about  
13 Tibbs for a minute. Tibbs names Cape. And then  
14 it's through that naming of Cape that Mohed  
15 Altrad, Altrad Investments, ESAB, Central Mining  
16 are alleged to come in, right?

17           MR. PROTOPAPAS: Yes, Your Honor.

18           THE COURT: So if the Tibbs' case is back  
19 in my responsibility, then what pending motions  
20 best deal with this overall issue? I had an  
21 original ruling on personal jurisdiction, but it  
22 may have to be revisited. But what's the best  
23 vehicle for exploring an issue that I think the  
24 Supreme Court wants the court to explore?

25           MR. PROTOPAPAS: We have a motion to amend



1       our complaint, Your Honor, which the Court has  
2       heard and deferred ruling on. The personal  
3       jurisdiction issue can come by a motion right  
4       after the amended complaint, or we can take it  
5       up as part of the motion to amend and encourage  
6       our friends to go ahead and renew --

7               THE COURT: Well, the motion to amend is a  
8       motion that puts all this averment we are  
9       talking about at issue, right?

10              MR. PROTOPAPAS: Yes, Your Honor.

11              THE COURT: Your Lawyer Lay is trying to --  
12       I can't hear both of you now, Mr. Lay.

13              MR. LAY: I'm raising my hand. It seems to  
14       me that the best vehicle would be the motion to  
15       dissolve and our response, the motion for  
16       confirmation.

17              THE COURT: Wait a minute. You got to go  
18       again.

19              MR. LAY: Let me back up. There are a  
20       bunch of motions that are filed in the Tibbs'  
21       case. One of them is a motion by the defendants  
22       to dissolve the receivership. We have our  
23       motion to confirm the receivership. Embedded in  
24       those motions are issues that you addressed in a  
25       73-page order in December 2023, again, on the

1           dissolution. They raised things like personal  
2           jurisdiction --

3           THE COURT: I don't agree with you,  
4           Mr. Lay. There is Cape and whether the naming  
5           of Cape can now legitimately include these other  
6           corporations. That's an issue all by itself  
7           that has nothing to do with motions to dissolve  
8           the receivership. That's a separate thing.  
9           It's an attack on the legitimacy of the  
10          receivership.

11          And there's also a contention that the  
12          parties can never include some of these that  
13          made all these motions the Supreme Court didn't  
14          have and sent back to me, like Altrad and some  
15          big -- Rawl's clients and his clients. I mean,  
16          there are a bunch of them that say it doesn't  
17          extend as far as me. Those have got to be dealt  
18          with.

19          MR. LAY: So I think in the motion for  
20          dissolution and in the motion to confirm the  
21          appointment, that is going to be about the scope  
22          of our responsibility as receiver and ability to  
23          bring those suits. So we're going to be talking  
24          about --

25          THE COURT: That's fine. But before we do

1       that is the basic question: Should these people  
2       be in this lawsuit? And you say I've already  
3       ruled on that when I denied the motions for  
4       personal jurisdiction. But they use that to  
5       race all the way up to the Supreme Court, who  
6       sent it back to me and now says take a look at  
7       everything.

8               MR. LAY: Well, I'll respond to that  
9       because I was chomping at the bit to get up to  
10      explain when I was listening to Mr. Rawl explain  
11      his confusion about what the case is about. I  
12      can explain that now. If you would rather defer  
13      that, I can do that.

14             THE COURT: That's what I want to have a  
15      hearing about.

16             MR. LAY: Okay. I think as part of the  
17      scope, in our -- they have a motion for summary  
18      judgment, which is really not ripe at this  
19      point. If they're wanting to revisit with a  
20      motion to dismiss, we're glad to address that.  
21      You have ruled on that.

22             THE COURT: I have.

23             MR. LAY: If that needs to be revisited,  
24      then I guess that's something they can revisit.  
25      We'll gladly take that on. But I think the

1 motion for dissolution and our authority, which  
2 extends to what we're actually doing in the  
3 third-party complaint, and the viability of that  
4 third-party complaint are all embedded in the  
5 motion for dissolution and our motion for  
6 confirmation. If they need to supplement their  
7 motion for dissolution, do it.

8 THE COURT: Here's what I want to do. I  
9 want to separate out the part of the case that  
10 deals with their continued contention that they  
11 don't have anything to do with the case, and  
12 therefore, I'm not to be in the case. I want to  
13 take another shot at that.

14 And then I want to talk directly about the  
15 scope of the receivership and their contentions  
16 to the whole thing ought to be dissolved. They  
17 have got several contentions. Some of them are  
18 about the method of appointment itself. They  
19 say you can't use these old appointments. You  
20 had to have an appointment in the Tibbs case.

21 Then because they already had an  
22 appointment in Park, they go back and attack the  
23 Park case. And, you know, it might not even be  
24 in the Park case, some of them, but they go back  
25 and attack the appointment in Park for all kind

1 of procedural things.

2 So we have got to deal with the validity of  
3 the appointment in Park to begin with. And we  
4 want to go back that far. And then we have to  
5 deal whether the appointment in Park can stand  
6 for activities in Tibbs.

7 MR. LAY: Okay. Let me repeat it back and  
8 make sure that I understand. If I can get some  
9 help on this. You have the Park case in which  
10 the appointment occurred.

11 THE COURT: Right.

12 MR. LAY: That appointment goes to Tibbs,  
13 and in the Tibbs case, once, you know, they  
14 responded, Cape responded to the complaint and  
15 brought a third-party action against these  
16 defendants.

17 THE COURT: Right. Typical that's done in  
18 a bunch of asbestos cases.

19 MR. LAY: Yes, ma'am. Instead of it being  
20 insurance based, it may be insurance based, at  
21 some point there may be insurance involved in  
22 this and that's part of what we're trying to  
23 discover.

24 THE COURT: They're making a big point of  
25 the fact that even if you could justify the

1 receiver as going over into the Tibbs case,  
2 under no circumstances could they go after  
3 assets other than insurance assets.

4 MR. LAY: Which is a wrong reading of  
5 Welch.

6 THE COURT: I understand all that. That's  
7 got to be dealt with.

8 MR. LAY: That's their argument and our  
9 argument is we are responsible for assimilating  
10 assets. That may be insurance --

11 THE COURT: That's fine.

12 MR. LAY: And then it's this third party --

13 THE COURT: I don't need to hear that  
14 argument today. I understand.

15 MR. LAY: Yes, ma'am.

16 THE COURT: That's one that we're going to  
17 have to deal with.

18 MR. LAY: Yes, ma'am. So how do we get --  
19 I mean, I think the dissolution motion and the  
20 confirmation motion have those issues, our  
21 ability to do it. Now you're talking about  
22 taking it a step further and looking at the  
23 viability, it sounds like, effective motion to  
24 dismiss on the third-party defendants. That  
25 motion is not pending in front of you right now.

1 I don't know of a vehicle where that could  
2 occur.

3 THE COURT: Well, it's pending to me in a  
4 sense that -- wait a minute. What is pending  
5 before me is a motion to dissolve the  
6 receivership and that motion does go to the  
7 heart of what their contention is, to Welch, to  
8 some new order. Their reading of what the  
9 difference is between custodian and receiver and  
10 their reading of what the Business Corporation  
11 Act says, Rule 66 says, what the Title 15 says  
12 and so forth. That's all in their thing. This  
13 is an illegit receivership.

14 That's got to be dealt with, and it's got  
15 some of these other elements in it. But  
16 that's -- their motion to dissolve the  
17 receivership is a motion pending in Tibbs and  
18 it's got to be heard.

19 MR. LAY: The fundamental issue is the  
20 motion for dissolution and for confirmation.  
21 And that's step one and that's fundamental. And  
22 it seems to me that's what you need to be  
23 addressing. As part of that, the motion to  
24 amend, which is the operative complaint, needs  
25 to be dealt with.



1           So I think those are the three motions that  
2           give you a vehicle to get this started to have  
3           this hearing.

4           THE COURT:   Okay.

5           MR. LAY:   Those are the three primary  
6           motions.

7           THE COURT:   So basically all these things  
8           would go together if you did a motion to  
9           dissolve, motion to confirm, and a motion to  
10          amend --

11          MR. LAY:   Yes, ma'am.

12          THE COURT:   -- in Tibbs.

13          MR. LAY:   In Tibbs.   Yes, ma'am.

14          THE COURT:   Okay.   Now, let's go back to  
15          Park for a minute.

16          Sawyer says that he still has motions  
17          pending in Park even though Carroll says Park  
18          has been totally resolved.   I show on the  
19          Richland County website that the Park case is  
20          still an open case and noted as such on there.  
21          So then I got to figure out what matters are  
22          still pending in Park for resolution.

23          And I asked this to Protopapas.  
24          Protopapas, are there motions in Park that  
25          attack the receivership?

1 MR. PROTOPAPAS: No, Your Honor. There is  
2 only a motion to compel insurance carriers that  
3 Mr. Sawyer represents. On that motion to  
4 compel, I will note I have withdrawn it as to  
5 Travelers. I have reached agreement. I have  
6 withdrawn it against Interstate. I reached an  
7 agreement on their response. I have not reached  
8 agreement with Mr. Sawyer's clients. I  
9 apologize, Your Honor. Mr. Sawyer's clients.

10 THE COURT: So other clients may have --  
11 other insurers may have gotten some resolution,  
12 but where his clients have not given him any  
13 permission to resolve so we still have to hear  
14 his motions.

15 MR. PROTOPAPAS: Yes, Your Honor. I will  
16 say, as I said earlier, I have reached out to  
17 Resolute, who is his client, like I advised the  
18 court, to see --

19 THE COURT: But Park is kind of -- that is  
20 not as necessitous because you've got a toll  
21 agreement in effect with Park with really the  
22 only defendants that are left, right?

23 MR. PROTOPAPAS: Yes, Your Honor. Not to  
24 confuse matters more, I do believe there is  
25 insurance assets. I do believe there is money

1           for me to chase.

2           THE COURT: But that's the subject of more  
3           discovery and so forth and so on. Right now,  
4           what I got on the books for them is Wes Sawyer's  
5           motion and that's it, right?

6           MR. PROTOPAPAS: My motion to compel his  
7           memo in opposition. I should note his memo in  
8           opposition raises all the --

9           THE COURT: And in his motion in  
10          opposition, he raises all these questions about  
11          the legitimacy of your appointment.

12          MR. PROTOPAPAS: Yes, Your Honor.

13          THE COURT: Okay. And that's how he gets  
14          into the bigger playground of that.

15          MR. PROTOPAPAS: Yes, Your Honor. Probably  
16          better dealt with in Tibbs with the primary  
17          counsel.

18          THE COURT: Of course, Wes would not agree  
19          with you on that.

20          MR SAWYER: Actually, Your Honor, I think  
21          they are all very well equipped to fight that  
22          fight. But if I have a motion against my  
23          client, I have to make the arguments.

24          THE COURT: No question. No question.

25          MR SAWYER: Thank you, Your Honor.

1           THE COURT: You believe more thoroughly in  
2 brevity being the sole of wit than some of your  
3 brothers do. That's why I was trying to get you  
4 to be the lead guy on that.

5           Okay. I understand that.

6           So here's what I want done. I want --  
7 Todd, can you speak for all these brethren here  
8 at least in the procedural matter talking about  
9 how we would handle this?

10          MR. CARROLL: Your Honor, we've not  
11 consulted.

12          THE COURT: If they -- if you say something  
13 they don't like, I'm sure they will tell me.

14          MR. CARROLL: I'm sure they'll tell me,  
15 too.

16          THE COURT: Here's what I would like to do,  
17 is I would like to go on and take Tibbs and set  
18 the motion to dissolve by you all, the motion to  
19 confirm appointment by them, and the motion to  
20 amend by them.

21           I would like to set these three things.  
22 That would probably bring to the fore for  
23 adjudication all these contentions about the  
24 legitimacy of the receiver and all the rest of  
25 it. Do you agree?

1           MR. CARROLL: Your Honor, I think the  
2 motion to amend is completely premature because  
3 as it stands --

4           THE COURT: I will put it third to be  
5 heard. The first two things I would hear would  
6 be the motion to dissolve and the motion to  
7 confirm and then we would get to the motion to  
8 amend.

9           MR. CARROLL: Sure. My client's file will  
10 be styled a notice of the Supreme Court's orders  
11 and a motion to strike. Our position is that  
12 everything they file is a nullity.

13          THE COURT: Well, I understand that. The  
14 motion to dissolve and the motion to confirm  
15 will go a long way towards dealing with that.

16          MR. CARROLL: Yes, ma'am.

17          THE COURT: I can assure you if you then  
18 try to, on an interim basis, appeal those two  
19 things, that the South Carolina Supreme Court is  
20 going to look at you with a big fish eye. But  
21 we'll cross that bridge when we come to it. You  
22 all won't be able to take a breath wrong. I  
23 have no -- what you all do in that. But that's  
24 how we will attack what I think is the main  
25 questions raised by the Welch case and by the

1 Supreme Court's June the 26 case.

2 The main questions they raise can all be  
3 accommodated in the legitimacy of the  
4 receivership appointment and whether it should  
5 be dissolved. And that will set the stage for  
6 the rest of these matters to trail along behind.

7 MR. CARROLL: Yes, ma'am. The only reason  
8 I distinguish my filing is because mine is not  
9 called a motion to dissolve.

10 THE COURT: What is it called?

11 MR. CARROLL: It's a notice of the Supreme  
12 Court's authority and a motion to strike.

13 THE COURT: Well, is that filed in the  
14 Supreme Court?

15 MR. CARROLL: No, ma'am. It was filed on  
16 Friday in this --

17 THE COURT: The motion to strike is a  
18 motion on the pleadings. And, you know, if I'm  
19 going to get into the motion to strike, I'm  
20 going to get into the motion to amend. I will  
21 put the motion to strike down there with the  
22 motion to amend.

23 That's, to me, not the best vehicle for  
24 talking about what we've got to talk about. The  
25 motion to dissolve the receivership is the more

1 direct --

2 MR. CARROLL: Yes, ma'am. I promise I'm  
3 not trying to quibble. I'm only saying what I'm  
4 saying so that the record is clear that I think  
5 my client's papers need to be considered as part  
6 of that whole -- that whole set of issues.

7 THE COURT: Well, your clients are the two  
8 Altrads, right?

9 MR. CARROLL: Yes, ma'am.

10 THE COURT: And you want to stay in the  
11 case and talk about your motion to strike, but  
12 you want to get out of the case because you want  
13 the whole --

14 MR. CARROLL: I don't want to stay in the  
15 case.

16 THE COURT: Well, then dissolving the  
17 receivership I believe is the first thing you  
18 want to do before you talk about nitpicking the  
19 complaint.

20 MR. CARROLL: Your Honor, the only reason  
21 I'm not nitpicking the complaint, I am not  
22 saying -- I'm making this distinction because a  
23 motion to dissolve the receivership presumes the  
24 receivership exists in this case and no such  
25 receivership exists. No, ma'am. That is the



1 heart and soul of our filing. So I don't want  
2 anybody to hand me --

3 THE COURT: That's fine. You may not like  
4 the way I set it up, then you can argue what you  
5 want to argue.

6 MR. CARROLL: It's not how you set it up.  
7 That is what the De Beers' motion is called.  
8 And so I'm just making sure the record is clear  
9 that I want my client's papers considered as  
10 part of that whole consideration of the  
11 receivership in this case, does it even exist in  
12 this case? And if it doesn't, should it? I  
13 just want my --

14 THE COURT: I see nothing, but I like my  
15 writing better than your writing here because  
16 the motion to dissolve the receivership --

17 MR. CARROLL: No, ma'am.

18 THE COURT: -- is made on the same basis as  
19 your motion to strike. Motion to strike is a  
20 pleadings motion to strike certain things that  
21 are in the pleading. If that's an indirect way  
22 of saying, I want to strike everything except  
23 the receiver, you're just trying to attack the  
24 receivership.

25 I'm not going to get into the nit-picky

1 details of this, but I think I know the way I'm  
2 going to set this thing up. You can file what  
3 you want to.

4 MR. CARROLL: No, Your Honor. I take your  
5 point. I'm not trying to quibble. On the Park  
6 case, if I may, item B, please.

7 THE COURT: No, I'm just saying I don't  
8 hear you as well from there as you come up here.

9 Now you want to talk about the Park case?

10 MR. CARROLL: Briefly.

11 THE COURT: I'm not on the Park right now.

12 MR. CARROLL: I know you're not on Park,  
13 but Item B on the Supreme Court Tibbs order,  
14 calls out two motions in Park.

15 THE COURT: Yeah, both of them are  
16 resolved.

17 MR. CARROLL: Those were my motions, and I  
18 was just coming to report that those motions  
19 don't exist anymore.

20 THE COURT: Do what?

21 MR. CARROLL: They do not exist anymore.

22 THE COURT: Right. So I'm going to tell --  
23 don't worry, I'm going to tell that to the  
24 Supreme Court right away. Those motions don't  
25 exist anymore because what the heck are you

1           doing in the Park case?

2           MR. CARROLL: We talked about this earlier.  
3           The only reason I've even raised any issue about  
4           Park is because the receiver, with no  
5           appointment in Tibbs, has said, oh, that's okay,  
6           just Park --

7           THE COURT: You're going to attack that in  
8           the motion to dissolve the receivership. You  
9           want to dissolve it because you say you can't  
10          operate in Tibbs. I get that. But this other  
11          motion to strike and everything I don't get in  
12          the Park case, you are not involved in Park  
13          anymore.

14          MR. CARROLL: That's it. I was just trying  
15          to help you clarify the point B on the Supreme  
16          Court's order.

17          THE COURT: I get that.

18          MR. CARROLL: Okay. Those are my motions.  
19          I owned them, now they're gone. That's that.

20          THE COURT: Thank you.

21          MR. CARROLL: Thank you.

22          THE COURT: All right. So get the calendar  
23          out here for a minute.

24          MR. RAWL: Your Honor, if I may just  
25          briefly. I want to incorporate what Mr. Carroll

1       said on behalf of ESAB and then Charter clients,  
2       but our only point would be is that we think  
3       that you do have to determine whether or not the  
4       receivership appointment is proper first, so we  
5       would ask that --

6               THE COURT: That's the predicate for the  
7       motion to dissolve it, is it wasn't proper to  
8       begin with, Mr. Rawl. And that's the first  
9       thing I'm going to set for this proceeding.

10              MR. RAWL: Your Honor, my only request was  
11       that the -- of the Anglo Group filed a motion to  
12       dissolve -- the friends of the receiver filed a  
13       motion to confirm. I believe -- I agree with  
14       you that those motions together heard will deal  
15       with the receivership appointment issues.

16              I would just ask that just those issues be  
17       set first so that we can get a ruling  
18       determination from you so that we can determine  
19       that the receiver does have authority to  
20       continue to push any other motion that he may  
21       have.

22              THE COURT: That's why I set them to begin  
23       with. Either I'm not making myself clear or  
24       something funny is happening or everybody just  
25       wants to get a word in and be heard.

1           That's just what I said, Mr. Rawl. I'm  
2 going to set the motion to dissolve first. Then  
3 I'm going to set the motion to confirm the  
4 appointment. And we're going to probably hear  
5 arguments on each of those things. I'm going to  
6 cogitate. I'm going to rule from the bench, as  
7 I generally do, and ask the winner to draw an  
8 order. Okay.

9           MR. RAWL: Thank you, Your Honor.

10          THE COURT: Yes, sir. And that, depending  
11 on what I do with those, may or may not obviate  
12 the necessity for a motion to amend or motion to  
13 strike.

14          Okay?

15          MR. RAWL: Thank you, Your Honor.

16          THE COURT: Now, what about this August  
17 term? Is that the Motley Rice term? Come give  
18 me some good news.

19          MR. LEDLIE: Yes, Your Honor. I'll be  
20 happy to. This is James Ledlie.

21          THE COURT: Yes, James, I'm glad to see  
22 you.

23          MR. LEDLIE: Thank you, Your Honor. I am  
24 happy to report and follow up on what  
25 Mr. Protopapas followed up on earlier. As to

1 all of our cases pending in August, all have  
2 been resolved. As to all parties, subject to  
3 the discussion with Mr. Protopapas, there's a D  
4 block coming, and so I'm happy to report that we  
5 can release back to the court.

6 THE COURT: That's what I was hoping. I  
7 have the August term back.

8 Oh boy, we got somebody else? Surely  
9 you're not going to blow this up for me.

10 MR. MERIWETHER: I am going to do my level  
11 best not to do that. Robert Meriwether. Just  
12 wanted to let Your Honor know that in one of the  
13 remaining cases in the August term, which is  
14 a -- it's one of the smoking lung cancer  
15 cases --

16 THE COURT: Right. Right. Right.

17 MR. MERIWETHER: -- from an out of town  
18 group. And we still are working hard to resolve  
19 for two clients, but I didn't want you to think  
20 that because Mr. Ledlie's have gone, that we  
21 still have got that Vincent case.

22 THE COURT: Okay.

23 MR. MERIWETHER: Just not pulling anything  
24 out. Working hard to get rid of it.

25 THE COURT: Good. Excellent. Thank you so

1 much.

2 So we still have an outstanding case left  
3 on the August term, but a child is always  
4 hoping. I am going to hope that one of the most  
5 experienced asbestos defense attorneys that ever  
6 practiced at the bar will work his magic and we  
7 will get that case resolved.

8 And based on that, we had a pretrial  
9 hearing set for the August term on Wednesday,  
10 the 30th. And then we had trial beginning --  
11 what is the 3rd, a holiday?

12 That's Monday. Okay. So then August 4th  
13 would begin the August term. So that's when I  
14 would like to set a hearing in Tibbs on the  
15 motion to dissolve the receivership that's made  
16 by the defense. The motion to confirm the  
17 receiver's appointment in Tibbs. That's made by  
18 the receiver.

19 Those two are kind of the opposite sides of  
20 the same coin. They all revolve around whether  
21 the receiver has been properly appointed. Then  
22 the motion to amend the Tibbs complaint. And  
23 then the motion to strike certain things from  
24 the Tibbs complaint, which is really a place  
25 keeper from the continued objection by Altrad



1 defendants to the right of the receiver to do  
2 anything. Probably will be resolved in those  
3 other arguments.

4 Now, I would like to set those matters to  
5 be heard. And I think it's going to take a  
6 couple of days. So I'm going to say pretrial on  
7 those things to see if there's anything --  
8 procedure that needs to be done. But pretrial  
9 can go by the boards, we don't need it, would be  
10 July the 30th.

11 And then merits hearing in Tibbs on those  
12 motions, let's set it for the 4th, 5th, and 6th  
13 with the idea that there may be other things  
14 that would come up and with the promise that at  
15 the end of that, whether it be the 5th or the  
16 6th, I can't imagine we would get through all  
17 those things in less than a day, we would hear  
18 the Motion to Compel in Park and the opposition  
19 of Sawyer day two.

20 And the combination of those things would  
21 lead to the Court being able to make an order  
22 that is responsive to the order of the Supreme  
23 Court of June the 26th. And that's what I  
24 would -- that's what my report will tell the  
25 court, if that's what we can agree upon.

1           And can you think of anything else? We've  
2           got -- we've got all this De Beers stuff. Who's  
3           here for De Beers?

4           You are. So your stuff will be -- we ought  
5           to contingently set your stuff as well. If the  
6           receiver survives the first big, which is to  
7           dissolve the receivership, that will take care  
8           of your stuff. Wouldn't you agree?

9           MR. BALBER: That's right, Your Honor.  
10          Yes.

11          THE COURT: Okay. Then I would think we  
12          could tack all your stuff on after the motion to  
13          strike for -- before we get to any of the Park  
14          stuff.

15          MR. BALBER: Let me step up so you can hear  
16          me, Your Honor.

17          THE COURT: Sure. Sure.

18          MR. BALBER: That largely makes sense. I  
19          think one item that is among our stuff is our  
20          motion for summary judgment.

21          THE COURT: Yeah. That ought to be heard,  
22          you know, if the receiver survives that part.

23          MR. BALBER: And even then, we filed it  
24          because we had to make a due date.

25          THE COURT: That's right. In all events,

1        your motion for summary judgment should be heard  
2        because the larger landscape of Tibbs, of  
3        course, continues.

4                MR. BALBER: Well, except we're only a  
5        third-party defendant in Tibbs. So it's only  
6        contingent, as you noted, on the receivership  
7        being filed.

8                THE COURT: Right. Right.

9                MR. BALBER: But I was making a slightly  
10       different point, which is actually may be at  
11       this juncture premature because there's still  
12       some discovery going on in our third-party  
13       action.

14               THE COURT: I'll leave it off.

15               MR. BALBER: I would suggest you leave it  
16       off, Your Honor. If I could just get a little  
17       clarification for what you expect from us all on  
18       the 4th, 5th, and 6th. I know we all want to  
19       make sure we're prepared and present to you what  
20       you want to hear.

21               Because I think the motions themselves, in  
22       my humble opinion, are not going to require more  
23       than a couple of hours. If you're envisioning  
24       an evidentiary hearing or something like that, I  
25       think we all want to make sure we're

1           accommodating what Your Honor is expecting.

2           THE COURT: Well, I am envisioning a  
3           hearing which can include the presentation of  
4           evidence, if anybody thinks that needs to be  
5           done. So I'm not going to restrict the hearing  
6           at this moment. You all got all huffy with each  
7           other about exchanging letters that were kind of  
8           evidentiary exhibits, as I saw them. So I sat  
9           up here and being put the stop on that.

10          If there are evidentiary matters, even by  
11          way of sworn affidavit or something else that  
12          you all consider need to be considered as a part  
13          of this matter, then I think that should be  
14          done.

15          We know that if the receivership survives,  
16          there's still all kinds of claims and  
17          contentions about Cape and a lot of corporations  
18          that are only averments and pleadings at this  
19          point but will have to at some point be heard.

20          MR. BALBER: Right. The last question,  
21          Your Honor, what is the Court's expectation on  
22          July 30th?

23          THE COURT: That would be a pretrial to see  
24          if any of these things have been resolved. It  
25          would just be a place keeper for any prehearing

1 motions that you wanted to make to either  
2 exclude things that have been selected for  
3 possible use as exhibits or whatever. I just  
4 find it's good to have a place keeper. We don't  
5 have to use it if it's nothing that needs to be  
6 done.

7 MR. BALBER: Okay. Thank you, Your Honor.

8 THE COURT: Any other questions?

9 Okay. Then what I'm going to do is two  
10 things: Number one, I'm going to prepare an  
11 order that sets these matters in Tibbs to be  
12 heard.

13 Number two, I'm going to prepare a status  
14 report to the Supreme Court in accordance with  
15 its desires in the June 25th material. And  
16 I'll -- if I can get them done by my 30 days  
17 deadlines, I think is when -- the end of this  
18 week -- then I'll try to get them to you all and  
19 see if you have a stroke or heart attack or  
20 something like that, don't like what I said,  
21 then doesn't mean I'm going to change what I  
22 said, but I'll give you a shot at it. It should  
23 not be substance but rather what it fairly  
24 reflects what I said I'm going to do.

25 And Stafford, as I understand it, it's

1       been -- there's a potential, upcoming mediation  
2       with a potential agreement to dismiss without  
3       prejudice. But that hadn't been officially done  
4       yet.

5               MR. PROTOPAPAS: Your Honor, in Stafford,  
6       the asbestos plaintiffs have agreed to dismissal  
7       without prejudice on a toll agreement, as  
8       Mr. Ledlie said. My individual action to  
9       provide coverage for Mr. Ledlie's clients is  
10      going to be part of the mediation at the end of  
11      the month. My friends at Travelers want to keep  
12      the motion alive in case they may want to move  
13      to dissolve Stafford.

14             THE COURT: So they want to keep their  
15      protection motion alive and -- that makes  
16      perfect sense to me. That's fine.

17             MR. PROTOPAPAS: We will report back,  
18      Your Honor.

19             THE COURT: We will just continue with  
20      Stafford out there and on the list kind of like  
21      we do with Park and the pretrial may resolve it.

22             MR. PROTOPAPAS: Yes, Your Honor.

23             THE COURT: Anything else?

24             I thank you for your patience. And as  
25      contentious as these matters might all seem to

1           my brothers and sisters at the Supreme Court, I  
2           think you will get along well enough, as you  
3           always do in front of me. Let's get this thing  
4           moving along and make some decisions that you  
5           can legitimately appeal to the South Carolina  
6           Supreme Court.

7                     All right. Thanks.

8                             - - -

9                     (The hearing concluded at 1:38 p.m.)

10                            - - -



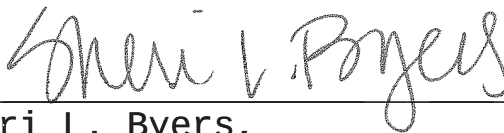
CERTIFICATE OF REPORTER

I, Sheri L. Byers, Registered Professional Reporter and Notary Public of the State of South Carolina at Large, do hereby certify:

That the foregoing proceedings were taken before me on the date and at the time mentioned on page 1 and the proceedings were recorded stenographically by me and were thereafter transcribed under my direction; that the foregoing transcript as typed is a true, accurate and complete record of the proceedings to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 24th day of July, 2024, at Lexington, Lexington County, South Carolina.



Sheri L. Byers,  
Registered Professional Reporter,  
Notary Public  
State of South Carolina at Large  
My Commission expires:  
November 1, 2033

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
ISABELLA PARK,  
Plaintiff,  
vs. C/A No.: 2021-CP-40-01759  
ARMSTRONG INTERNATIONAL, ET AL.,  
Defendants.

(Caption continued on the following page.)

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H E A R I N G  
BEFORE THE HONORABLE  
CHIEF JUSTICE (RET.) JEAN TOAL

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DATE TAKEN: Tuesday, August 12, 2025  
TIME START: 9:24 a.m.  
TIME END: 4:58 p.m.  
LOCATION: Richland County Judicial Center  
1701 Main Street  
Columbia, South Carolina  
REPORTED BY: Sheri L. Byers, RPR  
Magna Legal Services  
866.624.6221  
www.MagnaLS.com

CAPTION CONTINUED:  
JOHN A. TIBBS AND  
MARGARITE B. TIBBS,

Plaintiffs,

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

3M COMPANY, ET AL.,

Defendants.

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1        ---  
2        P R O C E E D I N G S  
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4        THE COURT: Preliminarily, let me give you  
5 focus of how I'm looking at this melange of  
6 things that have been sent to us for  
7 adjudication.

8        I have been remanded seven cases which were  
9 brought by defendants in the third-party action  
10 in Tibbs as appeals of rulings that I made in  
11 Tibbs some time ago. The Court of Appeals ruled  
12 that those matters were not appealable, went up  
13 to the Supreme Court.

14        In the meantime, the Welch matter was  
15 decided and certain parties that are  
16 participating in these matters filed material in  
17 Welch, though they were not parties in Welch,  
18 that looked kind of like a motion for  
19 reconsideration and attempted to argue with the  
20 Court about some of the conclusions it had made  
21 about their clients in Tibbs in the course of  
22 dealing with the matters at play in Welch.

23        So to that end, when the Supreme Court  
24 finally decided it wasn't going to fool with  
25 these things anymore and didn't like the

1 repetitive nature of the filings and the  
2 negative nature of some of what was contained in  
3 the filings, they sent the matters back to me  
4 with some instructions on remand.

5        And those instructions included some  
6 questions about the Park case and the validity  
7 of the appointment of the receiver for Cape in  
8 the Park case and the validity of or the status  
9 of the Park case and what -- in terms of what it  
10 was acting.

11        But they also asked me to rule on  
12 everything that was outstanding in Parks, any  
13 motions. And it also said with respect to all  
14 the other receiverships, tell us what is going  
15 on, tell us what's still outstanding in these  
16 cases and if you haven't ruled on them, tell us  
17 why.

18        So I have a huge plate of things that  
19 involve kind of moving a target as to who the  
20 parties are at play in the various buckets of  
21 things that I have to deal with. And I have  
22 tried to iron that out the best way I can. I  
23 don't just speak from the thrown to the Court  
24 about kind of my general opinions about  
25 everything. I make rulings in cases that are

1 before me and make a record and then the  
2 appellate process takes place.

3        And in addition to that, in these  
4 particular matters, I am required to give a  
5 report every 30 days to the Court that is a  
6 procedural report about what's taking place.

7        But it is not a report that involves  
8 anything that needs to be ruled on as a  
9 contested matter by the Court. It's simply a  
10 report. The parties' ability to engage about  
11 the merits of things takes place within the  
12 course of the cases that are pending in front of  
13 me.

14        That's the only way I have any business  
15 ruling about anything that has to do with  
16 matters is in the posture of ruling on matters  
17 that are before me and the cases that are before  
18 me.

19        To that end, the two cases that we are  
20 dealing with today, as promised, are Park and  
21 Tibbs. And in each case, what I attempted to do  
22 was, first of all, identify any outstanding  
23 motions in Park and in both cases identify  
24 anything that dealt with the legitimacy and  
25 status of the receiver appointed for Cape in

1 Park and participating as receiver for Cape in  
2 Tibbs.

3        So the way I propose to move forward with  
4 this thing, I've listed everything that I think  
5 is pending. I might say to begin with that  
6 there are certain things that I think were  
7 referred to perhaps in what the Court was asking  
8 about in Park that are no longer pending.

9        The only outstanding motion I had before I  
10 started looking at this thing in any great  
11 detail was Locke Lord's motion to dismiss  
12 third-party complaint for lack of jurisdiction  
13 and for stay of discovery. And that was filed  
14 by Locke Lord on September the 15, 2023.

15        On July the 10th, 2025, Locke Lord was  
16 dismissed with prejudice by means of a  
17 stipulation entered into by attorneys for  
18 Locke Lord, Womble Bond & Dixon, Turner Padgett  
19 Graham & Laney, and Harling & West and attorneys  
20 for the receiver or for this third claimant  
21 Harling & West and Rikard & Protopapas.

22        So that's no longer outstanding and I know  
23 regarding something I need to deal with. So I  
24 just mention that, that part of my report will  
25 be to say that that motion has been -- will not

1 be acted on by me by reason of the fact that the  
2 entire matter with regard to Locke Lord has been  
3 stipulated as dismissed.

4 That would leave in the Park case,  
5 Plaintiff's brief about the status of the Park  
6 case, which was filed on August the 4th. The  
7 receiver's Motion to Compel Certain Underwriters  
8 of Lloyd's filed in June of 2025. Certain  
9 Insurers' Motion in Opposition to this Motion to  
10 Compel. That's Mr. Sawyer.

11 Certain Insurers, Continental Casualty  
12 Return to the Bench Brief. That's again  
13 Mr. Sawyer. And then nonparty Travelers motion,  
14 Memo in Opposition, I guess, to what was said in  
15 the bench memo by me to the Court.

16 I do not regard nonparty Travelers as  
17 having any status in Park. But after I finish  
18 hearing from those that do have status in Park,  
19 before I leave Park, I will ask any comments  
20 that nonparty Travelers wishes to make.

21 Also, filed in Tibbs are some other matters  
22 that relate to the current status of Park, and  
23 they are filed by entities that are not  
24 defendants in Park. They are defendants --  
25 third-party defendants in Tibbs.

1 So I don't regard them as having any status  
2 in Park to say anything. But I'm not going to  
3 preclude them from putting on the record what  
4 they would like to put on the record. I regard  
5 the parties that I need to hear from in Park as  
6 the plaintiff, the receiver, and Mr. Sawyer on  
7 behalf of Certain Insurers and Continental  
8 Casualty. So that's how I'm going to start Park  
9 now.

10 With respect to the Tibbs matter, I have  
11 outlined as best I can everything I think is  
12 pending on the subject of the legitimacy of the  
13 Cape receivership, and that takes the form of  
14 many filings by Anglo, De Beers, and others  
15 asking that the Cape receivership be  
16 dismissed -- be dissolved and the third-party  
17 complainant dismissed. Receiver's opposition to  
18 those things.

19 And also the receiver's motion to confirm  
20 the appointment of receiver. That kind of puts  
21 out of the picture. Along with others'  
22 objection and opposition to the submissions of  
23 the receiver as well as motion to dismiss,  
24 strike all filings and so forth and so on. I  
25 will in due time get to those as well.

1 That is how I'm going to set the hearing  
2 up. And so I would call on Ms. McVey to begin  
3 with.

4 MS. MCVEY: Thank you, Your Honor.

5 And just for clarity's sake as we argue,  
6 one of the things the Supreme Court has to do is  
7 ensure, as you recall, our motion to appoint a  
8 receiver over Cape was filed in Park. And one  
9 of the things that the Supreme Court has to do  
10 is ensure that the order is based on findings of  
11 fact sufficient under Welch to justify the  
12 order.

13 So with your permission, because the motion  
14 was filed in Park, I would like to argue the  
15 personal representative issue as well as to go  
16 into the basis of the Park motion to appoint the  
17 receiver.

18 THE COURT: Here's what I would like for  
19 you to do before you do that as a preliminary  
20 matter.

21 MS. MCVEY: Yes, ma'am.

22 THE COURT: I would like for you to discuss  
23 the status of the Park case because that's to be  
24 attached, much of it made by people who are not  
25 in Park, so I don't think they have much status

1 to raise those issues in Park.

