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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, 2024-001499, and 2025-_____

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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JOHN A. TIBBS and
MARGARET B. TIBBS

Plaintiffs,

V.

3M COMPANY

4520 CORP., INC.

A.O. SMITH CORPORATION

AIR & LIQUID SYSTEMS CORPORATION

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.

BEATY INVESTMENTS, INC.

BECHTEL CORPORATION

THE BONITZ COMPANY

C/A NO. 2023-CP-40-

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

SUMMONS

BW/IP INC.	)
	)
CANVAS CT, LLC	)
	)
CAPE PLC	)
	)
CARBOLINE COMPANY	)
	)
CB&I LAURENS, INC.	)
	)
CLEAVER-BROOKS, 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	)
	)
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 CORPORATION	)
	)
FLUOR ENTERPRISES, INC.	)
	)
FMC CORPORATION	)
	)
FOSTER WHEELER ENERGY	)
CORPORATION	)
	)
GARDNER DENVER NASH, LLC	)
	)
GENERAL BOILER CASING COMPANY,	)
INC.	)
	)
GENERAL ELECTRIC COMPANY	)
	)
GOULDS PUMPS, INCORPORATED	)
	)
GOULDS PUMPS LLC	)
	)
GREAT BARRIER INSULATION CO.	)
	)
GRINNELL LLC	)
	)
HAJOCA CORPORATION	)
	)
HOWDEN NORTH AMERICA INC.	)
	)
IMO INDUSTRIES INC.	)
	)
ITT LLC	)
	)
JOY GLOBAL UNDERGROUND MINING	)
LLC	)
	)
K-MAC SERVICES INCORPORATED	)
	)
METROPOLITAN LIFE INSURANCE	)
COMPANY	)
	)
MINE SAFETY APPLIANCES COMPANY,	)
LLC	)
	)

THE NASH ENGINEERING COMPANY	)
	)
PARAMOUNT GLOBAL	)
	)
PATTERSON PUMP COMPANY	)
	)
PIEDMONT INSULATION, INC.	)
	)
PRESNELL INSULATION CO., INC.	)
	)
REDCO CORPORATION	)
	)
RILEY POWER INC.	)
	)
SEQUOIA VENTURES INC.	)
	)
SPIRAX SARCO, INC.	)
	)
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	)
	)
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	)
	)

ZURN INDUSTRIES, LLC)
)
 Defendants.)
 _____)

SUMMONS

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the Plaintiffs' counsel, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

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tbranham@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

April 5, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and
MARGARET B. TIBBS

Plaintiffs,

v.

3M COMPANY
f/k/a MINNESOTA MINING AND
MANUFACTURING COMPANY

4520 CORP., INC.
individually and as successor-in-interest to
BENJAMIN F. SHAW COMPANY

A.O. SMITH CORPORATION

AIR & LIQUID SYSTEMS CORPORATION
individually and as successor-in-interest to
BUFFALO PUMPS, INC.

AMENTUM ENVIRONMENT & ENERGY,
INC. f/k/a AECOM ENERGY &
CONSTRUCTION, INC., individually and as
successor-in-interest to YEARGIN
CONSTRUCTION COMPANY, INC.
successor to IMPAC, INC.

ANCHOR/DARLING VALVE COMPANY

ARMSTRONG INTERNATIONAL, INC.

ASBESTOS CORPORATION LIMITED

ASCO, L.P.
f/k/a ASCO VALVE, INC.

ATLAS ASBESTOS CO

ATLAS TURNER, INC.
as successor to ATLAS ASBESTOS CO, a
foreign company

C/A NO. 2023-CP-40-_____

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket
Living Lung Cancer

COMPLAINT

(Jury Trial Demanded)

AWT AIR COMPANY, INC.	)
f/k/a RESEARCH-COTTRELL, INC.	)
	)
BAHNSON, INC.	)
	)
BANNER INDUSTRIES INTERNATIONAL, INC.	)
	)
BEATY INVESTMENTS, INC.	)
f/k/a GUY M. BEATY & CO.	)
	)
BECHTEL CORPORATION	)
	)
THE BONITZ COMPANY	)
f/k/a BONITZ INSULATION COMPANY	)
	)
BW/IP INC.	)
and its wholly-owned subsidiaries	)
	)
CANVAS CT, LLC	)
individually and as successor to MARLEY	)
COOLING TOWER COMPANY	)
	)
CAPE PLC	)
individually and as successor-in-interest to	)
CAPE INDUSTRIES LTD. f/k/a CAPE	)
ASBESTOS COMPANY LTD. and its	)
subsidiaries and global affiliates	)
	)
CARBOLINE COMPANY	)
	)
CB&I LAURENS, INC.	)
individually and as successor-in-interest to	)
CHICAGO BRIDGE & IRON COMPANY	)
	)
CLEAVER-BROOKS, INC.	)
f/k/a AQUA-CHEM, INC.	)
d/b/a CLEAVER-BROOKS DIVISION	)
	)
COPES-VULCAN, INC.	)
	)
COVIL CORPORATION	)
	)
CRANE INSTRUMENTATION & SAMPLING, INC.	)
f/k/a CIRCOR INSTRUMENTATION	)
TECHNOLOGIES, INC. f/k/a HOKE INC.	)

CROSBY VALVE, LLC

**DANIEL INTERNATIONAL
CORPORATION**

**DAVIS MECHANICAL CONTRACTORS,
INC.**

DEZURIK, INC.

DUKE ENERGY CAROLINAS, LLC
f/k/a DUKE ENERGY CORPORATION

DUKE ENERGY CORPORATION

**ELLINGTON INSULATION COMPANY,
INC.**

EMERSON ELECTRIC CO.
individually and as successor-in-interest to
COPELAND CORPORATION

**FISHER CONTROLS INTERNATIONAL
LLC**

FLAME REFRACTORIES, INC.

FLOWERVE CORPORATION
f/k/a THE DURIRON COMPANY INC.

FLOWERVE US INC.
individually and as successor-in-interest to
EDWARD VALVES, INC. and ROCKWELL
MANUFACTURING COMPANY

**FLUOR CONSTRUCTORS
INTERNATIONAL**
f/k/a FLUOR CORPORATION

**FLUOR CONSTRUCTORS
INTERNATIONAL, INC.**

**FLUOR DANIEL SERVICES
CORPORATION**

FLUOR ENTERPRISES, INC.

FMC CORPORATION)
 on behalf of its former Peerless Pump business)
FOSTER WHEELER ENERGY)
CORPORATION)
GARDNER DENVER NASH, LLC)
 individually and as successor-in-interest to THE)
 NASH ENGINEERING COMPANY)
GENERAL BOILER CASING COMPANY,)
INC.)
GENERAL ELECTRIC COMPANY)
GOULDS PUMPS, INCORPORATED)
GOULDS PUMPS LLC)
 f/k/a GOULDS PUMPS INC.)
GREAT BARRIER INSULATION CO.)
GRINNELL LLC)
 d/b/a GRINNELL CORPORATION)
HAJOCA CORPORATION)
HOWDEN NORTH AMERICA INC.)
 f/k/a HOWDEN BUFFALO, INC., individually)
 and as successor-in-interest to BUFFALO)
 FORGE COMPANY and NEW)
 PHILADELPHIA FAN CO.)
IMO INDUSTRIES INC.)
ITT LLC)
 f/k/a ITT CORPORATION, ITT INDUSTRIES)
 INC., ITT FLUID PRODUCTS CORP.,)
 HOFFMAN SPECIALTY MFG. CORP., BELL)
 & GOSSETT COMPANY, ITT MARLOW and)
 KENNEDY VALVE COMPANY)
JOY GLOBAL UNDERGROUND MINING)
LLC)
 f/k/a JOY TECHNOLOGIES, INC., f/k/a JOY)
 TECHNOLOGIES LLC)

K-MAC SERVICES INCORPORATED

**METROPOLITAN LIFE INSURANCE
COMPANY**

a wholly owned subsidiary of METLIFE INC.

**MINE SAFETY APPLIANCES COMPANY,
LLC**

THE NASH ENGINEERING COMPANY

PARAMOUNT GLOBAL

f/k/a VIACOMCBS INC., f/k/a CBS
CORPORATION, a Delaware corporation f/k/a
VIACOM, INC., successor-by-merger to CBS
CORPORATION, a Pennsylvania corporation,
f/k/a WESTINGHOUSE ELECTRIC
CORPORATION and as successor-in-interest to
BF STURTEVANT

PATTERSON PUMP COMPANY

PIEDMONT INSULATION, INC.

PRESNELL INSULATION CO., INC.

REDCO CORPORATION

f/k/a CRANE CO.

RILEY POWER INC.

f/k/a BABCOCK BORSIG POWER INC.,
f/k/a DB RILEY, INC., f/k/a RILEY STOKER
CORPORATION

SEQUOIA VENTURES INC.

f/k/a BECHTEL CORPORATION

SPIRAX SARCO, INC.

SPX CORPORATION

individually and as successor-in-interest to
KINNEY PUMPS

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	)
	)
UNION CARBIDE CORPORATION	)
	)
VALVES AND CONTROLS US, INC.	)
f/k/a WEIR VALVES & CONTROLS USA	)
INC. d/b/a ATWOOD & MORRILL CO., INC.	)
	)
VELAN VALVE CORP.	)
	)
VIKING PUMP, INC.	)
	)
VISTRA INTERMEDIATE COMPANY	)
LLC	)
individually and as successor-in-interest to	)
CRSS INC.	)
	)
THE WILLIAM POWELL COMPANY	)
	)
WIND UP, LTD.	)
	)
YUBA HEAT TRANSFER LLC	)
	)
ZURN INDUSTRIES, LLC	)
individually and as successor-in-interest to	)
ZURN INDUSTRIES, INC.	)
	)
Defendants.	)
	)

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, JOHN A. TIBBS and MARGARET B. TIBBS (hereinafter "Plaintiffs"), sue the named Defendants for compensatory and punitive damages, by and through their attorneys, and come before this court and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff John A. Tibbs has been diagnosed with lung cancer.
2. This Court has personal jurisdiction over Defendants because Plaintiffs' claims arise from Defendants' conduct in:
 - (a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;
 - (b) Contracting to supply services or things in the State;
 - (c) Commission of a tortious act in whole or in part in this State;
 - (d) Having an interest in, using, or possessing real property in this State; and/or
 - (e) Entering into a contract to be performed in whole or in part by either party in this State.
3. Each Defendant, or its predecessors in interest, that manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action are referred to herein as "Product Defendants." At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale and distribution of asbestos-containing products and raw materials.
4. Each Defendant, or its predecessors in interest, that owned and/or controlled the work sites where Plaintiff John A. Tibbs experienced occupational exposure as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment in his immediate vicinity are referred to herein as the "Premises Defendants." At all times relevant to this action:
 - (a) the Premises Defendants owned the property and approved the use of asbestos-containing materials on its premises.