2 But Park does form the basis of the  
3 appointment of the receiver, and they make  
4 certain contentions that they say invalidate the  
5 activity in appointing the receiver apart from  
6 all the other things they say are wrong in the  
7 receivership.

8 And they revolve around whether they think  
9 Park is still alive and well, whether the  
10 personal representative had authority, et  
11 cetera. So I would like for you to first cover  
12 those matters.

13 MS. MCVEY: Absolutely. Happy to do that  
14 this morning.

15 Your Honor, just by way of background with  
16 the Park case, the Park case, when Mrs. Park was  
17 still alive, was filed on July 4th of 2021.  
18 Mrs. Park died from her mesothelioma, and we  
19 allege as a result of her exposure to asbestos  
20 imported by Cape and incorporated into hundreds  
21 of miles of insulation at the Celanese facility  
22 where her husband worked.

23 THE COURT: Let me stop you right there.  
24 When Park was first filed, was Cape a defendant  
25 in the case?

1 MS. MCVEY: A Cape entity was named as a  
2 defendant in the case.

3 THE COURT: All right. It was named in the  
4 caption, right?

5 MS. MCVEY: And in the body of the  
6 complaint.

7 THE COURT: And in the body of the  
8 complaint.

9 MS. MCVEY: Right.

10 THE COURT: And what was that entity?

11 MS. MCVEY: I think it just was Cape. I  
12 don't think we had the right name.

13 THE COURT: Well, something that called  
14 itself Cape or Cape PLC was named --

15 MS. MCVEY: Yes, ma'am.

16 THE COURT: -- in the caption of the case  
17 and in a paragraph in the case.

18 MS. MCVEY: That's right.

19 THE COURT: All right.

20 MS. MCVEY: That's right. On August 4th,  
21 after Mrs. Park died, Keith Park was appointed  
22 as a personal representative of the estate. On  
23 December 21st of 2021, Keith Park filed his  
24 second amended complaint naming Cape PLC and  
25 Cape Intermediate Holdings.

1 THE COURT: That date is what?

2 MS. MCVEY: December 23rd, 2021.

3 THE COURT: All right.

4 MS. MCVEY: Mr. Park was still the personal  
5 representative.

6 THE COURT: Is that when he filed the  
7 complaint?

8 MS. MCVEY: Yes. And then the complaint  
9 was served on the Cape defendants on March 8th,  
10 2022. Keith Park was still the personal  
11 representative.

12 THE COURT: And that was the service --  
13 that service was filed at some later time, but  
14 the service itself was made then?

15 MS. MCVEY: Absolutely. And you have  
16 already ruled in a prior motion that that was  
17 proper service.

18 THE COURT: That's correct.

19 MS. MCVEY: On August 26th, 2022,  
20 unbeknownst to us, the probate court closed the  
21 estate. Now the case remained open and you have  
22 seen on the Common Pleas docket the Park case  
23 remains open. As soon as we found out about  
24 this, we moved to reopen the estate and the  
25 estate is now currently open.

1 THE COURT: When did you move to reopen?

2 MS. MCVEY: We moved it the day after they  
3 filed their pleading. It's reopened on  
4 July 30th. Or filed it on July 30th. I may  
5 have my dates wrong a little bit. But the  
6 complaint has been -- I mean, that I think we  
7 filed the motion to reopen the estate on  
8 July 30th and it has since been reopened.

9 THE COURT: What is your position with  
10 respect to whether Keith Park had the  
11 authority -- whether the -- on the impact of the  
12 closing of estate on August the 6th, 2022?

13 MS. MCVEY: Okay. So here's my -- at the  
14 time that Cape was -- the complaint was filed  
15 against Cape, at the time that Cape was served,  
16 at the time that Cape's answer was due, Mr. Park  
17 was the personal representative.

18 THE COURT: Right.

19 MS. MCVEY: Okay. And so what the  
20 defendants argue is that the closing of the  
21 estate -- by the way, an honest mistake -- was  
22 jurisdictional. And they point to three  
23 different cases.

24 Those cases deal with when a complaint is  
25 filed whether or not the personal representative

1 had jurisdiction, had authority to bring the  
2 case. In this case we know Mr. Park absolutely  
3 had authority to deal with it.

4 So what do we look to if some mistake  
5 happens in the interim? There's three places  
6 that you can look. The first one is a probate  
7 Section 62-3-701, and that provides the duties  
8 and powers of a personal representative commence  
9 upon his appointment.

10 The powers of a personal representative  
11 relate back in time to give acts by the person  
12 appointed, which are beneficial to the estate,  
13 occurring prior to the appointment, the same  
14 effect of those occurring after.

15 A personal representative may ratify and  
16 accept acts on behalf of the estate done by the  
17 others where the acts would have been proper for  
18 the personal representative.

19 So that's the first thing.

20 The second thing is Rule 17(a), and that  
21 requires ratification, joinder substitution, and  
22 it gives the abilities for an -- in this case  
23 for Mr. Park to cure what happened with the  
24 probate case.

25 And we know that because there's a Fisher

1 case, and it's called Fisher versus Huckabee,  
2 and it discusses Rule 17(a). Fisher is a  
3 Supreme Court case, South Carolina Supreme Court  
4 case from 2018.

5 And in discussing Rule 17(a), which says no  
6 action shall be dismissed on the ground that is  
7 not prosecuted in the name of the real party in  
8 interest until a reasonable time has been  
9 allowed, after objection, for ratification or  
10 commencement of the action or joinder. And such  
11 ratification shall be -- and it goes on.

12 The last sentence according to the notes of  
13 17(a) is intended to prevent a forfeiture in  
14 those cases in which there's been a  
15 determination that the party -- the proper party  
16 to sue is difficult for where there's been an  
17 honest mistake.

18 And the Fisher case, the Supreme Court, and  
19 I have that case if Your Honor would like a copy  
20 of it.

21 THE COURT: I would.

22 Thank you.

23 MS. MCVEY: Thank you.

24 The Fisher case makes it -- the Court  
25 doesn't have discretion not to allow us a chance

1 to cure this. What the Fisher case says is that  
2 if they -- Ms. Fisher had asked to cure the  
3 defect from the probate court, the Court would  
4 have had to allow her to do that.

5 So this isn't a case where when we filed  
6 the complaint there wasn't a personal  
7 representative. This isn't a case where that  
8 when Cape was sued, we didn't have a personal  
9 representative. It's not a case when Cape was  
10 served that we didn't have a personal  
11 representative.

12 Simply what happened is when he filed an  
13 ancillary motion to the case, the estate had  
14 been closed. That's an honest mistake, and the  
15 rules allow us to cure it. We have since cured  
16 it. And so we believe the motion was proper and  
17 that Mr. Park had the authority to bring that  
18 motion.

19 The cases that they cite, including a  
20 New York case -- they cite three cases. The  
21 first is the Glenn case, the second is the  
22 McCullar case.

23 And in McCullar, what the Court said there  
24 is the question of whether at the time the suit  
25 was commenced there existed a judicial entity

1 known as the estate of, is the question before  
2 the Court. And the Court held undisputed estate  
3 was closed before the action was commenced. The  
4 answer is no.

5 Same thing with Glenn.

6 In the New York case that they cite  
7 litigation was ongoing, the estate was closed,  
8 but what happened is the defendant wanted to  
9 bring counterclaims. That's the same thing.  
10 That's a jurisdictional issue.

11 We don't have a jurisdictional issue here.  
12 We simply have an opportunity under 17(a) to  
13 correct an honest mistake. And that's what has  
14 been done here. And there's certainly no  
15 prejudice to any party here.

16 And I'll just note that Cape never appeared  
17 to contest any of this. And still hasn't. Cape  
18 is not in this courtroom, if you ask any of  
19 these guys.

20 So, Your Honor, we believe under the  
21 preliminary basis, we have absolutely authority  
22 to bring the motion.

23 THE COURT: All right.

24 MS. MCVEY: I'm happy to roll into the  
25 moral fraud on the basis of our motion.

1 THE COURT: Yes, I'm going to let you be  
2 heard on everything, and we'll move from there.

3 MS. MCVEY: Okay. Your Honor, I wanted to  
4 hand up, because it was so long ago. This was  
5 our original motion to appoint a receiver in the  
6 Park case over Cape. If I could hand that to  
7 you.

8 And in it, it contained 35 exhibits which  
9 outlined at length the moral fraud of Cape. And  
10 let me remind you of how we got here in Cape.  
11 You've already found that Cape was sued and  
12 served with the complaint. You have found that  
13 service of that complaint was proper. They did  
14 not appear at all for well over a year. And we  
15 moved to have a receiver appointed outlining the  
16 moral fraud contained in that original motion  
17 along with exhibits.

18 Not only did we serve the complaint on  
19 them, we also served that motion to appoint the  
20 receiver. They got actual notice of our motion  
21 to appoint a receiver. And what did Cape do?  
22 Nothing. They didn't appear because that's what  
23 they do.

24 And I'm going to outline it for you if  
25 you'll give me just a few minutes to outline



1 because the moral fraud here, what the Supreme  
2 Court told you to do was look at Welch and to  
3 say does the moral fraud of Welch rise to the  
4 level? Does Cape rise to that level? I would  
5 represent to you that this moral fraud is like  
6 Atlas Turner on steroids. And let me go through  
7 it in just a moment.

8 But they have never appeared to dispute  
9 this appointment of the receiver. Ever.

10 They've never disputed that they engaged in  
11 moral fraud. They never filed an answer.

12 And just a reminder that in the Welch and  
13 Tibbs case, Atlas Turner was the one that came  
14 in and disputed the appointment of the receiver.  
15 It was Atlas Turner the company. Cape has never  
16 done that and still hasn't done it two years  
17 after appointment.

18 To emphasize and to establish the moral  
19 fraud of Cape, I do want to emphasize my  
20 brethren on the other side keeps saying the  
21 moral fraud of any of Cape was in the past.  
22 It's not ongoing. What you see is that not only  
23 is it ongoing, it's been ongoing for decades.  
24 And we know it because they didn't show up in  
25 the Park case despite being properly served.

1 At the last hearing I heard counsel say  
2 this is not about whether or not Cape is a bad  
3 company or engaged in moral fraud. It  
4 absolutely is about whether Cape did that.

5 At the time that you appointed this  
6 receiver, you had that notebook, you had 35  
7 exhibits. And so just briefly, I'd like to go  
8 through the allegations of the moral fraud that  
9 are really undisputed in this case.

10 As you know, Cape was organized and  
11 existing under the laws of the United Kingdom.  
12 They bind thousands of tons of raw asbestos  
13 fibers in South Africa. And they admit they  
14 sold most of the blue and brown asbestos  
15 products into the United States. That, as you  
16 know, is the crocidolite and the amosite. The  
17 most deadly types of asbestos.

18 We cited to you a case, Hammond versus  
19 Northern American Asbestos Court, 454 Minnesota  
20 East 2d -- I'm sorry, I had that wrong.  
21 Southeastern -- it's an Illinois case from 1983.  
22 In that case the court confirmed that Cape  
23 asbestos supplied 90 percent of the world's  
24 amosite and was virtually the sole supplier of  
25 the longer fiber grades.

1 It's undisputed that Cape knew about the  
2 dangers of asbestos and sought to hide those  
3 dangers. And the scene is outlined in their own  
4 documents and they wrote it down. Cape said,  
5 and I quote, It had no moral responsibility to  
6 the end users of asbestos.

7 Since the 1970s, it's refused to appear in  
8 any litigation to defend its conduct. Instead,  
9 what Cape decided to do is accept default  
10 judgments in asbestos lawsuits because they  
11 couldn't be collected in the UK or South Africa.

12 Now, that sounds very familiar to what  
13 Atlas Turner was doing about Canadian default  
14 judgments. That continues today, as you know,  
15 from the Park case. And ultimately what Cape  
16 decided to do is dissolve, to liquidate its  
17 North American arm so that it couldn't be  
18 touched in the United States.

19 But first what Cape did to make as much  
20 money off their asbestos products selling it to  
21 the United States is they established an  
22 American presence through the NAAC, who you've  
23 heard about.

24 And the purpose of establishing the NAAC  
25 was to expedite and facilitate the movement of

1 asbestos from the South African mines into North  
2 America. That was established October 14th,  
3 1953. And that is a direct subsidiary that was  
4 part of Cape Mining's division that was  
5 domiciled in Illinois. That's Exhibit 2 to our  
6 motion.

7 NAAC had both marketing and distribution  
8 roles. NAAC was Cape's sole agency in the  
9 United States with the sole authority to offer  
10 Cape products. It was responsible for  
11 transmitting information about customer needs to  
12 Cape mines.

13 The goal, as stated in their own documents,  
14 was to make sure that shipments from Africa made  
15 it, and I quote, all the way through to the  
16 customer's plant. And that's Exhibit A to our  
17 original motion.

18 They intended to, and I quote, put the  
19 mines, South African mines at every U.S. port.  
20 That's Exhibit 5 to our original motion.

21 By 1970, NAAC was the largest U.S. importer  
22 of amphibole fibers, which were redistributed  
23 from warehouse locations on the East Coast, the  
24 Gulf Coast, and West Coast ports. That's  
25 Exhibit 6 to our original motion.

1 NAAC described itself as essentially a one  
2 man in motion, a one-man operation. But they  
3 were overseen -- this is important -- they were  
4 overseen by a board of directors made up of  
5 largely company lawyers or other Cape executives  
6 until all Cape officials resigned in 1975, and I  
7 quote, as a simple precaution in light of U.S.  
8 litigation.

9 That's Exhibit 6 to our original motion.

10 In coordination with Cape, NAAC sold  
11 asbestos to Cape's numerous American-based  
12 clients, including the U.S. government, King  
13 Corp, Carey Fiber Board, Owens Corning,  
14 Johns-Manville and Pittsburgh Corning.

15 That was Exhibit 7 to our original motion.

16 And we know these companies, because you've  
17 seen them in many trials, were all over  
18 South Carolina and supplied asbestos insulation  
19 to industrial facilities all over this state and  
20 of course others.

21 They didn't stop there. Cape and NAAC  
22 tried to influence public and corporate opinion  
23 about the safety of asbestos by rebutting  
24 emerging medical critiques of the safety.

25 We have seen testimony from a chemist,

1 Dr. Gaze, who is a Cape chemist employee. And  
2 he said since 1961, he continually discussed  
3 health hazards that neither Cape nor the NAAC  
4 had never placed warning labels on asbestos  
5 bags.

6 Exhibit 13 to our original motion is a 1977  
7 document from Cape prioritizing the efforts,  
8 their efforts, to, and I quote, It is clear to  
9 me that one of our first tasks must be to try to  
10 organize a body of medical opinion that is  
11 prepared to stand up to Dr. Selikoff.

12 And this Court knows very well who  
13 Dr. Selikoff was. He was one of the first  
14 American scientists to really sound the alarm  
15 about how hazardous asbestos was on human  
16 health.

17 So what did Cape do in response to that?  
18 They didn't say, hey, we're going to look at  
19 what Dr. Selikoff is saying. Instead what they  
20 decided to do is fund their own science.

21 Anthony Mendell, who was the plant manager  
22 for Cape from 1956 to 1968, admits that its  
23 workers were dying of mesothelioma by the late  
24 1950s. He admits that Cape knew that amosite  
25 caused the disease, and they closed the Barker

1 plant -- the Barking plant.

2 There was a Gaze memo, that's the chemist  
3 that we mentioned earlier, dated July 24th,  
4 1964. And it gives an internal warning that  
5 asbestos conditions are dangerous. But guess  
6 what? Cape keeps that in house and doesn't tell  
7 anyone else.

8 And they even reached out to North American  
9 customers. Cape did. How do we know that?  
10 Pittsburgh Corning contacted Cape and said, hey,  
11 we're seeing some stuff about asbestos being  
12 dangerous for workers. We're worried about  
13 that. What do you think, Cape?

14 And Dr. Gaze, the chemist again, he wrote  
15 to Pittsburgh Corning on March 22, 1966, and he  
16 tells Pittsburgh Corning, and I quote, No  
17 mesothelioma has ever been linked to amosite.

18 And we know that the customers rely because  
19 when what happened? It's Pittsburgh Corning  
20 wrote back to Cape after receiving that letter.  
21 And at that -- and what Pittsburgh Corning says  
22 back to Cape, and I quote, At this point from  
23 your letter, I am assured that no customers'  
24 worker need to be concerned about mesothelioma.

25 That's Pittsburgh Corning relying on what

1 Cape has told them. And guess what? Cape  
2 wasn't just saying that to North American  
3 customers, they're saying it internally.

4 And in an August 19th, 1966, memo, Cape  
5 circulated the same false claim to the entire  
6 company saying that no mesothelioma had ever  
7 been linked to amosite.

8 And so they have Dr. Selikoff out there.  
9 They have Dr. Wagner's study, who you've heard  
10 about in many of these cases, and they know that  
11 the science is turning against them.

12 And so what they did, November 29th, 1960,  
13 they come up with a study proposal. In that,  
14 Cape agrees to fund the study in order to gain  
15 access to the interim results.

16 April 30th, 1962, that interim study finds  
17 alarmingly high mesothelioma in miners and not  
18 just in the miners but also in nearby residents.

19 August 30th, 1962, it's the Smither report  
20 to Cape. This Cape doctor admits that the  
21 findings are alarming but urges no other survey,  
22 suggest moving patients hundreds of miles away  
23 to hide cases.

24 Cape threatened -- and you have heard this  
25 in other cases, to threaten and ruin a local

1 doctor's practice if he kept raising a  
2 mesothelioma alarm. And that's from a 1996  
3 deposition of a Dr. Van Rooyen, who was a  
4 South African physician.

5 And we know while all of that is going on,  
6 Cape is also dominating what NAAC is doing in  
7 the United States. For example -- and this is  
8 Exhibit 14 to our original motion. NAAC was  
9 unable to borrow one dollar without Cape's  
10 approval.

11 NAAC routinely forced to withdraw cash from  
12 the United States to pay dividends to Cape  
13 Asbestos minimizing the assets on NAAC's balance  
14 sheets.

15 That's Exhibit 16 to our original motion.

16 And we know that to keep the scheme going,  
17 as they called it, Cape handpicked personnel for  
18 NAAC that would go along with its scheme.

19 Exhibit 15 to our original motion suggests  
20 that Cape was extremely cautious in picking NAAC  
21 personnel who would, and I quote, fit into the  
22 company's scheme of things without causing  
23 embarrassment all around.

24 NAAC understood that it had to subordinate  
25 its own interest to its master, which was Cape.

1 Then Cape decides to accept default  
2 judgments. What happens is they're sued and  
3 they think we're going to be fine. There's no  
4 personal jurisdiction, and then they get hit and  
5 they have to settle a case.

6 So after the onset of asbestos-related  
7 product liability claims in 1970, Cape becomes  
8 really concerned with its own liabilities. And  
9 we see from Exhibit 18 to our original motion,  
10 the 1975 letter referring to the attempts -- and  
11 I'm quoting here, attempt to limit NAAC's and  
12 Cape's exposure to future U.S. litigation.

13 So Cape went through all those machinations  
14 to make it appear that it was reducing its  
15 oversight of NAAC. But in reality, NAAC  
16 continued to operate as a mere division or  
17 instrumentality under Cape. How do we know  
18 that?

19 Exhibit 19 in our original motion. This is  
20 a Cape document. And it's NAAC discouraging  
21 Cape visits to the U.S. in 1978, or else that  
22 may, and I quote, Negate maneuvers related to  
23 continuing problems with product liability  
24 litigation.

25 Don't come to the U.S. or people might find

1 out that you're still running NAAC, and you'll  
2 be responsible.

3 Exhibit 20 to our original motion is a 1975  
4 letter from Cape suggesting that the parent  
5 company disassociate as fully as possible from  
6 the other companies.

7 And then that letter goes on to say this:  
8 And this letter should not appear in the office  
9 files. We don't want anyone to know what we're  
10 doing, so I'm sending it to your home address.

11 Who talks like that? Cape.

12 Exhibit 21 to our original motion is a 1975  
13 letter raising whether to do something, and I'm  
14 quoting here, whether to, quote, do something to  
15 change the identity of NAAC in order to avoid  
16 exposing the company unnecessarily while doing  
17 everything possible to maintain its successful  
18 selling operation in the United States.

19 We want to limit our liability. We're  
20 going to do everything we can to do that. We're  
21 going to hide it. We've got to keep making this  
22 money off our sales in the United States.

23 Exhibit 9 to our original motion is a  
24 1975 -- I'm sorry, Exhibit 22 to our original  
25 motion is a 1974 NAAC letter suggesting, and I

1 quote, No one from Cape to be an officer of NAAC  
2 since we want it to be as independent as  
3 possible in order to avoid the contention that  
4 it's the alter ego of Cape and that Cape is  
5 doing business in the United States.

6 Exhibit 9 to our original motion is a 1975  
7 Cape asbestos letter stating that it would be,  
8 and I'm quoting, It would be a sensible  
9 precaution against Cape's involvement in any  
10 future proceedings for Cape's personnel to  
11 resign from the NAAC boards. And in closing the  
12 resignation letter.

13 They decide to dissolve NAAC and after  
14 NAAC's debts were paid, of course not to any  
15 claimant, the remaining assets were transferred  
16 upstream to NAAC's direct parent company at that  
17 time Cape Industries oversees. That is a UK  
18 entity that was wholly-owned by Cape Industries.  
19 And that's at Exhibit 27.

20 And then Cape does what it's continuing to  
21 do today. Cape began to emerge in a campaign of  
22 litigation avoidance by refusing to accept  
23 process of service or appear at any U.S.  
24 proceedings in the United States. And that  
25 moral fraud continues today, and it continued in

1 the Park case.

2 Cape actually wrote down in 1977, and I'm  
3 quoting, We really cannot be said to have a  
4 moral responsibility to respond to suits and are  
5 simply victims of a U.S. product liability cult.

6 That's Exhibit 25 to our original motion  
7 from Cape's counsel.

8 The Cape board formally authorized its  
9 withdrawal from the U.S. litigation and relied  
10 on the inability of any default judgment to be  
11 collected in the United Kingdom.

12 That was written down in November 1, 1977,  
13 minutes, and it was confirmed in Exhibit 23 to  
14 our original motion with NAAC personnel opining  
15 that it's most unlikely that any plaintiff would  
16 bother to pursue collection of any default  
17 judgment against Cape.

18 Exhibit 24 to our original motion. NAAC's  
19 counsel in 1979 confirming correspondence that  
20 you UK -- they got advice from United Kingdom  
21 and South African lawyers, and that they  
22 confirmed any resulting judgments would not be  
23 enforceable again Cape UK and South African  
24 assets. And I quote, The potential loss of all  
25 of NAAC's outstanding assets is not material in

1 the Cape group context.

2 They had already liquidated NAAC. To avoid  
3 paying damages to workers to whom they made  
4 sick, Cape resolved to liquidate NAAC. And  
5 that's exactly what they did.

6 Exhibit 26. Just one more thing on that  
7 with an April 1978 letter noting the liquidation  
8 and requesting that Cape asbestos officials stop  
9 sending accounting memorandum to NAAC officials,  
10 quote, for safety's sake.

11 And NAAC's liquidation was central to  
12 Cape's litigation avoidance strategy. They had  
13 to get rid of their North American presence.  
14 And that was based on legal advice they had  
15 gotten, talking about default judgments. That's  
16 exhibits 28, 29, and 30, outlining their  
17 litigation strategy.

18 But Cape continued to kind of play schemes  
19 to facilitate the sale of its asbestos to U.S.  
20 customers while minimizing its product liability  
21 risk. So what they decided to do is we're going  
22 to liquidate NAAC. Because that's too  
23 intertwined with Cape. And we're going to start  
24 a new company. But guess what? It's going to  
25 be in the same building and same office. It's

1 going to have the same phone numbers.

2 But don't worry, Exhibit 31 to our original  
3 motion is a 1977 meeting memorandum to discuss  
4 liquidation of NAAC and formation of a new  
5 offshore company to service North American  
6 companies.

7 For example, Continental Products  
8 Corporation is using the same address as NAAC in  
9 Chicago. Formed, and I quote, to act as a  
10 commission agent for future sales of asbestos  
11 from South Africa to the U.S. with South African  
12 mines selling to a new Liechtenstein subsidiary  
13 called Associated Mines Company. Which in turn  
14 sold asbestos to the U.S. under its invoices.

15 And that's exhibits 32 and 33 to our  
16 original motion.

17 The express purpose of this deal, and I'm  
18 quoting, The purpose of this corporate  
19 arrangement was to eliminate or reduce as much  
20 as possible the exposure in the U.S. of  
21 South African Mining Companies to lawsuits  
22 brought against it under areas of strict  
23 liability concerning products liability on the  
24 sale of asbestos to you in the U.S.

25 That's Exhibit 34 to our original motion.

1 As noted in our motion to appoint the  
2 receiver over Cape, the moral fraud is simply  
3 overwhelming. It is way more extensive than any  
4 of the allegations that we made against Atlas  
5 Turner in the Welch. Cape knew of the dangers  
6 of asbestos in 1950. They publicly denied the  
7 dangers. They had extensive sales, and they  
8 took a no-moral-responsibility stance.

9 And while they were trying to hide  
10 themselves and protect themselves, they  
11 continued to profit off of sales into the United  
12 States. There's no higher moral fraud.

13 And the Welch court talked a lot about how  
14 Atlas Turner was thumbing its nose at the  
15 courts, at claimants. Atlas Turner, I mean, if  
16 you want to give them credit for anything, you  
17 can say they showed up and filed a personal  
18 jurisdiction motion and then they fought the  
19 receivership and they filed an appeal and they  
20 did it fairly.

21 Cape hasn't even done that here. They are  
22 not going to show up. They have never shown up  
23 since the late 1970s.

24 THE COURT: Ms. McVey, let me ask you this:  
25 The order appointing Mr. Protopapas' receiver

1 for Cape -- for Cape, which was filed March the  
2 17th, 2023, is heavily criticized by nonparties  
3 in this case, but by parties in Tibbs and by  
4 others who aren't even parties in Tibbs but have  
5 filed claims, because it doesn't recite what you  
6 just recited.

7 There's no question that all of that was  
8 before the Court. All those materials were  
9 filed on March 6th, 2023, and were before the  
10 Court when the Court issued the appointment  
11 order.

12 But the details were not recited in the  
13 order, and this is viewed as a problem with not  
14 reciting reasons for the appointment.

15 Also, recited in the order is Cape or the  
16 company have dissolved and Cape, a foreign  
17 corporation, has forfeited its chart and further  
18 failed to answer in this case. They don't  
19 contest that Cape failed to answer, although  
20 they say it's defective that no default was  
21 filed.

22 But it concentrates its criticism on the  
23 recitation that Cape was dissolved. What was  
24 meant by that and what is the status of Cape?

25 MS. MCVEY: So that's a good question. I

1 think Receiver's counsel could probably dig into  
2 a little bit more because they had -- at the  
3 time that we filed that, we were unsure whether  
4 or not they had resolved or were insolvent  
5 because they had not participated in anything  
6 going on. So that's the first.

7 THE COURT: You did recite in your papers  
8 that they had dissolved.

9 MS. MCVEY: Yes.

10 THE COURT: And it's on that basis the  
11 Court put that in the order.

12 MS. MCVEY: Absolutely.

13 THE COURT: It wasn't in your filing about  
14 it.

15 MS. MCVEY: That's right. So the Court  
16 relied on our filing.

17 THE COURT: Right.

18 MS. MCVEY: Which recited all the basis for  
19 the moral fraud, number one. And that's  
20 important because the moral fraud that we talk  
21 about --

22 THE COURT: Right. I'm not talking about  
23 the moral fraud right now. I'm just talking  
24 about the recitation they had dissolved. It was  
25 contended by the plaintiff when the application

1 in Park was made to the appointment of a  
2 receiver that Cape had dissolved.

3 MS. MCVEY: Yes, ma'am.

4 THE COURT: What was the basis for that at  
5 the time?

6 MS. MCVEY: We did not know exactly the  
7 status of Cape. I have to go back and remember  
8 now what that was. Because they had not  
9 appeared in any litigation, they had not shown  
10 up. I think we had a good faith basis to assert  
11 that they had dissolved or were insolvent. And  
12 that is the insolvency or dissolve defunct,  
13 that's the Section 4. And then the moral fraud  
14 is the Section 5.

15 THE COURT: Section 5. I get that.

16 MS. MCVEY: So those are the two different  
17 bases that we had a good faith to believe. And  
18 now, they never came in to dispute that.

19 THE COURT: Second area that they fuss  
20 about, and this, again, may be something for the  
21 receiver to make a presentation on, is the  
22 breadth of the order that the receiver was  
23 empowered to administer all of the assets of  
24 Cape and not just to pursue the insurance  
25 matters.

1 The order does say that the Court expects  
2 the receiver to investigate the existence of all  
3 insurance coverages potentially available to the  
4 company in receivership, but the appointment  
5 piece of it is broader than that.

6 What do you say that the contentions are?  
7 You can defer to the receiver if you want to,  
8 but somebody's going to have to answer the  
9 question of whether that's appropriate. And if  
10 it's not appropriate, whether that defeats the  
11 whole order or whether that can be cured by some  
12 kind of amendment to the order.

13 MS. MCVEY: So two things are true. The  
14 receiver only had the ability to collect assets  
15 that are within the state of South Carolina.  
16 Right.

17 THE COURT: Right.

18 MS. MCVEY: Those can be intangible assets  
19 which may not physically be here but may be --

20 THE COURT: We know from several decisions  
21 of the Court that insurance that covers torts  
22 committed in South Carolina is regarded as an  
23 asset present in South Carolina.

24 MS. MCVEY: Right. But it also goes  
25 further than that. In Welch, you see when they

1 go through the history of receiverships, they  
2 talk about bank accounts in another state. They  
3 talk about a horse getting moved from one state  
4 to another state. You're not limited to just  
5 insurance.

6 Now, Welch was a little bit different  
7 because the receivership order itself limited  
8 just to insurance. We don't know, and the  
9 receiver can probably speak more to this, about  
10 whether or not there's insurance here for Cape  
11 even more.

12 But that order was broader than it needed  
13 to be. It still is in the parameters of the  
14 receivership statute because he only has the  
15 authority to collect the assets that are  
16 within --

17 THE COURT: Within the state.

18 MS. MCVEY: That's right.

19 THE COURT: Right.

20 MS. MCVEY: And those assets don't have to  
21 be physically located here. But I don't think  
22 anybody is saying they are going to go to Cape  
23 and run the board room just as anybody else is  
24 saying.

25 THE COURT: Right.

1 MS. MCVEY: As to your contention about --  
2 or your point, not your contention, your point  
3 about whether the recitation of the factual  
4 basis for the moral fraud in the order should be  
5 in there or not, I think that's easily solved.

6 And, in fact, the Supreme Court kind of  
7 instructs us, you know, if we haven't outlined  
8 the facts, that's an easy fix, we can do that.  
9 So certainly that's an order that can be  
10 supplemented to outline the ongoing.

11 And, look, we gave you more than enough, we  
12 believe, in the original appointment. I think  
13 you saw that, too. There's even more now that  
14 has been discovered. You know, one thing I  
15 wanted to mention, and maybe this is  
16 appropriate, you know, there's been a lot of --  
17 how should I say this? -- what I would deem as  
18 intimidation or attempted intimidation of the  
19 receiver and his lawyers and to some extent the  
20 Court.

21 And this is a book -- I only have one copy,  
22 but it's called In a Rain of Dust. And it  
23 really involves a plaintiff's lawyer who kind of  
24 went after Cape. And there's a chapter in this  
25 book, and I would just note it for the Court and

1 for others, where they personally went after --  
2 as a strategic litigation strategy to go after  
3 this lawyer himself to try to ruin his  
4 reputation while he was fighting Cape.

5 That is, to me, evidence of a continuing  
6 ongoing fraud, that it is a litigation strategy  
7 to try to go after anybody who's trying to hold  
8 Cape accountable.

9 So, Your Honor, this is not bad stuff that  
10 Cape has done in the past, and, oh, well, it's  
11 just a typical product liability case. No, this  
12 is ongoing, and it hasn't stopped.

13 So I'm happy to answer any other questions  
14 about the original motion to appoint a receiver  
15 or anything else.

16 THE COURT: And so your -- and then the  
17 final thing is this.

18 MS. MCVEY: Yes, ma'am.

19 THE COURT: This case appears as an open  
20 case on my docket.

21 MS. MCVEY: Yes.

22 THE COURT: On my asbestos docket. What do  
23 you plaintiffs regard as the status of this  
24 case?

25 MS. MCVEY: That we have the Cape

1 defendants remaining in the case, and that when  
2 we get to the point where we feel like we could  
3 try a case against Cape, it would move to have  
4 you set a trial on those issues.

5 We haven't had any discovery, obviously,  
6 from Cape. They haven't appeared. And so we  
7 could certainly move, I assume, for a default  
8 judgment or do something of that type. But we  
9 haven't done that yet.

10 THE COURT: And you stated when we were in  
11 court on our status conference that was held  
12 recently in early June, following the issuance  
13 of the Court's remand order in Tibbs, you stated  
14 that with regard to Park, you had a tolling  
15 agreement.

16 MS. MCVEY: That's correct.

17 THE COURT: Tell the Court what is the  
18 situation about that.

19 MS. MCVEY: We entered into a tolling  
20 agreement with the receiver for Cape. In order  
21 to allow -- as you know, they keep telling this  
22 court and they told the federal court this, too,  
23 that I said the Park case had been fully  
24 resolved.

25 And what I meant by that is it was totally

1 over. And you know the context of that was  
2 simply that the Park case was up for trial and  
3 all the trial defendants had resolved.

4 We later entered into a tolling agreement  
5 because we weren't ready to try the Cape case  
6 yet. And so we entered into a tolling agreement  
7 with the receiver to allow us to do that at a  
8 certain point going forward.

9 THE COURT: All right. And that tolling  
10 agreement is still in existence?

11 MS. MCVEY: Yes, ma'am.

12 THE COURT: And your contention is that the  
13 tolling agreement, although signed at the time  
14 when the estate was closed, that the  
15 reinstatement of the estate ratifies the  
16 authority that was given by Mr. Park to his  
17 attorneys to sign a tolling agreement.

18 MS. MCVEY: Absolutely. And, in fact, the  
19 case law on the statute mandates that the court  
20 allow us to cure that and those acts can be  
21 ratified. Which we believe we've done.

22 THE COURT: All right. All right. I think  
23 I've got what you can supply me with. Is there  
24 any presentation that --

25 MS. MCVEY: The receiver may want to.

1 THE COURT: -- that receiver -- what I have  
2 listed is open for the receiver is the Motion to  
3 Compel Certain Underwrites of Lloyd's. And I  
4 want to cover that because that's one of the  
5 outstanding -- that's the only other outstanding  
6 motion that I see in Park. So I want to cover  
7 that.

8 Certain Insurers, this is Mr. Sawyer, will  
9 then have the ability to come and argue against  
10 that.

11 So that's where I am in the process. So  
12 who will speak for the receiver in connection  
13 with the Motion to Compel Certain Underwriters  
14 of Lloyd?

15 MR. LAY: Mr. Protopapas is going to be  
16 dealing with that motion.

17 THE COURT: Yes, sir.

18 MR. LAY: Do you want me to -- I do have  
19 some things to add to some of the comments made  
20 by Ms. McVey.

21 THE COURT: They need to be brief. I think  
22 I got -- I think I have the status of the Park  
23 case well in mind --

24 MR. LAY: Okay.

25 THE COURT: -- Mr. Lay. If you wish to

1 make some brief comments, that's fine. But I  
2 think I understand from Plaintiff's counsel  
3 where that is. Your status in the case is  
4 you're the attorney for the receiver?

5 MR. LAY: The receiver.

6 THE COURT: Right.

7 MR. LAY: Yes, ma'am.

8 THE COURT: Right. So right now my main  
9 concentration is on the open motion. But if  
10 you've got something that you want to add  
11 briefly, I'll be glad to hear from you.

12 MR. LAY: Okay. Very briefly. I just  
13 wanted to add just a little bit.

14 THE COURT: This is John T. Lay for the  
15 receiver.

16 MR. LAY: Your Honor, one of the things  
17 that the Welch case delineated is what was  
18 required as it relates to bad conduct or fraud  
19 for someone that's going into a receivership  
20 under Subsection 5 of the receivership statute.

21 And in that, it states very clearly that if  
22 there is some sort of fraud or if there is some  
23 sort of indication that if there is an attempt  
24 to avoid paying that for being responsible,  
25 being held account for whatever acts have been

1 done by that party, that is a basis for the  
2 appointment of a receiver.

3 And it gave an example as someone that's  
4 currently trying to move assets. That was an  
5 example. But the fraud itself can exist over a  
6 period of time. Which is what concerns me, as  
7 Receiver for Cape is going to have to defend  
8 these cases down the road but also trying to  
9 figure out a way to hold other parties  
10 responsible for what happened with Cape. I've  
11 got to deal with some of the things that have  
12 occurred over that 30-year period of time.