- (b) the Premises Defendants invited the Plaintiff John A. Tibbs as a mechanic electrician, and/or his father as a superintendent of maintenance, on to Defendants' premises to perform construction work for Defendants' benefit. Plaintiff was an invitee who had express permission to enter Defendants' premises for the purpose of benefitting the owner (Defendant).
- (c) the Premises Defendants owed a duty of due care to discover risks and take safety precautions to warn of and eliminate unreasonable risks.
- (d) the Premises Defendants' failure to warn of or eliminate the unreasonable risks associated with working on or around asbestos-containing materials on Defendants' premises was a substantial factor contributing to cause Plaintiff John A. Tibbs's lung cancer.

5. Each Defendant, or its predecessors in interest, that provided labor, materials, goods, and/or services as architects, consultants, engineers, draftsmen, technicians, surveyors, or otherwise in connection with the design and/or repairs at the work sites where Plaintiff John A. Tibbs and/or his father experienced occupational exposure as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment, are referred to herein as the "Design Defendants."

6. Plaintiffs' claims against the Product Defendants, as defined herein, arise out of Defendants' purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

7. Plaintiffs' claims against the Premises Defendants, as defined herein, arise out of Defendants' ownership and/or control of real property located in South Carolina and North Carolina, and the purchase and use of asbestos-containing products on their premises located in South Carolina and North Carolina, and/or contracting with the employer of Plaintiff John A. Tibbs and/or his father John H. Tibbs in South Carolina and North Carolina for Plaintiff and others to cross state lines to work on Defendant's premises.

8. Plaintiffs' claims against the Design Defendants, as defined herein, arise out of Defendants', and/or Defendants' employees', direct and/or indirect purchase and use of asbestos and/or asbestos-containing products, materials, or equipment at the various industrial sites located in South Carolina where Plaintiff John A. Tibbs experienced occupational exposure to lethal doses of asbestos as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment.

9. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Plaintiff John A. Tibbs to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

10. In addition to being exposed through his own work, Plaintiff John A. Tibbs was exposed to asbestos through asbestos dust and fibers brought home on his father John H. Tibbs's work clothes, from asbestos dust in his vehicle and asbestos dust on his body including his hair, and from the dust being distributed and re-entrained in the family home. Plaintiff John A. Tibbs's exposure to asbestos dust and fibers occurred through his contact with his father John H. Tibbs's work clothing and person when greeting him and interacting with him on a daily basis at the end of each workday. Plaintiff John A. Tibbs's exposure to asbestos dust and fibers also occurred through spending time in his father's vehicle in which asbestos dust and fibers had been deposited, and through sharing a home contaminated with asbestos fibers that were constantly being stirred up and re-entrained in the air that they breathed throughout their family home.

11. Plaintiff John A. Tibbs's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial

factor in causing Plaintiff John A. Tibbs's lung cancer and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

12. Plaintiffs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

13. Plaintiff John A. Tibbs worked with, or in close proximity to others who worked with, asbestos-containing materials including but not limited to asbestos-containing products and other asbestos-containing materials manufactured and/or sold by Defendants identified above.

14. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an "alternate entity" as hereinafter defined. Defendants are liable for the acts of their "alternate entity" and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other acquisition resulting in a virtual destruction of Plaintiffs' remedy against each such "alternate entity"; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"; such "alternate entities" have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiffs' remedy against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

DEFENDANT	ALTERNATE ENTITY
3M COMPANY	MINNESOTA MINING AND MANUFACTURING COMPANY
4520 CORP., INC.	BENJAMIN F. SHAW COMPANY
AIR & LIQUID SYSTEMS CORPORATION	BUFFALO PUMPS, INC.

DEFENDANT	ALTERNATE ENTITY
AMENTUM ENVIRONMENT & ENERGY, INC.	AECOM ENERGY & CONSTRUCTION, INC., YEARGIN CONSTRUCTION COMPANY, INC., and IMPAC, INC.
ASCO, L.P.	ASCO VALVE, INC.
ATLAS TURNER, INC.	ATLAS ASBESTOS CO
AWT AIR COMPANY, INC.	RESEARCH-COTTRELL, INC.
BEATY INVESTMENTS, INC.	GUY M. BEATY & CO.
THE BONITZ COMPANY	BONITZ INSULATION COMPANY
BW/IP INC.	its wholly owned subsidiaries
CANVAS CT, LLC	MARLEY COOLING TOWER COMPANY
CAPE PLC	CAPE INDUSTRIES LTD., CAPE ASBESTOS COMPANY LTD., and its subsidiaries and global affiliates
CB&I LAURENS, INC.	CHICAGO BRIDGE & IRON COMPANY
CLEAVER-BROOKS, INC.	AQUA-CHEM, INC. and CLEAVER-BROOKS DIVISION
CRANE INSTRUMENTATION & SAMPLING, INC.	CIRCOR INSTRUMENTATION TECHNOLOGIES, INC. and HOKE INC.
DUKE ENERGY CAROLINAS, LLC	DUKE ENERGY CORPORATION
EMERSON ELECTRIC CO.	COPELAND CORPORATION
FLOWSERVE CORPORATION	THE DURIRON COMPANY INC.

DEFENDANT	ALTERNATE ENTITY
FLOWERVE US INC.	EDWARD VALVES, INC. and ROCKWELL MANUFACTURING COMPANY
FLUOR CONSTRUCTORS INTERNATIONAL	FLUOR CORPORATION
FMC CORPORATION	PEERLESS PUMP
GARDNER DENVER NASH, LLC	THE NASH ENGINEERING COMPANY
GOULDS PUMPS LLC	GOULDS PUMPS INC.
GRINNELL LLC	GRINNELL CORPORATION
HOWDEN NORTH AMERICA INC.	HOWDEN BUFFALO INC., BUFFALO FORGE COMPANY, and NEW PHILADELPHIA FAN CO.
ITT LLC	ITT CORPORATION, ITT INDUSTRIES INC., ITT FLUID PRODUCTS CORP., HOFFMAN SPECIALTY MFG. CORP., BELL & GOSSETT COMPANY, ITT MARLOW and KENNEDY VALVE COMPANY
JOY GLOBAL UNDERGROUND MINING LLC	JOY TECHNOLOGIES, INC. and JOY TECHNOLOGIES LLC
METROPOLITAN LIFE INSURANCE COMPANY	METLIFE INC.
PARAMOUNT GLOBAL	VIACOMCBS INC., CBS CORPORATION, a Delaware corporation, VIACOM, INC., CBS CORPORATION, a Pennsylvania corporation, WESTINGHOUSE ELECTRIC CORPORATION, and BF STURTEVANT
REDCO CORPORATION	CRANE CO.
RILEY POWER INC.	BABCOCK BORSIG POWER INC., DB RILEY, INC., and RILEY STOKER CORPORATION

DEFENDANT	ALTERNATE ENTITY
SEQUOIA VENTURES INC.	BECHTEL CORPORATION
SPX CORPORATION	KINNEY PUMPS
VALVES AND CONTROLS US, INC.	WEIR VALVES & CONTROLS USA INC. and ATWOOD MORRILL CO., INC.
VISTRA INTERMEDIATE COMPANY LLC	CRSS INC.
WIND UP, LTD.	PIPE & BOILER INSULATION, INC. and CAROLINA INDUSTRIAL INSULATING CO.
ZURN INDUSTRIES, LLC	ZURN INDUSTRIES, INC.

15. Plaintiffs have been informed and believe, and thereon allege, that at all times herein mentioned, Defendants or their “alternate entities” were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

16. Plaintiffs have been informed and believe, and thereon allege, that progressive lung disease, lung cancer and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

17. As a direct and proximate result of the conduct as alleged within, Plaintiff John A. Tibbs suffered permanent injuries, including, but not limited to, lung cancer and other lung

damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

18. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff John A. Tibbs incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff John A. Tibbs's medical treatment is ascertained.

19. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff John A. Tibbs incurred, and will continue to incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs pray leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

20. Plaintiffs hereby disclaim each and every claim or cause of action which does or may arise from or on any federal enclave. Plaintiffs are disclaiming each and every claim or cause of action arising from any exposure to asbestos as a result of the Plaintiffs presence on or at any federal enclave. Plaintiffs further disclaim each and every claim or cause of action arising under the United States Constitution and under any Federal Law or Regulation. Finally, Plaintiffs disclaim each and every claim or cause of action which may be asserted under federal admiralty or maritime law. Courts across the Country have found that such disclaimers are proper and within the province of the Plaintiffs to disclaim. Any removal by any defendant on the basis of the disclaimed claims will result in a motion for sanctions and seeking attorneys' fees.

THE PARTIES

21. Plaintiffs John A. Tibbs and Margaret B. Tibbs are currently residents of the State of North Carolina. Plaintiff John A. Tibbs was exposed to asbestos during the course of his career at various job sites, primarily located in South Carolina and North Carolina. He was also exposed to asbestos fibers carried home on the clothing and person of his father while he also worked as a superintendent of maintenance at various jobsites while Plaintiff John A. Tibbs lived in the family home.

22. Defendant, **3M COMPANY** f/k/a MINNESOTA MINING AND MANUFACTURING COMPANY, was and is a Delaware corporation with its principal place of business in Minnesota. At all times material hereto, 3M COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, or products fraudulently marketed to prevent asbestos exposure including, but not limited to, 3M masks and other asbestos-containing products. 3M COMPANY is sued as a Product Defendant. Plaintiffs' claims against 3M COMPANY arise out of this Defendant's business activities in the State of South Carolina.

23. Defendant, **4520 CORP., INC.**, as successor-in-interest to BENJAMIN F. SHAW COMPANY, was and is a Delaware corporation with its principal place of business in Oregon. At all times material hereto, 4520 CORP., INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. 4520 CORP., INC. is sued as a

Product Defendant. 4520 CORP., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against 4520 CORP., INC. arise out of this Defendant's business activities in the State of South Carolina.

24. Defendant, **A.O. SMITH CORPORATION**, was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, A.O. SMITH CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing boilers and heaters, including Burkey boilers, present at numerous jobsites in South Carolina and North Carolina. A.O. SMITH CORPORATION is sued as a Product Defendant. Plaintiffs' claims against A.O. SMITH CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

25. Defendant, **AIR & LIQUID SYSTEMS CORPORATION**, individually and as successor-in-interest to BUFFALO PUMPS, INC., was and is a Pennsylvania corporation with its principal place of business in Pennsylvania. At all times material hereto, AIR & LIQUID SYSTEMS CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Buffalo pumps present at numerous jobsites in South Carolina and North Carolina. AIR & LIQUID SYSTEMS CORPORATION is sued as a Product Defendant. Plaintiffs' claims against AIR & LIQUID SYSTEMS CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

26. Defendant, **AMENTUM ENVIRONMENT & ENERGY, INC.**, f/k/a AECOM ENERGY & CONSTRUCTION, INC., individually and as successor-in-interest to YEARGIN CONSTRUCTION COMPANY, INC. successor to IMPAC, INC., was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, AMENTUM ENVIRONMENT & ENERGY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. AMENTUM ENVIRONMENT & ENERGY, INC. is sued as a Product Defendant. AMENTUM ENVIRONMENT & ENERGY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against AMENTUM ENVIRONMENT & ENERGY, INC. arise out of this Defendant's business activities in the State of South Carolina.

27. Defendant, **ANCHOR/DARLING VALVE COMPANY**, was and is a Pennsylvania corporation with its principal place of business in Texas. At all times material hereto, ANCHOR/DARLING VALVE COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Darling valves present at numerous jobsites in South Carolina and North Carolina. ANCHOR/DARLING VALVE COMPANY is sued as a Product Defendant. Plaintiffs' claims against ANCHOR/DARLING VALVE COMPANY arise out of this Defendant's business activities in the State of South Carolina.

28. Defendant, **ARMSTRONG INTERNATIONAL, INC.**, was and is a Michigan corporation with its principal place of business in Michigan. At all times material hereto, ARMSTRONG INTERNATIONAL, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including but not limited to Armstrong steam traps and strainers present at numerous jobsites in South Carolina and North Carolina. ARMSTRONG INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiffs' claims against ARMSTRONG INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

29. Defendant, **ASBESTOS CORPORATION LIMITED**, was and is a corporation organized and existing under the laws of the country of Canada, with its principal place of business in Canada. At all times material hereto, ASBESTOS CORPORATIONN LIMITED mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina. ASBESTOS CORPORATION LIMITED is sued as a Product Defendant. Plaintiffs' claims against ASBESTOS CORPORATION LIMITED arise out of this Defendant's business activities in the State of South Carolina.

30. Defendant, **ASCO, L.P.**, f/k/a ASCO VALVE, INC., was and is a Delaware limited partnership with its principal place of business in New Jersey. At all times material hereto, ASCO, L.P. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing ASCO valves

present at numerous jobsites in South Carolina and North Carolina. ASCO, L.P. is sued as a Product Defendant. Plaintiffs' claims against ASCO, L.P. arise out of this Defendant's business activities in the State of South Carolina.

31. Defendant, **ATLAS ASBESTOS CO**, was and is a corporation organized and existing under the laws of the country of Canada, with its principal place of business in Canada. At all times material hereto, ATLAS ASBESTOS CO mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina. ATLAS ASBESTOS CO is sued as a Product Defendant. Plaintiffs' claims against ATLAS ASBESTOS CO arise out of this Defendant's business activities in the State of South Carolina.

32. Defendant, **ATLAS TURNER, INC.**, as successor to ATLAS ASBESTOS CO, was and is a corporation organized and existing under the laws of the country of Canada, with its principal place of business in Canada. At all times material hereto, ATLAS TURNER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at jobsites in South Carolina and North Carolina. ATLAS TURNER, INC. is sued as a Product Defendant. Plaintiffs' claims against ATLAS TURNER, INC. arise out of this Defendant's business activities in the State of South Carolina.

33. Defendant, **AWT AIR COMPANY, INC.**, f/k/a RESEARCH-COTTRELL, INC., was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, AWT AIR COMPANY, INC. manufactured, processed, imported, converted,

compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing precipitators present at numerous jobsites in South Carolina and North Carolina. AWT AIR COMPANY, INC. is sued as a Product Defendant. Plaintiffs' claims against AWT AIR COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

34. Defendant, **BAHNSON, INC.**, was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, BAHNSON, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. BAHNSON, INC. is sued as a Product Defendant. BAHNSON, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against BAHNSON, INC. arise out of this Defendant's business activities in the State of South Carolina.

35. Defendant, **BANNER INDUSTRIES INTERNATIONAL, INC.**, was and is a Delaware corporation with its principal place of business in Massachusetts. At all times material hereto, BANNER INDUSTRIES INTERNATIONAL, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Patterson pumps present at numerous jobsites in South Carolina

and North Carolina. BANNER INDUSTRIES INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiffs' claims against BANNER INDUSTRIES INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

36. Defendant, **BEATY INVESTMENTS, INC.** f/k/a GUY M. BEATY & CO., was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, BEATY INVESTMENTS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. BEATY INVESTMENTS, INC. is sued as a Product Defendant. BEATY INVESTMENTS, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Beaty Investments, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against BEATY INVESTMENTS, INC. arise out of this Defendant's business activities in the State of South Carolina.

37. Defendant, **BECHTEL CORPORATION**, was and is a Nevada corporation with its principal place of business in Virginia. At all times material hereto, BECHTEL CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. BECHTEL CORPORATION is sued as a Product Defendant. BECHTEL

CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against BECHTEL CORPORATION arise out of this Defendant's business activities in the State of South Corporation.

38. Defendant, **THE BONITZ COMPANY** f/k/a **BONITZ INSULATION COMPANY**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, THE BONITZ COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. THE BONITZ COMPANY is sued as a Product Defendant. THE BONITZ COMPANY is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of The Bonitz Company, exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against THE BONITZ COMPANY arise out of this Defendant's business activities in the State of South Carolina.

39. Defendant, **BW/IP INC.** and its wholly-owned subsidiaries, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, BW/IP INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Byron Jackson pumps and Borg Warner pumps and valves present at numerous jobsites in South Carolina and

North Carolina. BW/IP INC. is sued as a Product Defendant. Plaintiffs' claims against BW/IP INC. arise out of this Defendant's business activities in the State of South Carolina.

40. Defendant, **CANVAS CT, LLC**, individually and as successor to MARLEY COOLING TOWER COMPANY, was and is a Delaware limited liability company with its principal place of business in Kansas. At all times material hereto, CANVAS CT, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Marley cooling towers present at numerous jobsites in South Carolina and North Carolina. CANVAS CT, LLC is sued as a Product Defendant. Plaintiffs' claims against CANVAS CT, LLC arise out of this Defendant's business activities in the State of South Carolina.

41. Defendant, **CAPE PLC**, individually and as successor-in-interest to CAPE INDUSTRIES LTD f/k/a CAPE ASBESTOS COMPANY LTD., and its subsidiaries and global affiliates, was and is a private liability company organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland with its court appointed Receiver maintaining its principal place of business in South Carolina. At all times material hereto, CAPE PLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina. CAPE PLC is sued as a Product Defendant. Plaintiffs' claims against CAPE PLC arise out of this Defendant's business activities in the State of South Carolina.

42. Defendant, **CARBOLINE COMPANY**, was and is a Delaware corporation with its principal place of business in Missouri. At all times material hereto, CARBOLINE COMPANY

manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing coatings present at numerous jobsites in South Carolina and North Carolina. CARBOLINE COMPANY is sued as a Product Defendant. Plaintiffs' claims against CARBOLINE COMPANY arise out of this Defendant's business activities in the State of South Carolina.

43. Defendant, **CB&I LAURENS, INC.**, individually and as successor-in-interest to CHICAGO BRIDGE & IRON COMPANY, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, CB&I LAURENS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foxboro valves present at numerous jobsites in South Carolina and North Carolina. CB&I LAURENS, INC. is sued as a Product Defendant. Plaintiffs' claims against CB&I LAURENS, INC. arise out of this Defendant's business activities in the State of South Carolina.

44. Defendant, **CLEAVER-BROOKS, INC.** f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-BROOKS DIVISION, was and is a Delaware corporation with its principal place of business in Georgia. At all times material hereto, CLEAVER-BROOKS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Cleaver-Brooks boilers and distillers present at numerous jobsites in South Carolina and North Carolina. CLEAVER-BROOKS, INC. is sued as a Product Defendant. Plaintiffs' claims against CLEAVER-BROOKS, INC. arise out of this Defendant's business activities in the State of South Carolina.

45. Defendant, **COPES-VULCAN, INC.**, was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, COPES-VULCAN, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Vulcan blowers and valves present at numerous jobsites in South Carolina and North Carolina. COPES-VULCAN, INC. is sued as a Product Defendant. Plaintiffs' claims against COPES-VULCAN, INC. arise out of this Defendant's business activities in the State of South Carolina.

46. Defendant, **COVIL CORPORATION**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, COVIL CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. COVIL CORPORATION is sued as a Product Defendant. COVIL CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Covil Corporation, exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against COVIL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

47. Defendant, **CRANE INSTRUMENTATION & SAMPLING, INC.**, f/k/a CIRCOR INSTRUMENTATION TECHNOLOGIES, INC., f/k/a HOKE INC., was and is a New York corporation with its principal place of business in South Carolina. At all times material

hereto, CRANE INSTRUMENTATION & SAMPLING, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Hoke valves present at numerous jobsites in South Carolina and North Carolina. CRANE INSTRUMENTATION & SAMPLING, INC. is sued as a Product Defendant. Plaintiffs' claims against CRANE INSTRUMENTATION & SAMPLING, INC. arise out of this Defendant's business activities in the State of South Carolina.

48. Defendant, **CROSBY VALVE, LLC**, was and is a Nevada limited liability company with its principal place of business in Missouri. At all times material hereto, CROSBY VALVE, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Crosby valves present at numerous jobsites in South Carolina and North Carolina. CROSBY VALVE, LLC is sued as a Product Defendant. Plaintiffs' claims against CROSBY VALVE, LLC arise out of this Defendant's business activities in the State of South Carolina.

49. Defendant, **DANIEL INTERNATIONAL CORPORATION**, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, DANIEL INTERNATIONAL CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. DANIEL INTERNATIONAL CORPORATION is sued as a Product Defendant. DANIEL INTERNATIONAL

CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against DANIEL INTERNATIONAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

50. Defendant, **DAVIS MECHANICAL CONTRACTORS, INC.**, was a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, DAVIS MECHANICAL CONTRACTORS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. DAVIS MECHANICAL CONTRACTORS, INC. is sued as a Product Defendant. DAVIS MECHANICAL CONTRACTORS, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Davis Mechanical Contractors, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against DAVIS MECHANICAL CONTRACTORS, INC. arise out of this Defendant's business activities in the State of South Carolina.

51. Defendant, **DEZURIK, INC.**, was and is a Delaware corporation with its principal place of business in Minnesota. At all times material hereto, DEZURIK, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Vulcan blowers and valves present at numerous jobsites in South Carolina and North Carolina. DEZURIK, INC. is sued as a Product

Defendant. Plaintiffs' claims against DEZURIK, INC. arise out of this Defendant's business activities in the State of South Carolina.

52. Defendant, **DUKE ENERGY CAROLINAS, LLC** f/k/a DUKE ENERGY CORPORATION, was and is a North Carolina limited liability company with its principal place of business in North Carolina. At all times material hereto, DUKE ENERGY CAROLINAS, LLC owned and/or controlled premises at which Plaintiff John A. Tibbs and his father John H. Tibbs was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities in South Carolina and North Carolina, including but not limited to the Duke power plants listed in paragraph 111 of this Complaint. DUKE ENERGY CAROLINAS, LLC is sued as a Premises Defendant.

53. Defendant, **DUKE ENERGY CORPORATION**, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, DUKE ENERGY CORPORATION owned and/or controlled premises at which Plaintiff John A. Tibbs and his father John H. Tibbs was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities in South Carolina and North Carolina, including but not limited to the Duke power plants listed in paragraph 111 of this Complaint. DUKE ENERGY CORPORATION is sued as a Premises Defendant.