13 And what has been clear and we're looking  
14 at others as being responsible for what happened  
15 over the 30 years, but there's an ongoing  
16 attempt to create issues in litigation by Cape  
17 that is continuing and it's active.

18 We have seen it during the life of this  
19 case. And I think what is important to  
20 recognize is that Cape now is completely and  
21 utterly controlled by Altrad. How do we know  
22 that? We know that because Altrad is paying  
23 Cape's bills and litigation that's being done in  
24 the UK.

25 We have gotten that information. We



1 received that information. We know that the  
2 Altrad lawyers were involved with the UK  
3 litigation. We also know what's going on in the  
4 litigation, the UK litigation, and what has been  
5 filed there. This is ongoing.

6 What has been filed in the UK litigation,  
7 there are many misstatements, misrepresentations  
8 that were made to the UK court about what is  
9 going on in this courtroom.

10 For example, taking comments that you made  
11 from the bench, transcripts to suggest that  
12 you're trying to take over the company. Making  
13 suggestions that you and Mr. Protopapas have  
14 some sort of connection because he clerked for  
15 you and he couldn't be fair. But that's not  
16 true.

17 THE COURT: That's not true.

18 MR. LAY: Yeah, that's not true.

19 They made comments about what the Barton  
20 doctrine was, and it was completely wrong about  
21 what the Barton was.

22 THE COURT: Well, Mr. Lay, I don't think we  
23 need to get very far into that. All that's in  
24 the record. The federal courts have dealt with  
25 the Barton doctrine. Much of what is said in

1 the UK court, from what little I have been  
2 exposed to, is not correct.

3 But the bottom line is, what you simply say  
4 is that the moral fraud is ongoing via attempts  
5 to avoid responsibility. But in the end, your  
6 role is about finding assets that can stand good  
7 for the responsibility of Cape in this  
8 particular matter. The Park matter.

9 MR. LAY: And really, I think it's twofold.  
10 It's making sure that Cape is protected by  
11 looking at others that could have caused what is  
12 going on here. The moral fraud.

13 THE COURT: That's something that would  
14 occur if this case is tried, but --

15 MR. LAY: That's right.

16 THE COURT: -- one thing you contend is  
17 that Altrad is really the controller of Cape.

18 MR. LAY: Yes, ma'am.

19 THE COURT: Has Altrad been made a party in  
20 Park?

21 MR. LAY: Not yet. Altrad was made a party  
22 in the Tibbs case.

23 THE COURT: Right. But Altrad is not a  
24 party at the present time in this case; is that  
25 correct?

1 MR. LAY: Yes, ma'am. That is correct.

2 THE COURT: All right. Okay. Now,  
3 Mr. Protopapas, on the question of the Motion to  
4 Compel.

5 MR. PROTOPAPAS: Thank you, Your Honor.

6 Peter Protopapas. Your Honor, when faced  
7 with the appointment order as receiver, one of  
8 the first things we do is we try to identify the  
9 insurance assets of the entity.

10 And to that end, NAAC, which was dissolved,  
11 which was one of these companies that -- it was  
12 the company in the United States that Ms. McVey  
13 was detailing to the Court. That company did  
14 dissolve and forfeit its charter. And it was no  
15 daylight between Cape and NAAC.

16 So we sent out subpoenas to begin with.  
17 And as the Court knows, how you ask questions to  
18 the carriers will dictate the response. We've  
19 had many examples in this court of a subpoena  
20 going out, no insurance is available, and then  
21 we find, oh, wait a minute, there's an  
22 additional insurer and there's significant  
23 amounts of insuring assets.

24 So it is a learning curve for me to figure  
25 out how to write the right question to my

1 friends in the insurance group.

2 So on April 28, 2025, I took another stab  
3 at trying to write the right question. I tried  
4 to write a simple subpoena, sent eight of them  
5 out, Your Honor. And unbeknownst to me, on  
6 May 7th of 2025 -- so the subpoenas go out on  
7 April 28th -- on May 7th of 2025, a gentleman  
8 named Ran Oren.

9 Now, Mr. Oren is the director of Cape  
10 Intermediate Holdings, the director of Cape PLC,  
11 the group CO of Altrad Group, and he is the  
12 director of other Cape entities. That's how he  
13 describes himself. Those are his positions.

14 So on May 7th, he writes a letter to at  
15 least four of those eight carriers saying "Do  
16 not give any information to the receiver." That  
17 is attached to our motion, Your Honor.

18 Now, Hartford went ahead and did a search,  
19 Your Honor, and they found nothing. I have  
20 reached an agreement with my friends at  
21 Travelers. And so --

22 THE COURT: Wait a minute. Hartford was  
23 one of the companies you moved to compel in the  
24 Park case, correct?

25 MR. PROTOPAPAS: Yes, Your Honor. I did

1 not have to compel them because they complied  
2 with the subpoena. Whether they got the  
3 letter --

4 THE COURT: Hartford, you subpoenaed them.  
5 Hartford, you subpoenaed them in --

6 MR. PROTOPAPAS: Park.

7 THE COURT: The Park case?

8 MR. PROTOPAPAS: Yes, Your Honor, and they  
9 complied.

10 THE COURT: And Hartford complied and gave  
11 you information about coverage of NAAC/Cape.

12 MR. PROTOPAPAS: Yes, Your Honor.

13 THE COURT: All right. And then you  
14 mentioned Travelers.

15 MR. PROTOPAPAS: Yes, Your Honor.  
16 Travelers originally refused in Park based on  
17 Mr. Oren's letter. But we have reached an  
18 agreement with them, and so I have no motion. I  
19 withdraw that relief I was seeking against  
20 Travelers.

21 THE COURT: So Hartford and Travelers has  
22 complied.

23 Any other information about your subpoenas  
24 and whether others have complied?

25 MR. PROTOPAPAS: Allianz and I have reached

1 an agreement of a company -- an insurance  
2 company controlled by Allianz.

3 THE COURT: That's Allianz, the one with  
4 the Z at the end?

5 MR. PROTOPAPAS: Yes, Your Honor.

6 THE COURT: So you reached an agreement  
7 with them with regard to information about  
8 insurance or NAAC/Cape that would -- or Cape  
9 entities that might respond in the Park case,  
10 right?

11 MR. PROTOPAPAS: That's correct, Your  
12 Honor. And specific subsidiary's name is  
13 Interstate Fire & Casualty Company, which is on  
14 the first page of my Motion to Compel. And they  
15 had received -- my understanding is they may  
16 have received a letter from Mr. Oren.

17 THE COURT: All right.

18 MR. PROTOPAPAS: Now, the three that are  
19 still remaining on the compel are what we call  
20 the Resolute administered insurers, which are  
21 Liberty, Lloyd's, Continental Casualty.

22 THE COURT: And just to complete the  
23 record, we all know what we're talking about  
24 here, just to complete the record, Resolute is a  
25 company we've seen many times in many asbestos

1 litigation cases. It is a company that manages  
2 insurance assets for various companies and in  
3 the asbestos world manages insurance assets for  
4 various companies that have policies that might  
5 respond to some particular -- this is in the  
6 industrial world -- industrial asbestos claims,  
7 correct?

8 MR. PROTOPAPAS: Correct, Your Honor.

9 THE COURT: And in that connection, the  
10 negotiation is generally with Resolute, but it's  
11 Resolute on behalf of Liberty, Continental, and  
12 Lloyd's, right?

13 MR. PROTOPAPAS: You're correct, Your  
14 Honor.

15 THE COURT: All right. And so they --  
16 there are remaining discussions, I guess, taking  
17 place, but this Motion to Compel has not been  
18 resolved.

19 MR. PROTOPAPAS: Correct, Your Honor.

20 THE COURT: All right. So that's still  
21 outstanding?

22 MR. PROTOPAPAS: Yes, your honor.

23 THE COURT: All right.

24 MR. PROTOPAPAS: And so, Your Honor,  
25 Resolute retained my friends at Murphy &

1 Grantland. They wrote me a letter on May 15th  
2 on behalf of those three entities. And, Your  
3 Honor, it's a curious letter in this sense: The  
4 letter, of course, mentions they do not want to  
5 comply because Mr. Oren has told them do not  
6 give Mr. Protopapas any information.

7 But also, Your Honor, the very end, there's  
8 this curious statement from Underwriters of  
9 Lloyd's, it states, "Underwriters also do not  
10 consider the subpoena or any of the above-stated  
11 objections to constitute evidence of a tender of  
12 any claim to underwriters nor evidence of any  
13 notice pursuant to the terms and conditions of  
14 any insurance policy."

15 And I get a lot of letters telling me I'm  
16 not -- we're not giving you something. Rarely  
17 does it talk about tender, really it's to talk  
18 about underlying insurance policies, if any.  
19 So, Your Honor, what is curious about it, and  
20 this goes as well for Continental and Liberty,  
21 but in particular as it pertains to my friends  
22 at Lloyd's.

23 And if I may hand up two copies to the  
24 Court.

25 So, Your Honor, what I've handed up to you

1 is something that Aon had produced to me.  
2 Your Honor, Aon is an entity that brokers  
3 insurance for various entities. They're a  
4 well-known broker of insurance.

5 And, Your Honor, in the Aon production on  
6 page 1, you will see an inception date of an  
7 insurance policy of October of 2009 to September  
8 of 2010.

9 THE COURT: Right.

10 MR. PROTOPAPAS: And then, Your Honor, if  
11 you go to page 2 of the production, it  
12 identifies the insured. And there's been lots  
13 of name games that go on in this process. I  
14 don't mean name games pejoratively. I mean, are  
15 you asking the right question?

16 On page 2 of the production, it states  
17 insured is Cape PLC, Cape Industrial Services  
18 Division Limited and/or its associated and/or  
19 its subsidiary companies and/or Cape Industrial  
20 Services Limited and its agent subsidiary  
21 companies, and/or Cape Limited and/or its  
22 associated or subsidiary companies. And it goes  
23 on.

24 So it doesn't identify all the additional  
25 insureds, but it identifies all their

1 subsidiaries, all their associated entities, and  
2 it's a very broad insured definition.

3 And, Your Honor, if you were to go to page  
4 3, and it talks about business on page 3 that  
5 they're insuring.

6 THE COURT: Looking right at it.

7 MR. PROTOPAPAS: It says insulation. And  
8 under business, first paragraph, last sentence,  
9 "Manufacturers of fire retardant products and  
10 insulation materials."

11 Now, Your Honor, if you go further down,  
12 the limit of liability is 50 million pounds.  
13 What grabbed my attention even more so,  
14 Your Honor, is on page 4. On page 4,  
15 Your Honor, at line 13 appears the word  
16 asbestos. And it says asbestos total buyback to  
17 GP, which I believe sterling is pounds --  
18 50 million pounds or 10 million pounds -- as per  
19 policy endorsement CCLATV011107-V1.

20 So I have a suspicion that my friends at  
21 Lloyd's may have issued insurance to cover Cape  
22 and the subsidiaries. I have not properly asked  
23 the question apparently before April of 2025. I  
24 asked the question. Mr. Oren immediately jumps  
25 up and says -- told Lloyd's -- not to me but to

1 Lloyd's --

2 THE COURT: He mentions on down in this  
3 thing, I notice it mentions Lloyd's, Aon,  
4 others.

5 MR. PROTOPAPAS: And so this is a  
6 Lloyd's -- my understanding is this is a summary  
7 of a Lloyd's policy. And you're correct, Your  
8 Honor, on page 5 it talks about -- the line the  
9 terms of trade agreement of Lloyd's.

10 THE COURT: Right. I notice that as well.

11 MR. PROTOPAPAS: So I have been struggling  
12 to find the insurance in this receivership, but  
13 maybe I haven't asked the right question. But  
14 maybe I asked the right question in April of  
15 2025, which we got a response from Mr. Oren  
16 telling Lloyd's do not comply.

17 And perhaps, Your Honor, when Lloyd's  
18 writes to me and says we're not accepting it as  
19 a tender, perhaps there is an insurance policy  
20 that I should be tendering to. But in order for  
21 me to do that, I need a little bit of assistance  
22 from my friends at Lloyd's. I need them to tell  
23 me is there an insurance policy which would  
24 cover the Park claim.

25 THE COURT: This document would certainly

1 suggest that.

2 MR. PROTOPAPAS: It does. And, Your Honor,  
3 Continental and Liberty had insuring  
4 relationships either through workers' comp or  
5 otherwise with other entities affiliated with  
6 Cape.

7 So I sent out eight what I thought were  
8 going to be targeted subpoenas in an effort to  
9 unwind. I'd be remiss not to tell the Court  
10 that I'm familiar with a fund in Great Britain  
11 to pay British folks who have felt the effects  
12 of Cape asbestos. That fund has over  
13 170 million pounds in it, to my understanding.  
14 Perhaps these policies were all liquidated and  
15 put into that fund. I don't know.

16 But when we think about the assets or  
17 within the context of South Carolina, certainly  
18 I'd ask my friends at Lloyd's, Continental, and  
19 Liberty to go ahead and search for and produce  
20 to me those policies which may be responsive.

21 Your Honor --

22 THE COURT: Now, this policy you've  
23 described in this material from 2009 to -- 2009  
24 to 2010 would be within the period of exposure  
25 in the Park case, would it not?

MR. PROTOPAPAS: Yes, Your Honor. And, Your Honor, I may have not crafted questions artfully enough for my friends at Lloyd's, but what I would like from Lloyd's is their Cape file. I would like to know what insurance they sold to Cape. I would like to know if it had been liquidated, what those agreements look like. And is there an opportunity to tap into that.

I will say, Your Honor, it is hard to defend Cape in the Park case like a traditional defendant because I don't have a depository of documents that have been easily given to me to provide the defense.

THE COURT: Yeah, Cape is taking the position you are not in any way authorized and they have this order from England that takes that position, and yet you have insurance that covers matters in the United States apparently --

MR. PROTOPAPAS: Yes, Your Honor, I believe --

THE COURT: -- of companies that are well-known to South Carolina.

MR. PROTOPAPAS: That's right, Your Honor.

And to the extent they don't cover the claim, an explanation in the policy itself so I can make a determination and report to the Court.

I will say, Your Honor, that a lot of the policies we found from various periods of time for NAAC, carriers gave me proper documentation of exhaustion. And so there has --

THE COURT: So you know there's some that are exhausted, no good, do not cover anything. And that's what you're seeking to find in this particular situation?

MR. PROTOPAPAS: Yes, Your Honor.

THE COURT: Thank you.

MR. PROTOPAPAS: Thank you, Your Honor.

THE COURT: Okay. Now, we have nonparty Travelers who sent a memorandum filed July 18th, 2025, in opposition. And we have a party -- a subpoenaed entity, Continental, which has filed a reply and a return along with Certain Insurers.

So what I'm going to do now is turn to Mr. Wes Sawyer, your motion -- your opposition to the motion by Mr. Protopapas' receiver to compel.

MR. PROTOPAPAS: Your Honor, as it pertains

to Travelers, Mr. Conor Brady, a lawyer for Travelers, we have reached agreement on his position pertaining to that subpoena. And I have withdrawn my request for relief to compel Travelers.

THE COURT: All that's left is the Certain Insurers of Lloyd's, Resolute -- what you say are the Resolute managed three claims.

MR. PROTOPAPAS: Yes, Your Honor.

THE COURT: All right. Mr. Sawyer. And you know, Mr. Sawyer, before you get started, it's 20 minutes until 11. I should have some mercy on the court reporter. So let me turn to you, Madam Court Reporter, a short break?

THE COURT REPORTER: Yes. Thank you.

THE COURT: Very good. Why don't we take -- let's be back at 5 of. I just don't want to have to interrupt you after you get started, Mr. Sawyer.

MR. SAWYER: I understand, Your Honor. Thank you.

THE COURT: Thank you, sir.

The Court will be in recess.

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(A recess transpired.)

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THE COURT: The Court will resume, and we'll hear now from Mr. Wesley Sawyer on behalf of Certain Insurers as we kind of have colloquially referred to them, a group of the insurers who oppose the Motion to Compel.

MR. SAWYER: Thank you, Your Honor.

Good morning. Wesley Sawyer. I represent Continental Casualty Company, Liberty Mutual insurance Company, and Certain Underwriters at Lloyd's of London.

Before I get started, Your Honor, to be clear, my clients are not parties in this case. I think the Court -- Your Honor acknowledged that.

THE COURT: I do. You are not parties of this case in any way. This is a subpoena of a nonparty to the case. And I'm sure you will have some certain arguments about the presence and whether it can be subpoenaed and so forth and so on, which I certainly will be glad to listen to. But they are not parties.

MR. SAWYER: Thank you, Your Honor.

Also, we raise personal jurisdiction. I will get to that in time. I think the order of

1 presentation the Court has heard, it makes sense  
2 to start with the procedure and then work our  
3 way up to that and we get to the Motion to  
4 Compel, if that pleases Your Honor.

5 THE COURT: Yes, sir.

6 MR. SAWYER: Your Honor, let's start with  
7 procedure. And to be quite blunt, everything  
8 that's happened in this case since the estate  
9 was closed, after this Court was told the case  
10 was fully resolved, has been a nullity. And  
11 that's nothing of the Court's fault. That's a  
12 matter of fundamental rules of the Court's  
13 jurisdiction.

14 In June of 2022, this case was set up and  
15 was for trial and about three weeks before  
16 trial, this Court receives an email from  
17 Plaintiff's counsel stating that this case is,  
18 quote, fully resolved.

19 And, Your Honor, today that was presented  
20 as a -- you know, just a mere mistake, an honest  
21 mistake. But Mr. Parks' actions at that time  
22 confirm there was absolutely no mistake.  
23 Because that email came to the court on a  
24 Friday.

25 On Monday, the following business day,

1 Mr. Park, who had just represented to you, this  
2 court, that the case was fully resolved, went to  
3 the probate court in Spartanburg County, that  
4 had given him authority to act as a personal  
5 representative, and represented to that court  
6 under oath that the case was fully resolved.

7 He stated that he had done all the work  
8 required of him as a personal representative of  
9 the estate. He filed for a settlement of the  
10 estate and asked to be relieved, terminated is  
11 the statutory term, as a personal representative  
12 of the estate.

13 So it was not an honest mistake telling  
14 this court that the case was fully resolved, not  
15 partially resolved, because Mr. Park's conduct  
16 the following Monday confirmed his intent.  
17 Which was this case is done. Because if the  
18 case was not done, the estate would not be ready  
19 to close. Because he had asserted a survival  
20 and wrongful death claim.

21 As Your Honor knows by statute and your own  
22 case law you've written, only a personal  
23 representative can pursue a wrongful death and  
24 survival claim, other than a rare exception for  
25 a special personal administrator, which is not

1 an issue here.

2 So after telling this court the case is  
3 fully resolved, he tells the probate court the  
4 case is fully resolved. And both courts relied  
5 upon that representation in 2022.

6 This court relied upon that representation  
7 by taking the case off the trial docket. And we  
8 all know when a case is up for trial, the  
9 plaintiff has to be ready to try against all  
10 parties. If there's a party in default, then  
11 their job is to move for default and proceed on  
12 default judgment because the case is up, and  
13 it's not unusual for a court to dismiss a party  
14 that hasn't been reserved once trial comes up  
15 for failure to prosecute.

16 But the court didn't get that information  
17 presented to it. The court was told the case is  
18 fully resolved, and the court relied upon that.

19 The probate court, considering the  
20 application of Mr. Keith Park to close the  
21 estate, granted the relief he requested. This  
22 is not some administrative closing of the estate  
23 because a certain amount of time had passed by.  
24 No. He affirmatively went to the court, signing  
25 under oath that the estate was ready to close.

1 And particularly, Your Honor, with that  
2 submission, he submitted waivers and releases  
3 from all the heirs of the estate saying we  
4 release all claims of the estate. And he filed  
5 that support of asking the probate court to  
6 close the estate. And the probate court granted  
7 that relief in reliance upon those  
8 representations made under oath to the probate  
9 court.

10 It entered two orders. It entered one  
11 order closing the estate, and it entered a  
12 second order terminating Mr. Park's authority,  
13 his appointment as a personal representative of  
14 the estate.

15 And that has significant statutory  
16 implications under the probate code. Section  
17 608 of the probate code says that upon  
18 termination, the personal representative cannot  
19 act any further on behalf of the estate in any,  
20 quote, pending or future litigation.

21 So as of August 2022, by his own request,  
22 which is not an honest mistake, he signed an  
23 affidavit, said Court do this for me. Mr. Park  
24 was terminated, and very importantly the estate  
25 closed. Those have two independent, legally

1 significant impacts.

2 Mr. Park's termination as the personal  
3 representative goes to standing. It goes to his  
4 authority to act. In March of 2023, when he  
5 approached this court, they'll tell, Your Honor,  
6 that he had been terminated at his own request,  
7 and that the estate has been closed at his  
8 request, and ask Your Honor to appoint a  
9 receiver without letting you know that he had  
10 taken the steps in another court and made those  
11 representations to another judge and got relief  
12 based on those representations.

13 It also has significance that the estate  
14 was closed. And that goes to the most  
15 fundamental rule for our adversarial judicial  
16 system. Which is you have to have a party with  
17 a legitimate issue on both sides of the beat.  
18 Courts don't sit over and give advisory opinions  
19 to individuals who may have quandaries before  
20 the court. You have to have an adversarial  
21 situation. Plaintiff versus defendant.

22 And when the estate was closed, there was  
23 no longer a -- the Supreme Court uses the term  
24 juridical entity, known as the estate. There  
25 was no plaintiff on that side of the beat.

1 And that was as of August 2022. So when  
2 this court heard a motion in 2023 to appoint a  
3 receiver, again, this wasn't told to Your Honor,  
4 so it's not a matter of the court making an  
5 error, but it is a matter of the court's  
6 jurisdiction, which is what the Supreme Court  
7 says in the McCullar case that Ms. McVey  
8 referenced.

9 In that case, what the Court said, and this  
10 was a situation where there was no defendant, as  
11 opposed to no plaintiff. They cite old case law  
12 dealing with a lack of a plaintiff. So they  
13 appealed it on both sides of the beat. Is this  
14 gets to something even more fundamental than the  
15 phrase we use for subject matter jurisdiction.  
16 It's just fundamental jurisdiction.

17 And if you don't have a party on each side  
18 of the beat, there is no case for the court to  
19 preside over.

20 In fact, Your Honor, you were on that panel  
21 for that decision. And interestingly in a  
22 footnote at the end of that sentence, procurance  
23 so we don't know who actually penned it.

24 But at the footnote, at the end of that  
25 decision, the Court says, you know, we hesitate

1 to even call this a dismissal because there was  
2 never a defendant in the case. There simply was  
3 no case. So they called it a dismissal because  
4 in our lingo in courts, that's the best that  
5 they could come up with. But they said we  
6 really hesitate to even use that. There was no  
7 case at all.

8 And if there's no case, there can be no  
9 motion to appoint a receiver. There certainly  
10 can be no order to appoint a receiver.

11 And the case law is very clear. That a  
12 court that acts without jurisdiction, whether it  
13 knows it or not, any order from that court is a  
14 nullity for its lawyer. Depending on which case  
15 you read. But the case law is very consistent.  
16 When a court has no jurisdiction, any order  
17 entered is a void order.

18 Again, this is because of what was  
19 presented to the court. The court relied upon  
20 what was presented to it. But the reality is  
21 there was no plaintiff to move for appointment  
22 of a receiver and, therefore, no basis to  
23 appoint a receiver in 2023.

24 And Mr. Park did go in 2025, two years  
25 later, and file a motion for a subsequent

1 administration. That's a second administration,  
2 a new administration of an estate. It's not a  
3 reopening of the original estate. It's called a  
4 subsequent administration.

5 And, Judge, that motion, which is filed by  
6 the plaintiff, is quite interesting for a few  
7 reasons. One, even now in this new filing to  
8 the probate court, when they state the basis for  
9 the subsequent administration, they put the  
10 reason is possible civil litigation.

11 Not, hey, Probate Judge, we've had this  
12 case pending for years. We've been filing  
13 motions. We've taken action. It's possible  
14 civil litigation.

15 And in reliance upon that, the probate  
16 judge did a new estate. A subsequent  
17 administration. In fact, if you look at the  
18 case number for the probate for the subsequent  
19 administration, it's dash 2. It's not the  
20 original administration. It's a subsequent  
21 administration. And that, also, Your Honor, has  
22 a significance from a probate code statutory  
23 perspective. That's Section 62-3-1008.

24 And the last sentence of that, which is the  
25 subsequent administration statute, states that

1 if a new appointment is made, unless an order is  
2 otherwise, the provisions of this code applies  
3 appropriate. But here's the kicker: But no  
4 claim previously barred may be asserted in the  
5 subsequent administration.

6 This is not a savings clause for plaintiffs  
7 that should have been brought with the first  
8 estate. It's not a saving clause for a case  
9 that was fully dissolved, their language, and  
10 represented to the probate court as done and  
11 ready to close. It's for future claims. New  
12 claims. Which is not what is before the court  
13 today. There's no new summons and complaint.  
14 There's no new allegation. It would be barred  
15 by the statute of limitations, of course.

16 The case was represented to the court in  
17 2022 as fully resolved. And that's what it was.  
18 And all of the conduct of Mr. Park close in time  
19 to that representation to this court, including  
20 his representations to the probate court,  
21 confirmed all of that.

22 So then what's the case law saying? In  
23 addition to the McCullar case, which is  
24 fundamental jurisdiction, you have the Lennon  
25 case from the Court of Appeals, which I also

1 cited in our brief, that deals with standing.  
2 Another subject matter jurisdiction issue.

3 And it also said that when you don't have  
4 the authority to speak on behalf of someone  
5 else, there's no standing. And that's the issue  
6 here because there was no estate to speak on  
7 behalf of.

8 And by statute, under 608, once terminated,  
9 which, again, Mr. Park was terminated from the  
10 first estate, which was the plaintiff, in August  
11 of 2022. And noted no one in this room disputes  
12 that he was still terminated in March '23 when  
13 he moved to appoint receiver and continued to be  
14 terminated all the way up until the filing for  
15 the subsequent administration, which again we  
16 note is not the original estate. It's a new  
17 one.

18 The statute at 608 -- 62-3-608, the last  
19 sentence says this: Termination does not affect  
20 the jurisdiction of the court or the personal  
21 representative, but terminates his authority to  
22 represent the estate in any pending or future  
23 proceeding.

24 He sought the termination. He got the  
25 termination. He had no authority to represent

1 the estate in pending or future litigation,  
2 including in 2023 when they moved for the  
3 appointment of a receiver.

4 These are statutory boundaries on a  
5 personal representative's conduct. Not judge  
6 made; they're statutory. We all have to follow  
7 them, including Mr. Park. He has to honor what  
8 he has told this court.

9 And, Your Honor, you did pen this decision,  
10 adopting judicial estoppel in South Carolina,  
11 and it's a good rule. It's a rule often used in  
12 other cases. And what it says is that when you  
13 represent to a court a fact and the court relies  
14 upon it, you're bound by that. You can't take  
15 off that fact later on whenever it suits you.

16 Well, Mr. Park represented to two courts  
17 the fact that the case was fully resolved.  
18 Quote, fully resolved for this court and in his  
19 motion to close the estate in the probate court.

20 And, again, it's not just a motion to close  
21 the estate and terminate himself and say I've  
22 done all I'm supposed to do. He got releases  
23 from the heirs of the estate that he filed in  
24 support for that motion.

25 So multiple people rely upon that

1 representation, and the probate certainly does  
2 because it grants the relief he asked for based  
3 upon those representations. That's judicial  
4 estoppel. The foundational rule of judicial  
5 estoppel. You can't tell a court something,  
6 expect the court to rely upon it, have the court  
7 rely upon it, and then when it doesn't suit you  
8 later on, say, you know what, honest mistake,  
9 you know. But it wasn't.

10 Now, a friend of Ms. McVey may not have  
11 known. I don't know what communications took  
12 place between her and the probate lawyer. But  
13 Mr. Park, who is actually the party to this, or  
14 at least the estate and is the PR, certainly.  
15 And his conduct in time, a Friday email to this  
16 court, a Monday filing to the probate court,  
17 leaves no room for doubt about his intentions in  
18 2022. They were very, very clear.

19 So, Your Honor, there was reference made to  
20 the Fisher case. That case, Your Honor is a --

21 THE COURT: Which case?

22 MR. SAWYER: The Fisher case.

23 THE COURT: Yes.

24 MR. SAWYER: Judge, that case is about real  
25 party in interest. That's a whole different



1 issue. I agree real party in interest is not a  
2 jurisdictional issue. The court has made that  
3 very clear.

4 And, in fact, the McCullar decision I cite  
5 from the Supreme Court, it notes that the issue  
6 dealing with the McCullar about the existence of  
7 the estate is not a real party in interest  
8 issue. It's in a more fundamental issue.

9 And the Lennon case, from the Court of  
10 Appeals, says standing is not real party in  
11 issue. It's more fundamental.

12 So that's what the cases say. It's why  
13 Fisher doesn't meet anything for this case.  
14 Because we're not arguing real party interest.  
15 We're arguing that when the estate closed, after  
16 telling this court the case was fully resolved,  
17 there was no party, there was no plaintiff,  
18 which means there was no case for the court to  
19 preside over. And that cannot be remedied  
20 because it goes to fundamental existence of the  
21 case.

22 THE COURT: What do you do with Section  
23 62-3-701, which is sometimes termed the relation  
24 fact section, and with Rule 17(a) that discusses  
25 ratification? How do they affect, if they do,

1 this case?

2 MR. SAWYER: That's a great question,  
3 Your Honor, and the argument they try to hang  
4 their hat on. 17 -- or the Fisher cases say how  
5 that rule works. It's a real party at issue  
6 that's -- when there's an estate, you file a  
7 claim, but you haven't gotten properly appointed  
8 as the PR for whatever reason, then they can go  
9 and use Rule 17 to fix that sort of situation.  
10 It deals with -- and by the statutory term, the  
11 commencement of the personal representative's  
12 authority.

13 608, which is what we relied upon, deals  
14 with the termination of that authority. And all  
15 the conduct we're talking about is after the  
16 termination order, not before the appointment  
17 order.

18 So they're looking at the wrong statute.  
19 And the statute can't fix a fundamental problem  
20 on the lack of plaintiff, which is what the  
21 McCullar case is. And the McCullar case, again,  
22 is after the estate closed. I'm sorry, I  
23 misstated. Not the McCullar case. I'll get to  
24 the case that deals with when the estate closes.

25 THE COURT: Yeah.

1 MR. SAWYER: And that case is the New York  
2 appellate division case. And while we're  
3 talking about a New York appellate division  
4 case, it's applying South Carolina probate law.  
5 And I think that's important. This is not some  
6 court talking about a similarly adopted uniform  
7 probate code. They're actually looking at the  
8 South Carolina probate code.

9 And in that case, when the complaint was  
10 brought, there was an active estate. And then  
11 the estate closed. The PR was terminated.  
12 Asserted a counterclaim, which is just like  
13 filing a motion in a case. It's something you  
14 do during the life of a case. They moved in the  
15 case to assert a counterclaim. Which the court  
16 at that point granted, I believe.

17 But what they didn't tell the court  
18 anymore, just like they didn't tell Your Honor  
19 when they moved to appoint a receiver is,  
20 actually I've been terminated as the PR. The  
21 estate has been closed.

22 So when the plaintiff in that case learned  
23 about it, near the end of the life of the case,  
24 they raised that issue. And just like what  
25 Ms. McVey did, they went to the probate court,

1 got the estate reopened -- or actually, excuse  
2 me, got the probate court to issue a subsequent  
3 administration of the estate, and appoint the  
4 same person as the PR again.

5 And they said, hey, this fixes all the  
6 problems. It cures everything. Same argument  
7 that's been presented to you today.

8 And the appellate division said, no, it  
9 does not. And, in fact, what they said was that  
10 the reappointment in the context of a subsequent  
11 administration constitutes a subsequent  
12 administration, which has no nunc pro tunc  
13 effect, and does not relay back to the initial  
14 appointment and, therefore, the counterclaim was  
15 dead and dismissed.

16 THE COURT: Did the New York opinion  
17 discuss Rule 17(a) ratification rule at all?

18 MR. SAWYER: It did not talk about real  
19 party in interest. It talked about the fact  
20 that -- but it does cite 608, which I think is  
21 critical. The impact of a termination of a  
22 personal representative. Because the statute  
23 itself says you can't work an opinion case. And  
24 ratification can't fix something when you're  
25 violating a statute. It makes no sense.

1 The code sections are in the same probate  
2 code. The drafters understood those two rules.  
3 And what they said is, yes, 701 is going to deal  
4 with the creation, the appointment, the  
5 commencement of the PR's authority.

6 608 deals with something different. That  
7 is, when you ask to get terminated or the court  
8 terminates you, what's the consequence? And all  
9 the conduct we're talking about today is post  
10 termination.

11 So that's the appropriate statute for this  
12 court to look at and the lens through which it  
13 should look at it.

14 Now, Your Honor, getting past that, I think  
15 we've addressed it hopefully fairly completely.  
16 We provided the full probate filing to you, at  
17 least as July 25th. The subsequent filings for  
18 the subsequent administration have been filed by  
19 the plaintiffs. But we wanted you to have the  
20 full probate file, at least as to the paper  
21 copy, so you can see what was submitted to the  
22 court.

23 There's a couple of other oddities there.  
24 The application for the PR, there's two  
25 questions in the probate form code or probate

1 form to be appointed to ask about the existence  
2 of pending litigation. And are you being  
3 appointed for pending litigation? That  
4 application was made while this case was  
5 pending. They didn't disclose to the probate  
6 court the existence of this case.

7 That's an oddity. I don't think it matters  
8 for today, but it is an oddity and a sworn  
9 application. But ultimately, I don't think it  
10 matters because when everything that took place  
11 that we're dealing with today happened, not only  
12 were they not a personal representative, so  
13 Mr. Park had no authority to file, but there was  
14 no estate so there was no case law. And that's  
15 really where we sit today.

16 You can't fix that on the back end.

17 Dealing with other things that were tried  
18 that -- there were attempts to fix on the back  
19 end cannot be fixed.

20 Let's deal with service. The Court's heard  
21 service but not in this case actually. I think  
22 all the service arguments happen in Tibbs. So  
23 it's worth going over that some.

24 The timeline is important here. There was  
25 a question from Your Honor about the original

1 complaint. It never alleges a factual  
2 allegation as to Cape. When it does the party  
3 allegations about jurisdiction, Cape is not  
4 listed in there. It is on the caption, but  
5 there's no factual allegation about what Cape  
6 did or did not do.

7 The First Amended Complaint does reference  
8 Cape. And then in December -- on December 23rd  
9 of 2021, I believe, and I'll check my time,  
10 that's right. The second amended complaint is  
11 file after a motion to Your Honor.

12 Shortly before that -- now I think what was  
13 put on the record today is service was  
14 accomplished in March of '22. Let's start with  
15 that, if that's true. There's no affidavit to  
16 this court about service in '22. That would  
17 require service in the Second Amended Complaint  
18 because that's the operative complaint as of  
19 December of 2021. There's never been anything  
20 filed with this court in terms of a proof of  
21 service of the Second Amended Complaint. Ever.

22 So let's look at the First Amended  
23 Complaint. There's an affirmation that's been  
24 filed with Your Honor, in October of 2023, five  
25 months after the order appointing the receiver,

1 but not at the time that the court appointed a  
2 receiver, which is the first attempt to show  
3 this Court that there was service on Cape.

4 So when the Court got the motion to appoint  
5 a receiver, when it ordered it, there was  
6 actually nothing in the file showing service on  
7 Cape. No attempt to prove it. And to this day,  
8 this is, I think, important, there's still is no  
9 proof of service as to the motion to appoint a  
10 receiver being served on Cape either. Three  
11 years after the fact or two years after the  
12 fact.

13 But what was filed in October of '23,  
14 again, after the order appointing a receiver,  
15 and apparently in response to challenges in the  
16 Tibbs case, was an affirmation from a gentleman  
17 who appears to be in the UK.

18 And, Your Honor, the problem with that  
19 affirmation is that it says a few things. One,  
20 it says that this was attempted in December of  
21 2023 or 2021. December 16th is the day that he  
22 states it would have been effective.

23 Well, a few days later, December 23rd, the  
24 Second Amended Complaint is filed. Case law is  
25 really clear. Any amended complaint renders the

1 prior complaint null. It's the operative  
2 complaint. And, therefore, if you have to  
3 serve, guess what you have to serve? You have  
4 to serve the Second Amended Complaint. And  
5 there's no affidavit as to service of the Second  
6 Amended Complaint.

7 But if you actually look at the  
8 affirmation, it is deficient under Rule 3 for  
9 service. Because Rule 3 says you have to serve  
10 two things: Summons and a complaint.  
11 Foundational rules of South Carolina Civil  
12 Procedure.