54. Defendant, **ELLINGTON INSULATION COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, ELLINGTON INSULATION COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at

numerous jobsites throughout the southeastern United States. ELLINGTON INSULATION COMPANY, INC. is sued as a Product Defendant. ELLINGTON INSULATION COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Ellington Insulation Company, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against ELLINGTON INSULATION COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

55. Defendant, **EMERSON ELECTRIC CO.**, individually and as successor-in-interest to COPELAND CORPORATION, was and is a Missouri corporation with its principal place of business in Missouri. At all times material hereto, EMERSON ELECTRIC CO. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Hancock valves present at numerous jobsites in South Carolina and North Carolina. EMERSON ELECTRIC CO. is sued as a Product Defendant. Plaintiffs' claims against EMERSON ELECTRIC CO. arise out of this Defendant's business activities in the State of South Carolina.

56. Defendant, **FISHER CONTROLS INTERNATIONAL LLC**, was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, FISHER CONTROLS INTERNATIONAL LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Fisher valves present at numerous jobsites in South Carolina and North Carolina. FISHER CONTROLS INTERNATIONAL LLC is sued as a

Product Defendant. Plaintiffs' claims against FISHER CONTROLS INTERNATIONAL LLC arise out of this Defendant's business activities in the State of South Carolina.

57. Defendant, **FLAME REFRACTORIES, INC.**, was a North Carolina corporation with its principal place of business in Florida. At all times material hereto, FLAME REFRACTORIES, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. FLAME REFRACTORIES, INC. is sued as a Product Defendant. FLAME REFRACTORIES, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Flame Refractories, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against FLAME REFRACTORIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

58. Defendant, **FLOWERVE CORPORATION**, f/k/a THE DURIRON COMPANY INC., was and is a New York corporation with its principal place of business in Texas. At all times material hereto, FLOWERVE CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Duriron pumps present at numerous jobsites in South Carolina and North Carolina. FLOWERVE CORPORATION is sued as a Product Defendant. Plaintiffs' claims against FLOWERVE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

59. Defendant, **FLOWERVE US INC.**, individually and as successor-in-interest to EDWARD VALVES, INC. and ROCKWELL MANUFACTURING COMPANY, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLOWERVE US INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Edward valves and Rockwell valves present at numerous jobsites in South Carolina and North Carolina. FLOWERVE US INC. is sued as a Product Defendant. Plaintiffs' claims against FLOWERVE US INC. arise out of this Defendant's business activities in the State of South Carolina.

60. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL** f/k/a/ FLUOR CORPORATION, was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR CONSTRUCTORS INTERNATIONAL mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. FLUOR CONSTRUCTORS INTERNATIONAL is sued as a Product Defendant. FLUOR CONSTRUCTORS INTERNATIONAL is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against FLUOR CONSTRUCTORS INTERNATIONAL arise out of this Defendant's business activities in the State of South Carolina.

61. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** is sued as a Product Defendant. **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** arise out of this Defendant's business activities in the State of South Carolina.

62. Defendant, **FLUOR DANIEL SERVICES CORPORATION**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, **FLUOR DANIEL SERVICES CORPORATION** mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. **FLUOR DANIEL SERVICES CORPORATION** is sued as a Product Defendant. **FLUOR DANIEL SERVICES CORPORATION** is also sued for the work it did at the various industrial sites in the southeastern

United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against FLUOR DANIEL SERVICES CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

63. Defendant, **FLUOR ENTERPRISES, INC.**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR ENTERPRISES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. FLUOR ENTERPRISES, INC. is sued as a Product Defendant. FLUOR ENTERPRISES, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against FLUOR ENTERPRISES, INC. arise out of this Defendant's business activities in the State of South Carolina.

64. Defendant, **FMC CORPORATION** on behalf of its former Peerless Pump business, was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, FMC CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Peerless pumps present at numerous jobsites in South Carolina and North Carolina. FMC CORPORATION is sued as a Product Defendant. Plaintiffs' claims against FMC CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

65. Defendant, **FOSTER WHEELER ENERGY CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, FOSTER WHEELER ENERGY CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foster Wheeler boilers and exhausters present at numerous jobsites in South Carolina and North Carolina. FOSTER WHEELER ENERGY CORPORATION is sued as a Product Defendant. Plaintiffs' claims against FOSTER WHEELER ENERGY CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

66. Defendant, **GARDNER DENVER NASH, LLC**, individually and as successor-in-interest to THE NASH ENGINEERING COMPANY, was and is a Delaware limited liability company with its principal place of business in Pennsylvania. At all times material hereto, GARDNER DENVER NASH, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Nash pumps present at numerous jobsites in South Carolina and North Carolina. GARDNER DENVER NASH, LLC is sued as a Product Defendant. Plaintiffs' claims against GARDNER DENVER NASH, LLC arise out of this Defendant's business activities in the State of South Carolina.

67. Defendant, **GENERAL BOILER CASING COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, GENERAL BOILER CASING COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but

not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. GENERAL BOILER CASING COMPANY, INC. is sued as a Product Defendant. GENERAL BOILER CASING COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of General Boiler Casing Company, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against GENERAL BOILER CASING COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

68. Defendant, **GENERAL ELECTRIC COMPANY**, was and is a New York corporation with its principal place of business in Massachusetts. At all times material hereto, GENERAL ELECTRIC COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing General Electric turbines present at numerous jobsites in South Carolina and North Carolina. GENERAL ELECTRIC COMPANY is sued as a Product Defendant. Plaintiffs' claims against GENERAL ELECTRIC COMPANY arise out of this Defendant's business activities in the State of South Carolina.

69. Defendant, **GOULDS PUMPS, INCORPORATED**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, GOULDS PUMPS, INCORPORATED manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Goulds pumps present at numerous jobsites in South Carolina and North Carolina.

GOULDS PUMPS, INCORPORATED is sued as a Product Defendant. Plaintiffs' claims against GOULDS PUMPS, INCORPORATED arise out of this Defendant's business activities in the State of South Carolina.

70. Defendant, **GOULDS PUMPS LLC** f/k/a GOULDS PUMPS INC., was and is a Delaware limited liability company with its principal place of business in New York. At all times material hereto, GOULDS PUMPS LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Goulds pumps present at numerous jobsites in South Carolina and North Carolina. GOULDS PUMPS LLC is sued as a Product Defendant. Plaintiffs' claims against GOULDS PUMPS LLC arise out of this Defendant's business activities in the State of South Carolina.

71. Defendant, **GREAT BARRIER INSULATION CO.**, was an Alabama corporation with its principal place of business in Florida. At all times material hereto, GREAT BARRIER INSULATION CO. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. GREAT BARRIER INSULATION CO. is sued as a Product Defendant. GREAT BARRIER INSULATION CO. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Great Barrier Insulation Co., exposed tens of thousands of people, including the Plaintiff John A. Tibbs

to lethal doses of asbestos. Plaintiffs' claims against GREAT BARRIER INSULATION CO. arise out of this Defendant's business activities in the State of South Carolina.

72. Defendant, **GRINNELL, LLC** d/b/a GRINNELL CORPORATION, was and is a Delaware limited liability company with its principal place of business in Florida. At all times material hereto, GRINNELL, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Grinnell valves used at numerous jobsites in South Carolina and North Carolina. GRINNELL, LLC is sued as a Product Defendant. Plaintiffs' claims against GRINNELL, LLC arise out of this Defendant's business activities in the State of South Carolina.

73. Defendant, **HAJOCA CORPORATION**, was and is a Maine corporation with its principal place of business in Pennsylvania. At all times material hereto, HAJOCA CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing transite pipe at numerous jobsites in South Carolina and North Carolina. HAJOCA CORPORATION is sued as a Product Defendant. Plaintiffs' claims against HAJOCA CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

74. Defendant, **HOWDEN NORTH AMERICA, INC.** f/k/a HOWDEN BUFFALO INC., individually and as successor-in-interest to BUFFALO FORGE COMPANY and NEW PHILADELPHIA FAN CO., was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, HOWDEN NORTH AMERICA, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing

products, materials, or equipment, including, but not limited to, asbestos-containing Buffalo Forge fans and New Philadelphia fans present at numerous jobsites in South Carolina and North Carolina. HOWDEN NORTH AMERICA, INC. is sued as a Product Defendant. Plaintiffs' claims against HOWDEN NORTH AMERICA, INC. arise out of this Defendant's business activities in the State of South Carolina.

75. Defendant, **IMO INDUSTRIES INC.**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, IMO INDUSTRIES INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing DeLaval pumps used at numerous jobsites in South Carolina and North Carolina. IMO INDUSTRIES INC. is sued as a Product Defendant. Plaintiffs' claims against IMO INDUSTRIES INC. arise out of this Defendant's business activities in the State of South Carolina.

76. Defendant, **ITT LLC** f/k/a ITT CORPORATION, ITT INDUSTRIES INC., ITT FLUID PRODUCTS CORP., HOFFMAN SPECIALTY MFG. CORP., BELL & GOSSETT COMPANY, ITT MARLOW, and KENNEDY VALVE COMPANY, was and is an Indiana limited liability company with its principal place of business in Connecticut. At all times material hereto, ITT LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Kennedy valves present at numerous jobsites in South Carolina and North Carolina. ITT LLC is sued as a Product Defendant. Plaintiffs' claims against ITT LLC arise out of this Defendant's business activities in the State of South Carolina.

77. Defendant, **JOY GLOBAL UNDERGROUND MINING LLC**, f/k/a JOY TECHNOLOGIES, INC., f/k/a JOY TECHNOLOGIES LLC, was and is a Delaware limited liability company with its principal place of business in Pennsylvania. At all times material hereto, JOY GLOBAL UNDERGROUND MINING LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Joy compressors present at numerous jobsites in South Carolina and North Carolina. JOY GLOBAL UNDERGROUND MINING LLC is sued as a Product Defendant. Plaintiffs' claims against JOY GLOBAL UNDERGROUND MINING LLC arise out of this Defendant's business activities in the State of South Carolina.

78. Defendant, **K-MAC SERVICES, INC.**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, K-MAC SERVICES, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. K-MAC SERVICES, INC. is sued as a Product Defendant. K-MAC SERVICES, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of K-Mac Services, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against K-MAC SERVICES, INC. arise out of this Defendant's business activities in the State of South Carolina.

79. Defendant, **METROPOLITAN LIFE INSURANCE COMPANY**, a wholly-owned subsidiary of METLIFE INC., was and is a New York corporation with its principal place

of business in New York. METROPOLITAN LIFE INSURANCE COMPANY has done and does business in the State of South Carolina. METROPOLITAN LIFE INSURANCE COMPANY is named as a conspiracy defendant.

80. Defendant, **MINE SAFETY APPLIANCES COMPANY, LLC**, was and is a Pennsylvania limited liability company with its principal place of business in Pennsylvania. At all times material hereto, MINE SAFETY APPLIANCES COMPANY, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, or products fraudulently marketed to prevent asbestos exposure including, but not limited to, MSA masks and respirators and other asbestos-containing products. MINE SAFETY APPLIANCES COMPANY, LLC is sued as a Product Defendant. Plaintiffs' claims against MINE SAFETY APPLIANCES COMPANY, LLC arise out of this Defendant's business activities in the State of South Carolina.

81. Defendant, **THE NASH ENGINEERING COMPANY**, was and is a Connecticut corporation with its principal place of business in Maine. At all times material hereto, THE NASH ENGINEERING COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Nash pumps used at numerous jobsites in South Carolina and North Carolina. THE NASH ENGINEERING COMPANY is sued as a Product Defendant. Plaintiffs' claims against THE NASH ENGINEERING COMPANY arise out of this Defendant's business activities in the State of South Carolina.

82. Defendant, **PARAMOUNT GLOBAL** f/k/a VIACOMCBS INC., f/k/a CBS CORPORATION, a Delaware corporation, f/k/a VIACOM, INC., successor-by-merger to CBS

CORPORATION, a Pennsylvania corporation, f/k/a WESTINGHOUSE ELECTRIC CORPORATION and as successor-in-interest to BF STURTEVANT, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PARAMOUNT GLOBAL manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Westinghouse turbines and BF Sturtevant forced-draft blowers present at numerous jobsites in South Carolina and North Carolina. PARAMOUNT GLOBAL is sued as a Product Defendant. Plaintiffs' claims against PARAMOUNT GLOBAL arise out of this Defendant's business activities in the State of South Carolina.

83. Defendant, **PATTERSON PUMP COMPANY**, was and is an Ohio corporation with its principal place of business in Georgia. At all times material hereto, PATTERSON PUMP COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Patterson pumps present at numerous jobsites in South Carolina and North Carolina. PATTERSON PUMP COMPANY is sued as a Product Defendant. Plaintiffs' claims against PATTERSON PUMP COMPANY arise out of this Defendant's business activities in the State of South Carolina.

84. Defendant, **PIEDMONT INSULATION, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, PIEDMONT INSULATION, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing,

insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. PIEDMONT INSULATION, INC. is sued as a Product Defendant. PIEDMONT INSULATION, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Piedmont Insulation, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against PIEDMONT INSULATION, INC. arise out of this Defendant's business activities in the State of South Carolina.

85. Defendant, **PRESNELL INSULATION CO., INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, PRESNELL INSULATION CO., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. PRESNELL INSULATION CO., INC. is sued as a Product Defendant. PRESNELL INSULATION CO., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Presnell Insulation Co., Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against PRESNELL INSULATION CO., INC. arise out of this Defendant's business activities in the State of South Carolina.

86. Defendant, **REDCO CORPORATION** f/k/a CRANE CO., was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, REDCO CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-

containing products, materials, or equipment, including, but not limited to, asbestos-containing Crane pumps and valves, Chempump pumps, Deming pumps, and Jenkins valves used at numerous jobsites in South Carolina and North Carolina. REDCO CORPORATION is sued as a Product Defendant. Plaintiffs' claims against REDCO CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

87. Defendant, **RILEY POWER INC.** f/k/a BABCOCK BORSIG POWER INC., f/k/a DB RILEY, INC., f/k/a RILEY STOKER CORPORATION, was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, RILEY POWER INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Riley Stoker boilers and associated asbestos materials present at numerous jobsites in South Carolina and North Carolina. RILEY POWER INC. is sued as a Product Defendant. Plaintiffs' claims against RILEY POWER INC. arise out of this Defendant's business activities in the State of South Carolina.

88. Defendant, **SEQUOIA VENTURES INC.** f/k/a BECHTEL CORPORATION, was and is a Delaware corporation with its principal place of business in Virginia. At all times material hereto, SEQUOIA VENTURES INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. SEQUOIA VENTURES INC. is sued as a Product Defendant. SEQUOIA VENTURES INC. is also sued for the work it did at the various

industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against SEQUOIA VENTURES INC. arise out of this Defendant's business activities in the State of South Carolina.

89. Defendant, **SPIRAX SARCO, INC.**, was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPIRAX SARCO, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing steam traps and valves present at numerous jobsites in South Carolina and North Carolina. SPIRAX SARCO, INC. is sued as a Product Defendant. Plaintiffs' claims against SPIRAX SARCO, INC. arise out of this Defendant's business activities in the State of South Carolina.

90. Defendant, **SPX CORPORATION**, individually and as successor-in-interest to KINNEY PUMPS, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, SPX CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Kinney pumps present at numerous jobsites in South Carolina and North Carolina. SPX CORPORATION is sued as a Product Defendant. Plaintiffs' claims against SPX CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

91. Defendant, **STAFFORD INSULATION COMPANY**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, STAFFORD INSULATION COMPANY manufactured, processed, imported, converted,

compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. STAFFORD INSULATION COMPANY is sued as a Product Defendant. STAFFORD INSULATION COMPANY is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Stafford Insulation Company, exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against STAFFORD INSULATION COMPANY arise out of this Defendant's business activities in the State of South Carolina.

92. Defendant, **STANDARD INSULATION COMPANY OF N. C., INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STANDARD INSULATION COMPANY OF N. C., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. STANDARD INSULATION COMPANY OF N. C., INC. is sued as a Product Defendant. STANDARD INSULATION COMPANY OF N. C., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Standard Insulation Company of N. C., Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against STANDARD

INSULATION COMPANY OF N. C., INC. arise out of this Defendant's business activities in the State of South Carolina.

93. Defendant, **STARR DAVIS COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY, INC. is sued as a Product Defendant. STARR DAVIS COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against STARR DAVIS COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

94. Defendant, **STARR DAVIS COMPANY OF S.C., INC.**, was a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY OF S.C., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY OF S.C., INC. is sued as a Product Defendant. STARR DAVIS COMPANY OF S.C., INC. is also sued for the work

it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company of S.C. Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against STARR DAVIS COMPANY OF S.C., INC. arise out of this Defendant's business activities in the State of South Carolina.

95. Defendant, **STERLING FLUID SYSTEMS (USA) LLC**, was and is a Delaware limited liability company with its principal place of business in Indiana. At all times material hereto, STERLING FLUID SYSTEMS (USA) LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Peerless pumps present at numerous jobsites in South Carolina and North Carolina. STERLING FLUID SYSTEMS (USA) LLC is sued as a Product Defendant. Plaintiffs' claims against STERLING FLUID SYSTEMS (USA) LLC arise out of this Defendant's business activities in the State of South Carolina.

96. Defendant, **UNION CARBIDE CORPORATION**, was and is a New York corporation with its principal place of business in Texas. At all times material hereto, UNION CARBIDE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Calidria raw asbestos fibers used in drywall compounds and Bakelite boards at numerous jobsites in South Carolina and North Carolina. UNION CARBIDE CORPORATION is sued as a Product Defendant. Plaintiffs' claims against UNION CARBIDE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

97. Defendant, **VALVES AND CONTROLS US, INC.**, f/k/a WEIR VALVES & CONTROLS USA INC. d/b/a ATWOOD & MORRILL CO., INC., was and is a Texas corporation with its principal place of business in Oregon. At all times material hereto, VALVES AND CONTROLS US, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Atwood & Morrill valves at numerous jobsites in South Carolina and North Carolina. VALVES AND CONTROLS US, INC. is sued as a Product Defendant. Plaintiffs' claims against VALVES AND CONTROLS US, INC. arise out of this Defendant's business activities in the State of South Carolina.

98. Defendant, **VELAN VALVE CORP.**, was and is a Delaware corporation with its principal place of business in Vermont. At all times material hereto, VELAN VALVE CORP. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Velan valves at numerous jobsites in South Carolina and North Carolina. VELAN VALVE CORP. is sued as a Product Defendant. Plaintiffs' claims against VELAN VALVE CORP. arise out of this Defendant's business activities in the State of South Carolina.

99. Defendant, **VIKING PUMP, INC.**, was and is a Delaware corporation with its principal place of business in Iowa. At all times material hereto, VIKING PUMP, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Viking pumps at numerous jobsites in South Carolina and North Carolina. VIKING PUMP, INC. is sued as a

Product Defendant. Plaintiffs' claims against VIKING PUMP, INC. arise out of this Defendant's business activities in the State of South Carolina.

100. Defendant, **VISTRA INTERMEDIATE COMPANY LLC**, individually and as successor-in-interest to CRSS INC., was and is a Delaware limited liability corporation with its principal place of business in Texas. At all times material hereto, VISTRA INTERMEDIATE COMPANY LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. VISTRA INTERMEDIATE COMPANY LLC is sued as a Product Defendant and a Design Defendant. VISTRA INTERMEDIATE COMPANY LLC is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against VISTRA INTERMEDIATE COMPANY LLC arise out of this Defendant's business activities in the State of South Carolina.

101. Defendant, **THE WILLIAM POWELL COMPANY**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE WILLIAM POWELL COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Powell valves at numerous jobsites in South Carolina and North Carolina. THE WILLIAM POWELL COMPANY is sued as a Product Defendant. Plaintiffs' claims against

THE WILLIAM POWELL COMPANY arise out of this Defendant's business activities in the State of South Carolina.

102. Defendant, **WIND UP, LTD.**, individually and as successor-in-interest to PIPE & BOILER INSULATION, INC. f/k/a CAROLINA INDUSTRIAL INSULATING CO., was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, WIND UP, LTD. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. WIND UP, LTD. is sued as a Product Defendant. WIND UP, LTD. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Wind Up, Ltd., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiff's claims against WIND UP, LTD. arise out of this Defendant's business activities in the State of South Carolina.

103. Defendant, **YUBA HEAT TRANSFER LLC**, was and is a Delaware limited liability company with its principal place of business in Oklahoma. At all times material hereto, YUBA HEAT TRANSFER LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Yuba water pre-heaters present at numerous jobsites in South Carolina and North Carolina. YUBA HEAT TRANSFER LLC is sued as a Product Defendant. Plaintiffs' claims against YUBA HEAT TRANSFER LLC arise out of this Defendant's business activities in the State of South Carolina.

104. Defendant, **ZURN INDUSTRIES, LLC**, individually and as successor-in-interest to ZURN INDUSTRIES, INC., was and is a Delaware limited liability company with its principal place of business in Wisconsin. At all times material hereto, ZURN INDUSTRIES, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Zurn boilers present at numerous jobsites in South Carolina and North Carolina. ZURN INDUSTRIES, LLC is sued as a Product Defendant. Plaintiffs' claims against ZURN INDUSTRIES, LLC arise out of this Defendant's business activities in the State of South Carolina.

105. Plaintiff John A. Tibbs experienced further occupational exposure as a result of working with asbestos-containing equipment in his immediate vicinity at his work site, the premises of Defendants DUKE ENERGY CAROLINAS, LLC and DUKE ENERGY CORPORATION (collectively, hereinafter the "Premises Defendants"). All other Defendants (except for METROPOLITAN LIFE INSURANCE COMPANY), or their applicable predecessors in interest, were engaged in the manufacture, sale, distribution and/or installation of asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action. At all times relevant to this action, the Defendants and the predecessors of the Defendants, for whose actions the Defendants are legally responsible, were engaged in the manufacture, sale, distribution, and/or installation of asbestos-containing products and raw materials for use in South Carolina and other states at times relevant to this action.