13 So what did the person signing the  
14 affirmation state that he served? I'm reading  
15 from paragraph 6 of that. On December 14, 2021,  
16 I did serve copies of the First Amended Summons  
17 in the matter on Cape PLC and Cape Intermediate  
18 Holdings Limited at the aforementioned address,  
19 and I did so rural mail, first class post.

20 He doesn't say he served the complaint.  
21 But that's not the only document we have from  
22 his affirmation to rely upon that. Your Honor,  
23 then he attaches an exhibit, cover letters for  
24 service that he used. We enclose herewith by  
25 way of service the First Amended Summons in this

1 matter. Again, no reference to the complaint.

2 And then in the enclosures, guess what's in  
3 the enclosures? You guessed it. First Amended  
4 Summons. The list of enclosures doesn't include  
5 the complaint. So this affirmation under  
6 South Carolina's simple rules, which you have  
7 the service of a summons and complaint, is  
8 defective in and of itself.

9 Judge, I'd also note that he says he served  
10 it first class mail. The stamp on the picture  
11 -- we took a picture of the envelope was one  
12 pound. And I don't think that you find, if you  
13 did some research on the postal rates of the  
14 mail during 2021, that a pound would be  
15 sufficient for a packet of this size of the  
16 summons and complaint in this case.

17 So there's no evidence of service on the  
18 complaint before the court today. And certainly  
19 there wasn't even that filing with the court  
20 when they moved to appoint the receiver.

21 So there's no proper reason for appointment  
22 of the receiver on the record. That means, of  
23 course, the Motion to Compel is a moot point  
24 because the receiver's appointment is a nullity  
25 and everything else falls from that, that

1 defect. But it's a critical issue in terms of a  
2 procedure, of course, that would be the first  
3 step, not the only step, but it's a necessary  
4 step for establishing personal jurisdiction over  
5 a defendant.

6 They also have to be properly subject to  
7 the court's jurisdiction for a slew of other  
8 reasons. Right? But service is a foundational  
9 first step to trying to establish personal  
10 jurisdiction of a defendant.

11 And the argument is, well, Cape has never  
12 appeared, Cape has never fought this, Cape's  
13 never done this, Cape's never done that. I  
14 can't speak for Cape, but what I can say is,  
15 well, if they weren't served, maybe that's why  
16 they haven't responded.

17 I don't know. I know that their position  
18 is Cape never answers anything in any  
19 litigation. I don't have any facts on that. I  
20 don't think that's been submitted to the court  
21 in terms of admissible evidence. But it really  
22 is neither here nor there. Here there's no  
23 evidence of proper service of the complaint of  
24 this case at all.

25 And I would note there have been multiple

1 times when filings have been submitted to this  
2 court to correct the record. This affirmation  
3 filed after the fact was an omitted exhibit, is  
4 what it was labeled as when it was filed.

5 Then after he pointed out the personal  
6 representative issue, he stated you get a  
7 subsequent administration. They file to this  
8 court to correct the record.

9 The defects in service have been raised, at  
10 least in the Tibbs case, for almost two years.  
11 I think that if he had served a complaint after  
12 two years, you probably would have gotten an  
13 affidavit saying that. I think it's a fair  
14 assumption since they've certainly taken steps  
15 to fix other parts of the record. Why hasn't  
16 that been fixed?

17 But it really doesn't matter because the  
18 issue is the record doesn't support service at  
19 this point as we sit here today, which is a  
20 necessary first step to everything else they're  
21 wanting to do in this case.

22 So, Your Honor, those are the procedural  
23 defects. That's the case law on the procedural  
24 defects. And if you have questions, I'm happy  
25 to deal with those and then move on to the

1 motion to compel or I can just move on to the  
2 Motion to Compel.

3 THE COURT: You can move on.

4 MR. SAWYER: Thank you, Your Honor.

5 Judge, on the Motion to Compel, the  
6 receiver's only focus is on, well, I sent them a  
7 subpoena and I want a response. And,  
8 Your Honor, you have our brief. We raise a lot  
9 of very serious issues about the process for the  
10 subpoena, the scope of the subpoena.

11 And, again, all of this is moot if the  
12 receivership is improper. An improperly  
13 appointed receiver, again, if the court lacked  
14 jurisdiction when it appointed a receiver, that  
15 order is null. Simple as that. Which means a  
16 subpoena from the receiver is null. That's not  
17 a slight on the receiver; it's just a reality of  
18 how the law works.

19 But for purposes of this argument, assuming  
20 the court finds all of those other defects are  
21 not a problem and that there was a proper  
22 appointment in 2023 so the subpoena is proper in  
23 2025, and all the other things, let's get to the  
24 Motion to Compel issue.

25 So first of all, let's deal with the issue

1 of the court's subpoena power. The reason I  
2 want to start there is because you're on really,  
3 really, really solid ground here. We're not  
4 dealing with something from some esoteric  
5 location. We're dealing with a Supreme Court  
6 decision from the South Carolina Supreme Court  
7 and then repeated Supreme Court decisions from  
8 courts all over the country dealing with the  
9 issue of the scope and jurisdiction of court  
10 subpoena power.

11 And when I talk about courts, I'm talking  
12 about Supreme Court, state highest appellate  
13 courts of Virginia, Florida, Mississippi,  
14 Colorado, Alabama, Louisiana, Nevada, the 11th  
15 Circuit, and the New Jersey Superior Court. Not  
16 the highest court but the another appellate  
17 court in New Jersey.

18 And, Judge, that's not even me doing an  
19 exhaustive search. I can't represent to you  
20 that that's all the cases because I didn't do an  
21 exhaustive search. Those are the ones I came up  
22 with in the time that I had allowed to oppose  
23 the Motion to Compel.

24 And, Judge, every one of those  
25 jurisdictions has held unequivocally that the

1 court's subpoena power does not give the court  
2 power to subpoena a nonparty, nonresident to go  
3 and search for documents or produce documents  
4 outside the jurisdiction.

5 And this court knows that that's been in  
6 the rule for forever because that's why we have  
7 letters derogatory. And that's why courts issue  
8 writs of commission, to go to the jurisdiction  
9 where defendants are located to seek discovery.

10 And courts, through comity, historically  
11 and much more recently through the Uniform  
12 Interstate Depositions and Discovery Act have  
13 recognized those things. But the recognition is  
14 that the authority stops at the borders.

15 And the courts over the party where that  
16 party is located have an interest in protecting  
17 that party from overreaching, abusive, improper  
18 discovery from another jurisdiction.

19 Now, they still often entertain that for an  
20 act of comity or now statutory comity, which is  
21 the UIDDA. But the reason the General Assembly  
22 and 48 general assemblies across the country  
23 enacted the UIDDA is because they all recognize  
24 that the subpoena power of the court doesn't go  
25 beyond its borders.

1 And importantly, Your Honor, it's  
2 oftentimes that people mix up personal  
3 jurisdiction and the court's subpoena power,  
4 which is understandable. But multiple of these  
5 cases that I've cited to, Your Honor,  
6 specifically and explicitly state that those two  
7 things are not the same.

8 Yes, you need personal jurisdiction to be  
9 able to enforce a subpoena over a nonparty, but  
10 that's not enough. Even if you had personal  
11 jurisdiction, you still have to have subpoena  
12 power over what you're asking them to do. It  
13 has to be something within the borders of the  
14 state.

15 And the Supreme Court's decision in the  
16 John Deere case is a real good example. In that  
17 case, it was really interesting that they were  
18 trying to garnish wages from a family court  
19 matter. The family court judge tried to get  
20 creative and use essentially subpoena to garnish  
21 wages from another jurisdiction. And the  
22 Supreme Court said despite the desire, despite  
23 the novel way the court was trying to do it, we  
24 don't have authority to do that because the  
25 party is not here.

1 THE COURT: Mr. Sawyer, insurance companies  
2 are very different in that regard. And all  
3 three of these insurance companies have done a  
4 lot of business in South Carolina over the  
5 years. I don't understand the concept that  
6 something like a Lloyd's or Liberty or  
7 Continental doesn't have enough presence in  
8 South Carolina when they write -- each of those  
9 companies writes a lot of business in  
10 South Carolina.

11 I do not understand the concept that they  
12 are not subject to the subpoena power of the  
13 courts of this state. How about educating me  
14 about that.

15 MR. SAWYER: I would be happy to,  
16 Your Honor. First of all, that question --

17 THE COURT: The John Deere case and some of  
18 the rest of them, I get that. But this is --  
19 insurance companies are very different and  
20 insurance companies that do business in this  
21 state are subject to the courts of this state,  
22 the jurisdiction of the courts of this state,  
23 the subpoena power and everything else about it.

24 MR. SAWYER: So a few things --

25 THE COURT: And if they don't respond, the

1 insurance commission, whether it licenses them  
2 specifically or not, can accept service for  
3 them.

4 MR. SAWYER: I will get to that because  
5 that's another argument we raised that I think  
6 is very important. But let me focus on what  
7 you're focused on, which is presence through  
8 activities in the state is enough.

9 First of all, John Deere. John Deere did a  
10 lot of business in South Carolina. Certainly  
11 did a lot of business at the time of the John  
12 Deere --

13 THE COURT: Right. The insurance industry  
14 has a bunch of material that's specific to the  
15 insurance companies that talks about this.

16 MR. SAWYER: But so does John Deere  
17 certainly has all of those things.

18 THE COURT: It's not even in the same  
19 hemisphere with a regulated industry like an  
20 insurance industry.

21 MR. SAWYER: I certainly disagree with  
22 that -- the idea that some presence for one  
23 business isn't a similar presence or another  
24 business.

25 THE COURT: We'll agree to disagree. I

1 want to hear you specifically as applies to  
2 insurance company.

3 MR. SAWYER: Certainly. So the  
4 North Carolina court that we cite, which is from  
5 Judge Diaz, when he was on the business court, a  
6 very respected court in North Carolina. Of  
7 course, Judge Diaz went from that court to the  
8 Fourth Circuit, obviously respected not just in  
9 North Carolina but on a broader scale, dealt  
10 with the issues of subpoenas to an insurance  
11 company in North Carolina, served through the  
12 North Carolina Department of Insurance, through  
13 their substitute service statute, and said the  
14 fact that you can serve them or could isn't  
15 enough, although that service wasn't proper. He  
16 said both.

17 And I'll deal with again the service issue  
18 later, but he said that that's not enough.

19 There's also the Cuomo case that we cited.  
20 I think it's NRA v. Cuomo. That's the Board of  
21 New York case, federal case. That similarly  
22 said you can't serve through this. If you want  
23 to do it, you have got to go through it the  
24 proper way. And that was Lloyd's. And said go  
25 after it, if you need.

1 So there are courts that have dealt with  
2 this in the insurance context and said that's  
3 not enough. And then all of these cases that we  
4 cite from other jurisdictions have entities with  
5 varying degrees of interaction with the state.  
6 In many of those cases, service was done through  
7 a registered agent for service in the state  
8 because they were licensed to do business in the  
9 state.

10 And what the subpoenaing parties move to  
11 compel in those cases argue is, look, they  
12 submitted to the jurisdiction of the state.  
13 They're allowed to be served here. They've got  
14 a registered agent. We serve a registered  
15 agent. That's enough.

16 And the courts repeatedly say, no, personal  
17 jurisdiction is not the same as the court's  
18 subpoena power. And here, Judge, we submit --

19 THE COURT: Wait a minute. We're not  
20 talking about -- we are talking about the  
21 ability to subpoena the records of an insurance  
22 company that does business in the state and  
23 writes policies in the state pertaining to those  
24 policies.

25 MR. SAWYER: Well, except -- let's be clear

1 here. Pertaining to policies allegedly or  
2 potentially issued to an entity of the UK. I  
3 don't think we can ignore that that's what these  
4 subpoenas are supposed to be.

5 THE COURT: I don't see that. The question  
6 is whether they've got insurance that covers  
7 torts committed in this state.

8 MR. SAWYER: Well, Judge, in terms of  
9 activity, I don't think that's all that we look  
10 at. And obviously, Your Honor, you and I have  
11 mentioned this repeatedly about insurance  
12 policies in the state. I'd be remiss if I  
13 didn't mention Howard v. Allen. I know we have  
14 a disagreement on --

15 THE COURT: I understand.

16 MR. SAWYER: But I have a strong, strong  
17 belief on what Howard v. Allen says. So I'll  
18 note that, preserve that. We've noted it in our  
19 brief as well.

20 So we'll obviously always disagree on  
21 whether liability policies are properly issued  
22 within the state -- or issued out of the state.  
23 I understand that. I don't want to hammer that  
24 whole point. We have a disagreement. Maybe one  
25 day I'll get fortunate enough to get the

1 appellate courts to find out if I'm wrong. I  
2 might find out I'm wrong. Who knows. But for  
3 now, we'll leave it at that.

4 Your Honor, these courts -- all of these  
5 courts we cite, seven state supreme courts say  
6 that presence is not enough. Again,  
7 North Carolina, doesn't matter if it's an  
8 insurance company. Because the documents aren't  
9 there, the people aren't there. And we provide  
10 you affidavits in our opposition for Liberty,  
11 for Certain Underwriters of Lloyd's, for  
12 Continental, that tells you that the people who  
13 do this search are not located in  
14 South Carolina. The people who do the search  
15 are over where the home offices are or in Boston  
16 or for Lloyd's of London.

17 So you'd be subpoenaing persons to go to a  
18 search that are not inside the state. And  
19 that's what the recognition was from all of  
20 these jurisdictions. From the Yelp decision,  
21 which is California but a Virginia case. Yelp  
22 is everywhere. It's ubiquitous. It reviews  
23 everybody.

24 But the Virginia court said we can't go and  
25 tell Yelp, whose personnel who do this search

1 are located in California, we can't tell those  
2 people to do that search in California just  
3 because Yelp can be served here or does business  
4 here. Even if they're ubiquitous there.

5 Poultry Growers Association, case in  
6 Alabama, is the same. All the cases we site are  
7 the same.

8 And, Judge, this is not a  
9 you-have-no-solution problem. Before the UIDDA,  
10 you could issue a writ of commission. They  
11 could take it to these places and get a court  
12 there, if the court found it appropriate to  
13 issue a subpoena and enforce that subpoena. The  
14 UIDDA just makes it that much easier because the  
15 UIDDA codifies the process for doing that.

16 What's interesting is 48 states have  
17 adopted the UIDDA. And the UIDDA says what  
18 court controls that subpoena and controls the  
19 motion to compel and an order compliant with  
20 that subpoena. It's the discovery state. It's  
21 the state where the party being subpoenaed is.  
22 Because those courts have an interest in  
23 protecting the people in those states or the  
24 businesses in those states.

25 And the General Assembly of South Carolina

1 has obviously adopted the UIDDA.

2 And what the Virginia Supreme Court says is  
3 the General Assembly's adoption of this is its  
4 recognition of this important principle and its  
5 adoption of this principle. And, in fact, the  
6 UIDDA, South Carolina's version, as well as the  
7 others, say that the statute is supposed to be  
8 construed uniformly amongst the states that have  
9 adopted this uniform act.

10 It's a comity. And if states treat it  
11 differently from one state to the next, it  
12 erodes the usefulness of that act as other  
13 states may choose to do the same.

14 So the Virginia court said this is evidence  
15 of the state General Assembly's intent because  
16 they adopted it. South Carolina adopted it.  
17 Same thing.

18 And there's a solution to do this. If they  
19 believe the subpoenas are proper, they can go  
20 serve the subpoenas where they are supposed to  
21 be done via the proper process, whether that be  
22 UIDDA or writ of commission. And then if  
23 there's a fight over the propriety or scope of  
24 the subpoena, the court in those jurisdictions  
25 can hear that and say, hey, Continental, comply

1 fully, or it can say, hey, this is too broad,  
2 here's what you have to comply with, or it can  
3 say, hey, this is all improper. No.

4 But that's the Court's job where the  
5 discovery state is and as established by the  
6 UIDDA adopted by South Carolina and 47 other  
7 jurisdictions.

8 THE COURT: Well, assume for a minute the  
9 court would have submitted to it something like  
10 Mr. Protopapas submitted to us in the argument  
11 he just made, that indicates the issuance of a  
12 policy by Lloyd's for the years 2009 to 2010  
13 that covers Cape for asbestos liability,  
14 wherever Cape incurs that kind of liability.

15 You're telling me that under that set of  
16 circumstances those records could not be  
17 subpoenaed by a South Carolina subpoena?

18 MR. SAWYER: Let me answer two things.  
19 First of all, just a note. The court gave us a  
20 briefing schedule. Gave the reply deadline.  
21 Mr. Protopapas never submitted this in reply or  
22 response -- I'm bringing up today, I know  
23 nothing about it is my point.

24 THE COURT: Well, that's fine.

25 MR. SAWYER: So I think asking some

1 questions about, you know what, I've had  
2 forewarning submitted, you know, in accordance  
3 with the court's briefing schedule, I could know  
4 something about this maybe today. I don't.

5 THE COURT: If we've got to do something  
6 about that, we will, Mr. Sawyer. The question  
7 I'm asking is simply this: If it can be shown  
8 that there's a policy of insurance or the  
9 possibility that there's a policy of insurance  
10 that actually covers a defendant that has  
11 refused to cooperate with this court, that has  
12 been sued in this court, let's just put aside  
13 for a moment all the squabble we've got going  
14 about how they were served and so forth.

15 But we've got a foreign defendant who,  
16 evidence would show, has some insurance to cover  
17 torts that it has alleged that foreign entity  
18 caused to occur in the state of South Carolina  
19 that were written by a Lloyd's, for example,  
20 you're telling me that we couldn't subpoena that  
21 information?

22 MR. SAWYER: So I'm saying that a  
23 South Carolina court cannot issue the subpoena.  
24 Not that it cannot be subpoenaed. And that's an  
25 important distinction. What I'm saying is the

1 subpoena has to be served where it's supposed to  
2 be served.

3 THE COURT: Where would that be in this  
4 case?

5 MR. SAWYER: Yeah, so --

6 THE COURT: Where would that be in this  
7 case?

8 MR. SAWYER: It's where these insurance  
9 companies are located, which they're in the  
10 affidavits that I provided to the court.

11 THE COURT: Well --

12 MR. SAWYER: I don't have them.

13 THE COURT: So that would be in the UK?

14 MR. SAWYER: I think one is Boston, one is  
15 Illinois, and one is UK. That's what seven  
16 state supreme courts have held. That's what the  
17 UIDDA recognizes. I'm not going out on a limb  
18 saying that.

19 And it's not anything to degrade or dismiss  
20 this court because this court will receive  
21 subpoenas under the UIDDA from all over the  
22 country. And it follows the UIDDA just the same  
23 way to protect the citizens of South Carolina.  
24 So it's not a matter of can it be subpoenaed,  
25 it's matter of what court decides about the

1 subpoena and where the subpoena is issued from.

2 And this case, the subpoenas have to be  
3 issued. And, again, I apologize, I'll mix up if  
4 I say where Liberty is versus where Continental  
5 is. We know Lloyd's operates out of London.

6 THE COURT: All right. I understand the  
7 argument you're making.

8 MR. SAWYER: Sure. And, Your Honor, I  
9 would note, it's significant on Bates number Aon  
10 8, page 15, of what was handed up. Again, from  
11 looking at this for a matter of minutes, the  
12 country of origin, United Kingdom. There's  
13 nothing here that said this was issued in  
14 South Carolina, and nobody would think that a  
15 policy issued to Cape, a UK entity, would be in  
16 South Carolina. Plus, we're dealing with the  
17 2009 policy.

18 But, Your Honor, those are all extra  
19 points. I don't want to get bogged down on  
20 that. Let's deal with service.

21 I know the Court has looked at this --  
22 actually, I don't think the Court has ever  
23 looked at this issue. I note that I wanted to  
24 raise it for many years, and I never had the  
25 chance. So I've got my chance. I'm a little



1 excited. If I get over my skis a little bit,  
2 back me off a little bit. How about that?

3 There are two substitute service statutes  
4 that authorize the Department of Insurance to  
5 accept service for insurance companies. They  
6 actually fit hand in hand. One says, To  
7 operate, the insurer shall give the Department  
8 of Insurance certain authority. And the other  
9 one says summons shall be done in this way. So  
10 they're really dovetailing each other for a  
11 complete picture.

12 And, Judge, I'll start with Section  
13 15-9-270. This is the statute that's titled  
14 Service on Insurance Companies. And it says at  
15 the beginning, The summons and any other legal  
16 process and any action or proceeding against it  
17 must be served on an insurance company as  
18 defined in the statute ... through Department of  
19 Insurance.

20 Summons and any other legal process and any  
21 action or proceeding against it is important  
22 language. You have the same language in the  
23 appointment statute which it says that insurance  
24 companies have to appoint the Department of  
25 Insurance to be able to do this. And that's

1 Section 38-5-70. Every insurer shall, before  
2 being licensed, skip a little ahead, designate  
3 the director of successors as the lawful  
4 attorney upon whom all legal process in any  
5 action or proceeding against it must be served.  
6 An action or proceeding against the insurance  
7 company.

8 And, Your Honor, a subpoena to a nonparty  
9 is not an action or proceeding against a  
10 nonparty. This is for case initiating  
11 documents, for documents that are bringing  
12 actions or proceedings against an insurance  
13 company.

14 THE COURT: Well, then what would the  
15 meaning of nonparty be?

16 MR. SAWYER: Excuse me. What do you mean  
17 by meaning of nonparty?

18 THE COURT: You're saying that this doesn't  
19 include a proceeding against a nonparty.

20 MR. SAWYER: Well, no, what I'm saying  
21 is -- no, what I'm saying is that there's no  
22 proceeding against the insurance company because  
23 the subpoena is not a proceeding against an  
24 insurance company. It's a request for  
25 documents. There's no summons and complaint.

1 There's no assertion of claims against an  
2 insurance company.

3 THE COURT: So the word proceeding, in your  
4 view, is a -- the initiation of a lawsuit  
5 against the person being subpoenaed. That means  
6 nobody else but the people that are sued could  
7 ever be subpoenaed.

8 MR. SAWYER: No. What I'm saying is that  
9 the service statute is only for actions or  
10 proceedings against the insurance company. A  
11 subpoena to a nonparty is not action or  
12 proceeding against an insurance company.

13 THE COURT: So you're saying that the  
14 substituted service provisions in the Department  
15 of Insurance cover only initiation of summons  
16 and complaint against an insurance company?

17 MR. SAWYER: Or a similar thing. That it's  
18 a proceeding against the insurance company.

19 THE COURT: What else would a proceeding --

20 MR. SAWYER: There may be administrative  
21 proceedings that I'm not aware of, so I don't  
22 want to -- I don't want to be more narrow than  
23 what the statute is, but I certainly don't think  
24 the statute permits any interpretation that a  
25 subpoena to a nonparty is an actual proceeding

1 against it.

2 And I'm not getting that out of thin air.  
3 That's what Judge Diaz said. He actually puts  
4 an emphasis against it or against the insurance  
5 company. And the quote in his decision, and we  
6 quote to you in the brief. Because he says,  
7 yes, I have no problem with the idea that a  
8 subpoena is processed. That's not shocking to  
9 the court. But it's not an act or proceeding  
10 against an insurance company.

11 And the statute is a little bit different.  
12 He actually uses the phrase against the  
13 insurance company, I think. He emphasizes it.  
14 Which is significant. He says it's not a  
15 proceeding against them. The statute's for  
16 case-initiating-type proceedings, not for  
17 subpoena. And that's why he says the service  
18 through the part of insurance in North Carolina  
19 was improper for a subpoena.

20 And the NRA v. Cuomo case, their statute  
21 again, a little bit different, but same result.  
22 It's not a proper basis for the department to  
23 accept service on.

24 Again, this doesn't mean a subpoena can't  
25 be done. It emphasizes the subpoena has to be

1 done in the right place. This makes sure that  
2 the insurance company, when it's getting sued in  
3 South Carolina for something, whether it should  
4 be sued in South Carolina, that the plaintiff  
5 can serve the Department of Insurance and  
6 doesn't have to find out where Progressive  
7 Direct versus Progressive Northern versus  
8 Progressive Home may be located and serve the  
9 right entity.

10 It doesn't say, hey, this is a one all, you  
11 can serve them with anything you want no matter  
12 what. It says action or proceeding against it.

13 And, Your Honor, this is important because  
14 in South Carolina substitute service statutes  
15 are deemed in contradiction of the common law  
16 and must be narrowly construed. That's been the  
17 law in South Carolina for many, many years. The  
18 South Carolina Supreme Court held that in  
19 Seubert versus Buchanan at 250 S.C. 140. It's a  
20 1967 Supreme Court case. That notes the  
21 derogation of common law.

22 It says, quote, Substituted service must  
23 conform to the statute which authorized it.

24 Justice Kittredge, just as early as two  
25 years ago in the Denson case, reiterated that,

1 moreover legislation and derogation of common  
2 law must be strictly construed under several  
3 principles enunciated by this court.

4 And you, Your Honor, wrote, when you were I  
5 think at the time acting Chief Justice in the  
6 Gilfillin case in 2001, that statutes in  
7 derogation of common law must be strictly  
8 construed, and I'll quote, We will not extend  
9 the application of a statute beyond the clear  
10 legislative intent.

11 And, Your Honor, Judge Diaz, in his order,  
12 notes that substitute services in derogation of  
13 common law and says it has to be strictly  
14 construed. That was part of his reasoning in  
15 that decision. The same rule applies here.  
16 Strictly construed what is an action or  
17 proceeding against the insurance company.

18 THE COURT: I think I get this argument.

19 MR. SAWYER: That's fine, Your Honor.  
20 Sorry for beating a dead horse. I've wanted to  
21 raise it for a long time. Thank you for letting  
22 me.

23 THE COURT: I know. Yes, sir.

24 MR. SAWYER: Your Honor, I guess let me  
25 look at my notes before I get off of the Motion

1 to Compel issue because we'll deal with the  
2 moral fraud issue, which I know will be more  
3 fully fleshed out in Tibbs. But since it's  
4 being brought up now, I will also deal with it  
5 now.

6 Again, Your Honor, just one other note.  
7 The John Deere case is a South Carolina case.  
8 And then Florida, Virginia, Alabama, and  
9 Eleventh Circuit cases all dealt with services  
10 of subpoena in the state through registered  
11 agents for service process. All those courts  
12 held that wasn't enough to give the court  
13 subpoena power. So well established in that  
14 regard as well.

15 We talked about lack of personal  
16 jurisdiction. There's obviously a general  
17 jurisdiction. Specific jurisdictions, your  
18 actual connection with this matter. There's no  
19 allegation of issuing of a policy in  
20 South Carolina.

21 In fact, here the claim would be policies,  
22 if they exist, would be in the UK. So I don't  
23 think there's a basis for specific jurisdiction.  
24 But again, even if you have personal  
25 jurisdiction over the insurance company, that's

1 not the same as the court's subpoena power. And  
2 all those cases that we just talked about deal  
3 with that.

4 Service is improper. I'm raising the AARP  
5 case, that's Judge Diaz. The NRA v. Cuomo,  
6 that's New York. Talk about the rules of  
7 construction. Let me get to Rule 45, subpoenas,  
8 and burden and that sort of thing, because  
9 there's also issues with that, Your Honor. If  
10 we get to that point, I've lost the war and  
11 maybe I can keep a couple of strongholds,  
12 Your Honor.

13 Your Honor, we've also raised the fact that  
14 the subpoena is overbroad, burdensome. One of  
15 the most obvious ones is one that you have ruled  
16 on multiple times in the past, which is the  
17 subpoena asked for additional insured  
18 information. And there's no information  
19 provided in connection with that.

20 It says Cape and its affiliates and all the  
21 other terms they use to say anybody who ever may  
22 have been somewhat affiliated with Cape. We  
23 don't have a list of what those other entities  
24 are, so we're left to guess. Or my clients are  
25 left to guess, I should say.

| Page 114                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 116                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 So there's those problems in terms of just<br/>2 the simple fact that it's impossible to comply<br/>3 with the subpoena as written in a way that we<br/>4 could say, hey, we have given you everything.<br/>5 We can try to, but there's going to be a lot of<br/>6 question marks. And that can be dealt with<br/>7 through, you know, properly extrajudicial what --<br/>8 who made the requirement to name Cape as an<br/>9 additional insurer.</p> <p>10 I can't imagine who that would be, frankly,<br/>11 but I'm not that creative. So maybe there's a<br/>12 very reasonable thing to list that.</p> <p>13 What it can be is a list of 10,000 entities<br/>14 or a thousand entities that creates a burden<br/>15 that again violates Rule 45. Because Rule 45<br/>16 expressly states as to nonparties, the party<br/>17 issuing the subpoena has a duty to avoid<br/>18 creating undue burden. Baked into Rule 45 to<br/>19 protect nonparty recipients of subpoenas for<br/>20 good reason. They're not in litigation. They<br/>21 can't seek costs at the end of the day. So<br/>22 they're protected by Rule 45.</p> <p>23 Your Honor, there's privilege issues. They<br/>24 ask for claims, underwriting files, things like<br/>25 that that are likely to have privileged</p> | <p>1 thinks about it. But I also know that one of my<br/>2 clients in this subpoena issue is Certain<br/>3 Underwriters at Lloyd's London. They're not a<br/>4 party in Welch. They're not a party in Tibbs.<br/>5 They're not a party here. But they operate out<br/>6 of London and there's a UK high court order<br/>7 saying something about the receiver's<br/>8 authorities.</p> <p>9 And a nonparty is put in a really<br/>10 difficult --</p> <p>11 THE COURT: I don't see the bind you're put<br/>12 in at all in that regard. I really don't.<br/>13 There's no suggestion that even in the very<br/>14 broad parameters of the order of the British<br/>15 court that its reach would extend to voluntary<br/>16 cooperation or to any other kind of cooperation<br/>17 processes in this country. So we don't need to<br/>18 spend a lot of time on that.</p> <p>19 MR. SAWYER: Just to note on the record, I<br/>20 think my client has a significant concern.</p> <p>21 THE COURT: I know that. The Supreme Court<br/>22 is the arbiter of that, not me. So that's just<br/>23 not an argument that I think is something I need<br/>24 to be getting into.</p> <p>25 MR. SAWYER: I'll put on the record and</p>         |
| Page 115                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 117                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>1 communications. Especially when you're dealing<br/>2 with potentially policies that aren't issued to<br/>3 CIHL, or whatever may be the actual entity and<br/>4 receivership.</p> <p>5 THE COURT: This whole issue would be<br/>6 something you get to with a lot more showings<br/>7 than have been made now because this is not the<br/>8 centerpiece of the discussion now. It's the<br/>9 validity of the service, et al. You know, I've<br/>10 read your material. I know what it says. But I<br/>11 don't think that's a key issue right now.</p> <p>12 MR. SAWYER: I don't think it's a key<br/>13 issue, but I do think that if the Court ends up<br/>14 ruling that the subpoena is properly served,<br/>15 enforceable, and enters an order enforcing the<br/>16 subpoena, I've got to raise the problems of --</p> <p>17 THE COURT: I understand all that. I think<br/>18 you've raise it adequately.</p> <p>19 MR. SAWYER: One other thing on burden<br/>20 before I get to everything else. And I realize<br/>21 this is touchy subject, but I also cannot ignore<br/>22 the existence of the subject, and that is the<br/>23 existence of this UK high order.</p> <p>24 And I know what the Supreme Court has<br/>25 indicated in Welch. I know what this court</p>            | <p>1 I'll move on because I understand Your Honor.</p> <p>2 THE COURT: It's on the record.</p> <p>3 MR. SAWYER: I'll be very quick. Which is<br/>4 just Rule 45, again, baked in, cannot put an<br/>5 undue burden. And for Lloyd's in particular,<br/>6 that is a significant burden to have two courts<br/>7 saying two different things. And they are not<br/>8 in a position --</p> <p>9 THE COURT: My friend, that happens all the<br/>10 time state to state and country to country.<br/>11 That's not something that somebody in my<br/>12 position in the chain of authority is going to<br/>13 need to worry about.</p> <p>14 MR. SAWYER: Okay. Well, unfortunately, my<br/>15 client is worried about it.</p> <p>16 THE COURT: Well, that's fine. I'm not the<br/>17 person that's going to give them much relief in<br/>18 that regard.</p> <p>19 MR. SAWYER: And, Judge, the only other<br/>20 thing in terms of scope, Ms. Park's complaint<br/>21 says she was exposed, again, in the mid 1960s.<br/>22 The subpoena asks beginning in the 1930s.<br/>23 Welch -- I think one thing Welch was clear about<br/>24 was that the property that's subject to the<br/>25 receivership or the receiver's scope is limited</p> |

1 to the assets that could be responsive to the  
2 claim of the party that sought the appointment.  
3 In that case, Welch.

4 If her exposure begins in 1960, then the  
5 subpoena should be limited to 1960. Shouldn't  
6 date back to 1930 or earlier because those  
7 policies could be not responsive to somebody  
8 that wasn't exposed until the 1960s.

9 THE COURT: Well, as we know, there's a  
10 whole other dimension to this thing. You are  
11 going after things that are so far away from the  
12 main argument, I'm not going to entertain too  
13 much more of this.

14 MR. SAWYER: That was actually my last  
15 point on this.

16 THE COURT: Well, the reason that you put  
17 stuff like that in these kind of documents is  
18 because some of those policies are written in  
19 the old fashioned way, where they are per  
20 occurrence policy. Mesothelioma is a disease  
21 with a long tail of between exposure and  
22 disclosure or discovery.

23 And for that reason, some of these  
24 policies -- some of those subpoenas and other  
25 discovery requests in these mesothelioma cases

1 go way back before the exposure takes place  
2 because there are some policies that would still  
3 be viable depending on how they are written in  
4 terms of exposure.

5 So I'm not going to pick down to a granular  
6 level like that. Thanks for that argument.  
7 It's noted.

8 MR. SAWYER: All right. I'll move on then  
9 to the Cape moral fraud issue, which, again, as  
10 was noticed before we came in today, my  
11 understanding was that that issue was going to  
12 dealt with in Tibbs, frankly to be dealt with  
13 first.

14 So I may be a bit of a fish out of water on  
15 that being a nonparty subpoena opposer having to  
16 deal with that weight. But I will do my best to  
17 at least address it. Others can do it much  
18 better.

19 THE COURT: I don't think you can add much  
20 to what your brothers on your side of the fence  
21 are going to say about this, Mr. Sawyer.

22 MR. SAWYER: They have raised it quite  
23 well.

24 THE COURT: Briefly.

25 MR. SAWYER: Briefly. Thank you,

1 Your Honor.

2 First, Welch dealt with current activity to  
3 avoid or hideaway assets. The claim at least by  
4 the Supreme Court, their finding was that Atlas  
5 had recently or actively tried to enter  
6 agreements that could highway insurance and it  
7 represented to the court there was no insurance.

8 That's active attempts to hide assets.

9 THE COURT: That was part of it, but Welch  
10 covered a lot of other things.

11 MR. SAWYER: At of things they did in your  
12 case, that they were accused of disregarding  
13 your orders in that case.

14 THE COURT: I'm just saying that's not  
15 dispositive based on the other things that  
16 happened in Welch. Welch has had that dimension  
17 to it but also had a long history. ACL had a  
18 long history in that regard.

19 MR. SAWYER: I think the Supreme Court had  
20 two bases that it stated for a point of  
21 receiver. One was the active litigation conduct  
22 in your court; and two was that issue about the  
23 insurance and the risk of those assets that was  
24 a current risk.

25 THE COURT: Its analysis of moral fraud did

1 not just cover the time parameters when I got  
2 this case, it was a broader analysis than that.

3 MR. SAWYER: I will note Virginia Chemical  
4 case, which is one of the receiver's favorite  
5 cases to cite. Same thing. The defendant there  
6 was actively signing away land, deeding away  
7 land to family members to avoid his liabilities,  
8 including the fact that he had just been charged  
9 with manslaughter -- convicted of manslaughter.

10 Sounds a lot like Murdaugh, which, by the  
11 way, the evidence in the motion to appoint a  
12 receiver for Murdaugh was replete with evidence  
13 of him trying to squander his assets away to his  
14 family to protect it from predators.

15 THE COURT: We have no averment about that  
16 here that involves the continuing activity of  
17 the company. You know, that's away, away from  
18 what you need to be arguing on behalf of your  
19 insurance clients. So others will cover that,  
20 but I don't think I need to plow that ground a  
21 whole bunch of times.

22 MR. SAWYER: I'll try to be quick. There's  
23 a few more points. One in terms of active  
24 versus past. I listened to all the dates that  
25 Ms. McVey listed in her recitation of the moral

1 fraud activities of Cape. All of them are 1977,  
2 1978, or long before that. Fifty years ago.

3 There's no asset they're alleging currently  
4 is being squandered away by Cape. Not alleged,  
5 not in a motion that's before you. It's not in  
6 a file that's before you in the Park case.  
7 There's nothing that says there's an active  
8 thing. There wouldn't be if this was done 50  
9 years ago. I should say I wouldn't expect there  
10 to be. I don't know.

11 THE COURT: Mr. Sawyer, again, the clash of  
12 that is going to be the clash of people other  
13 than yourself. Their allegation is that Cape's  
14 legacy is the activity of folks that now own it,  
15 and it is an unbroken series of activities in  
16 aid of not living up to their responsibility  
17 about these torts.