BACKGROUND FACTS

106. Plaintiffs bring this action for monetary damages as a result of Plaintiff John A. Tibbs contracting an asbestos-related disease.

107. Plaintiff John A. Tibbs was diagnosed with lung cancer on or about December 15, 2022.

108. Plaintiff John A. Tibbs's lung cancer was caused by his exposure to asbestos during the course of his employment, as well as through the asbestos carried home on the clothing and person of his father during the years in which he lived in the family home.

109. During his work history, Plaintiff John A. Tibbs was exposed to Defendants' asbestos-containing products through his work as a mechanic electrician from approximately the late 1950s to the late 1970s, at various industrial jobsites located primarily in South Carolina and North Carolina. Plaintiff performed a variety of tasks throughout his worksites, which include but are not limited to, working on asbestos-containing pipe, block, cement, insulation, turbines, boilers, valves, steam traps, pumps, furnaces, and other equipment, as well as cutting, repairing, installing and removing asbestos-containing insulation, materials and other products. All of these activities exposed Plaintiff to asbestos and asbestos-dust.

110. During his work history, Plaintiff was further exposed through his work around other trades including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. Plaintiff worked near and closely to a variety of tradesmen working on asbestos-containing pipe, block, cement, insulation, turbines, boilers, valves, steam traps, pumps, furnaces, and other equipment, as well as tradesmen mixing, cutting, repairing, installing and removing asbestos-containing insulation, materials and other products. All of these activities exposed Plaintiff to asbestos and asbestos-dust.

111. Plaintiff John A. Tibbs was exposed to Defendants' asbestos-containing products through his work as a mechanic electrician for Duke Power Company from approximately the late 1950s to the late 1970s, at various locations, including but not limited to the following:

- Ninety-Nine Islands Hydroelectric Station – Blacksburg, SC
- Gaston Shoals Hydroelectric Station – Blacksburg, SC
- Portman Shoals Hydroelectric Station – Williamston, SC
- Rocky Creek Hydroelectric Station – Great Falls, SC
- Cedar Creek Hydroelectric Station – Great Falls, SC
- Boyd's Mill Hydroelectric Station – Poplar Springs, SC
- Oxford Hydroelectric Station – Conover, NC
- Rhodhiss Hydroelectric Station – Rhodhiss, NC
- Tumbling Shoals Hydroelectric Station/Dam – Lake Lure, NC
- Holiday's Bridge Hydroelectric Station – Belton, SC
- Riverbend Steam Station – Mount Holly, NC
- Cowans Ford Hydroelectric Station/Dam – Huntersville, NC
- Marshall Steam Station – Sherrills Ford, NC
- Dan River Steam Station – Eden, NC
- Oconee Nuclear Station – Seneca, SC
- Jocassee Hydroelectric Station/Dam – Salem, SC
- Keowee Hydroelectric Station – Seneca, SC
- Cliffside Steam Station – Mooresboro, NC
- Belews Creek Steam Station – Belews Creek, NC
- Allen Steam Station – Belmont, NC
- Buck Steam Station – Salisbury, NC
- Lee Steam Station – Williamston, SC

112. During the course of Plaintiff John A. Tibbs's employment at the location(s) mentioned above, during other occupational and non-occupational work projects and in other ways, Plaintiff was exposed to and inhaled, ingested, or otherwise absorbed asbestos dust and fibers emanating from certain products he was working around.

113. Plaintiff John A. Tibbs was further exposed as a result of his father John H. Tibbs's employment as a superintendent of maintenance for Duke Power Company from approximately the late 1930s to the early 1980s. Plaintiff's father was exposed to asbestos through his work throughout the various facilities, and was further exposed through his work around various other

trades, including but not necessarily limited to premises workers, maintenance workers, insulators, pipefitters, welders, boilermakers, electricians, and others who installed and removed asbestos-containing materials.

114. While employed as a superintendent of maintenance, Plaintiff's father John H. Tibbs wore his own clothes to work, was exposed to asbestos dust and fibers that he brought home on his work clothes, fell off in his vehicle and were on his body including his hair, that distributed and re-entrained in his vehicle and home which caused Plaintiff John A. Tibbs to be exposed to said asbestos dust in sufficient amounts as to cause him to develop lung cancer.

115. From approximately the early 1940s to the early 1960s, Plaintiff John A. Tibbs was exposed to asbestos dust and fibers from products, services, and goods manufactured, distributed and/or sold by Defendants for use at Plaintiff's father's jobsites which Plaintiff came in contact with off premises through contact with his father's work clothes, personal possessions, and vehicle. Plaintiff's exposure to asbestos dust and fibers occurred through his contact with his father's work clothing and person when greeting him at the end of the workday, through spending time in his father's vehicle in which asbestos dust and fibers had been deposited, and through sharing a home contaminated with asbestos fibers that were constantly being stirred up and re-entrained in the air that they breathed throughout their home.

116. Plaintiff John A. Tibbs's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff John A. Tibbs's lung cancer and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

117. Plaintiffs and Plaintiff John A. Tibbs's father John H. Tibbs were not aware at the time of exposure that asbestos and/or asbestos-containing products presented any risk of injury and/or disease.

118. Plaintiffs are informed and believe, and thereon allege, that progressive lung disease, lung cancer and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

119. As a direct and proximate result of the conduct as alleged within, Plaintiff John A. Tibbs suffered permanent injuries, including, but not limited to, lung cancer and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

120. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff John A. Tibbs has incurred, and will continue to incur, liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff John A. Tibbs's medical treatment is ascertained.

121. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiffs have incurred loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs request leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

FOR A FIRST CAUSE OF ACTION
(Product Liability: Negligence)

Plaintiffs Complain of Defendants for a Cause of Action for Negligence Alleging as Follows:

122. Plaintiffs incorporate herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

123. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products.

124. At all times herein mentioned, Defendants, and/or their “alternate entities” singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products, in that said products caused personal injuries to Plaintiff John A. Tibbs and

others similarly situated, (hereinafter collectively called “exposed persons”), while being used for their intended purpose and in a manner that was reasonably foreseeable.

125. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos and asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing Plaintiff John A. Tibbs’s lung cancer, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff’s lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their “alternate entities.” The gravity of the potential harm resulting from the use of Defendants’ asbestos or asbestos-containing products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by Plaintiff John A. Tibbs and his father John H. Tibbs. Defendants and/or their “alternate entities” had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

126. Defendants, and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and asbestos-containing products would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation,

construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, “rip-out,” and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Plaintiff John A. Tibbs and his father John H. Tibbs, would use or be in proximity to and exposed to said asbestos fibers.

127. At all times relevant, Defendants and/or their “alternate entities” were aware of their asbestos and asbestos-containing products’ defect but failed to adequately warn Plaintiff John A. Tibbs, Plaintiff’s family members or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants’ products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

128. Plaintiff John A. Tibbs, Plaintiff’s family members and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Plaintiff’s and his father John H. Tibbs’s exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint.

129. Plaintiff John A. Tibbs suffers from lung cancer, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff John A. Tibbs and his father John H. Tibbs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

130. Defendants’ conduct and defective products as described in this cause of action were a direct cause of Plaintiff John A. Tibbs’s injuries, and all damages thereby sustained by

Plaintiff John A. Tibbs. Plaintiffs therefore seek all compensatory damages in order to make them whole, according to proof.

131. Furthermore, the conduct of Defendants and/or their “alternate entities” in continuing to market and sell products which they knew were dangerous to Plaintiff John A. Tibbs and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Plaintiff John A. Tibbs and others similarly situated.

132. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, Defendants and/or their “alternate entities” did so with conscious disregard for the safety of “exposed persons” who came in contact with asbestos and asbestos-containing products, in that Defendants and/or their “alternate entities” had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, asbestosis, lung cancer, and other lung damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their “alternate entities.”

133. Defendants and their “alternate entities” were aware that members of the general public and other “exposed persons,” who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products, could

cause injury, and Defendants, and their “alternate entities,” each of them, knew that members of the general public and other “exposed persons,” who came in contact with asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health and human life.

134. The above-referenced conduct of Defendants, and their “alternate entities,” was motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Defendants, their “alternate entities,” and each of them consciously disregarded the safety of “exposed persons” in pursuit of profit. Defendants were consciously willing and intended to permit asbestos and asbestos-containing products to cause injury to “exposed persons” without warning them of the potential hazards and further induced persons to work with and be exposed thereto, including Plaintiff John A. Tibbs.

135. Plaintiff John A. Tibbs, his father John H. Tibbs, and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos containing-products, and products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff John A. Tibbs, his father John H. Tibbs, or other exposed persons. Defendants and/or their “alternate entities” further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

136. Defendants and/or their “alternate entities” are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and

managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their “alternate entities” as set forth herein.

137. The herein-described conduct of Defendants and their “alternate entities,” was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiffs, for the sake of example and by way of punishing said Defendants, seek punitive damages according to proof against all defendants.

FOR A SECOND CAUSE OF ACTION

(Product Liability: Strict Liability - S.C. Code Ann. § 15-73-10, et seq.)

As a Second and Distinct Cause of Action for Strict Liability, Plaintiffs Complain of Defendants, and Allege as Follows:

138. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

139. Plaintiff John A. Tibbs suffers from lung cancer, a cancer related to exposure to asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Plaintiff John A. Tibbs and his father John H. Tibbs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

140. The Product Defendants’ conduct and defective products as described above were a direct cause of Plaintiff John A. Tibbs’s injuries, and the injuries and damages thereby sustained by Plaintiffs.

141. Furthermore, the Defendants’ conduct and that of their “alternate entities” in continuing to market and sell products which they knew were dangerous to Plaintiff John A. Tibbs, his father John H. Tibbs, and the public without adequate warnings or proper use instructions, was

done in a conscious disregard and indifference to the safety and health of Plaintiff John A. Tibbs, his father John H. Tibbs, and others similarly situated.

142. Defendants and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, “rip-out,” and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling, “exposed persons,” including Plaintiff John A. Tibbs and his father John H. Tibbs, would use or be in proximity to and exposed to said asbestos fibers.

143. Plaintiff John A. Tibbs, Plaintiff’s family members, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, referred to herein in a manner that was reasonably foreseeable. Plaintiff’s and his father John H. Tibbs’s exposure to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products occurred at various locations as set forth in this Complaint.

144. Defendants and/or their “alternate entities” knew and intended that the above-referenced asbestos and asbestos-containing products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

145. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the

product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants' asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing Plaintiff John A. Tibbs's lung cancer, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

146. The defect existed in the said products at the time they left the possession of defendants and/or their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including lung cancer, asbestosis, other lung damage, and cancer to "exposed persons," including Plaintiff John A. Tibbs herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

147. Plaintiff John A. Tibbs, his father John H. Tibbs, and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff John A. Tibbs, his father John H. Tibbs, or other exposed persons. Said Defendants and/or their "alternate entities" further failed to

adequately warn of the risks to which Plaintiff John A. Tibbs, his father John H. Tibbs, and others similarly situated were exposed.