18 So that's not something you need to get  
19 into. There are other people who are going to  
20 argue to me. You've had a good, long time at  
21 the podium.

22 MR. SAWYER: As long as I can adopt  
23 whatever they argue at the end of it, we're  
24 good.

25 THE COURT: That's what you always do.

1 That's not going to change. That's already been  
2 done in your pleadings.

3 MR. SAWYER: Well, I haven't adopted all of  
4 their pleadings. As long as I'm able to do that  
5 at the end, I'm happy to sit down. I think I've  
6 said my part. If I'm allowed to do that again.

7 THE COURT: Yes, sir.

8 MR. SAWYER: Thank you, Your Honor.

9 THE COURT: All right.

10 All right. Now, the question is what to do  
11 now, whether to go back to Ms. McVey and the  
12 receiver, which is what I'm inclined to do. But  
13 I have this nonparty Travelers memo in  
14 opposition.

15 Travelers, as I understand it, is not a  
16 party in Tibbs. Am I right about that?

17 MR. PROTOPAPAS: You are correct,  
18 Your Honor. And we have reached resolution.  
19 And that opposition memo does not need to be  
20 considered, is my understanding.

21 THE COURT: All right. So I can strike  
22 that off the list of things I need to take into  
23 account.

24 MR. PROTOPAPAS: Yes, Your Honor.

25 THE COURT: Travelers?

1 MR. CARROLL: Yes, ma'am. Your Honor, Todd  
2 Carroll with Travelers. I'm joined by Connor  
3 Reed.

4 THE COURT: Well, who is really the author  
5 or what we're talking about right here?

6 MR. CARROLL: Well, Your Honor, I'm the one  
7 who signed the document. But when you were  
8 reciting the agenda this morning, when you got  
9 to that, you seemed to indicate that you thought  
10 it was about the bench brief. It's not. It was  
11 a -- it was the same motion that Mr. Sawyer --

12 THE COURT: It's the same motion that  
13 Wesley Sawyer is making. I understand that now.

14 MR. CARROLL: Correct. And it's been  
15 withdrawn.

16 THE COURT: And it's been withdrawn.

17 MR. CARROLL: Yes, ma'am.

18 THE COURT: All I need to do is strike that  
19 off?

20 MR. CARROLL: Yes, ma'am.

21 THE COURT: Okay. We got it.

22 All right. Very briefly, my friends, in  
23 reply, and then we're going to shut this down  
24 and go to lunch and come back and hopefully do  
25 the rest of this today. At least that would be

1 my desire.

2 All right. Mr. Protopapas.

3 MR. PROTOPAPAS: Your Honor, just very  
4 briefly cause it's the tail end of Mr. Sawyer's  
5 argument so I'll do three things very quickly.

6 One, just to refresh the Court's  
7 recollection, you did indeed rule on these  
8 service issues before with Lloyd's. But  
9 Mr. Sawyer was not the lawyer for Lloyd's at  
10 that time. At that time I believe it was  
11 Mr. Rawl.

12 THE COURT: That's correct.

13 MR. PROTOPAPAS: You issued an order on  
14 March 22nd of 2024 in regards to ACL and Lloyd's  
15 compelling Certain Underwriters of Lloyd's,  
16 Resolute, Lloyd's of London, and so forth, where  
17 they raised those similar type arguments.  
18 That's one.

19 Two, I note to the Court that Ran Oren,  
20 which is attached to my motion to compel,  
21 Mr. Oren's letter of May 7th telling Lloyd's do  
22 not cooperate with the receiver in his attempt  
23 to find assets as a part of this continuing  
24 pattern.

25 And finally, Your Honor, I will

reference -- I will reference the Welch opinion, Your Honor, which I thought was a complete victory and a complete affirmation of this Court's proceeding when it says, "We hold any insurance assets owned by Atlas Turner that may cover Mr. Welch's injuries are properly within the receivership estate, meaning those insurance assets are within South Carolina's exclusive jurisdiction."

They have an asset that's in the exclusive jurisdiction of this Court. And I just raise those three points briefly, Your Honor.

Thank you so much.

THE COURT: Hang on for a minute. He's got a little bit of a -- kind of sideways approach to that subject. He doesn't argue at all about the asset in its presence here. What he argues instead is the only service requirements with regard to the nonparty subpoenas, much like Judge Diaz talked about in the North Carolina case, the typical, more usual subpoenas to insurance companies for information about policies.

Tell me why it's different here in the light of what's said in Welch and otherwise.

MR. PROTOPAPAS: Yes, Your Honor. So our Code 38-5-70 and 15-9-270 work together to appoint the Department of the Director of Insurance to accept summons and other process.

And as the Court knows, the commencement of the civil action is by summons and complaint, they could have said summons and complaint. It said process. And it is to allow people like South Carolinians, who are looking to recover for a personal injury, to find out what asset is there.

It could be Rule 33, our standard interrogatories. It could be through these two statutes. This insurance is properly before the court to address a South Carolinian's injury. And so 38-5-70, all legal process.

THE COURT: What do you do with the UIDDA and the decisions like the North Carolina decision Diaz authored?

MR. PROTOPAPAS: I think you can utilize that tool if the entity is not registered with our Department of Insurance. But once they register with our Department of Insurance, they subject themselves, and that's what our case law references. It is giving our courts -- the

procedures were intended by the legislature to be methods of obtaining jurisdiction over a foreign insurance company. That's Equilease Corp v. Weathers, 272 S.E.2d 789.

So if they're not registered to do business, and many insurance companies are not registered to do business in this state. I can certainly go through that other format. But our courts and our statutes and our legislatures say all process.

And so we are attempting to find an asset that is within the exclusive jurisdiction of this Court. And this Court addressed these issues with ACL and Atlas Turner where we ended up finding, if you ask the right question, there's a billion dollars of insurance for ACL.

And so the question -- I've been trying to ask the right question over and over again. I think I finally asked the right question.

And so in my mind, Your Honor, when I look at the statutory provisions, and our case law, all process can be accepted by the Department of Insurance, and I must serve it on the insurance company. I did that. I must deliver two copies. I did that. And these procedures then

are intended to bring them before this Court.

THE COURT: They got a whole lot of other questions about what you did in that regard, but we're concentrating right now on the service on the Department of the Insurance. And tell me again, what you mean by registered with the Department of Insurance.

Are you taking the position that Lloyd's, Liberty, and Continental are certainly -- well, those three companies that Mr. Sawyer represented have some different status because they are registered in South Carolina?

MR. PROTOPAPAS: Yes, Your Honor. Every insurer shall, before being licensed, appoint in writing the director and its successors in office --

THE COURT: And are those three companies registered in South Carolina?

MR. PROTOPAPAS: I attached a response from the Department of Insurance --

THE COURT: I think the answer is yes.

MR. PROTOPAPAS: Yes. I believe the answer is yes. I'm pulling up the letter from the Department of Insurance, which was Exhibit B in my motion. And they forward those to

1 continental Casualty. They forward them to  
2 Liberty Mutual Insurance Company. And they  
3 forward them to underwriters at Lloyd's of  
4 London.

5 So I served the Department of Insurance  
6 Exhibit B to my motion is the South Carolina  
7 Department of Insurance acceptance and  
8 forwarding of that process. And so I believe  
9 the Department of Insurance did what it's  
10 supposed to, forward it on. And if the asset is  
11 there, and they're not willy-nilly subpoenas, I  
12 understand the additional insured is a tricky  
13 question.

14 All I can tell Your Honor is I have reason  
15 for it, which was the Aon paragraph of how they  
16 define their own insureds. I'm trying to use  
17 their words to them. I'm trying to get -- ask  
18 the right question. If I ask the right  
19 question, perhaps I find the 50 million pounds  
20 insurance policy capable of covering Ms. Park's  
21 injuries.

22 THE COURT: Now, what do you say to the  
23 argument that going back to the 1930s is way,  
24 way over reaching?

25 MR. PROTOPAPAS: Your Honor, on that

1 specific issue, I'm more than happy to reform it  
2 to the 1960s to present. That's perfectly fine  
3 with me. It's just what the hope was if they  
4 find it -- if somebody calls me and says we  
5 can't go back that far, Peter. Fair enough.

6 But if they can, and if they can give me --  
7 unlock another piece of information and another  
8 piece of information.

9 And I would give the Court the example of  
10 ACL. Where 46 times somebody represented to you  
11 there's no insurance to tender to. And that  
12 representation obviously, I guess it was '23  
13 now, if you go by the named insured on the  
14 policy was adequate.

15 But if you go by the additional insured or  
16 if you keep asking the question in a way -- you  
17 know, the 2009 policy is now -- maybe it opens  
18 up ten years of historical coverage or people  
19 tend large --

20 THE COURT: I understand that, but, you  
21 know, when you go back way beyond what the --  
22 you know, back years before this exposure took  
23 place, you don't really have much of an argument  
24 that there's a high probability that you're  
25 going to find something that covers something

1 that's 20 years or 30 years pre the exposure.

2 MR. PROTOPAPAS: And I'm fine with  
3 reforming the subpoena to be post 1960 policies.

4 THE COURT: Okay. What else?

5 MR. PROTOPAPAS: That is it, Your Honor.

6 THE COURT: All right. Ms. McVey, I  
7 hesitate to call on you.

8 MS. MCVEY: I'm happy to even not stand up,  
9 but I didn't know if you wanted me to respond to  
10 a few of his arguments or not.

11 THE COURT: Well, I'm covering all my  
12 bases, but I'm not begging you to.

13 MS. MCVEY: The only thing I will say is  
14 you have ruled about the service on the Park  
15 case was proper in Cape. You had a day-long  
16 hearing. You issued an 80-page order. That  
17 issue is done, as far as I'm concerned.

18 I have walked you through why the cases  
19 that Mr. Sawyer and others rely on about the  
20 closing of the estate. It's not applicable  
21 here. The cases they rely on talk about  
22 jurisdiction at the beginning of a case when a  
23 case is filed. We have had that here. We had  
24 jurisdiction. There was a mistake. The estate  
25 was closed. We reopened it. It can be ratified

1 again. Otherwise, the statute 701 makes no  
2 sense, nor does 17(a), nor does Fisher, which  
3 tells you you have no discretion but to allow us  
4 to cure it.

5 THE COURT: So in sum, all right, kind of  
6 heart and soul of that is we sued Cape before he  
7 got -- before this estate was closed?

8 MS. MCVEY: Sued and served.

9 THE COURT: And served --

10 MS. MCVEY: Yes, ma'am.

11 THE COURT: -- before the estate was  
12 closed. That's your argument. And so beyond  
13 anything else, the action commenced at a time  
14 when there wasn't any question but what he had  
15 the authority to commence.

16 MS. MCVEY: Absolutely. And while he was  
17 still PR, Cape's answer was due. Okay. Which  
18 they never have responded to and still haven't.  
19 So I don't even think they have standing to  
20 raise these issues, but if they do, then we have  
21 statutes and case law that protect us on it and  
22 allows us to correct it, which is what the court  
23 has directed us to do. There's no prejudice to  
24 anybody here with that.

25 THE COURT: One thing I never did ask, and



1 I don't want to open a whole can of worms. It  
2 will be explored when we get to the bigger  
3 question of Tibbs anyway, and that is this: Why  
4 did you never put them in -- ask for an order of  
5 default?

6 MS. MCVEY: So that's a valid question, and  
7 that is a thought that we had had based on past  
8 cases. What I don't ever want to do is get a  
9 default judgment that I can't do anything with.  
10 And that becomes the dilemma. So we wait for  
11 them to come in, see what we can do.

12 And then is there a reason to appoint a  
13 receiver here? Let me go look. Because if  
14 there's insurance and I have a default judgment  
15 and now it gets tendered to the insurance  
16 carrier, what is the insurance carrier going to  
17 say? You can't collect it. You can't do  
18 anything with it because we have noncooperation.  
19 That's why we didn't do it.

20 And Welch says, you know, look, this  
21 shouldn't be used in a typical default case.

22 THE COURT: What you're saying is they let  
23 themselves go into default, then the insurance  
24 company comes out from under them and says, hey,  
25 that was noncooperation by our insured so we're

1 sorry, Plaintiff, but you don't get anything.

2 MS. MCVEY: Absolutely.

3 THE COURT: So that's the rationale. I  
4 understand it now. I'm not saying agree,  
5 disagree, or anything else --

6 MR. PROTOPAPAS: I understand.

7 THE COURT: -- but I wanted to have the  
8 record clear about why you all didn't do that.

9 MS. MCVEY: So that's why we didn't do it.  
10 I'm not getting into the moral fraud argument  
11 again. I think you've heard enough about that  
12 unless you want me to respond to --

13 THE COURT: No, I think that's on the  
14 record by both sides.

15 MS. MCVEY: Okay. Anything else I can  
16 answer?

17 THE COURT: That's it.

18 All right. Now, it's 12:10. Okay. Guys,  
19 if we do it at quarter of 2, will we have time  
20 to finish today? I'm not pressing anybody. I  
21 know you all got many, many things to say on the  
22 bigger question of the receivership in Tibbs.

23 MR. CARROLL: Your Honor, Todd Carroll for  
24 the Altrad defendants. I think so. If we come  
25 back at 1:45. Is that your question?

1 THE COURT: Yeah. I'm not -- listen here,  
2 you all have handled things with great respect  
3 and economy of motions so far, and I appreciate  
4 that very much. And so I'm just kind of trying  
5 to plan a little bit.

6 MR. CARROLL: Yes, ma'am. I can't envision  
7 any reason why we can't be done today. I don't  
8 speak for everybody.

9 THE COURT: I get it.

10 Anybody else got any thoughts about it?

11 MR. RAWL: Mr. Carroll can speak for me.

12 MR. CARROLL: No, thank you.

13 THE COURT: Ms. McVey.

14 MS. MCVEY: I think that's fine. And I  
15 know Mr. Carroll said in his briefing, he made a  
16 lot of his arguments last time so I don't know  
17 how much more he's going to do.

18 THE COURT: Well, I'm not going to restrict  
19 him. So, you know, we want this record to be  
20 kind of a freestanding, complete picture on  
21 everything, so ...

22 All right. Come back at quarter of 2.

23 MR. CARROLL: Thank you.

24 THE COURT: The court will be in recess.  
25 - - -

1 (A lunch recess transpired.)  
2 - - -

3 MR. BALBER: All right. Ladies and  
4 gentlemen, come to order.

5 Let me ask you this. You know, we've done  
6 that first part of the agenda on the Isabella  
7 Park matter, and I just put that note that there  
8 were things filed in Tibbs that related to the  
9 Isabella Park case. That's because the  
10 contentions of Altrad and certain others about  
11 the receiverships tee off of Park and then, of  
12 course, also have some other arguments that are  
13 pertinent to Tibbs itself.

14 So I'm assuming that you're going to cover  
15 those things in your presentation in Tibbs; am I  
16 right?

17 MR. CARROLL: Your Honor, yeah, we're going  
18 to cover all the Park issues and the Tibbs  
19 issues at once.

20 THE COURT: Good.

21 MR. CARROLL: If that's okay with you.

22 THE COURT: Sure. Absolutely. All right.  
23 I kind of was hoping that's the way it would go.  
24 It just works a little bit better that way.

25 Let me just say to begin with, if the

1 parities feel that they need more time than what  
2 is this day, I'm certainly willing to come back.  
3 So please don't feel like you have got to be  
4 rushed in making the kind of record you want.

5 We know we're making a record that won't  
6 stop with me. So I want to be sure that you  
7 have in the record the things that you would  
8 like to have there.

9 Whether or not I agree with the pertinence,  
10 or whether or not I agree with your status as an  
11 entitled party or whatnot, I want everybody to  
12 be able to get in the record what they want to  
13 get in. So please understand I'm not  
14 restricting you at all in that regard.

15 All right. So we look at the first thing  
16 in the Tibbs, and it's Anglo American, De Beers,  
17 et cetera's, Motion to Dismiss for Lack of  
18 Subject Matter Jurisdiction, the Receiver's  
19 Memorandum in Opposition, Anglo American support  
20 or the memos in support of motions to dissolve  
21 the Cape receivership and dismiss the  
22 third-party plaintiff, Receiver's opposition,  
23 and then of course replies.

24 So, to me, there's not a whole lot of  
25 difference between dismissing the receivership

1 and the third-party complaint and dissolving the  
2 receivership and dismissing the third-party  
3 plaintiff's claims, but you all decide how you  
4 want to do that. So with that.

5 MR. BALBER: It's up to you, Your Honor.  
6 But I'm happy to go first on behalf of Anglo  
7 American and De Beers.

8 THE COURT: Certainly. Certainly. In any  
9 event, you do that. I'm just trying to figure  
10 out whether both of those things mirror parts of  
11 each other. So I'm not restricting you if you  
12 want to cover both of them. However you want to  
13 do it is what I'm saying.

14 MR. BALBER: Thank you, Judge. I think  
15 they are all intertwined, and I will address all  
16 of my points at least at one time. So thank  
17 you.

18 THE COURT: For the record, introduce  
19 yourself.

20 MR. BALBER: Yes, of course, Your Honor.  
21 Scott Balber on behalf of the Anglo  
22 American and De Beers defendants.

23 As a threshold matter, Your Honor, I just  
24 want to thank you for adjourning from yesterday  
25 to today so I could have the extra vacation day.

1 My wife is a little suspicious as to why I came  
2 to visit with you instead of being on vacation,  
3 but she'll get over it, Judge.

4 THE COURT: She will. Even husbands get  
5 over it sometimes.

6 MR. BALBER: So first of all, Your Honor, I  
7 just want to refresh on who we are, who my  
8 clients are. I feel I need to do that because  
9 there have been some allusions to these parties  
10 and these guys, I just want to refresh on who we  
11 actually are.

12 So we are a publicly-traded company in the  
13 United Kingdom. My clients mine diamonds,  
14 platinum, and copper. We're not an insurance  
15 company. We've never mined or sold asbestos in  
16 South Carolina or anywhere else.

17 We are in this case, I believe, because at  
18 one point in time, a number of decades ago, one  
19 of my client entities was a minority shareholder  
20 in Charter, which was a minority shareholder in  
21 Cape.

22 And that's our nexus to these facts. Never  
23 a majority interest, only a minority interest.  
24 We've cooperated fully in discovery. We  
25 produced documents. We provided witnesses for

1 depositions. Already have proffered three  
2 senior executives for depositions in this case.

3 And, again, just to distinguish ourselves,  
4 we have not been part of any UK litigation, and  
5 I certainly don't believe we've made any attacks  
6 on plaintiffs or Mr. Protopapas or plaintiff's  
7 counsel. I just wanted to clear all that up  
8 first.

9 So moving to why we're here today,  
10 Your Honor, and the Supreme Court's June 26th  
11 order and Welch.

12 One principle, which I think is crystal  
13 clear, is there must be an appointment order for  
14 the receiver entered in this case. And I know  
15 that we collectively did something  
16 unprecedented, which is we broke the electronic  
17 docket with the number of filings in this case.

18 And you know what you will not find in that  
19 massive, broken electronic docket? You will not  
20 find the entry of an appointment order vis-a-vis  
21 the receiver in this case. It did not happen.

22 And therefore, there could be and have not  
23 been -- could not have been and were not any  
24 specific findings of fact or conclusions of law  
25 about the appropriateness of a receivership

1 being entered in this case.

2 There is no evidence that Cape was  
3 dissolved, and, in fact, we know Cape was not  
4 dissolved. Cape continues to be an active,  
5 living company in the United Kingdom. And I  
6 know Ms. McVey said that in her good faith  
7 belief when she sought the Park appointment  
8 order was that Cape was defunct and had been  
9 dissolved.

10 All I had to do, Your Honor, is go on the  
11 company's house register in the UK, publicly  
12 available, and search for Cape. And I found  
13 sure enough, Cape remains a viable company today  
14 and was so in 2024, 2023, 2022 and 2021.

15 We have a copy of the printout from the  
16 Cape Intermediate Holdings Company house  
17 register in the UK. I'm happy to share it with  
18 counsel and the court.

19 THE COURT: Certainly. That would be well.

20 MR. BALBER: I will do that, Your Honor.

21 There's also no evidence that Cape is now  
22 or has been insolvent. And we know that from  
23 the receiver's own filings.

24 I believe it was Exhibit 24 of the  
25 receiver's filings in which the receiver -- I'm

1 sorry, the receiver's Motion to Confirm, Exhibit  
2 24, page 2, reflects that for the fiscal year  
3 ending in August 2025, I believe -- I'm sorry,  
4 August 2024, Cape had a profit of more than  
5 25 million pounds. Not insolvent, not  
6 dissolved, still in existence.

7 There's also no evidence of any in-state,  
8 South Carolina assets that may be dissipated.  
9 In fact, again, the receiver has stated that any  
10 insurance that Cape may have had in  
11 South Carolina or elsewhere was exhausted in  
12 1978. That was in his report to the court from  
13 a number of weeks ago.

14 Now, there's also no evidence of any  
15 misconduct in this litigation before this court  
16 by Cape.

17 Now, I heard Ms. McVey and Mr. Lay talk  
18 about the things that Cape may have done  
19 historically, and I can't really comment on that  
20 except to say there was no admissible evidence.  
21 They're from many decades ago. It was triple  
22 levels of hearsay. And none of the things that  
23 Ms. McVey or Mr. Lay claim that Cape did was  
24 done before this court in this case. Unlike  
25 what happened with regard to Atlas Turner and

1 Welch.

2 Now, the absence of an appointment order in  
3 this case, vis-a-vis the receiver, means that  
4 Cape was never served with the complaint. No  
5 dispute about that. We know that  
6 Mr. Protopapas, in his capacity as receiver for  
7 Cape, accepted service of the complaint. That  
8 deprived Cape of service and therefore due  
9 process.

10 Now, I get that everybody is of the belief,  
11 and it may be true, that Cape has engaged in all  
12 this misconduct and has repeatedly defaulted for  
13 many years and many jurisdictions and the like.  
14 It doesn't deprive them of due process  
15 entitlement to be served.

16 I said this last time and I'm going to say  
17 it again, both because I like it and because  
18 it's true, but due process is not reserved for  
19 the good guys. You get due process whether  
20 you're a good guy, a bad guy, or something else.  
21 And Cape was deprived of due process in this  
22 case because it was not served.

23 Now, that is not curable, Judge, because  
24 everything that happened since then is a nullity  
25 since Cape was not given due process and the

1 opportunity to respond.

2 And I analogize it to a criminal defendant  
3 who has engaged in many crimes over many years.  
4 Do they still get a trial? Yes, they do.

5 It's not good enough to say Mr. Jones or  
6 Ms. Smith did bad things for many years and,  
7 therefore, why bother giving them a trial? Due  
8 process demands they get a trial in the case at  
9 issue, and Cape was entitled to be served in  
10 this case. They were not.

11 Now, to the extent the receiver and  
12 Plaintiff's counsel are relying on the Park  
13 order, I am not going to reiterate Mr. Sawyer's  
14 points. I will incorporate them by reference,  
15 if that's okay with Your Honor, and we certainly  
16 agree with them.

17 Because the problems with Park, to the  
18 extent Park is being relied on here, bleed into  
19 this case. Not only were there all of these  
20 incurable infirmities in the Park order, again,  
21 that Mr. Sawyer alluded to, and I believe  
22 Mr. Carroll will address as well, and, again,  
23 which we incorporate by reference.

24 The order itself is grossly overbroad. It  
25 does not comply with what the Supreme Court has

1 said is required under Welch. It allowed the  
2 receiver in this case, in the Tibbs case, to  
3 take action that is not permissible. And  
4 there's a long list of things that have happened  
5 in this case that the receiver has done because  
6 of the breadth of the Park order that he's  
7 relying upon that are improper.

8 And I'm going to list the laundry list of  
9 things that happen, which in our view intrude  
10 upon the purview of Cape's board, invade the  
11 board room, and therefore are improper under  
12 Welch.

13 He accepted service of the Tibbs lawsuit  
14 against Cape. The receiver filed an answer on  
15 behalf of Cape. The receiver waived Cape's  
16 jurisdictional and merit defenses. The receiver  
17 confessed Cape's liability. The receiver  
18 entered into a tolling agreement with  
19 Plaintiff's counsel. He sought to pierce the  
20 corporate veil of Cape. He asserted third-party  
21 claims.

22 He deprived Cape's documents. Many of  
23 the documents that Ms. McVey alluded to, that  
24 were part of her submission in Park, are  
25 deprived Cape documents where the

1 attorney-client privilege was waived.

2 They have taken the position they're in a  
3 common interest with their litigation  
4 adversaries, the plaintiffs in Tibbs and the  
5 plaintiffs in Park. They have appointed counsel  
6 on Cape's behalf, and they sought the removal of  
7 and sanctions of Cape's own lawyers.

8 These things are all things that are  
9 reserved exclusively for the board of directors  
10 and management of Cape, which, again, remains an  
11 operative entity.

12 Now, one thing that struck me when we were  
13 in front of Your Honor a couple of weeks ago,  
14 which I want to come back to. And I don't  
15 purport to know what Your Honor was thinking,  
16 but I would like to take a guess and try to  
17 address it.

18 Your Honor knows far more about  
19 receiverships on this asbestos docket than I  
20 will ever know and I could possibly learn. Let  
21 me accept that fact. And I know Your Honor has  
22 been instrumental in orchestrating the effective  
23 use of receiverships on this docket for many  
24 years.

25 And I think, again, not to be presumptuous,

1 that Your Honor had some discomfort with some of  
2 the arguments that the defendants were making.  
3 And I think, and Your Honor suggested this on  
4 several occasions, that you stated and believed  
5 this has worked for many years in these  
6 receiverships.

7 Why is what we're doing now different?  
8 What is problematic about this receivership in  
9 Tibbs that has been sustained by the Supreme  
10 Court, recognized by this court, repeatedly for  
11 many years?

12 So what I did, my team did, I should say,  
13 I'm not going to take credit for it, we looked  
14 back and we tried to identify all of the  
15 receiverships on the asbestos docket. We  
16 believe there have been 21 of them. And I'd  
17 like to explain why those 21 are different than  
18 this one and why this one, the Tibbs  
19 receivership, is unprecedented, and I  
20 respectfully submit in a fundamentally flawed  
21 way.

22 So 18 -- and I'm going to give you the list  
23 after I make the point, if that's okay.

24 THE COURT: I'm aware.

25 MR. BALBER: I'm sure you can cite them

1 chapter and verse. But I will do it anyway for  
2 the record, if that's okay, Your Honor.

3 THE COURT: It's perfectly okay, but I'm  
4 tracking.

5 MR. BALBER: Thank you, Judge.

6 So 18 of the 21 receiverships on the docket  
7 involve dissolved or defunct entities. Again,  
8 not Cape. As I said a few minutes ago, Cape was  
9 at the time the Park order was entered, at the  
10 time that Tibbs case was initiated, and today, a  
11 living, breathing entity, continues to be  
12 registered in the UK corporate system. Not  
13 dissolved or defunct.

14 The other three, which, again, I'll  
15 enumerate in a second, the other three  
16 receiverships on the asbestos docket involve  
17 entities that were solvent, that were still in  
18 existence, but for which there was evidence of a  
19 risk of dissipating in-state assets. Neither of  
20 those situations is applicable to Tibbs or, I  
21 would submit, Park.

22 Let me read for the record the 18 that  
23 involve the dissolved defunct entities. If I  
24 missed one, I have no doubt Your Honor will  
25 correct me. And if I misstated it, I say the

1 same thing. I'll do it quickly just for sake of  
2 brevity.

3 The first one is Beaty Investments, Inc.,  
4 formerly known as Guy Beaty Inc., B-E-A-T-Y.

5 THE COURT: Beaty.

6 MR. BALBER: Beaty. I knew it, Judge.  
7 Thank you. I knew you would correct me if I was  
8 wrong. I appreciate.

9 Covil Corporation, C-O-V-I-L; Davis  
10 Mechanical Contractors, Inc.; Flame Refractories  
11 Inc./United Construction Company of Rome, Inc.;  
12 General Boiler Casing Company, Inc.; Great  
13 Barrier Insulation Company; Heat and Frost  
14 Insulation Company, Inc.; Hefco, H-E-F-C-O,  
15 Inc.; J&L Insulation, Inc.; J.R. Deans Company,  
16 Inc.; Payne & Keller Company; Piedmont  
17 Insulation, Inc.; Pipe and Boiler Insulation,  
18 Inc., formerly known as Carolina Industrial  
19 Insulating Company, I'm sorry, Windup Limited.

20 Presnell, P-R-E-S-N-E-L-L, Insulation  
21 Company, Inc.; Southern Insulation, Inc.;  
22 Stafford Insulation Company; Standard Insulation  
23 Company of North Carolina, Inc.; and Starr Davis  
24 Company, Inc., and Starr Davis Company of  
25 South Carolina, Inc.

1 Those are the 18 that were defunct or  
2 dissolved at the time the receivership was  
3 formed.

4 The three involving viable companies with  
5 risk of dissipation of in-state assets were  
6 Asbestos Corporation Limited, Atlas Turner,  
7 Whittaker Clark & Daniel. And the last one, by  
8 the way, Whittaker Clark & Daniel was a post  
9 judgment receivership appointment, but I  
10 included it anyway.

11 Those are the 21, Judge. Not one of them  
12 involved a viable, vibrant corporation that  
13 lacked, A, in-state South Carolina assets, let  
14 alone in-state South Carolina assets that were  
15 at risk of being dissipated and the process  
16 being dissipated.

17 So this is a unique situation where,  
18 Your Honor, we've heard quite a bit today  
19 already. You'll hear some more about why this  
20 is a failed receivership. Why this should not  
21 be recognized.

22 And I believe Your Honor can continue to  
23 utilize the receivership process in the way  
24 you've done it in the past 21 receiverships and  
25 in the future receiverships where you have,

1 again, either defunct entity or a risk of  
2 dissipation -- a material risk of dissipation of  
3 in-state assets.

4 That's all I have, Your Honor. Happy to  
5 answer any questions.

6 THE COURT: Thank you, Mr. Balber. That's  
7 a good summary.

8 Let me ask you this: Just put yourself in  
9 the Court's shoes for a minute. If you got a  
10 defendant who won't answer, not even to say what  
11 many people say, what other folks in this case  
12 have said, which is my answer is I'm not subject  
13 to your jurisdiction, or my answer is I'm not  
14 appropriately in this case because the plaintiff  
15 has no valid claim against me or a myriad of  
16 things that indicate a challenge to the Court's  
17 authority to have that entity appear.

18 Then, of course, the Court knows what it's  
19 dealing with. How does the Court respond when  
20 you've got a company that absolutely defies and  
21 instructs even its insureds to defy the Court's  
22 authority?

23 And I'm not asking you to give away  
24 anything or concede to anything. I understand  
25 your position, and it's a well-presented one and

1 an honestly held view on the part of your  
2 client. But what does a Court do in that  
3 situation?

4 MR. BALBER: Thank you for the question,  
5 Your Honor. I'll put it this way. Step one --  
6 and I'm going to lay it out how I see it if I  
7 were in your shoes, which I am not and will  
8 never be.

9 Step one, the plaintiff in the lawsuit, the  
10 injured plaintiff, files the complaint and  
11 serves the defendant. Step one. That step has  
12 not happened.

13 Step two, that defendant either appears or  
14 not. I know in your hypothetical, Judge, that  
15 defendant does not appear and they default.

16 Step three, the plaintiff, then, either  
17 seeks a default judgment. And that's clean and  
18 that's easy. We all know how that works. I  
19 know Ms. McVey articulated an insurance-related  
20 reason why not to do that. But that is  
21 certainly inevitable. Obtain a default  
22 judgment, have a receiver appointed post  
23 judgment, very frequent, very common, and have  
24 that post judgment appointed receiver seek to  
25 enforce the judgment and collect assets on

1 behalf of the plaintiff.

2 Alternative is the plaintiff, again, in  
3 this case with Mr. Tibbs, Mr. and Mrs. Tibbs,  
4 they then come to Your Honor. Your Honor, I  
5 served Cape, or whoever the defendant may be,  
6 they have not appeared. Now I'm Mr. Tibbs and  
7 making a motion to you, Your Honor, to appoint a  
8 receiver.

9 Your Honor then follows through with a  
10 proper finding of facts and conclusions of law.  
11 Your Honor appoints a receiver in accordance  
12 with the statute. That imposes certain  
13 obligations on to Tibbs, as Your Honor is aware,  
14 post a bond, be liable if it's determined that  
15 there's no receivership, and you're off to the  
16 races.

17 But none of that happened here, Your Honor.  
18 So I am not suggesting, and I would not suggest,  
19 that there is no mechanism for an injured party  
20 or an aggrieved court that feels like somebody  
21 is thumbing their nose at the court to find a  
22 remedy. But it has to be done the right way.  
23 And what I've articulated is the only right way  
24 to do it.

25 Again, Mr. Sawyer said this, and I'm going

1 to reiterate it, it's not Your Honor's fault  
2 that we are where we are. I think Your Honor  
3 relied on statements that were I think made in  
4 good faith but end up being wrong about certain  
5 aspects of the court receivership.

6 And now we're at a Tibbs situation that is  
7 impregnated by the Park situation. It's the  
8 fruit of the poisonous tree. And now the whole  
9 thing is flawed and we have to go back to the  
10 beginning or not.

11 But what's happened here is not sustainable  
12 because it is not abided by due process or the  
13 receivership rules or what I understand the  
14 Supreme Court to have asked to be done.

15 I'm happy to answer any more questions.

16 THE COURT: Very good. Thank you, sir.

17 MR. BALBER: Thank you for your time,  
18 Your Honor. And I do have the company house  
19 listing, which I don't know how you would like  
20 me to offer it. May I approach and give you  
21 that?

22 THE COURT: Yes, of course.

23 And, Madam Court Reporter, Mr. Balber is  
24 giving the other side a copy.

25 And if you will give the court reporter a

1 copy and that will be Court's Exhibit 1. It's  
2 in the record.

3 MR. BALBER: Thank you, Your Honor.

4 - - -

5 (COURT'S EXHIBIT NUMBER 1, Cape  
6 Intermediate Holdings Limited House Register,  
7 was marked for identification.)

8 - - -

9 THE COURT: Now, what's going to happen  
10 next? Do you want to continue your side?

11 MR. CARROLL: Do you want to finish us off?

12 THE COURT: I think that's an excellent --  
13 let's get the complete argument out there, and  
14 then I will turn it to the other side.

15 MR. CARROLL: Yes, ma'am. Thank you.

16 Good afternoon, Chief Justice Toal.

17 THE COURT: Yes, sir.

18 MR. CARROLL: May it please the Court.  
19 Todd Carroll on behalf of the Altrad defendants  
20 in the Tibbs case.

21 Your Honor, I appreciate you giving us some  
22 time. I appreciate the way you're  
23 systematically working through this.

24 I do not intend to replot all of the ground  
25 that my friends on the -- Mr. Sawyer and

1 Mr. Balber, I don't intend the replot all that  
2 ground. I do want to incorporate by reference  
3 what Mr. Sawyer said with regard to the myriad  
4 of problems with the Park receivership  
5 appointment. And I want the record to be  
6 crystal clear on this.

7 At the time the appointment was entered, it  
8 was a nullity. The estate was closed. There's  
9 no dispute about that. There did not exist an  
10 entity that could have even asked for that order  
11 to be entered.

12 I want -- I do diverge with Mr. Sawyer on  
13 one point, and I want to make sure this is in  
14 the record. So, Your Honor, if I may approach,  
15 this is a compilation of some exhibits that  
16 we've already filed. But I want to mark, Your  
17 Honor, do this a little systematically just so  
18 it's clear what we're talking about.

19 - - -

20 (COURT'S EXHIBIT NUMBER 2,  
21 DESCRIPTION , was marked for  
22 identification.)

23 - - -

24 THE COURT: Mr. Carroll hands to the Court  
25 an order on Plaintiff's Motion to Appoint

1 Receiver.

2 MR. CARROLL: Well, this isn't an order,  
3 Your Honor. This is Mr. Park's application to  
4 open the estate.

5 THE COURT: Well, I was trying to read all  
6 these documents at one time.

7 MR. CARROLL: Yes, ma'am, of course.

8 THE COURT: Let me put them in order here.

9 Mr. Carroll hands up Plaintiff's Motion for  
10 the Appointment of a Receiver. July the 28th,  
11 2023.

12 MR. CARROLL: No, ma'am.

13 THE COURT: Oh, it's these packets?

14 I'm sorry, Mr. Carroll. You're handing me  
15 something that I've seen before, of course.  
16 This was an exhibit to your argument regarding  
17 this matter, and it is represented to be a copy  
18 of the estate file in Park. It ends with a  
19 document filed March of 2022.

20 There has, of course, been other activity  
21 in the file since then, but this represents the  
22 activity from June 2021, when the estate was  
23 filed, until --

24 MR. CARROLL: Yes, ma'am.

25 THE COURT: -- March of '22. March 18,

1 2022, when the estate was closed.