148. Defendants' defective products as described above were a direct cause of Plaintiff John A. Tibbs's injuries, and the damages thereby sustained.

149. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, Defendants and/or their "alternate entities," and each of them, did so with conscious disregard for the safety of Plaintiff John A. Tibbs, his father John H. Tibbs, and other exposed persons who came in contact with the asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, lung cancer, asbestosis, other lung damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

150. Defendants and/or their "alternate entities" were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products could cause injury. Defendants and/or their "alternate entities" further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing

products, and products manufactured for foreseeable use with asbestos products would assume, and in fact did assume, that exposure to asbestos and asbestos- containing products was safe, when in fact exposure was extremely hazardous to health and human life.

151. The above-referenced conduct of Defendants and/or their “alternate entities” motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products. Defendants and/or their “alternate entities” consciously disregarded the safety of “exposed persons” in their pursuit of profit and in fact consciously intended to cause injury to Plaintiff John A. Tibbs, his father John H. Tibbs, and other exposed persons and induced persons to work with, be exposed to, and thereby injured by asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products.

152. Defendants are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their “alternate entities” as set forth herein.

153. The conduct of said defendants, their “alternate entities,” and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiffs, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all defendants.

154. At all times herein mentioned, each of the named Defendants, and/or their “alternate entities,” was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos and products manufactured for foreseeable use with asbestos products.

FOR A THIRD CAUSE OF ACTION
(Vicarious Liability of Defendants Based upon Respondeat Superior)

As a Third Distinct Cause of Action Against Defendants, Plaintiffs Bring this Third Cause of Action for Vicarious Liability of Defendants Based upon Respondeat Superior and Allege as Follows:

155. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

156. Prior to and during all relevant times Defendants and/or their “alternate entities” employed workers (hereinafter “employees”) in areas where defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff John A. Tibbs and/or his father John H. Tibbs worked and/or spent time as alleged above.

157. At all times herein mentioned, Defendants’ employees frequently encountered asbestos-containing products, materials, and debris during the course and scope of their employment, and during their regular work activities negligently disturbed asbestos-containing materials to which Plaintiff John A. Tibbs and his father John H. Tibbs were exposed.

158. Employees handling and disturbing asbestos-containing products in Plaintiff John A. Tibbs's and his father John H. Tibbs's vicinity were the agents and employees of defendants and at all times relevant were subject to the control of Defendants with respect to their acts, labor, and work involving (a) the removal, transport, installation, cleaning, handling, and maintenance of asbestos-containing products, materials, and debris, and (b) the implementation of safety policies and procedures. Defendants controlled both the means and manner of performance of the work of their employees as described herein.

159. Employees handling and disturbing asbestos-containing products in Plaintiff John A. Tibbs's, Plaintiff's family members and others' vicinity received monetary compensation from Defendants in exchange for the work performed and these employees performed the work in the transaction and furtherance of Defendants' businesses.

160. Harmful asbestos fibers were released during Defendants' employees' use, handling, breaking, or other manipulation of asbestos-containing products and materials.

161. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Plaintiff John A. Tibbs and his father John H. Tibbs, who also inhaled those fibers, and on the surfaces of work areas, where further activity caused the fibers to once again be released into the air and inhaled by Plaintiff John A. Tibbs.

162. The asbestos and asbestos-containing materials were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air onto surrounding surfaces, and onto persons in the area. The inhalation of asbestos fibers can cause serious disease and death.

163. Defendants' employees' use, handling and manipulation of asbestos-containing materials, as required by their employment and occurring during the course and scope of their

employment, did in fact, cause personal injuries, including lung cancer and other lung damage, to exposed persons including Plaintiff John A. Tibbs.

164. Defendants' employees were negligent in their use, handling and manipulation of said products in that they failed to isolate their work with asbestos and/or to suppress asbestos fibers from being released into the air and surrounding areas. They also failed to take appropriate steps to learn how to prevent exposure to asbestos, failed to warn and/or adequately warn Plaintiff John A. Tibbs and his father John H. Tibbs that they were being exposed to asbestos, failed to adequately warn Plaintiff John A. Tibbs and his father John H. Tibbs of the harm associated with his exposure to asbestos, and provide them with protection to prevent their inhalation of asbestos.

165. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Plaintiff John A. Tibbs and his father John H. Tibbs.

166. Defendants' employees owed Plaintiff John A. Tibbs and his father John H. Tibbs a duty to exercise due care and diligence in their activities while they were lawfully on the premises so as not to cause them harm.

167. Defendants' employees breached this duty of care as described above.

168. At all times mentioned, Plaintiff John A. Tibbs and his father John H. Tibbs were unaware of the dangerous condition and unreasonable risk of personal injury created by Defendants' employees' use of and work with asbestos-containing products and materials.

169. As a direct result of the Defendants' employees conduct, Plaintiff John A. Tibbs's and his father John H. Tibbs's exposure to asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products, each individually and together, caused severe and permanent injury to Plaintiff John A. Tibbs and the damages and injuries as complained of herein by Plaintiffs.

170. The risks herein alleged and the resultant damages suffered by the Plaintiff John A. Tibbs were typical of or broadly incidental to Defendants' business enterprises. As a practical matter, the losses caused by the torts of Defendants' employees as alleged were sure to occur in the conduct of Defendants' business enterprises. Nonetheless, Defendants engaged in, and sought to profit by, their business enterprises without exercising due care as described in this Complaint, which, on the basis of past experience, involved harm to others as shown through the torts of employees.

171. Based on the foregoing, Defendants as the employers of said employees are vicariously liable under the doctrine of respondeat superior for all negligent acts and omissions committed by their employees in the course and scope of their work that caused harm to Plaintiff John A. Tibbs.

FOR A FOURTH CAUSE OF ACTION
(Premises Liability: Negligence as to Premises Owner/Contractor)

As a Fourth Distinct Cause of Action for General Negligence, Plaintiffs Complain of Defendants, and Allege as Follows:

172. Plaintiffs incorporate by reference, the preceding paragraphs as if fully set forth herein.

173. Prior to and during all relevant times, the Defendants and/or their "alternate entities" employed workers in areas where Defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff John A. Tibbs and his father John H. Tibbs worked and/or spent time.

174. At all times herein mentioned, Defendants selected, supplied, and distributed asbestos-containing materials to their employees for use during their regular work activities, and said employees disturbed those asbestos-containing materials.

175. Defendants were negligent in selecting, supplying, distributing and disturbing the asbestos-containing products and in that said products were unsafe. Said products were unsafe because they released asbestos fibers and dust into air when used which would be inhaled by Plaintiff John A. Tibbs, and his father John H. Tibbs, and settled onto their clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers and by-standers including Plaintiff John A. Tibbs would be exposed to dangerous asbestos dust beyond the present.

176. The asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products described herein were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air, and the inhalation of asbestos fibers causes serious disease and death. Here, the handling of the above-described asbestos-containing materials by Defendants' employees, as required by their employment and occurring during the course and scope of their employment, did, in fact, cause personal injuries, including lung cancer and other lung damage, to exposed persons, including Plaintiffs.

177. At all times herein mentioned, Defendants knew or should have known that its employees and bystanders thereto, including Plaintiff John A. Tibbs and his father John H. Tibbs, frequently encountered asbestos-containing products and materials during the course and scope of their work activities.

178. At all times herein mentioned, Defendants knew or should have known that the asbestos-containing materials encountered by its employees and bystanders thereto including Plaintiff John A. Tibbs and his father John H. Tibbs were unsafe in that harmful asbestos fibers were released during the use, handling, breaking, or other manipulation of asbestos-containing products and materials, and that once released, asbestos fibers can be inhaled, and can alight on the clothes, shoes, skin, hair, and body parts of those exposed, where further activity causes the

fibers to once again be released into the air where they can be inhaled, all of which causes serious disease and/or death.

179. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that absent adequate training and supervision, their employees and bystanders thereto, including Plaintiff John A. Tibbs and his father John H. Tibbs, were neither qualified nor able to identify asbestos-containing products nor to identify the hazardous nature of their work activities involving asbestos-containing products.

180. At all times herein mentioned, Plaintiff John A. Tibbs and his father John H. Tibbs were unaware of the dangerous condition and unreasonable risk of personal injury created by the presence and use of asbestos-containing products and materials.

181. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that workers and bystanders thereto, would bring dangerous dust home from the workplace and contaminate their family cars and homes, continuously exposing and potentially causing injury to others off the premises.

182. At all times herein mentioned, Defendants had a duty to use due care in the selection, supply, distribution and disturbance of asbestos-containing products and materials to its employees, to adequately instruct, train, and supervise their employees and to implement adequate safety policies and procedures to protect workers and persons encountering those workers, including Plaintiff John A. Tibbs, from suffering injury or death as a result of the asbestos hazards encountered and created by the work of Defendants' employees.

183. Defendants' duties as alleged herein exist and existed independently of Defendants' duties to maintain their premises in reasonably safe condition, free from concealed hazards.

184. Defendants negligently selected, supplied, and distributed the asbestos-containing materials and failed to adequately train or supervise their employees to identify asbestos-

containing products and materials; to ensure the safe handling of asbestos-containing products and materials encountered during the course of their work activities; and to guard against inhalation of asbestos fibers and against the inhalation of asbestos fibers by those who would come into close contact with them after they had used, disturbed, or handled, said asbestos-containing products and materials during the course and scope of their employment by Defendants.

185. Defendants failed to warn their employees and bystanders thereto, including Plaintiff John A. Tibbs and his father John H. Tibbs, of the known hazards associated with asbestos and the asbestos-containing materials they were using and/or disturbing.

186. As a direct and proximate result of the conduct of Defendants in selecting, supplying, distributing and disturbing asbestos-containing materials or products manufactured for foreseeable use with asbestos products and failing to adequately train and supervise their employees and failing to adopt and implement adequate safety policies and procedures as alleged herein, Plaintiff John A. Tibbs became exposed to and inhaled asbestos fibers, which was a substantial factor in causing Plaintiff John A. Tibbs to develop asbestos-related lung cancer, and to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION
(Negligence Per Se)

As a Fifth Distinct Cause of Action for Negligence Per Se, Plaintiffs Complain of Defendants, and Allege as Follows:

187. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

188. The actions of Defendants also constituted negligence per se.

189. Defendants violated federal and state regulations relating to asbestos exposure. Such violations constitute negligence per se or negligence as a matter of law. Further, each such violation resulted in dangerous and unlawful exposures to asbestos for Plaintiff John A. Tibbs.

Plaintiffs are not making any claims under federal law; instead, Plaintiffs are simply using the violation of federal standards as proof of liability on their state-law theories. Further, the reference to Federal regulations does not create a federal question. *See Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804 (1986). Any removal on this basis will be met with an immediate motion for remand and for sanctions.