2 MR. CARROLL: That's right. Your Honor,  
3 there is one document in there that has my name  
4 at the top that's not yet in the record. It is  
5 now, and we'll file it later on in the public  
6 index. It's a calendar appointment for  
7 mediation in the Park case. It should be the  
8 third stapled document.

9 It looks like this.

10 THE COURT: I have it. I have it.

11 MR. CARROLL: No, ma'am.

12 THE COURT: Not yet. Yes. All right.

13 Mr. Carroll is drawing my attention to a  
14 document labeled Todd Carroll dated May the  
15 24th, 2022.

16 MR. CARROLL: Yes, ma'am.

17 THE COURT: And it is memorandum of a Zoom  
18 conversation.

19 MR. CARROLL: Well, it's a calendar  
20 appointment for a Zoom conference.

21 And, Your Honor, let me walk you through  
22 these documents.

23 THE COURT: All right. Okay. I've got  
24 them in the order you gave them to me.

25 MR. CARROLL: The top document is what

1 Mr. Sawyer referred to as an oddity. And this  
2 is where he and I diverge a little bit because  
3 Mr. Sawyer talked about he gave Your Honor a big  
4 argument about judicial estoppel.

5 And he said, Look, Mr. Park has made  
6 representations to multiple courts. His counsel  
7 told this court in June of '22 that his case was  
8 fully resolved. He went to the probate court  
9 the next business day, told probate Judge  
10 Caldwell that his time as a personal  
11 representative should come to an end because he  
12 had done all of his work. And he asked Judge  
13 Caldwell to terminate his appointment and close  
14 the estate.

15 And Judge Caldwell did. She took him at  
16 his word and she granted his motion.

17 Mr. Sawyer pointed out that when Mr. Park  
18 opened the estate, he filled out this document.  
19 And on the third page, questions 11C and 11D  
20 asks specifically, "Are you seeking appointment  
21 as personal representative in order to pursue  
22 civil litigation on behalf of the decedent's  
23 estate? Is there a civil litigation attorney?"

24 And of course at the time that he answered  
25 this question, the Park case already existed.

1 It had already been filed in Your Honor's court.  
2 Yet Mr. Park told the probate court no.

3 Question 11D: "At the time of decedent's  
4 death was he or she involved in any pending  
5 civil litigation? Is there a civil litigation  
6 attorney?"

7 Again, we know the answer is yes because  
8 the Park case already existed in front of  
9 Your Honor. Yet Mr. Park told the probate court  
10 and the creditors of the estate and his  
11 co-beneficiaries and presumably his probate  
12 attorney, he told them no.

13 Then that was in June of '21. Mr. Park  
14 then gets his personal representative  
15 appointment from the probate court, and he comes  
16 back to your court.

17 He then, in May, there were three -- there  
18 were three beneficiaries of this estate,  
19 Your Honor. There's Keith Park, who became the  
20 personal representative. He had two siblings,  
21 Alistair and Fiona. One of them lives in  
22 Greenville. The other lives in Texas.

23 On May 21st, Fiona, Fiona Wiley, signs a  
24 receipt and release. It's witnessed. She  
25 acknowledges that she has received all she's



1 supposed to get from the estate, and she  
2 releases -- quote, releases and forever  
3 discharges the estate and the personal  
4 representative from any and all rights and  
5 claims which the undersigned may have relating  
6 to the estate. Ms. Wiley signed that on  
7 May 21st, 2022.

8 The brother, Alistair Park, signs the exact  
9 same form, making the exact same  
10 representations, containing the exact same  
11 releases on May 22nd of 2022.

12 Now let me tell you why that strikes me as  
13 something that ought to be a concern for the  
14 court in the context of judicial estoppel.

15 Keith Park went to the probate court in  
16 Spartanburg and told that judge, I need you to  
17 open this estate, but I'm not looking to get  
18 involved in any civil litigation. And, in fact,  
19 there isn't any civil litigation regarding the  
20 decedent.

21 That's not true. But that was his  
22 representation to that court. And anybody else  
23 who looked at the probate file, including  
24 creditors of the estate, potential creditors of  
25 the estate, and his co-beneficiaries.

1 In May of '22, May 21st and 22nd of '22,  
2 the two other co-beneficiaries executed releases  
3 that were witnessed that forever released any  
4 claim they might ever have against the estate or  
5 against the personal representative.

6 Then -- and this is the new document that  
7 I've added, that I was trying to get Your Honor  
8 to find in the packet -- the Park case is  
9 mediated with Tom Wills, who is the regular  
10 mediator for these asbestos cases. Mr. Wills  
11 mediated the Park case on May 24th of 2022.

12 And that's what this Zoom meeting  
13 appointment is that I put in the record.

14 That time -- the date and time of that  
15 meeting -- of the mediation was announced on May  
16 the 19th of 2022.

17 So between May 19th, when the mediation was  
18 announced, and May 24th, when the mediation  
19 actually took place, Mr. Park's two  
20 co-beneficiaries released any interest they may  
21 ever have in this estate, and they released any  
22 claim they may ever have against the personal  
23 representative.

24 Then the case is mediated. And then the  
25 story picks up, Your Honor. You know on June

1 the 3rd, Ms. McVey represented to the court that  
2 the Park case and the Garrin case were both  
3 fully resolved.

4 THE COURT: Well, Mr. Park himself, also on  
5 June 6th, 2022, signed a release, correct?

6 MR. CARROLL: Yes, ma'am. Yes, he signed a  
7 release as well.

8 THE COURT: This is not something he pulled  
9 over on them. All three of them signed a  
10 release that was filed with the estate papers.

11 MR. CARROLL: All three filed the release,  
12 but, Your Honor, the timing, again, we're  
13 talking about judicial estoppel, the timing  
14 matters. The co-beneficiaries, who, I don't  
15 know if Alistair Park and Fiona Wiley even know  
16 this case exists. They certainly wouldn't learn  
17 of it by looking at the probate file because  
18 their brother, when he applied to open the  
19 estate and be named as the personal  
20 representative, told the Spartanburg probate  
21 court --

22 THE COURT: I get that already.

23 MR. CARROLL: I understand. But the timing  
24 of them releasing their claims comes right  
25 before the money actually comes in for the case.

1 They release it days before the mediation.

2 Then he -- Mr. Keith Park releases his  
3 future interest in the estate after the  
4 mediation. And that he releases his the same  
5 time he goes back to the Spartanburg County  
6 probate court and says terminate my appointment,  
7 close the estate, my work here is done.

8 And the last document in that packet that I  
9 handed up, Your Honor, as far as we can tell,  
10 the only inventory that was filed with the  
11 probate court, it does not appear to make any  
12 mention of this case in Richland County.

13 There is a Tab C.

14 THE COURT: Spartanburg County.

15 MR. CARROLL: No -- yes, ma'am. What I'm  
16 saying is there's no filing in the probate court  
17 in Spartanburg that in any way references the  
18 Richland County wrongful death/survival act.

19 THE COURT: Yeah.

20 MR. CARROLL: Even category C, which is on  
21 page 2 of the inventory, is called -- the  
22 heading says Cash, Bank Accounts, Notes  
23 Receivable. But then in the non-bold type it  
24 lists what you're supposed to put in there and  
25 that includes Survival Action Proceeds.

1 And all Mr. Park represented to the probate  
2 court was that there a little less than \$28,000  
3 cash on hand. He doesn't reference anything  
4 about survival action proceeds. And this was  
5 filed in March of '22 before the Park case was  
6 mediated.

7 So, again, if we're talking about judicial  
8 estoppel, I want the record to be crystal clear  
9 on this, because the Supreme Court has  
10 specifically asked what's going on in Park? So  
11 if the Supreme Court ever reads this record, I  
12 want them to know loud and clear, there's not  
13 one document filed in the Spartanburg County  
14 probate court that in any way references this  
15 case in Richland County -- this tort case in  
16 Richland County.

17 South Carolina Code 15-51-42 puts it on the  
18 personal representative to tell the probate  
19 court about the survival -- survival actions and  
20 survival settlements. There's nothing in the  
21 probate court about it.

22 And as Mr. Sawyer mentioned when Mr. Park's  
23 probate attorney, which is not Ms. McVey, a  
24 different lawyer up in Spartanburg, when  
25 Mr. Park's probate lawyer filed a motion to have

1 him reappointed and have a new estate created to  
2 be administered, they didn't mention in that  
3 filing the Park case in Richland County. They  
4 said meet Mr. Park, representative. I want to  
5 be reappointed for possible litigation or  
6 potential civil litigation. Again, not  
7 referencing this case.

8 THE COURT: Let me see if I understand what  
9 your argument is. You're arguing that the --  
10 what took place in the estate case operates as a  
11 judicial estoppel against what?

12 MR. CARROLL: Well, I think that  
13 Mr. Park -- I'm not sure Mr. Park had authority  
14 to be the personal representative in the tort  
15 case that was in front of you in the first  
16 place. Because his appointment out of  
17 Spartanburg came based on a statement to the  
18 Spartanburg County probate court that he was not  
19 going to try to get involved in any civil  
20 litigation on behalf of the decedent because  
21 there was no civil litigation on behalf of the  
22 decedent.

23 Now, I'm not trying to undo any kind of  
24 settlements that he's entered or any dismissals  
25 that may have already taken place.

1 THE COURT: You could have fooled me.  
2 Arguing judicial estoppel. But I'm listening.

3 MR. CARROLL: Well, but what I am saying is  
4 not only are the legal impediments of the  
5 action -- the receivership order was a nullity  
6 when it was entered. And that is an incurable  
7 problem because you can't -- the Rule 17 --

8 THE COURT: I understand what you're  
9 arguing with respect to the receivership. But  
10 when you start arguing judicial estoppel with  
11 respect to the estate, that's where I'm wanting  
12 to understand what you're arguing there.

13 What does the activity in the estate, how  
14 does it judicially estop something? And what is  
15 the something it judicially estops?

16 MR. CARROLL: As I understand it, from the  
17 receiver and from Ms. McVey, they want  
18 Your Honor to say what happened in March of 2023  
19 in this court was just fine. They want -- they  
20 want to nunc pro tunc all of the many, many  
21 flaws and all of the jurisdictional defects by  
22 saying, well, he got reappointed so it's all  
23 good.

24 And what I'm saying is his initial  
25 appointment all the way to the current

1 reappointment of a new estate never mentions  
2 this case.

3 THE COURT: I'm asking a real simple  
4 question, Mr. Carroll, and that is are you  
5 claiming that -- that, A, you've got the  
6 standing? And B, are making the argument that  
7 this estate is somehow judicially estopped from  
8 being created and moving forward?

9 MR. CARROLL: I'm saying that I think --

10 THE COURT: Just answer me that question  
11 first. I don't mind whatever else you say. I  
12 want to know, first of all, whether what you're  
13 arguing now is an -- is a direct attack on the  
14 existence of the estate from the git-go and its  
15 operation.

16 MR. CARROLL: I'm not attacking the estate.  
17 What I'm saying is that the punitive personal  
18 representative's behavior in front of this court  
19 should be judicially estopped because --

20 THE COURT: Well, what is the behavior of  
21 his you want to be judicially estopped?

22 MR. CARROLL: The attempt -- the attempt to  
23 stand here in August of 2025 and say, well,  
24 whatever happened in March of '23 was okay.

25 THE COURT: Why does that concern you?

1 What you are really trying to do is say he  
2 didn't have the authority or the lawsuit didn't  
3 have the existence to allow the appointment of  
4 the receiver. I get that argument.

5 MR. CARROLL: Sure.

6 THE COURT: But what I'm very concerned  
7 about is this broader argument you're making  
8 that this whole estate is somehow or another  
9 acting ultra vires or is not properly in  
10 existence. I don't think you've got the  
11 standing to make that argument to begin with  
12 because it has --

13 MR. CARROLL: That's right.

14 THE COURT: -- the broader issue of the  
15 estate, how it operated, how it received,  
16 whatever it received, whether those funds went  
17 directly to beneficiaries or anything else about  
18 it is not Altrad's concern.

19 MR. CARROLL: You're right, Your Honor.

20 THE COURT: That's all I want to do. I  
21 want to stay within my lanes. I'm not a probate  
22 judge either. Ponda is the probate judge up  
23 there, and she can make the decisions if there's  
24 some challenge in the probate court to his  
25 authority.

1 But up here, all I've got is documents that  
2 indicate the authority and then a claim that  
3 stands on its own by you that the receiver was  
4 not properly appointed.

5 I am -- I've got heartburn about you all  
6 wanting to attack the whole operation of this  
7 estate. I don't know how it was operated and  
8 whether everything it did satisfied every nicety  
9 of the law. But that's not something that's  
10 before me right now. All I've got is a very  
11 narrow question about the legitimacy of the  
12 appointment of the receiver.

13 MR. CARROLL: Yes, ma'am.

14 THE COURT: And I want to keep it on that  
15 basis. That's plenty enough to digest all by  
16 itself.

17 MR. CARROLL: Understood. Yes, ma'am.

18 THE COURT: I'm not saying this in a  
19 hostile way, but what I want to be sure we all  
20 understand is there is nothing that's being  
21 argued here in front of me today by you,  
22 Mr. Balber, or anybody else that requests that  
23 some action be taken with respect to the  
24 legitimacy of this estate.

25 MR. CARROLL: No, ma'am. I'm simply

1 extrapolating on Mr. Sawyer talking about  
2 judicial estoppel.

3 THE COURT: I know I had some heartburn  
4 about that too. But I decided in light of all  
5 the other things he was talking about, that  
6 really that's a tangential issue to what he's  
7 really saying.

8 MR. CARROLL: Sure.

9 THE COURT: Judicial estoppel is a loaded  
10 term, a complex term, that can encompass a lot  
11 of different things. And I certainly don't want  
12 to get off on that tangent.

13 MR. CARROLL: Yes, ma'am.

14 THE COURT: Articles by me to the contrary  
15 notwithstanding, I don't want to get into all of  
16 that. That's way above my pay grade now.

17 MR. CARROLL: Oh, Your Honor, judicial  
18 estoppel is not above your pay grade. You wrote  
19 the opinion.

20 THE COURT: I've written a lot of opinions  
21 and articles and everything else. I don't want  
22 that to infect the legitimacy of this estate, is  
23 what I'm telling you.

24 MR. CARROLL: I understand.

25 THE COURT: And I'm saying that unless I

1 hear differently, there's nothing I have heard  
2 so far or have read in all of the many filings  
3 that I have studied closely that would lead me  
4 to believe that it is necessary to make any kind  
5 of judgment about the legitimacy of this estate.  
6 And I'm not going to do that.

7 MR. CARROLL: Your Honor, I'm not  
8 challenging the legitimacy of the estate.

9 THE COURT: We're on the same page.

10 MR. CARROLL: What I am saying is that when  
11 Mr. Park drives down I-26 from Spartanburg to  
12 Richland County and comes in this court and  
13 says, oh, yeah, the estate was closed in 2022,  
14 and then my lawyer filed for a receivership in  
15 2023, and I wasn't the PR, and the estate was  
16 closed. And now I'm going to go back to  
17 Spartanburg and get a new appointment --

18 THE COURT: We'll make -- we can make  
19 decisions about what the effect is of reopening  
20 the estate. I get that. But that's something  
21 that's a very narrow issue, and I'm hearing both  
22 sides of that.

23 MR. CARROLL: Yes, ma'am.

24 THE COURT: And I very open-minded about  
25 it.

1 MR. CARROLL: I just think he's estopped  
2 from going back up there, getting another order,  
3 and coming down here saying whatever happened in  
4 '23 --

5 THE COURT: That's where I cannot follow  
6 that argument. The idea that a person who has  
7 formerly been the administrator or the executor  
8 of an estate is estopped to go back to the  
9 probate court and request an opening of the  
10 estate, I don't think it's in front of me. I  
11 don't think it's appropriate that I rule on  
12 that.

13 And I don't think that's -- you can attack  
14 this with all the legitimacy on the basis of  
15 good arguments you make about the order  
16 appointing and whether it gets into Park or if  
17 it's to be recognized in the subsequent Tibbs  
18 suit. I get that.

19 MR. CARROLL: Sure.

20 THE COURT: That's all fair game. But I  
21 can tell you that I'm very resistant to the idea  
22 of characterizing anything that Mr. Park did to  
23 reopen this estate or open it to begin with and  
24 answer the questions in a way that doesn't  
25 comport with the way we view it here as anything

1 that I need to review.

2 And I certainly do not think that I would  
3 have the ability to rule that an individual who  
4 was the former executor or personal  
5 representative of an estate in Spartanburg is  
6 estopped by anything from going back and  
7 reopening. And I'm not going to do that.

8 MR. CARROLL: Very good, Your Honor. I  
9 just want -- because the Supreme Court has asked  
10 what is going on in Park? I want the record to  
11 be clear on that.

12 THE COURT: That ain't going on in Park in  
13 my view. I can answer a whole lot of other  
14 questions about what's going on in Park, but I  
15 am not disposed one bit to say that activity in  
16 this case somehow estops what the probate judge  
17 did in reopening this estate. That's an  
18 argument --

19 MR. CARROLL: Your Honor --

20 THE COURT: The legitimacy of the reopening  
21 of the estate or how it affects your case is  
22 something you can argue. But the concept that  
23 anything that was done in this case estops  
24 someone from going to a duly authorized probate  
25 judge and making showings to that probate judge

1 and reopening the estate, I don't see judicial  
2 estoppel as being something I would rule on in  
3 that.

4 MR. CARROLL: Your Honor, so I'm actually  
5 arguing the exact opposite. I'm not arguing  
6 anything happened here that should estop  
7 Mr. Park in Spartanburg. I'm arguing the exact  
8 opposite. I'm saying what he told the judge in  
9 Spartanburg --

10 THE COURT: And I'm saying I don't have any  
11 business in that judge's court and in that  
12 judge's determination. That would be completely  
13 wrong for me to sit here and say with the  
14 advantage of what I know, Judge, he was estopped  
15 from coming before you. That would be something  
16 that judge could decide.

17 MR. CARROLL: Yes, ma'am. I understand.  
18 And that's not my argument. But the simple fact  
19 is, is that everything that's happening in the  
20 Park case only -- can only happen if there was  
21 actually any authority for Mr. Park and the  
22 creation of the estate that comes out of  
23 Spartanburg.

24 THE COURT: I can rule on the authority  
25 thing, but I'm not going to rule on it on the

1 basis of judicial estoppel.

2 MR. CARROLL: Very good. Thank you for  
3 letting me make my points on that.

4 THE COURT: Yes, sir. All right.

5 MR. CARROLL: I will also join I think  
6 Mr. Balber and Mr. Sawyer on the service issues  
7 with Cape. I know that the common retort to  
8 that has been we've already decided that. Well,  
9 Your Honor, the facts remain the same. There's  
10 a single affidavit in the file that didn't exist  
11 in March of '23 when the receivership  
12 appointment order was entered.

13 That affidavit says I served the first  
14 amended summons. And that's -- and then the  
15 affiant shows us his cover letter. And the  
16 cover letter says enclosed herewith is the First  
17 Amended Summons. Full stop. And then it says  
18 enclosures. And the only thing it says for  
19 enclosures is First Amended Summons.

20 I understand when Ms. McVey was up here,  
21 she was saying that, well, Mr. Park had  
22 authority and the estate was still open when  
23 Cape's answer was due. But what she didn't tell  
24 you is when was Cape's answer due? And the  
25 reason she didn't tell you is because there is

1 no date that Cape's was due.

2 It was never served -- there are three  
3 complaints in this case. She can't tell you  
4 which of those complaints were ever sent to any  
5 Cape entity because the record is totally silent  
6 on that.

7 The guy who did the service didn't identify  
8 any pleading that he sent to any Cape entity.  
9 And I understand that they say, well,  
10 Your Honor, you've already decided that. You  
11 know Rule 54 pointblank says until an order is  
12 up on appeal, you can correct it.

13 And I would urge Your Honor to look  
14 carefully at the evidence on this issue because  
15 it is a -- without service, there's no personal  
16 jurisdiction. You know, I don't know, I'm still  
17 kind of puzzled why a South Carolina trial  
18 court -- why the plaintiffs and the receiver are  
19 insisting that a South Carolina trial court just  
20 seize assets of a UK company for which there is  
21 no evidence it has any personal jurisdiction  
22 here in the first place.

23 But notwithstanding is the lack of  
24 personal jurisdiction for Cape in  
25 South Carolina, you can't even get to that

1 analysis without first having legitimate service  
2 of process. The record is devoid of that  
3 threshold point.

4 I know you've heard these arguments. I  
5 want to remind you Rule 54 gives you the chance  
6 to fix that. And that's the easiest rebuttal I  
7 can think of to my friends on the other side's  
8 retort that, well, you've already ruled on that.

9 THE COURT: Right.

10 MR. CARROLL: Your Honor, I feel like I  
11 need to address some of the -- some of the  
12 so-called moral fraud points.

13 THE COURT: Certainly.

14 MR. CARROLL: Ms. McVey gave you a pretty  
15 fulsome presentation on that. I haven't heard  
16 anybody really respond to the actual merits. I  
17 will point out, as I frequently do, my clients  
18 are Mr. Altrad and Altrad Investment Authority.

19 My clients, Altrad Investment Authority,  
20 bought shares of Cape in 2017. They were  
21 publicly available shares. Everything you've  
22 heard about moral fraud and what was going on  
23 with NAAC was all from the 1970s. So 40 years  
24 before my client even had an ownership interest  
25 in Cape.

1 Cape is a stand-alone company. There is  
2 certainly no -- there's nothing in the record to  
3 suggest otherwise.

4 But I want to address the moral fraud  
5 points in two ways: First, Mr. Balber pointed  
6 this out, and I would be remiss if I don't  
7 reiterate. The Welch court specifically says  
8 that the moral fraud that formed the basis of  
9 the receivership appointment order that it  
10 approved there was internal to the litigation in  
11 South Carolina.

12 And I know Your Honor earlier this morning  
13 said, well, yeah, but it was really looking at  
14 the whole history -- the whole history. I  
15 disagree. I disagree because -- and I'm looking  
16 at my dog-eared copy of the advance sheets. I'm  
17 sorry, I don't have the South Carolina Reporter  
18 citation. I have the old fashioned -- the old  
19 fashioned document.

20 THE COURT: So have I.

21 MR. CARROLL: But on page 25, Justice Hill  
22 writes, "We conclude Atlas Turner conduct  
23 justified the appointment of a receiver before  
24 judgment."

25 Then he says, "First, Atlas Turner's

1 disregard of this court's discovery orders."  
2 That was his first point. Your Honor issued  
3 discovery orders. Atlas Turner didn't do  
4 anything in response. Justice Hill and his  
5 colleagues on the Supreme Court did not care for  
6 that.

7 Then about halfway down the paragraph, it  
8 says, second, Atlas Turner represented to the  
9 trial court that it had no insurance assets in  
10 the case. And Your Honor thought otherwise.  
11 The Supreme Court thought otherwise.

12 It was the Atlas Turner's active --  
13 seemingly active hiding of insurance in response  
14 to the request to produce it. And it said I  
15 don't have it. And the Supreme Court said that  
16 that was -- that was the second point of moral  
17 fraud.

18 What it didn't say is Atlas Turner sold  
19 asbestos, and Atlas Turner is a foreign company.  
20 It didn't say that that was moral fraud. It  
21 said that the way that that company acted when  
22 interacting with Your Honor was the proof of its  
23 moral fraud.

24 There is, of course, nothing like that with  
25 respect to Cape. Not in Park, not in Tibbs.

1 Cape was never served in Park. You just  
2 heard me argue about that. And we definitely  
3 know that Cape was never served in Tibbs because  
4 the receiver filed -- Ms. McVey, at our last  
5 hearing, said we served Cape through the  
6 receiver in Tibbs.

7 And then in one of the receiver's filings  
8 since that last hearing, he said that's a  
9 nonissue. I accepted service on behalf of Cape.  
10 Well, he's a nullity. He doesn't exist in  
11 Tibbs.

12 The Supreme Court's order in Tibbs is  
13 crystal clear on this. He can't be authorized  
14 to do work outside the case in which an  
15 appointment order is filed. There is no such  
16 order in Tibbs. Without such an order, he  
17 doesn't exist as a legal entity. How could he  
18 possibly accept service of a complaint when he  
19 doesn't exist in the first place?

20 Mr. Balber made that point, and I think it  
21 is one worth reiterating.

22 Your Honor, the Welch case makes it clear  
23 that basically everything that Ms. McVey and the  
24 receiver presented as, quote, unquote, moral  
25 fraud is simply not relevant to any analysis

1 that our Supreme Court has cosigned on. But I  
2 will address their points head-on because what  
3 they're doing is giving Your Honor a -- they're  
4 giving you little drips and drabs of the  
5 evidence that was presented to the courts in  
6 England at trial in 1988 and again on appeal in  
7 1990 in the Adams case.

8 Ms. McVey told you there was -- the moral  
9 fraud in part was the Cape controlled NAAC's  
10 finances. You heard that throughout her -- she  
11 gave a presentation about half an hour. One her  
12 main things over and over again, Cape controlled  
13 NAAC's finances.

14 Well, the English Court of Appeals  
15 issued -- they had -- they issued a lengthy  
16 order rejecting all these arguments, but they  
17 also had opinions with their order that  
18 addressed these exact same factual allegations.

19 And in point 5 in the appendix, the English  
20 Court of Appeals explained that NAAC carried on  
21 its own business. It was its own thing. It  
22 wasn't this puppet of Cape. NAAC ran its own  
23 business.

24 In point 7, the Court said, quote, Each  
25 corporate member was carrying out its own

1 well-defined commercial function for serving the  
2 overall commercial purpose of mining and  
3 marketing asbestos.

4 Point 13 is actually specific to this  
5 notion of Cape controlled -- Cape controlled  
6 NAAC's finances.

7 In point 13, the Court said Cape did not  
8 interfere with day-to-day expenditures or with  
9 particular borrowings by NAAC.

10 That's not me making it up. That's not me  
11 cherry-picking some random document from 1978.  
12 This is a court reviewing the evidence after a  
13 34-day-long trial and 17-day-long appeal that  
14 was highly adversarial. The receiver talks  
15 about Adams. They blow off the Adams case by  
16 acting like Cape went and just got that order.

17 Cape was the defendant. The plaintiff was  
18 a group of 200 Americans who had default  
19 judgments against Cape. And they had gone to  
20 the United Kingdom to enforce those judgments.  
21 And Cape said I wasn't in the United States.  
22 Those judgments aren't enforceable against me.

23 They had this lengthy trial about is NAAC  
24 the alter ego of Cape? Because NAAC is in the  
25 United States. That's what that trial was

1 about. Because if -- and maybe in his most  
2 recent filing, the receiver has this kind of  
3 casual sentence that says in England they never  
4 pierce the corporate veil. The principal always  
5 stands apart from its subsidiary. That its law  
6 is completely different than South Carolina.

7 Well, that's not true. We've given you the  
8 Adams case. It's in the file. There's a  
9 five-page discussion on page 539 through 544 of  
10 the Adams case where they talk about English  
11 corporate veil piercing, and it sounds  
12 remarkably similar to ours in South Carolina and  
13 just about every other western country and  
14 jurisdictions that uses western jurisprudence.

15 Before Ms. McVey also said in addition to  
16 controlling NAAC's finances, she said, hey, Cape  
17 control NAAC's day-to-day operations. That's  
18 all part of the moral fraud because Cape sold --  
19 Cape mined asbestos and put asbestos in the  
20 market, and it controlled NAAC, so moral fraud.

21 Well, that's point 11 of the English  
22 appellate court's ruling.

23 And this is after -- after reviewing the  
24 evidence, this is what the English appellate  
25 court said. Nor did Dr. Gaze or any

1 representative of Cape, quote, run NAAC, close  
2 quote, with reference to the internal affairs of  
3 NAAC.

4 Such as -- pardon me, lower case i,  
5 staff -- they did not run -- they did not  
6 have -- run the internal affairs of NAAC, such  
7 as the staff dealing with direct customers and  
8 its own source of supply, such as U.S.  
9 government stocks.

10 Roman numeral lower case ii, they did not  
11 run NAAC's own office premises and warehouse  
12 premises.

13 Iii, NAAC's arrangements for insurance.

14 Iv, NAAC's pension scheme.

15 V, formulation of NAAC's accounts.

16 And vi, NAAC's payment of U.S. taxes on  
17 NAAC's profits.

18 This idea that Cape ran the day-to-day of  
19 NAAC and therefore Cape was in the United  
20 States, the Adams courts took the evidence that  
21 Ms. McVey has given you and all the other  
22 evidence before it, heard from witnesses  
23 contemporaneous with all of this -- these goings  
24 on and said, no, NAAC was a -- it was a  
25 stand-alone subsidiary. It ran its own

1 business. It had its own contract. It paid its  
2 own taxes. It had its own employees, had its  
3 pension system. It had its own office space.  
4 Had its own equipment. It's its own company.

5 That's the same analysis that a  
6 South Carolina court would do here.

7 But my point is in Welch, in Tibbs, in  
8 dozens of other cases from the South Carolina  
9 Supreme Court, the Court hammers home the point  
10 that receivers are rare and reserved for the  
11 most extraordinary circumstances.

12 What the plaintiffs have brought to you and  
13 the receiver has brought to you is their version  
14 of a story that has been flatly rejected by a  
15 trial court and an appellate court from 40 years  
16 ago who heard the witnesses and reviewed the  
17 evidence that they're asking you to review. And  
18 they're asking you to just say, I don't care, I  
19 don't care what this court said, I'm just going  
20 to find that the evidence is what they are  
21 trying to present it to you as.

22 I would suggest that that would be an  
23 unprecedented departure from any kind of  
24 receivership law. In particular, in light of  
25 the Supreme Court's order in Welch and Tibbs to

1 reserve such an extraordinary remedy. And  
2 again, the remedy they're asking you to do is to  
3 put into receivership a company in the  
4 United Kingdom that has no connection to  
5 South Carolina. They don't have -- they can't  
6 tell you a connection to South Carolina. Other  
7 than they'll try to tell you there's NAAC.

8 But that ship has sailed. The train has  
9 left the station. Those facts, that argument  
10 has been thoroughly vetted and rejected.

11 And, you know, I've said this a couple of  
12 times. I don't want this point to get lost in  
13 my restitution of Adams. The people that are  
14 making these arguments that I'm rebutting, they  
15 didn't exist as a jural entity to even be making  
16 these arguments.

17 The receiver doesn't exist in Tibbs. How  
18 can he possibly come to this court and say moral  
19 fraud, appoint me as a receiver in Tibbs. He  
20 doesn't exist in Tibbs. Everything he says is a  
21 brutum fulmen. He has -- he can't say anything  
22 here because it doesn't exist here.

23 Cape can't be put in a receivership in  
24 Tibbs because Cape hasn't been served with  
25 anything in Tibbs. The Tibbs plaintiffs haven't

1 even tried to serve Cape in Tibbs. They named  
2 Cape in their -- it's not in their caption, but  
3 in the body of their pleading, they say Cape  
4 or -- yeah, Cape PLC is a European entity and  
5 its receiver is located at Beltline Boulevard in  
6 Columbia, South Carolina. They identify Cape as  
7 if it is the receiver in the body of their  
8 pleadings. And they certainly haven't even made  
9 CIHL a defendant in the Tibbs case.

10 So again, Your Honor, I made a lot of these  
11 arguments last time. I'm going to sit down.  
12 Unless Your Honor has any questions. But I do  
13 want to address one thing that Ms. McVey pointed  
14 out. She came up here, she had a color copy of  
15 a book and said, oh, there goes Cape,  
16 intimidating lawyers. Can you believe these  
17 guys? Cape intimidates lawyers.

18 I have stood at this podium a half dozen  
19 times, maybe more, in the five and a half years  
20 since these receiverships have been existing in  
21 these asbestos dockets, where I've had to  
22 defend, myself, my colleagues, my clients  
23 against sanctions motions that get filed against  
24 me, my colleagues, and my clients for simply  
25 arguing the law.



1 The Supreme Court still has another  
2 sanctions motion against me and my clients that  
3 it has not yet ruled on that the receiver has  
4 brought against us. But my clients and my law  
5 firm are not alone in this. Your Honor knows.

6 They have sued -- the receiver has sued  
7 Winston and Strawn. They sued Locke Lord. You  
8 mentioned it earlier. They sued Robert  
9 Thackston, a lawyer at Nelson Mullins. The sued  
10 the Fox Rothschild's firm. They got a  
11 malpractice settlement from their own lawyer's  
12 law firm now.

13 Your Honor, will recall back in Covil days,  
14 Mr. Lay's firm was within the receiver's  
15 crosshairs. This idea that the receiver is  
16 being somehow intimidated by Cape is just  
17 inconsistent with the record and inconsistent  
18 went his consistent behavior over the last  
19 five-plus years.

20 So I didn't --

21 THE COURT: There's been -- there's been a  
22 lot of activity on both sides. I am still, as  
23 the Supreme Court is, appalled at the English  
24 court's imposition of over a million-dollar  
25 award against the receiver in this case for

1 doing nothing more than being the receiver.

2 So there's a lot of excess on all sides in  
3 this thing. And I think that's what the Supreme  
4 Court wants to avoid in talking about these  
5 matters on the merits.

6 MR. CARROLL: Sure. Yes, ma'am.

7 THE COURT: My heart does not bleed too  
8 much for anybody in this case because there  
9 isn't anybody that's gotten that kind of  
10 judgment against them. Mr. Protopapas can't go  
11 abroad at the present time because of these  
12 filings, not just in England, but in France and  
13 other places. So, you know, don't talk to me  
14 about excessive conduct. I'm horrified about  
15 any kind of attempt to attack lawyers  
16 individually.

17 MR. CARROLL: I don't think anybody is --

18 THE COURT: Not just you and others, but it  
19 goes very much for these rogue orders that  
20 attempt to impose that kind of financial burden  
21 on someone who has done nothing but try to be a  
22 receiver but is taking actions they don't agree  
23 with legally. There's a way to address that  
24 without trying to imperil somebody financially.

25 MR. CARROLL: Your Honor, I think he's done

1 a whole lot more than just act as a receiver.  
2 He has filed a complaint in which he is  
3 pretending to be Cape PLC and is trying to  
4 commit corporate sabotage as that company by  
5 engaging in some self-piercing exercise.

6 THE COURT: That's a pejorative way of  
7 characterizing it and another way of  
8 characterizing it is he is acting per the orders  
9 of this court appointing him as the receiver.  
10 And if there's something wrong with that, this  
11 court and the -- what I'm engaged in right now  
12 is the perfect way to repair that.

13 MR. CARROLL: Yes, ma'am.

14 THE COURT: Because that deals with legal  
15 issues that I can deal with, which is whether  
16 the receiver was properly appointed. And I'm  
17 going to decide those things on their merits.

18 But this idea that your status for your  
19 client is somehow enhanced because you all have  
20 been unfairly attacked and other lawyers in your  
21 position have been unfairly attacked, I don't  
22 like that on any side. Not on your side and  
23 certainly not against Mr. Protopapas.

24 These issues are legal issues that can be  
25 argued on the basis of who's right and who's

1 wrong about the law. But trying to punish the  
2 lawyers or the receiver is, I think, way out of  
3 bounds.

4 MR. CARROLL: Well, Your Honor, you will  
5 note that we haven't filed a single thing in  
6 this court asking for sanctions on anything in  
7 the five-plus years we've been dealing with  
8 this. I want that to be clear.

9 Also, with respect to whatever cost order  
10 the court in England issued pursuing its loss,  
11 the receiver was served with pleadings in that  
12 case. He chose not to respond.

13 Now, they come to this court and say if  
14 somebody behaves like that, that's moral fraud  
15 and you should appoint a receiver over them.  
16 But when they had a chance to appear in front of  
17 a court and if the situation is as simple as  
18 Your Honor says and they could have just gone  
19 and said, look, I have this order. I'm doing  
20 what I've been authorized to do. Well, he sure  
21 should have said that, but he didn't. He  
22 instead ignored it. And now there's a cost  
23 order consistent with that country's loss.

24 THE COURT: All of that the pretty doggone  
25 irrelevant to what I'm deciding.

MR. CARROLL: I agree.

THE COURT: And what I'm telling -- and I tell Mr. Protopapas and Ms. McVey and everybody else the same thing is I'm like the Supreme Court, I'm fed up with this idea that we ought to take into the account the injured feelings of anybody in this case about so-called personal attacks. What we ought to do is stay away from that.

MR. CARROLL: Your Honor, I could not agree more. And the only reason I brought it up was because this morning Ms. McVey was waving around a book and said that apparently she feels intimidated by Cape or somebody feels intimidated by Cape.

THE COURT: Well, let's move on to merits.

MR. CARROLL: Yes, ma'am. Well, I've said what I need to say on the merits. Unless you have any more questions, I'll have a seat.

THE COURT: I don't.

MR. CARROLL: Thank you, Judge.

THE COURT: Mr. Rawl.

MR. RAWL: Your Honor. May it please the Court.

I represent Charter, Consolidated Mining,

and ESAB Group. And, Your Honor, if I may, I would like to join the arguments that have been made today by Mr. Sawyer.

THE COURT: What he means is E-S-A-B.

MR. RAWL: I would like to join in the arguments that Mr. Sawyer made this morning in regard to the Park arguments and with regard to the Altrad counsel and the Anglo counsel that Your Honor just heard. That will shorten my comments substantially.

Initially, I wanted to ensure that my client is standing on personal jurisdiction and I make these arguments and do not intend to waive any personal jurisdiction.

And I apologize, I'm going to make a couple of points, you know, but not try to go through, you know, the whole arguments all over again.

With regard to the errors or the problems with the face of the Park appointment order, one thing I would like to add is that the Park order does not have on its face the amount of a bond that should be required to be paid should any of the entities for which the receiver is seeking their assets would be able to pay in order to terminate the receivership.

I cite all this in the brief, but the Supreme Court case states that that bond is -- the amount of that bond is not in the face of the order and that the order is aware of that issue.

THE COURT: And tell me a little bit more about what you all's argument is about a bond and how that bond works and what kind of -- what setting an amount of a bond would depend on. Nobody has argued that before me, yet you bring it up, so I want to hear from you on it.

MR. RAWL: I appreciate that. I have argued this before, Your Honor.

THE COURT: I'm talking about today in this proceeding.

MR. RAWL: Yes, Your Honor. The receivership statutes, the Section 10 talks about the different reasons why a receiver can be appointed. And in Section 20 and 30 it says who has to get notice of the receiver.

And then you get to Sections 50 and 60, ones which says that if the party that's holding the assets that are being sought to be put into the receivership pays a bond to the court of I believe it's two times the amount of the asset.

Then the receiver -- the order appointing receiver will not be entered or may not be entered.

The next section states that if before any receiver may be appointed under this statute, that the amount of a bond would have to be put into the order such that, you know, the parties could pay the bond at any time prior to prejudgment.

THE COURT: How is that going to practically work in a case like this? You've got an entity that's been served and won't respond. A receiver's been appointed. Let's not get into the intricacies about this, but in some kind of normal case, there's no attempt to attack the concept of using a receiver as a general matter specific to what happened in this particular case.

But let's say the receiver is regularly appointed. And what the receiver is appointed for is to look for potential insurance assets.

How in the heck -- and you've got insurance companies that say you don't have any ability to even serve a subpoena on me. I'm not telling you anything. Or I've been told by my company

1 not to even respond to you.

2 So how is a bond supposed to be set when  
3 the receiver has not yet gotten information  
4 about the assets available? And particularly  
5 when there are insurance assets, which is the  
6 main thing that is mostly sought in  
7 receiverships is insurance assets. I mean, that  
8 doesn't make any sense to me that an insurance  
9 company can just never respond, hide behind the  
10 idea that they don't have to respond or that  
11 their information is not even subpoenaable in  
12 this case, and yet a bond is supposed to be set?  
13 You tell me how that works.

14 MR. RAWL: Yes, Your Honor. So initially  
15 the bond would be --

16 THE COURT: Because you're saying the  
17 receiver can't even be appointed until the bond  
18 is set, and yet you hold the key as insurance  
19 companies as to what the assets might be, you  
20 sit there and say, oh, I can't possibly be  
21 involved in this. So how does the bond work in  
22 that kind of situation?

23 MR. RAWL: Your Honor, in this case, I do  
24 not represent insurance carriers. I  
25 represent -- this is a case where I represent

1 ESAB, Charter, and Central Mining. You know,  
2 they're not --

3 THE COURT: Well, it's the same kind of  
4 concept. You all are not going to be  
5 forthcoming about anything.

6 MR. RAWL: I just want to be clear who I  
7 represent in this case.

8 THE COURT: Same thing as the example I  
9 gave with insurance assets. If those assets are  
10 sought in aid of trying to establish a pool for  
11 the payment of claims made in this case, you  
12 know, you sit on your thing of this whole thing  
13 is illegal therefore I don't have to respond;  
14 but by the way, you can't be appointed as a  
15 receiver until you know how much assets I have  
16 that might be applicable to this situation.

17 What kind of argument is that?

18 MR. RAWL: I'll be happy to explain,  
19 Your Honor. So my reading of the statute is  
20 that, you know, the person -- the plaintiff in  
21 the cause -- the plaintiff in the case where the  
22 receiver is being sought, that person, when  
23 making the -- an appointment, making a motion to  
24 appointment a receiver, you know, normally says  
25 there are some type of assets that are at risk

1 of dissipation and those assets would be  
2 identified, you know, by the plaintiff.

3 THE COURT: How are they going to identify  
4 them when you won't even respond to their  
5 request for discovery?

6 MR. RAWL: Again, Your Honor, I represent  
7 three entities that have been sued by a receiver  
8 in a case other than the one in which he was  
9 appointed.

10 THE COURT: I get all those arguments, but  
11 let's get beyond the legitimacy of the  
12 appointment for a minute. You're making a very  
13 specific argument about another reason that the  
14 receivership fails is because they haven't set a  
15 bond. And I just want to know in practical  
16 terms how that bond is supposed to be set. It  
17 has nothing to do with whether the receiver can  
18 be appointed, the Park versus Tibbs thing.

19 You say that the bond requirement is there  
20 even if you have an otherwise legitimate  
21 appointment of a receiver. And I want to know  
22 how that would work in a situation like this.  
23 And so far I'm not hearing you address that at  
24 all other than to say, hey, I'm not what you  
25 think I am.

1 MR. RAWL: I apologize. I'll do my best to  
2 describe my position. My position is that,  
3 Your Honor, the receiver cannot be appointed.  
4 No appointment order can be issued without a --  
5 without the amount that is at issue, you know,  
6 that the plaintiff is seeking from the  
7 defendant, that is seeking to put that  
8 defendant's assets into the receiver's hands.

9 So before -- and I'm not making this up.  
10 This is what the statute says.

11 THE COURT: Let me tell you something,  
12 Mr. Rawl. Most receiverships could never be  
13 started if you had to identify the specific  
14 asset and its value before the receiver was  
15 appointed. That is often why the receiver is  
16 appointed because there is an entity that has  
17 assets but you're not sure of the amount of them  
18 or whether they've been dissipated or just what  
19 has happened.

20 And the entity won't respond otherwise to  
21 the suit. So you appoint a receiver to try to  
22 find out what kind of assets they have. That  
23 receiver -- you're saying the receivers could  
24 never be appointed in that situation, as I  
25 understand it.

1 MR. RAWL: I understand that a receiver  
2 should not be appointed prejudgment on their --  
3 the receivership's --

4 THE COURT: That's yet another argument and  
5 prejudgment that that -- that is not an argument  
6 that's going to prevail in this court. The  
7 Supreme Court has already said that, yes, there  
8 are times when prejudgment a receiver can be  
9 appointed. They are rare but, yes, there are  
10 times when that can happen. You all have  
11 already lost that. And I'm going to go by what  
12 the court has said so far in that regard.

13 MR. RAWL: I'm not arguing there's no such  
14 thing as a proper prejudgment appointment of a  
15 receiver. That's not what I'm here to argue.

16 THE COURT: What is your argument?

17 MR. RAWL: My argument is that in order to  
18 appoint a prejudgment receiver, the court has to  
19 follow the receivership statutes. Which one of  
20 the requirements, it says before an appointment  
21 may be entered, the amount of the bond has to be  
22 on the face of the order.

23 And so I didn't write the statute. That's  
24 what the statute says. And so -- and then the  
25 Supreme Court has interpreted that statute to

1 say if there is no amount on the face of the  
2 order of the bond, then the order is void  
3 ab initio.

4 And the Welch opinion, actually the last  
5 line of the sentence says, And the -- you know,  
6 and the entity receivership can always pay the  
7 bond if they want to get rid of the  
8 receivership.

9 So the Welch opinion actually referenced  
10 the bond statute. It wasn't raised in the Welch  
11 matter by any of the parties. However, the  
12 Supreme Court sua sponte raised the issue of  
13 this bond protection. And the bond protection  
14 that is in the underlying statute says that the  
15 amount of the bond needs to be on the face of  
16 the order so that the implicated parties could  
17 pay the bond in that case because the  
18 receivership statute makes it very clear the  
19 receiver is only to act in the case in which he  
20 was appointed. In that cause, if they pay the  
21 amount of the bond prejudgment, then the  
22 receiver is to be terminated.

23 So, Your Honor, I've made this argument  
24 before. I apologize if I'm being wordy, but I  
25 just want to make sure that I'm pointing out

1 that another defect on the face of the actual  
2 Park appointment order is it does not have --  
3 does not reference the bond or the amount of the  
4 bond that would need to be paid in order to  
5 terminate any existence of the receiver.

6 THE COURT: I understand your argument.

7 MR. RAWL: Thank you, Your Honor.

8 THE COURT: I hear your argument. I don't  
9 think I understand it yet.

10 MR. RAWL: So I apologize for jumping  
11 around. My client also agrees that in the Park  
12 case at the time when Keith Park went and filed  
13 the application to close the estate and to  
14 terminate his receivership, that that -- at that  
15 point there no longer existed a plaintiff in the  
16 case and that that case was abated. And that  
17 that case at this time no longer exists.

18 And interestingly, the plaintiff's bench  
19 brief concedes that, you know -- you know, what  
20 she states is each of Mr. Park's actions taken  
21 in the interim period will relate back thus  
22 rendering them proper and valid, including the  
23 appointment of the receiver.

24 You know, what she's saying is that she  
25 acknowledges that at the time of the appointment

1 there was no plaintiff, and that the appointment  
2 of receiver was void or a nullity.

3 What I think the argument is, is that Park  
4 can do something now or later in order to  
5 somehow ratify or relate back or, you know, to  
6 make the appointment order not a nullity.

7 And, Your Honor, my client respectfully  
8 disagrees with that because you can't go back  
9 and reinvent subject matter jurisdiction or a  
10 capacity when there was none at the time that  
11 the motion was filed or considered.

12 And frankly, my client's position is that  
13 everything that was filed, you know, in the name  
14 of the Park plaintiff after the estate was  
15 closed and there existed -- there no longer  
16 existed a plaintiff much less a PR that could  
17 act on behalf of the plaintiff is a nullity and  
18 should not be considered.

19 And to take that one step further, I heard  
20 the plaintiff, and I think I believe even  
21 Your Honor said it at one point that Mr. Park  
22 sought a reopening of the estate. And I just  
23 want to be clear what Mr. Park sought was  
24 subsequent administration, which is different  
25 than going back and reopening the same estate.

1 A subsequent, you know, administration --  
2 THE COURT: Well, is there such a thing in  
3 your mind as reopening an estate?

4 MR. RAWL: I mean, it could be done.

5 THE COURT: What's the basis for it?

6 MR. RAWL: They would have to --

7 THE COURT: Is there a statutory provision  
8 that talks about that as opposed to  
9 subsequent -- what are you basing that on? Is  
10 subsequent administration something that's found  
11 in the Uniform Probate Code?

12 MR. RAWL: It is. It's under 1008.

13 THE COURT: Exactly.

14 MR. RAWL: And it's also reference -- you  
15 know, it says it's not retroactive. It's, you  
16 know, a -- a subsequent administration and it's  
17 done when additional assets are found and need  
18 to be dealt with under the estate. And not what  
19 we have here.

20 What Ms. McVey argued is that she made a  
21 mistake, did not understand that the estate had  
22 been closed at the time the motion to appoint  
23 was made. And so then went back --

24 THE COURT: I'm saying it sounds to me like  
25 it's more a quibble about verbiage than it is

1 something real because of the interaction of the  
2 statutory provisions about what happens when you  
3 have a subsequent administration or a reopening  
4 of the estate, whatever you want to call it, it  
5 sounds like we are quibbling about words rather  
6 than talking about what the probate court means  
7 and what the rule means.

8 MR. RAWL: Well, what the rule means or  
9 what the rule says is that if additional assets  
10 are found that were not dealt with in the  
11 original estate, then an interested party can  
12 make a petition for a subsequent administration,  
13 which opens a new estate. Even when you look at  
14 the numbers, they don't go back to the same  
15 numbers.

16 THE COURT: They go back to the very same  
17 number, they just call it 2. They add the  
18 number 2 to it. So it is a part -- it's not  
19 something that stands completely unrelated to  
20 the other estate.

21 MR. RAWL: Well, the original PR --

22 THE COURT: There's no sense in quibbling  
23 about it.

24 MR. RAWL: I mean, my understanding of the  
25 probate code in some of the cases that have

1 discussed these issues is that when an estate is  
2 closed, that estate is forever closed. Unless  
3 somebody goes back and shows some kind of fraud  
4 to get -- you know, to get nunc pro tunc  
5 reopened. That would be the reopening of an  
6 estate, you know.

7 With regard to subsequent administration,  
8 there must be something different in the new  
9 estate in order --

10 THE COURT: And from what do you derive  
11 that understanding?

12 MR. RAWL: From the statute itself.

13 THE COURT: Is there case law on that?

14 MR. RAWL: There are a couple of cases.  
15 Some of the cases that have been cited already  
16 in the briefs suggest like the Glenn v. DuPont  
17 case, 254 S.C. 128.

18 Also, the principal is in the McNair v.  
19 Howle case, 123 S.C. 252.

20 In that matter, the court emphasized that  
21 the appointment of an administrator de bonis  
22 non, which is a successor administrator, you  
23 know, is not a revocation of prior orders and  
24 does not infer a retroactive authority but  
25 instead that the appointment process itself is

1 new and that the authority starts at that time  
2 and goes forward as opposed to retroactive.

3 But my point, Your Honor, is that at this  
4 time, the only plaintiff even listed on the  
5 caption is still the original PR and the  
6 original estate in which --

7 THE COURT: Well, the name is the same name  
8 as the PR that's also just been appointed in  
9 subsequent administration, correct?

10 MR. RAWL: The PR had -- the same person  
11 was appointed the PR in subsequent  
12 administration. However, it is a different  
13 estate, so it is a different entity.

14 THE COURT: I don't see any case that says  
15 that and certainly not under the Uniform Probate  
16 Code. Some of the -- McNair, for example, is a  
17 very old case. And I started practicing when  
18 you still had to appoint administrators or  
19 executors to de bonis non. But the Uniform  
20 Probate Code is a different kettle of fish in  
21 terms of regularizing all of that.

22 MR. RAWL: Your Honor, I understand, but  
23 the process didn't change. I mean, from a  
24 standpoint of the probate court's appointing of  
25 a -- and now is of course a PR.

1 But what Mr. Park did is he said he went to  
2 the probate court three days after Ms. McVey  
3 emailed that the case was fully resolved. And  
4 at that time, when he filed with the probate  
5 court his sworn statement saying that everything  
6 needed to be done in that estate had been  
7 completed --

8 THE COURT: I understand that argument.

9 MR. RAWL: And also he filed not only the  
10 release from his siblings, but also his own  
11 release. So at that time when the estate was  
12 closed, not only did no party have any interest  
13 in the estate whatsoever, the estate was closed.

14 And even Mr. Park's coming back and opening  
15 the subsequent administration. What I, Your  
16 Honor, would respectfully the new estate. What  
17 he again said was that that was for potential  
18 litigation. Which what that suggests,  
19 Your Honor, is that there is concern that  
20 they -- the estate will be sued, not that the  
21 estate is going to bring litigation.

22 Because at the time they closed the  
23 original estate, Mr. Park, of course, was well  
24 aware of his litigation that he had just settled  
25 and told the court that that matter was over.

1 So anyway, Your Honor, my slightly subtle  
2 difference than what my colleagues have argued  
3 is that at this time in the Park case nothing  
4 has been done or filed to show that there is  
5 some new party or new estate that has intervened  
6 in or substituted in, in order to try to do any  
7 type of Rule 17 or Rule 25 or some type of  
8 ratification.

9 At this point, it still shows the same  
10 original estate, the same original PR, both of  
11 which we know are nullities.

12 And so as we stand here now, you know,  
13 frankly, Plaintiff's counsel in Park haven't had  
14 a client with regard to the original estate  
15 since that estate was terminated. So everything  
16 that was filed after that was done with no  
17 client and is a nullity.

18 At this point, my client's position is that  
19 counsel may represent Mr. Park in his new  
20 appointment as PR for the subsequent estate, but  
21 that is different than -- that does not allow  
22 counsel to go back and make arguments again on  
23 behalf of the original state or claim to  
24 represent the original estate. You can't get  
25 rid of that gap where there was no estate and no

1 standing of the court and no capacity.

2 THE COURT: I understand your argument.

3 MR. RAWL: And because of those same  
4 issues, of course the receivership appointed is  
5 a nullity, is void. And my client would object  
6 to any arguments being considered at this point  
7 by the receiver or by counsel because they don't  
8 have the authority or standing to make any of  
9 the arguments.

10 And lastly, to the extent that the  
11 receiver's, you know, appointment was not void,  
12 the arguments being made now are in furtherance  
13 of his own jurisdiction. And an arm of the  
14 court, I don't think that the receiver is meant  
15 to be an adversarial party arguing, you know, on  
16 behalf of Park as to what Park should have  
17 ordered in order to get a receiver, or in Tibbs  
18 on behalf of, you know, himself in order to  
19 support an appointment of his own receiver or  
20 his own authority to act in Tibbs.

21 You know, Your Honor, with regard to Park,  
22 the only party that would be improper to argue  
23 about the propriety of the underlying motion to  
24 appoint the receiver would be the original  
25 estate and Mr. Park as PR of the original

1 estate. But it was a nullity at the time.

2 So there's actually nobody on the  
3 plaintiff's side that has standing or authority  
4 or capacity to actually argue in favor of the  
5 void Park order. That carries over into Tibbs.

6 And so the same thing. I don't think it  
7 would be appropriate for the arguments being  
8 made by the receiver that are he's trying to  
9 demonstrate at, you know, the cost of Cape or  
10 the other entity why he should be able to  
11 continue in the role as an appointed receiver of  
12 the court.

13 THE COURT: Okay. Thank you, Mr. Rawl.

14 MR. RAWL: Your Honor, if I can just check  
15 my notes and make sure I didn't miss anything.

16 Thank you, Your Honor.

17 THE COURT: All right, sir.

18 All right. Charter kind of got out of  
19 order here in terms of the way I set this thing  
20 up, but I'm certainly not going to hear those  
21 arguments repeated again. But what it looks  
22 like to me we are at right now is to go to the  
23 receiver's side of this situation, which could  
24 either be argued as opposition to the motion to  
25 dismiss and dissolve, or as an affirmative

1 request that the appointment of the receiver be  
2 confirmed.

3 Both those things are at issue. And  
4 actually what Charter, ESAB, and Central Mining  
5 did was to submit, in connection with receivers,  
6 a report, which is really not something that's  
7 pertinent to what we're doing right now and to  
8 the motion to confirm.

9 So I guess we've gotten the cart ahead of  
10 the horse a little bit in terms of Charter's  
11 argument, but I'm sure not going to get it  
12 repeated.

13 So I think I'll turn now to the receiver  
14 and ask for argument with respect to both  
15 opposition to the dismissal or the dissolution  
16 of the receivership and request that the  
17 receiver's motion appointment be confirmed.

18 Who's going to make those arguments?

19 MR. LAY: I think between me and Ms. McVey,  
20 we'll be able to make those arguments. I've got  
21 one request. I have to go for a comfort break,  
22 if you don't mind.

23 THE COURT: Absolutely. All right. 3:30.  
24 Let's take a 15-minute break. Court be in  
25 recess.

1 ---  
2 (A recess transpired.)  
3 ---

4 THE COURT: All right. Mr. Lay, who's  
5 recognized, we're still in Tibbs. And this is  
6 Receiver's opposition to the motions to dissolve  
7 the case receivership and dismiss the  
8 third-party claims and concomitantly the  
9 Receiver's motion to confirm the appointment.

10 You may proceed.

11 MR. LAY: Thank you, Your Honor. And thank  
12 you for the brief break.

13 THE COURT: Yes, sir.

14 MR. LAY: I'm going to try to avoid being a  
15 squirrel in the road because I'm responding to  
16 three different folks, and I'm going to try to  
17 make this as simple as I can. If I get off  
18 track and you have concerns, please just let me  
19 know. But I am having to respond to a lot of  
20 different arguments that have been made.

21 I do want to start with what I think the  
22 Court's got to do here today. Whether to  
23 dismiss or strike the third-party action on the  
24 theory that the receiver does not exist. He  
25 does exist. They're saying it doesn't. We're

1 going to talk through that.

2 Whether Welch requires a Tibbs appointment  
3 order in each case in which a receiver acts, you  
4 have to be appointed receiver in each case in  
5 which the receiver acts. And really there's  
6 some nuance to that. You've got to make a  
7 decision on whether you have to go through an  
8 appointment process for a new receiver in each  
9 case, or if there is an appointment order in  
10 another case that encompasses the case that  
11 you're doing work in and that's filed, is that  
12 enough?

13 Or third, can you do a confirmation order  
14 or a more elaborate order to address the  
15 concerns of Welch, which I think that's what the  
16 June 26 order did.

17 So I think that's what's in front of you.

18 Now, we have talked about this somewhat in  
19 a vacuum, and I do want to very briefly talk  
20 about what the case is, this third-party case,  
21 and why these defendants are in the case.

22 And there is a significant historical,  
23 actually fascinating, tragic but fascinating  
24 historical background on all of this. And it  
25 all started in South Africa. And I'm not going

1 to go back to the turn of the century, but I do  
2 want to say this.

3 South Africa, at the turn of the century,  
4 had a vacuum. They did not have a strong  
5 government. It was a diffuse government. They  
6 did not have regulations. And so to fill that  
7 vacuum, they came up with this idea called a group  
8 system. And the group system evolved.

9 It was a corporate, economic system that  
10 really was driven in South Africa. It was  
11 unique to South Africa. And it came about to  
12 make sure that companies were able to handle  
13 risks associated with not having the government,  
14 to make sure that they controlled different  
15 aspects of the economy, and to have total  
16 control, vertical down, in all aspects of an  
17 economy. And it started out with this -- it's  
18 called the Corner House and it was mining  
19 interest.

20 And the reason it was so important to have  
21 this system that they developed was because it  
22 cost a lot. It's a lot of capital that goes  
23 into mining, and sometimes those mines pay off,  
24 sometimes those mines don't pay off. They were  
25 trying to attract European and American capital



1 into South Africa, but there were concerns about  
2 the environment that they were in.

3 So they set up this system is a top-down  
4 vertical system called a group system. And  
5 we're not making it up. There is a lot that has  
6 been written on it. And it's even been  
7 litigated in the U.S. because the U.S.  
8 authorities have tried to deal with some of the  
9 group system companies that they thought were  
10 acting as a monopoly.

11 And that is a way to look at the group  
12 system. It is effectively a bunch of different  
13 divisions under a head. And here, ultimately it  
14 was called the Oppenheimer Group.

15 And Mr. Oppenheimer controlled about 15 to  
16 20 percent of the GNP in South Africa because of  
17 this group system. And this group system  
18 controlled all aspects. It controlled mining,  
19 it controlled labor, it controlled capital  
20 investments, it controlled allocation of  
21 resources.

22 They were even in situations where there  
23 were providing equipment, providing resources to  
24 the mines, to feed the miners. They had  
25 everything covered. All of it was under one

1 umbrella, and that there was one decision maker.

2 So how did they control all of these  
3 subsidiaries? And there are different ways that  
4 it was done. But they did it through board  
5 memberships and executive committee. And these  
6 board members were friends of Mr. Oppenheimer,  
7 and they were deployed in every one of these  
8 companies where there were shared memberships,  
9 board memberships where these guys would be on  
10 30, 40, 50, a hundred different boards. And  
11 they all answered to Mr. Oppenheimer, and they  
12 all were part of the executive committee.

13 They also had something called secondants,  
14 and what they would do is they would deploy  
15 individuals that were part of the main group,  
16 part of either the Oppenheimer Group or Anglo  
17 American, and would deploy them to subsidiaries,  
18 to run the subsidiaries.

19 They also did risk allocation so that if  
20 there was a problem with the mine, where it  
21 didn't pay off and it was a loss, they allocate  
22 that loss across multiple subsidiaries. So the  
23 mine didn't get hit. That there was --  
24 everybody had to share in the loss.

25 They also had clearinghouses where they

1 would collect capital and deploy the capital  
2 throughout the subsidiaries as well.

3 So it didn't operate as independent  
4 companies. They didn't operate as independent  
5 companies. They operated as one giant company.  
6 And it is unique to South Africa. This could  
7 not happen in the U.S. We have too much  
8 regulation. It could not happen.

9 They also use management fees, preference  
10 shares, directors of the subsidiaries were all  
11 loyal. They were subservient to the Oppenheimer  
12 Groups, subservient to Anglo.

13 What we have here with our theory on Cape,  
14 Cape was involved in asbestos and in to mining.  
15 They created resources. They created products  
16 that were then sold in the U.S. They also  
17 controlled the market in the U.S. 95 percent of  
18 the blue asbestos in the United States came from  
19 Cape.

20 65 to 70 percent of the brown asbestos came  
21 from Cape. They had an almost complete monopoly  
22 over brown and blue asbestos, which are two of  
23 the most dangerous forms of asbestos.

24 So what we have here with this moral fraud,  
25 and I do want to deal with the moral fraud that

1 is being discussed here. With the moral fraud,  
2 you have this attempt -- this recognition by  
3 Cape that -- and the people that were  
4 controlling Cape, the companies, the parents  
5 that were above Cape, there was recognition that  
6 there was growing toward liability, it was  
7 emanating from the United States. There was  
8 growing concern that there were problems with  
9 meso in connection to asbestos. Particularly  
10 blue and brown asbestos. And they weren't  
11 surprised by that because they knew about it.  
12 And they had known about it for years and years.

13 But when they recognized that it was  
14 potentially an existential threat to the mines,  
15 they wanted to make sure that they escaped the  
16 U.S. And I'm not making this up. They wrote it  
17 all down. And Cape and, you know, the receiver  
18 has to deal with the information that's provided  
19 and presented.

20 So they knew it was an existential threat  
21 and potentially an existential threat to Anglo  
22 American, potentially an existential threat to  
23 not just Cape but everyone above Cape, Charter  
24 and Central, De Beers, which is a diamond  
25 operation. All of those were in this group

1 system, and they knew that they had a problem.

2 So what are we going to do? Cape had a  
3 subsidiary in Chicago that was really a one-man  
4 operation, and that subsidiary really did phone  
5 calls. They filled orders.

6 It was one guy who was primarily doing it,  
7 and he had four or five secretaries that would  
8 help with the paperwork. That was the NAAC  
9 operation.

10 This idea that NAAC was acting as an  
11 independent company is just completely and  
12 utterly inaccurate. It wasn't. And there is  
13 testimony that comes from the president of NAAC,  
14 it comes from other employees in Cape, that NAAC  
15 was acting and controlled by, dominated by Cape.  
16 And we know that from sworn testimony.

17 We have put together documents that we have  
18 presented that showed the moral fraud. And that  
19 was presented to you before we were even  
20 involved in the case. All of these documents.

21 Now, we have affidavits, and we've also got  
22 an Excel spreadsheet that shows the  
23 authentication to all these documents. Both  
24 from business records, ancient document  
25 exception. We have all of it authenticated.

1 We've got it all lined up for you. And I'm  
2 going to give you a package to show all of those  
3 documents in a form where they're admissible at  
4 trial right now.

5 We don't have to -- there's no hearsay upon  
6 hearsay. These are primary documents that  
7 exist, including documents that we did not  
8 deprive, but they're internal lawyer notes  
9 that Lord Bissell had produced.

10 It was not something that the receiver was  
11 depriving. It's documents that are out  
12 there. Because it's been so long they've gotten  
13 out. But the lawyers set up this idea with  
14 Cape, primarily Cape individuals talking about  
15 NAAC. They liquidated NAAC. We're going to get  
16 out of the U.S. We got a subsidiary here, they  
17 had selling. They've got customers. We got to  
18 get out of Dodge. We need to go stay in the UK.

19 But we're making too much money by selling  
20 asbestos and we don't want to give that up. So  
21 what they did was, and this is what we're going  
22 to have to live with, is they set up another  
23 company. Changed its name, in the same place,  
24 in the same building, same equipment, same  
25 individual, same customer list. They started a

1 new NAAC overnight.

2 In fact, testimony is they made calls to  
3 the customers to tell them about the new name  
4 before the transition occurred.

5 The transition was effectively I turn the  
6 light off one day -- NAAC one day, turn the  
7 light off the next day, I turn the light back  
8 on, and, boom, I'm another company. Everything  
9 else is the same.

10 So then they set up another Cape-owned  
11 entity in Luxembourg that owned this new  
12 subsidiary and did not share with some of the  
13 employees of NAAC that Cape actually owned the  
14 Luxembourg subsidiary. It was just a simple  
15 holding company in Luxembourg. They did that --  
16 and we know this because they wrote it down.  
17 They did that to put distance between the mines  
18 and U.S. tort liability.

19 And on top of that, they made a decision  
20 that we're not responding to U.S. litigation  
21 anymore. Again, we know that because they wrote  
22 it down. We're not responding anymore. We're  
23 going to take defaults, and they're not going to  
24 be able to execute on the defaults in the UK.

25 And that's what they've done for the last

1 50 years. This is not a one-off event. This is  
2 an ongoing event that continues to this day  
3 through different iterations and different  
4 successors of these companies that I'm going to  
5 point out just to give you some insight into why  
6 some of these folks are in the case.

7 But they've been doing this for the last 50  
8 years. There have been cases in the U.S. where  
9 this is -- the U.S. courts have positively  
10 responded to this alter ego theory. You have  
11 the UK litigation, the Adams litigation that  
12 they've talked about, which, I mean, I had  
13 trouble sitting in my seat hearing the  
14 description of the UK Adams litigation.

15 It was litigated in 1991. Preinternet, I  
16 might say, which is very important here because  
17 we've been able to gather a lot of the  
18 information that's floating out there about what  
19 went down in this situation.

20 But the UK case is not controlling here in  
21 any way. The law on alter ego, the law on  
22 successor liability is different in the UK.  
23 It's sacrosanct. It's much more aggressive in  
24 the U.S. Any suggestion that it's not is just  
25 plain wrong.

1 The facts that were litigated in the UK are  
2 not the facts that we have here, and they do not  
3 have single business enterprise as a theory.

4 What you will see as you get more into what  
5 the group system is, you could put an equal sign  
6 from the single business enterprise equals group  
7 system. The very definition of single business  
8 enterprise is the group system. They all worked  
9 in concert to try to escape asbestos liability  
10 in the U.S. and try to run to the UK. And  
11 they've gotten away with it for 60 years, these  
12 companies that really were in control of Cape.

13 Cape's defense into this is to say, okay,  
14 this information exists. I want to turn to the  
15 people that have controlled me, dominated me,  
16 caused this or were a part of it to deflect the  
17 liability that Cape is going to be dealing with.

18 Cape has personal jurisdiction in this  
19 state. We've got direct sales into this state.  
20 We've got NAAC, again, dominated by Cape, direct  
21 sales into this state. You've got a case, a  
22 Barnwell County case that said Cape had --  
23 there's jurisdiction in South Carolina.

24 You've got advertisement in these asbestos  
25 magazines. You've got sales to companies that

1 were doing business in South Carolina. There's  
2 profound contacts in South Carolina about Cape.

3 The idea that the UK court said there's no  
4 presence in South Carolina. They did not have  
5 available to them these direct sales and other  
6 contacts with South Carolina. They availed  
7 themselves of the South Carolina market, and  
8 they escaped to the UK.

9 And what is remarkable about this, and I  
10 don't want to -- I don't want to preach, but  
11 what bothers me about this is during the life of  
12 this case there's been all kind of articles,  
13 magazine articles, even the U.S. Chambers have  
14 articles about this court and how things have  
15 been handled, suggesting that these companies  
16 are -- something's wrong if these companies have  
17 to deal with this.

18 I've even heard over and over again my  
19 friend Mr. Carroll say this whole rotten mess.  
20 Well, this is a whole rotten mess, but they're  
21 looking at the wrong thing. What's a rotten  
22 mess here is this attempt to escape the U.S.  
23 All of these companies that were associated with  
24 Cape to escape this liability and leave it to  
25 South Carolina plaintiffs to have the deal with

1 what they're dealing with, with meso and  
2 asbestosis.

3 And South Carolina companies are paying the  
4 share of these companies that should have been  
5 involved in the settlements of these cases for  
6 the last 30, 40, 50 years. That's what's a  
7 rotten mess here.

8 Now, what Cape knew and what the companies  
9 that controlled them knew in the moment was not  
10 just there had been sales and we got this  
11 asbestos. They knew what they had been doing.  
12 And what they had been doing, it rolls through  
13 all of these companies, is that they were aware  
14 before everyone else that asbestos, blue  
15 asbestos particularly, was causing meso.

16 They had African miners that were getting  
17 meso. You had people around the mines that were  
18 getting meso. You had doctors that were talking  
19 with Cape, and the people who controlled Cape  
20 about meso causing -- being caused by  
21 asbestosis -- or excuse me, by asbestos. They  
22 knew it, they knew it, they knew it, and they  
23 hid it.

24 They put pressure on doctors not to reveal  
25 that these studies have been done. They buried

1 studies that show in fact that they had a  
2 problem. And if think about their unique  
3 position. All of these companies' unique  
4 position in that moment.

5 That unique position was they controlled 95  
6 percent of the blue asbestos coming into the  
7 United States. They controlled 65 to 70 percent  
8 of the brown asbestos that was coming into the  
9 United States. Worldwide actually. Worldwide.

10 They had created many of the products and  
11 were making products. They were a leader in the  
12 asbestos industry with one of the biggest mining  
13 operations in the world. They could have raised  
14 their hands and said we've got a problem. You  
15 can be safe.

16 They lied to one of their customers, and  
17 we've got that evidence. They lied to Owens  
18 Corning, I think, and said, no, this is not a  
19 problem. And Owens Corning writes their  
20 employees and said this is not a problem. When  
21 they knew it. They had the study in their  
22 hands.

23 If they had simply raised their hand in  
24 that moment, which was years ago, 30 years plus,  
25 40 years ago, many of the plaintiffs that we're

1 looking at that meso plaintiffs that go on on a  
2 yearly basis wouldn't exist. If they had simply  
3 raised their hand and said be careful, stop. We  
4 need to do something about this. They didn't do  
5 it. That's moral fraud.

6 That moral fraud continued with this  
7 litigation scheme where you have a frontline  
8 defendant in asbestos. It's the same as R.J.  
9 Reynolds walking out of the U.S. and not paying  
10 a dime in tobacco litigation. That's how  
11 profound this was. And books have been written  
12 about how profound this moment is where Cape and  
13 the people who controlled Cape got away with  
14 this.

15 And this lawsuit is to make sure that Cape  
16 is not dealing with this alone but is talking to  
17 the people that control them and dominated them.  
18 This idea of self-piercing, look how terrible  
19 that is. No, it's not. Self-piercing is  
20 effectively -- and you can have self-piercing if  
21 there's active participation. And every one of  
22 these defendants we've got active participation,  
23 or they are successors of companies that were  
24 actively participating in this scheme.

25 And that is our defense to the overwhelming

1 problem we've got that blue and brown asbestos  
2 caused meso, and most of the blue and brown  
3 asbestos in the United States came from Cape.  
4 And got to deal with that.

5 So you look at the people that dominated  
6 you. That's moral fraud, and it's gone on over  
7 and over again.

8 Now, in this case the moral fraud has been  
9 continued in the light of litigation. And  
10 it's -- we've had to deal with it. And that's  
11 just part of the game. But here's some of  
12 things that have been going on, and some of this  
13 has been talked about. But the UK litigation  
14 has been driven by Altrad and controls Cape.

15 And that litigation in the UK is not just,  
16 oh, we're trying to get another court to help  
17 us. It's been much more aggressive than that.  
18 Your Honor knows that because we provided some  
19 of the communications that we're receiving from  
20 the lawyers in the UK, from the lawyers in  
21 France.

22 Even copied on some of the correspondence  
23 from Cape/Altrad itself talking to carriers  
24 saying don't participate. Writing letters to  
25 Mr. Protopapas telling him that he's got a

1 \$4 million judgment against him, telling him it  
2 can be executed against -- suggesting that  
3 they're criminal sanctions involved. And, yes,  
4 you're right, he can't go to Europe. He can't  
5 do it.

6 They have been provided service of the  
7 motion for receivership. They were provided  
8 service of a complaint. This is in the Park  
9 case. They had an opportunity to come in and  
10 say -- defend themselves. There shouldn't be a  
11 receiver here. Or we will take care of  
12 defending this case. Or whatever their defense  
13 is. We didn't do it.

14 They could do whatever they want to, and  
15 they didn't take advantage of that. They  
16 ignored it, and they executed the plan that they  
17 began in the 1970s, thumbed their nose at the  
18 U.S. courts. We're not paying U.S. plaintiffs.  
19 It's not our responsibility.

20 And there's even internal documents that  
21 we're going to have to deal with where they say  
22 we feel no moral obligation to U.S. plaintiffs.  
23 This is part of the U.S. plaintiffs' lawyer  
24 cult.

25 So that's what -- that's what's been going

1 on. They've also -- all of these companies now,  
2 almost all of these companies that were viable,  
3 operating companies over the last 50 years have  
4 become molding company. I mean, one of  
5 Mr. Rawl's clients decapitalized, got liquidated  
6 in the last month and half. And we just found  
7 out about this.

8 But Cape itself has been -- if you look at  
9 the 2017, the Altrad Group purchased Cape. And  
10 we've got the financial statements, 2020, 2021,  
11 for example, and you can see a profound change  
12 in the financial condition of Cape. It went  
13 from a declaration in their disclosure  
14 statements that we can handle all of our debts,  
15 to the next year we can't handle the debts, but  
16 we got Altrad who can cover it for us.

17 So there's a depletion -- a dissipation of  
18 the assets that are occurring as late as the  
19 2020s.

20 So, yeah, the scheme continues. They're  
21 doing buybacks on buyouts of asbestos policies.  
22 And I think you -- I think Mr. Protopapas  
23 explained that well, but, I mean, it's a pretty  
24 big deal when you have policies that can respond  
25 to U.S. plaintiffs that are doing buybacks to

1 where they're paying the company -- the  
2 insurance companies are paying a bunch of money  
3 to just end those policies. And they're taking  
4 that money, Cape and Altrad, because of this  
5 transaction they entered into, and Altrad bought  
6 Cape, and they're funding UK former Cape  
7 employee settlement fund only. Excludes U.S.  
8 plaintiffs.

9 So they're taking policies that could have  
10 responded to U.S. plaintiffs, and they're  
11 converting it, liquidating it so it just  
12 responds in the UK.

13 We think that's what's going on. Part of  
14 the problem we have is some of these folks  
15 aren't participating at all. It's remarkable to  
16 me to see people who are not participating in  
17 the liquidation come in and factually dispute  
18 some of the moral fraud when they're not giving  
19 us their document. They're not participating.

20 It appears today for the first time they  
21 are participating in the litigation. I hope  
22 that's a good sign that they're going to start  
23 doing that and get us information.

24 But that's the information that we have  
25 now. And it looks like they have been moving

1 assets and doing things with insurance products  
2 so it doesn't respond to U.S. litigation.

3 So, yes, this continues, and it continues  
4 in the life of this litigation. It continued in  
5 the years leading up to this litigation. It's  
6 been going on for 50 years, the not responding.  
7 That's what this case is about.

8 And very quickly, we've got three groups.  
9 We got the Anglo folks, that is Mr. Elliott and  
10 Mr. Balber are representing them. They have  
11 been participating in some level.

12 And Anglo PLC is a successor. So you have  
13 Anglo -- so you have Anglo American South Africa  
14 merged with Minorco and became Anglo American  
15 PLC. And we think they have successor  
16 responsibility. We've gotten certain documents  
17 that suggest -- in fact, one official document  
18 from a transaction says that they are a  
19 successor.

20 We haven't gotten the transaction  
21 documents. We're in a fuss about that. We're  
22 going to try to get that resolved. But we are  
23 in a fuss about trying to get the transaction  
24 documents we need to prove that up. But we  
25 believe they're a successor.

1 Then you have De Beers, Consolidated Mines  
2 who broke off into three different De Beers  
3 groups. And we think that one or all or two of  
4 the three have some sort of successor liability.  
5 We need those documents to prove that. They're  
6 in it for successor purposes.

7 Then you have Charter. And the way this  
8 went was NAAC, Cape, Charter, Central Mining,  
9 and then you had Anglo above that and then  
10 Oppenheimer. But the big group was  
11 Anglo American. And then below them Charter.  
12 And then Charter is represented by Mr. Rawl.  
13 They have gone off and they have now -- they  
14 sold off Cape to Altrad. And then ESAB  
15 succeeded Charter, and we think they have the  
16 successor liability for Charter.

17 That's why so that you have a mixture of  
18 bad actors and then successors to those bad  
19 actors in all three groups. In all three  
20 groups.

21 So every one of them, there's a rhyme and a  
22 reason for their being included in this suit.  
23 And they were all involved and had knowledge of  
24 what was going down with trying to do something  
25 about the potential exposure of Cape and the

1 mines to U.S. based litigation.

2 Now, how we got here. The Welch case and  
3 the June 26 order. And I want to talk about  
4 both of those.

5 The defendants in this case are misreading,  
6 overreading, extending Welch in the June 26  
7 order in ways that the Supreme Court never  
8 thought that they would argue. And that's  
9 clear. Welch limited an appointment order and  
10 receivership action that was about insurance  
11 only.

12 The suggestion that it's limiting to just  
13 insurance assets, which has been made, they  
14 don't seem to have made it much today, it's  
15 limited to just insurance assets is ridiculous.  
16 The Welch appointment order specifically said  
17 I'm appointing a receiver for insurance assets.

18 And then the scope of the authority  
19 exceeded the insurance assets, and the only  
20 thing the Welch court did, the Supreme Court did  
21 in Welch, was just bring back the scope of  
22 authority to insurance assets. That's all they  
23 did. Because that was what the Welch order  
24 said. The authority, the scope is defined by  
25 the reason why the receiver is being appointed

1 and in that order it said insurance assets.

2 Now, it also -- there was an attack on  
3 whether or not you could even have prejudgment  
4 receivers. And there's no doubt that we can  
5 have prejudgment receivers. And it's a rare,  
6 moral fraud circumstance where it occurs. And  
7 this is one of those rare occasions.

8 With Atlas Turner case, you can at least  
9 give them some credit, though not much, but some  
10 credit for initially participating. Here  
11 there's a complete absence of participation and  
12 continued thumbing their nose at the U.S. courts  
13 and South Carolina courts about any of this.  
14 That's worse. And it is much worse on what they  
15 were doing.

16 Atlas Turner was a manufacturer. This is a  
17 supplier of asbestos. These group of companies  
18 supplied asbestos in the United States. The bad  
19 stuff that caused a lot of damage. This is a  
20 much more profound bad situation. The moral  
21 fraud absolutely exists.

22 And it did confirm that the receiver could  
23 institute actions beyond the case in which the  
24 receiver is appointed. And how did they do  
25 that? They did that by pointing to the fact

1 that we have out-of-state receivers that come  
2 into South Carolina and we recognize their right  
3 to sue. There's no appointment order ahead of  
4 time. They're appointed in another court.

5 And they come into South Carolina and the  
6 South Carolina Supreme Court says South Carolina  
7 recognizes out-of-state receivers bringing  
8 lawsuits.

9 They referenced a case in Welch where a  
10 horse was brought out of state back to New York.  
11 There's recognition in all of these cases that  
12 have gone on to the Supreme Court and to the  
13 Court of Appeals where there is litigation going  
14 on. Whether third-party complaints going on or  
15 independent stand alone.

16 The suggestion seems to be you can't do  
17 third-party litigation, but maybe you could do  
18 independent, stand-alone litigation. I don't  
19 understand any logical public policy reason why  
20 you would treat those two situations  
21 differently.

22 A receiver, and I struggle to understand  
23 how it's going to work, a receiver has to get  
24 appointed in every case on the front end to  
25 bring a piece of litigation? I was receiver in

1 the Murdaugh case. I'm not sure how that would  
2 work. Our ability to go out and try to get  
3 assets created at \$2 million fund in that  
4 situation because we were able to either  
5 threaten or bring independent actions. And what  
6 we would do is exactly what we're asking you to  
7 do here, is confirm, confirm the authority.

8 The authority here has already been brought  
9 into the case. There is an order in the Park  
10 case that has been filed in the Tibbs case.  
11 It's been filed as an exhibit. An order exists.

12 The Welch case does not say -- and the  
13 Welch opinion does not say that you have to go  
14 through the receiver process, get a receiver  
15 appointed. It could be a different receiver.  
16 It could be the same receiver. But you have to  
17 go through a receiver process, and then you can  
18 do something in litigation. It just says that  
19 you need to have an order showing you've got the  
20 authority filed in the case. They use the word  
21 filed. Filed in the case. We got that.

22 They also gave a process for you to come up  
23 with another opinion. You can endorse what  
24 we're doing. You have to ensure what we're  
25 doing is right. You can endorse what we're

1 doing. You can add facts to what you're doing.  
2 You can modify the order, limit it. None of  
3 that is fatal to the receivership.

4 In fact, the Welch case recognized that  
5 there could be modification. Because guess  
6 what? They modified. That's what the order  
7 said.

8 We're changing it. They don't say we're  
9 changing it; therefore, everything that happened  
10 before this moment is void. It's a nullity.  
11 You can't even talk. That's not what it said.  
12 It modified it. So if you've got concerns about  
13 the breadth of the order in part, which has been  
14 pulled over into Tibbs, you can do something  
15 about it. You can modify it.

16 You can also confirm that we have the  
17 authority. That's what we're asking you to do.  
18 Confirm that we have got the authority to do the  
19 things that we're doing. You simply confirm it.  
20 It's not seeking self-appointment. What we're  
21 doing is what you always do in the receivership  
22 realm. We are the arm of the court.

23 Court, we think we need to do this to make  
24 sure that we're protecting or pursuing the  
25 claims. And Welch recognized that it could be

1 claims too. Not just assets but claims are  
2 effectively assets.

3 You've got a right to pursue those claims.  
4 And we have come to court, have it in hand, say  
5 here's what we're thinking about doing, can we  
6 do it? Or can we get this settlement approved?

7 We did it in the Park case, an order  
8 confirming what we were doing in the Tibbs case  
9 and had been doing in the case is proper. And  
10 you said that it was.

11 So the authority exists. The overread by  
12 the third-party defendants here that because it  
13 does not exist with a case-specific process of  
14 appointing a receiver and the receiver getting  
15 appointed, it can be different than us. What  
16 are we going to do? Compete with each other?  
17 I'm not even sure how that would work. But  
18 because that doesn't happen, everything is a  
19 nullity? No.

20 The Court is looking for some indication  
21 that we have a right to do what we did, and we  
22 did. It's a Park order and it was filed in the  
23 Tibbs case. We had the right to accept service.

24 THE COURT: Mr. Lay, you say the Park order  
25 was filed in Tibbs. When was that done?

1 MR. LAY: It's an exhibit to the complaint.  
2 When we filed the answer in the third-party  
3 complaint.

4 THE COURT: When you filed a third-party  
5 complaint, that is when the Tibbs order -- I  
6 mean the Park order was filed in Tibbs?

7 MR. LAY: Yes. I think that was the date  
8 it was filed in Tibbs and there were a lot of  
9 other exhibits.

10 THE COURT: It was an exhibit to the  
11 complaint.

12 MR. LAY: I think the complaint or some  
13 filing.

14 THE COURT: I'm familiar with that.

15 MR. LAY: It's been put in the record. My  
16 client tells me it could be after the  
17 third-party complaint, but it's been put in the  
18 record. It's been in the record for some time.  
19 So it already exist in the Tibbs case.

20 But what is important --

21 THE COURT: What I'm trying to find out is  
22 when it was put in.

23 MR. LAY: We'll get that answer for you.

24 So we have an order that allows us to  
25 accept service. We have an order that allows us

1 to pursue claims. We've also got a confirmation  
2 order that says that what we're doing is  
3 appropriate.

4 And if any order -- if the Tibbs order  
5 filed is not sufficient, you have the ability to  
6 do a confirmation and do the findings of fact  
7 the Court asks to verify that the authority  
8 exists.

9 If there is a requirement that in every  
10 case of a receivership that's prejudgment before  
11 they can take any action, you've got to have a  
12 specific receiver process before you can do it.  
13 I think we would be the only state in the  
14 country that had that requirement. I can't find  
15 a case that says that other states are requiring  
16 that. There's recognition that receivers get in  
17 their scope of authority and can act on it and  
18 can seek approval from the Court to make sure if  
19 when they've acted, are we okay? We've done  
20 that. So this is a profound overread of what  
21 Welch was trying to do.

22 Now, a couple of other issues that I do  
23 want to address. Give me just a second.

24 Whether there's requirement that there  
25 should be some sort of moral fraud in the actual

1 case itself. This was -- the Welch opinion was  
2 a very specific opinion dealing with very  
3 specific facts. Where you had a litigant that  
4 started acting badly, and that was one of the  
5 bases for the striking of the answer which led  
6 to the receiver.

7 But it also talked about the corporate  
8 policy of Atlas Turner and the way they were  
9 handling litigation in the United States. Let's  
10 deal with personal jurisdiction. If we lose  
11 that, then we're going to thumb our nose at it.  
12 And we're not going to participate in 30(b)(6)s.  
13 We're not going to be producing anything.

14 That was part of their corporate policy.  
15 That big part of what they're talking about on  
16 the moral fraud is what they were doing before  
17 they were involved in litigation.

18 It just so happened in the Welch case, they  
19 did it. They started doing bad Cape, and that  
20 was another basis for striking the answer and  
21 appointing the receiver. But you're still  
22 looking at moral fraud.

23 THE COURT: Well, the moral fraud, though,  
24 would have to affect the plaintiff in the first  
25 Cape case, that it would have to affect



1 Ms. Park.

2 Now, Ms. McVey has done a pretty complete  
3 job of talking about why the conduct with Cape  
4 constituted moral fraud as it affects the Park  
5 case. And so I really don't understand -- I  
6 mean, there's this big, huge scope of things  
7 you've argued, but the bottom line that's argued  
8 is that both with respect to Ms. Park and with  
9 respect to Mr. Tibbs, the hide-the-ball  
10 contact -- conduct of Cape and its allied  
11 entities and really the allied entities got more  
12 focus on it in the Tibbs case than they do in  
13 the Park case.

14 In the Park case, the focus was on Cape.  
15 They were the defendant. That was the focus.

16 The focus expanded, when you've got the  
17 Tibbs case, to include a lot of other  
18 defendants. And you made your case that they  
19 are all involved in this hide-the-ball scheme  
20 and that being hiding the responsibility they  
21 have for the torts committed in connection with  
22 the distribution of Cape asbestos into the  
23 United States and specifically into  
24 South Carolina. I mean, that's the basis of it,  
25 right?

1 MR. LAY: That is the basis.

2 THE COURT: Well ...

3 MR. LAY: So it's ongoing, continuing and  
4 continues to this day.

5 THE COURT: Right. I mean, that's the  
6 argument you're making.

7 MR. LAY: Yes, ma'am.

8 THE COURT: Now, back for a minute to the  
9 arguments that are made in the Tibbs case about  
10 the Park receivership. The creation of the  
11 receivership in Park.

12 Of course, Ms. McVey and Mr. Protopapas  
13 have covered that in the discussion of Park, but  
14 the additional defendants in Tibbs make a much  
15 more aggressive assault based on concepts of  
16 service, concepts of what the probate code says,  
17 and concepts of -- that relate to the lack of  
18 any direct appointment in the Tibbs case. And I  
19 want you to talk about that concept just a  
20 little bit.

21 MR. LAY: Okay. Let me deal with each  
22 issue and the service issue. You have dealt  
23 with it. Right. You have dealt with it. And  
24 what they've left out is that you dealt with it  
25 by establishing because we had -- the

1 plaintiff's lawyer came in and demonstrated that  
2 he had one document. It's a summons and  
3 complaint together. And that the summons and  
4 complaint was served on Cape.

5 As part of this 80-page order that you  
6 signed, you went through that. We had a  
7 full-day hearing on that. There's been briefing  
8 out the wazoo on that. My goodness, that's been  
9 dealt with. And they're revisiting those  
10 service issues and acting like there's never  
11 been service.

12 There was service of the summons and  
13 complaint, and there was service of the motion  
14 on the receivership and it was not responded to.  
15 So that's been dealt with.

16 I'm going to leave to Ms. McVey to deal  
17 with the probate issue.

18 On the appointment order, they're taking a  
19 line in the June 26 order, the receiver's not  
20 authorized to conduct work as to a case in which  
21 no receivership order has been filed. So either  
22 the Park appointment order gets filed in this  
23 case, has been filed, or you do a confirmation  
24 order. It does not say that it's fatal if it's  
25 not done beforehand. They're reading words into

1 that statement.

2 We're authorized if you confirm that we  
3 were authorized to do it. We've already got the  
4 Park order. We've got a confirmation order from  
5 you saying that we're allowed to do this and  
6 that we need to have an order filed in this  
7 case.

8 THE COURT: Well, you've got two things.  
9 You -- and apparently Mr. Protopapas is maybe  
10 going to give me that before he leaves here  
11 today.

12 The averment is that in the Tibbs case, the  
13 Park order was filed. And what I was hearing  
14 was it was filed in connection with the  
15 third-party action by the receiver. It was  
16 filed in the Tibbs case.

17 MR. LAY: Either that or some other  
18 exhibit. We're trying to find out exactly where  
19 it was filed. We're going to get that to you.

20 THE COURT: So the contention you all are  
21 making is that constitutes a filing that could  
22 be a confirmation. That constitutes a filing.

23 In addition to that, this court has already  
24 ruled on the service on these various entities  
25 of the complaint. And that's the 80-page order.

1 And so your contention is the combination  
2 of these things satisfies the requirements of  
3 Welch and as well as the June 26 order.

4 MR. LAY: And, third, if there's any  
5 debate, you have it within your purview to issue  
6 an order granting the authority to the receiver  
7 to make sure that we can move forward on this  
8 case and to make sure that any authority that we  
9 have and the scope of our authority complies  
10 with Welch. You can issue an order that  
11 confirms that.

12 There's nothing in the June 26 order that  
13 suggests that you can't. In fact, it suggests  
14 that you can.

15 Number three, to the extent that the Court  
16 intends to authorize the work of the receiver  
17 based on facts not found. You just make  
18 specific findings of facts and conclusions.  
19 There's nothing that suggests that it's over.  
20 That it's a nullity. That you don't exist,  
21 Receiver, if this is not in there. There's  
22 nothing that says that in this order.

23 So I think we have it in every way that you  
24 can have it, and it is an overread by the  
25 defendants in this case that has led us to this

1 dramatic, breathless briefing that we've seen in  
2 this case.

3 And I'm not trying to be pejorative, but  
4 that's what it's been. By reading words into  
5 the Welch opinion that do not exist, and by  
6 reading those into the June 26 order that do not  
7 exist, they put us into this situation where  
8 you've got to have this hearing. That's not  
9 what this litigation is about. But we've done  
10 what we're supposed to do, and there's no  
11 surprise here.

12 We had the authority. You can confirm  
13 that. If you want to modify the order in Parks  
14 as it applies to Tibbs, there are things that  
15 you can do that deal with the claims that we --  
16 that Cape has that are related to what we're  
17 doing in this case. We're allowed to pursue  
18 those. We're allowed to pursue the insurance  
19 assets.

20 And anything else that causes concern, you  
21 can take out. Opening mail. I think it was  
22 opening mail was one of the acts. That's fine  
23 to modify that. The receiver in this case has  
24 never tried to enter the boardroom in any way.  
25 We've been very specific. This deals with

1 South Carolina litigation, South Carolina  
2 plaintiffs. That's what we're trying to handle  
3 here.

4 That's what they haven't responded here.  
5 That's the reason the receiver was appointed  
6 here, to deal with South Carolina plaintiffs and  
7 South Carolina litigation.

8 Modify the order, if you need to, to say  
9 that specifically, but they're inviting you to  
10 modify it and make findings and this conclusions  
11 in this June 26 order.

12 THE COURT: All right, sir.

13 MR. LAY: I think Ms. McVey is going to  
14 handle the other issue.

15 THE COURT: All right. Ms. McVey.

16 MS. PEAKE: Good afternoon, Your Honor.  
17 Shanon Peake on behalf of the receiver along  
18 with Mr. Lay.

19 There are two recent matters that I wanted  
20 to keep the Court advised of. I believe that  
21 whenever you're looking at the Tibbs remand  
22 order and fulfilling the directives that the  
23 Supreme Court issued to you, it's important for  
24 the Court to have a full picture of the way that  
25 the Welch issues are being raised across

1 receiverships.

2 There are two things I wanted to hand up to  
3 Your Honor for your information. On August 6,  
4 2025, Judge Brown in the federal court in the  
5 Burlington receivership, which is under  
6 Judge Nye's jurisdiction, issued a report and  
7 recommendation recommending that the court grant  
8 the receiver's motion to remand.

9 The parties in this case raised the Welch  
10 issue so we wanted to give this to Your Honor  
11 for your information.

12 The other issue is in the Starr Davis  
13 receivership, Travelers had filed a petition for  
14 writ of certiorari with the Supreme Court where  
15 they have raised in that petition the propriety  
16 of the Starr Davis receivership. And they have  
17 stated to Welch to do that.

18 National Union has filed a motion for leave  
19 to file an amicus brief due to their involvement  
20 in the Payne & Keller receivership. And their  
21 arguments that the Payne & Keller receivership  
22 is not proper due to Welch.

23 So they've requested that the Supreme Court  
24 grant them leave to file an amicus brief. The  
25 receiver has opposed that motion. And so in

1 this binder, Your Honor, I have Travelers  
2 petition for writ. National Union's motion for  
3 leave to file an amicus brief. National Union's  
4 proposed amicus brief. The receiver's return to  
5 National Union's motion. National Union's reply  
6 to the receiver's return. As well as the Court  
7 of Appeals opinion affirming the Starr Davis  
8 order that you issued that's in front of the  
9 Supreme Court right now.

10 MR. BALBER: I'm sorry. Can we get a copy  
11 as well?

12 MS. PEAKE: Yes, I can -- if you want to  
13 look at this. I can email you a copy, but do  
14 you want to look at --

15 MR. BALBER: I don't want to take up the  
16 time. But usually I would get a copy of what's  
17 being offered to the Court.

18 MS. PEAKE: I can email you a copy, but  
19 would you like to take a look at?

20 MR. BALBER: No.

21 THE COURT: Well, let me just say this  
22 before I invite any further comment by  
23 Ms. McVey.

24 Another thing that is obviously occurring  
25 in connection with this thing, and it's the

1 result of the directives of the Court to me in  
2 the June 26 order directing that I make a report  
3 to the Court. The last thing they said was to  
4 make a report about the other receiverships.  
5 And that has blossomed into an explosion of  
6 other filings, challenging further all the other  
7 receiverships, as I understand it. This is just  
8 a tip of the iceberg.

9 I don't claim to deal with those things  
10 until I get finished with this. I don't  
11 think -- there are some that are in a posture  
12 that they're before the Supreme Court. Whether  
13 they are before the Supreme Court correctly or  
14 incorrectly, I don't know right now.

15 But as far as I am able to understand, all  
16 these receiverships are still open and on my  
17 asbestos docket. I am going to deal with them  
18 in that regard unless I'm told otherwise.  
19 Particularly in light of the fact that the  
20 Supreme Court itself told me to take a look at  
21 these things and issue orders as I saw fit and  
22 report to them as I saw fit. So that's all I  
23 can tell you about that.

24 I sure hadn't got time to sit here now in  
25 addition to having to parse the history of Cape

1 since the turn of the last century and also have  
2 to sit here and go through all 21 of these  
3 receiverships right now. I'm not doing that.

4 But I will certainly continue to understand  
5 that I've got the authority in this despite what  
6 filings have been made in the Court of Appeals  
7 or the Supreme Court or anyplace else unless I'm  
8 told otherwise by the Supreme Court. That's  
9 about what I can tell you about it.

10 MS. PEAKE: Thank you, Your Honor.

11 THE COURT: I'm just looking at this  
12 material you supplied me with, Ms. Peake.

13 Now there's one that's Mr. Protopapas for  
14 Starr Davis against Travelers. That's the one  
15 that was argued before the Court of Appeals,  
16 right?

17 MS. PEAKE: Yes, Your Honor. It was argued  
18 before the Court of Appeals, and the Court of  
19 Appeals issued an opinion affirming your grant  
20 of partial summary judgment.

21 THE COURT: Right. And now that's on  
22 appeal to the Supreme Court, right?

23 MS. PEAKE: Yes, Your Honor.

24 THE COURT: Or take it back. Now that's  
25 the subject of a petition for a writ of

1 certiorari to the Supreme Court. Has it been  
2 granted?

3 MS. PEAKE: It has not, Your Honor. It's  
4 still in the briefing stage.

5 THE COURT: Okay. So I guess this is  
6 informational as far as I am concerned. I don't  
7 know what I would do with this material one way  
8 or another other than have it for information.

9 MS. PEAKE: Yes, Your Honor, just  
10 informational.

11 THE COURT: Okay. And then same thing  
12 would be true with National Union. This is an  
13 amicus request.

14 MS. PEAKE: Yes, Your Honor.

15 THE COURT: And returns for National Union.  
16 So this is for my information, I take it.  
17 There's nothing I have to do with this right  
18 now.

19 MS. PEAKE: Yes, Your Honor.

20 MS. MCVEY: And, Your Honor, just the  
21 Starr Davis, we had mentioned at the last  
22 hearing that was the one I was concerned about  
23 where there was some accusation that Ms. Hill  
24 had ex parted you in some way and that was --

25 THE COURT: Oh, those letters that came

1 in --

2 MS. MCVEY: That's just for your reference.

3 THE COURT: I think that's some more of the  
4 chippy back-and-forth stuff that the  
5 South Carolina Supreme Court said they didn't  
6 want us to be doing that anymore. I'll take it  
7 in that vein.

8 Now just explain to me one more time, you  
9 all are so involved in all this stuff, you  
10 assume that I know everything about it. But I  
11 don't know a thing about this Burlington stuff  
12 other than apparently you all were involved in  
13 that hearing at some point when you couldn't get  
14 what I was sending you.

15 But this is a recommendation by Judge Brown  
16 that this matter, which this is similar to what  
17 they did before in another case of trying to  
18 take -- removed this thing from the federal  
19 courts. And this is the magistrate's  
20 recommendation that it be sent back to  
21 South Carolina, correct?

22 MS. PEAKE: Yes, Your Honor.

23 MS. MCVEY: Under the Barton doctrine, I  
24 believe.

25 THE COURT: All right. Yes, on the same

1 basis as the Barton doctrine.

2 Okay. All right. Well, that's interesting  
3 information to have.

4 Okay. Ms. McVey.

5 MS. MCVEY: I thought you wanted a few more  
6 notebooks, I think.

7 Your Honor, I would like to be super brief,  
8 as you've heard this over and over again. The  
9 first thing I want to just respond to in terms  
10 of there was an argument that the receiver had  
11 somehow given us privileged documents which I  
12 used to bolster my moral fraud.

13 And just to so the Court is clear, of  
14 course, every exhibit I referenced in our motion  
15 to appoint the receiver was before the receiver  
16 was ever filed. So none of those documents were  
17 privileged. I don't know what that argument was  
18 exactly about.

19 The receivership order in Park allowed for  
20 Mr. Protopapas, as receiver, to accept service  
21 of complaints. That's why he was served in  
22 Tibbs.

23 And what Mr. Protopapas did in Tibbs,  
24 instead of acting like Cape always does, is he  
25 actually filed an answer in Tibbs thereby

1 protecting Cape from a default.

2 And in that answer he references the order  
3 of appointment in Parks. The third-party  
4 complaint against these fellas references the  
5 order of appointment. And it's my understanding  
6 that the actual order of appointment was filed  
7 on October 26th of 2023, in the Tibbs matter.

8 THE COURT: And what was it filed in  
9 connection with or what was it attached to?

10 MS. MCVEY: Your Honor, I'm going to let  
11 Mr. Protopapas or Ms. Joyner because it was in  
12 the third-party case, I believe.

13 MR. PROTOPAPAS: Yes, Your Honor. So we  
14 reference the appointment order in multiple  
15 motions and the answer in the third-party  
16 complaint. My good friends on the other side  
17 were kind enough to file it as part of their  
18 filings in October.

19 So it is a document that has been well  
20 cited to within Tibbs, put into the record. I  
21 believe it's part of their motion to dissolve  
22 the receivership on that order. It is not an  
23 order that was unknown to me.

24 THE COURT: Right. And so but what you're  
25 saying, the bottom line, easy answer is there is

1 a copy of the Park receivership order that's  
2 been filed in other pleadings in the Tibbs  
3 matter?

4 MR. PROTOPAPAS: Yes, Your Honor, as our  
5 motions rather than --

6 THE COURT: Right. And the one that you  
7 cite right now is one that was filed as part of  
8 some of the defendants filings on October the  
9 26, 2023?

10 MR. PROTOPAPAS: I believe so, Your Honor.  
11 And this record is massive and voluminous. And  
12 if it was filed someplace else, I will identify  
13 it.

14 THE COURT: Yeah, tell me about it.

15 MR. PROTOPAPAS: Thank you, Your Honor.

16 THE COURT: Okay.

17 MS. MCVEY: Your Honor, just to reiterate  
18 that the Supreme Court's June 26th order says  
19 that the receivership order needs to be filed, not  
20 entered. And those are two very different  
21 words. And, of course, that makes perfect  
22 sense.

23 But I would just go on to say that this  
24 idea that the receiver has hurt Cape and what  
25 they did in Tibbs is actually to protect Cape is

1 an interesting dichotomy.

2 Now, I have a lot of issues with the  
3 representations made about how this estate was  
4 handled or not handled to the extend anyone is  
5 insinuating that the beneficiaries weren't aware  
6 of this litigation or that they didn't get  
7 they -- they weren't -- they didn't receive the  
8 proceeds from the litigation. I hope that's not  
9 the allegation being made, but certainly all the  
10 beneficiaries were aware.

11 It's simply if you look at the filings --  
12 I'm not going to give away any privileged,  
13 confidential information between the  
14 conversations with my client. -- they didn't  
15 understand. You can see that. They knew there  
16 was litigation. They checked the wrong box. I  
17 didn't handle the probate. That was a mistake.  
18 It's an honest mistake, which I've already  
19 walked you, through allows us to ratify.

20 THE COURT: Well, your basic bottom-line  
21 position is this: The probate judge in  
22 Spartanburg accepted a successor or reopening of  
23 the probate court. But the bottom line was  
24 Mr. Keith Park was again appointed as a personal  
25 representative.

1 And your further contention is that another  
2 part of the probate code and another part of the  
3 rules permits that successor probate filing or  
4 reopening to allow in this case retroactive  
5 activity by the receiver.

6 MS. MCVEY: That's right. Or by us to make  
7 a motion.

8 THE COURT: On a point -- on the part -- on  
9 behalf of the receiver.

10 MS. MCVEY: That's right. They were able  
11 to ratify the action that had taken place. And  
12 that's all the relevant times, the  
13 jurisdictional piece that the cases the  
14 defendants cite to are jurisdictional. At the  
15 time the action is commenced, at the time the  
16 Park action was commenced, the personal  
17 representative, the first time, was in full  
18 effect. Both at the time the amended complaint  
19 was filed, at the time they were served, at the  
20 time the answer was due, all of that, there was  
21 a personal representative appointed.

22 THE COURT: Right.

23 MS. MCVEY: And I think we're covered on  
24 moral fraud unless there's anything else you  
25 want to talk about that.

1 THE COURT: No.

2 MS. MCVEY: Any other questions I could  
3 answer?

4 THE COURT: No. You may take your seat.

5 MS. MCVEY: Thank you, ma'am.

6 THE COURT: My ordinary practice is to rule  
7 from the bench. This has been a long day, and  
8 this is a complicated matter. And I'm going to  
9 cogitate about it. I will communicate with  
10 everyone before the week is out as to how I want  
11 to go from here in terms of proposed orders.

12 But there are a lot of possibilities that  
13 have been suggested by each side as to how I  
14 ought to handle this.

15 One of the things that's clear to me that  
16 can be done is to isolate this Cape matter from  
17 all the other matters that we've got under  
18 consideration now, and I intend to do that. I'm  
19 not going to get into all the other dilemmas and  
20 details that have been thrown around about the  
21 other receiverships. I'm going to try to focus  
22 in on the Park case and the Tibbs case and make  
23 my rulings in that context.

24 And, you know, what the defense, of course,  
25 argues or what Mr. Balber argued to begin with

1 is treated that way and look at it as a one-off  
2 and deal with Cape differently. Don't try to  
3 make that fit whatever else has been done in the  
4 other receiverships.

5 And I'm going to do that without regard to  
6 how I end up ruling in this case. I don't think  
7 I've got to right now answer every other  
8 question that was raised in the order remanding  
9 Tibbs. And I don't think the court expects  
10 that. There are too many other complexities in  
11 these other receiverships and interrelationships  
12 between some of them that are on a request for  
13 certiorari of the Supreme Court.

14 My kind of gross view of the thing is that  
15 I don't know how long it's going to take to  
16 straighten everything out, but I think finally  
17 both the Court of Appeals and the Supreme Court  
18 have got a pretty good grasp on what ought to be  
19 appealed to them and what not ought to be  
20 appealed to them.

21 Certain orders are not immediately  
22 appealable. And I think that both courts, by  
23 their rulings and by their opinions and by the  
24 directives to me, have made it crystal clear  
25 that they don't want to deal with these appeals

1 of nonappealable matters. They don't want to  
2 handle these big issues in that way. Rather,  
3 they want to handle them in a normal way that  
4 appeals are handled. The final rulings are made  
5 and then appeals are made and you go from there.  
6 And I'm trying to fit myself within that  
7 context.

8 Now, you know, I may very well end up  
9 saying, yeah, Cape is a one-off and that one is  
10 different and here's what I think needs to be  
11 done with Cape.

12 But I simply reiterate that the concept of  
13 every time something is done here on an interim  
14 basis within the context of a piece of  
15 legislation, that there's an immediate appeal of  
16 that up to the Court of Appeals or a request  
17 that the Supreme Court somehow or another have  
18 filed with it reports and other things that I'm  
19 doing to respond to the orders that they gave me  
20 in Tibbs. That's frustrating to me. And I  
21 don't intend to deal with the case that way.

22 I think the court -- both appellate courts  
23 are very well aware of what our appellate rules  
24 are and how matters proceed with the court. And  
25 this additional information in the remand order

1 to me, in Tibbs, is not some kind of open-ended  
2 license to start plowing yet again more stuff at  
3 the Supreme Court level that I'm supposed to  
4 somehow take notice of in connection with the  
5 decisions I'm making in the cases that are  
6 before me.

7 And that is why I am trying to fit this  
8 thing into some kind of procedural posture where  
9 I decide the things before me. I fit them into  
10 the bigger context of where these cases stand  
11 now. And then when I made final decisions on  
12 everything, they go to the court. And the  
13 courts -- the appellate courts can make  
14 decisions on the merits of these matters.

15 That's what I'm still going to try to do.  
16 But the defense has raised some issues that need  
17 more thoughtful attention than I am capable of  
18 providing off the bench at this moment about  
19 procedurally how these receiverships work. And  
20 I'm going to give that my attention and let you  
21 all know something. And it may take one or two  
22 forms.

23 I may either be completely resolved as to  
24 how I want to handle these things and give  
25 instructions to whoever the prevailing party is

1 and then the other parties will -- or party will  
2 have a chance to respond. Or I may ask for  
3 competing orders. I just can't quite decide  
4 that. These are some very interesting and  
5 technical matters about how things work  
6 procedurally.

7 So beyond just the fussing about all the  
8 kind of out-of-the-box things that are taking  
9 place about going constantly to the appellate  
10 courts I'm thinking about as opposed to a  
11 hearing.

12 When you get past that and look at what's  
13 now before me at this moment, your presentations  
14 have been your usual, amazing, fine job. This  
15 is a very sophisticated bar that practices in  
16 these asbestos cases, and there's some very  
17 serious issues raised on each side. And I'm  
18 going to give it my very best shot at being  
19 attentive and giving you some directions that I  
20 think may move this thing on forward and  
21 hopefully past me.

22 Thank you very much. Court is adjourned.

23 MR. SAWYER: Just one point that I noted  
24 earlier I wanted to at the end adopt arguments.  
25 That's all I want to do real quickly. If I may

1 adopt Mr. Carroll's arguments and adopt the  
2 argument that we need to -- there should be a  
3 bond. That's all I wanted to do, Your Honor.

4 THE COURT: Madam Court Reporter, do you  
5 have that?

6 THE COURT REPORTER: I do.

7 THE COURT: On the record, Mr. Sawyer.  
8 Thank you so much.

9 MR. SAWYER: Thank you so much.

10 - - -

11 (The hearing concluded at 4:58 p.m.)

12 - - -

CERTIFICATE OF REPORTER

I, Sheri L. Byers, Registered  
Professional Reporter and Notary Public of the State  
of South Carolina at Large, do hereby certify:

That the foregoing proceedings were  
taken before me on the date and at the time mentioned  
on page 1 and the proceedings were recorded  
stenographically by me and were thereafter transcribed  
under my direction; that the foregoing transcript as  
typed is a true, accurate and complete record of the  
proceedings to the best of my ability.

I further certify that I am neither  
related to nor counsel for any party to the cause  
pending or interested in the events thereof.

Witness my hand, I have hereunto  
affixed my official seal this 14th day of August,  
2024, at Lexington, Lexington County, South Carolina.

Sheri L. Byers,  
Registered Professional Reporter,  
Notary Public  
State of South Carolina at Large  
My Commission expires:  
November 1, 2033