190. The negligence per se of Defendants was a proximate cause of Plaintiff John A. Tibbs's injuries.

FOR A SIXTH CAUSE OF ACTION
(Negligence as to Design Defendants)

As a Sixth Distinct Cause of Action for Negligence, Plaintiffs Complain of Design Defendants and Allege as Follows:

191. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

192. The work performed by the Design Defendants was defective in all, but not limited to, the following particulars:

- (a) In failing and neglecting to properly inspect the building for defects in the construction, design, and defects in the asbestos-containing products, materials and/or equipment.
- (b) In failing and neglecting to properly train employees in the proper installation of asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (c) In failing and neglecting to properly supervise employees, contractors, subcontractors, and/or suppliers in the proper installation of asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (d) In failing and neglecting to employ careful contractors and/or employees.
- (e) In failing and neglecting to properly install asbestos-containing products, materials and/or equipment, including but not limited to asbestos.

- (f) In failing to properly install the asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (g) In failing to properly warn Plaintiff John A. Tibbs and his father John H. Tibbs of dangers and risks associated with the conditions of the material and work product which was being installed for use by Plaintiff, his father, and others in their vicinity.
- (h) By such other failures as will be proved at trial.

All of which is contrary to one or more of workmanlike practice; the plans, specifications, and other contract documents; manufacturers' recommendations and instructions; trade custom and usage; and applicable building codes.

193. As a direct, proximate, and foreseeable result of the negligence of the Design Defendants, Plaintiff John A. Tibbs suffered and incurred actual damages, as described hereinabove, and are entitled to recover such damages from the Design Defendants in such an amount as the trier of fact may find. The actions and omissions to act of the Design Defendants were willful, wanton, reckless and grossly negligent, so as to entitle the Plaintiffs to recover punitive damages.

FOR A SEVENTH CAUSE OF ACTION
(Negligent Design Services Against Design Defendants)

As a Seventh Distinct Cause of Action for Negligent Design Services, Plaintiffs Complain of Design Defendants and Allege as Follows:

194. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

195. Design Defendants owed Plaintiff John A. Tibbs and his father John H. Tibbs a duty to perform professional design services, including construction administration, in accordance with professional standards obtained in South Carolina for the delivery and performance of such services.

196. Design Defendants breached such professional standards in all, but not limited to, the following particulars:

- (a) In failing and neglecting to take reasonable care in the design of said building.
- (b) In failing and neglecting to properly design said building, to issue proper construction, to prevent continuous and substantial exposure to asbestos and/or asbestos-containing products.
- (c) In failing and neglecting to properly supervise the construction of said building.
- (d) In failing and neglecting to properly and reasonably design said building to eliminate exposure to asbestos and/or asbestos-containing products, including but not limited to asbestos-containing insulation.
- (e) In negligently specifying the use of inappropriate, improper and/or defective and deficient building systems, materials, and components, including but not limited to asbestos-containing insulation.
- (f) By such other failures as will be proved at trial.

197. As a direct, proximate, and foreseeable result of the negligence of the Design Defendants, Plaintiff John A. Tibbs suffered and incurred actual damages, as described hereinabove, and are entitled to recover such damages from the Design Defendants in such an amount as the trier of fact may find. The actions and omissions to act of the Design Defendants were willful, wanton, reckless and grossly negligent, so as to entitle the Plaintiffs to recover punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Product Liability: Breach of Implied Warranties - S.C. Code Ann. § 36-2-314)

As an Eighth Distinct Cause of Action for Breach of Implied Warranties, Plaintiffs Complain of Defendants and Allege as Follows:

198. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

199. Each of the Defendants and/or their “alternate entities” impliedly warranted that their asbestos materials or asbestos-containing products were of good and merchantable quality and fit for their intended use.

200. The implied warranty made by the Defendants and/or their “alternate entities” that the asbestos and asbestos-containing products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Plaintiff John A. Tibbs and his father John H. Tibbs carried out their duties and was inhaled by Plaintiff John A. Tibbs.

201. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Plaintiff John A. Tibbs and his father John H. Tibbs were exposed to Defendants’ asbestos, asbestos-containing products, and/or products manufactured for foreseeable use with asbestos products, and Plaintiff John A. Tibbs consequently developed lung cancer, causing Plaintiffs to suffer all damages attendant thereto.

FOR A NINTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Ninth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiffs Complain of Defendants, and Allege as Follows:

202. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

203. That during, before and after Plaintiff John A. Tibbs’s exposure to asbestos products manufactured by Defendants and/or their “alternate entities”, the Defendants and/or their “alternate entities” falsely represented facts, including the dangers of asbestos exposure to Plaintiff John A. Tibbs and his father John H. Tibbs in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff John A. Tibbs and his father John H. Tibbs. At the same time of these misrepresentations,

Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

204. The foregoing representations were material conditions precedent to Plaintiff John A. Tibbs's continued exposure to asbestos-containing products. Defendants and/or their "alternate entities" each intended that Plaintiff John A. Tibbs act upon the representations by continuing his work around, and thereby exposure to, the asbestos products. Plaintiff John A. Tibbs was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

205. As a direct and proximate result Plaintiff John A. Tibbs's and his father John H. Tibbs's reliance upon Defendants' false representations, Plaintiffs have suffered injury and damages as described herein.

FOR A TENTH CAUSE OF ACTION

(Conspiracy, Concert of Action – Defendant Metropolitan Life Insurance Company)

For a Tenth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendant Metropolitan Life Insurance Company, and Alleges as Follows:

206. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

207. Beginning in the late 1920's, conspirators including Defendant Metropolitan Life Insurance Company ("Met Life"), as well as Johns-Manville, Raybestos-Manhattan and others, undertook a duty to conduct research on asbestos-related health problems and to inform the public about any health risks that could be associated therewith. In or about 1929, Met Life, through its agents and employees acting within the scope of their agency and employment, including but not limited to Dr. Anthony J. Lanza ("Lanza"), began an investigation of asbestos-related health hazards. In 1935, this study was altered by Lanza, with the full knowledge of Met Life, at the request of and in concert with the asbestos industry in order to wrongly influence the United States Public Health Service, the United States medical community and various state legislatures.

208. Thereafter, Defendant Met Life through the acts and omissions of its employees, most notably Lanza, undertook a series of activities with various members of the asbestos industry including but not limited to Johns-Manville, Raybestos-Manhattan/Raymark Industries, Inc., United States Gypsum, American Brake Blok/Abex, and others to suppress and misrepresent the dangers of exposure to asbestos dust to employees of Met Life's insureds and the general public and the medical community.

209. The conspirators through their agent, Lanza of Met Life, made a concerted effort to discredit and to terminate the experiments of certain scientists who were developing data of profound importance for the area of public health in relation to the cancer hazard which existed for workers and bystanders in the asbestos industry.

210. As a direct and proximate result of Met Life's intentional publication of deceptive and misleading medical data and information, and other conspiratorial acts and omissions, Defendant caused asbestos to be used in the settings from which Plaintiff John A. Tibbs and his father John H. Tibbs were exposed to and breathed asbestos dust which resulted in Plaintiff John A. Tibbs's injuries. Defendant Met Life, through its agents and employees and officers, aided and abetted and gave substantial assistance to Johns-Manville and Raybestos-Manhattan in their tortious selling of asbestos products and voluntarily undertook a duty to warn the United States Public Health Service, the medical community, and others about the danger of asbestos and consciously and negligently misrepresented the dangers of asbestos to the United States Public Health Service, the medical community, and others, all to the ultimate harm of Plaintiff herein.

211. Defendant Met Life rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Plaintiff John A. Tibbs and his father John H. Tibbs were exposed, and such assistance by Met Life aided and abetted the negligence and the marketing of

unreasonably dangerous asbestos-containing products by such manufacturers which proximately caused Plaintiff John A. Tibbs's illness.

212. In both conducting tests and in publishing their alleged results, Met Life failed to exercise reasonable care to conduct or publish complete, adequate and accurate tests of the health effects of asbestos. Met Life also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure.

213. Plaintiff John A. Tibbs and his father John H Tibbs unwittingly and justifiably relied upon the thoroughness of Met Life's tests and information dissemination, the results of which Met Life published in leading medical journals.

214. As a direct and proximate contributing result of Met Life's failures to conduct or accurately publish adequate tests or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to Plaintiff John A. Tibbs from asbestos exposure was increased, and (ii) Plaintiff suffered the injuries described herein.

215. In failing to test fully and adequately for the adverse health effects from exposure to asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in collaborating with the other Defendants materially to understate the hazards of asbestos exposure, all for its own profit and gain, Met Life acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including Plaintiff John A. Tibbs and his father John H. Tibbs.

216. Additionally and alternatively, as a direct and proximate result of Met Life's actions and omissions, Plaintiff John A. Tibbs and his father John H. Tibbs were caused to remain ignorant of all the dangers of asbestos resulting in Plaintiff and his father, their co-workers, their wives, their family, and the general public to be unaware of the true and full dangers of asbestos, depriving

Plaintiff John A. Tibbs and his father John H. Tibbs of the opportunity to decide for themselves whether they wanted to take the risk of being exposed to asbestos, denied Plaintiff and his father the opportunity to take precautions against the dangers of asbestos and proximately caused Plaintiff's damages herein.

217. During the relevant time period the Plaintiff John A. Tibbs and his father John H. Tibbs were exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied, and/or sold by the Johns Manville and/or Raybestos/Raymark.

218. Defendant, Met Life, together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engaged in a conspiracy or concert of action to inflict injury on the Plaintiff John A. Tibbs, and his father John H. Tibbs, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the Plaintiff in the course of or as a consequence of the conspiracy or concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action:

- (a) In 1932, Met Life, through Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos-related disease. Further collaboration between Manville and Met Life continued the cover-up.
- (b) Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Lanza, Associate Director of Met Life, which was then insurer of Manville and Raymark, that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos

exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as 'fatal' and through other selective editing that affirmatively misrepresent asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark, and Met Life as insurer. Furthermore, upon information and belief, it is alleged that Met Life, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.

- (c) In 1936, the conspirators or some of them entered into an agreement with the Saranac Laboratories. Under this agreement, these conspirators acquired the power to decide what information Saranac could publish about asbestos disease and to control in what form such publications would occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.
- (d) By November 1948, or earlier, Manville, Met Life (acting through Lanza), Raymark, and others decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.
- (e) At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensities of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the Plaintiff John A. Tibbs and his father John H. Tibbs.
- (f) As a direct result of influence exerted by the above described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to

human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and deliberately disseminated this misleading Vorwald publication to universities, libraries, government officials, agencies and others.

- (g) Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.
- (h) For many decades, Met Life, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature, and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly.
- (i) Despite the medical and scientific data, literature and test reports possessed by and available to Met Life, individually and in conspiracy with Manville and Raymark, Fraudulently, willfully and maliciously withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, lung cancer, and other illnesses and diseases from Plaintiff who using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products; caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, lung cancer, and other illnesses and diseases, which Metropolitan, Manville and Raymark knew were either incorrect, incomplete, outdated and misleading; distorted the results of medical examinations conducted upon workers who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm which workers suffered; and failed to adequately warn the Plaintiff of the dangers to which he was exposed when they knew of the dangers.
- (j) By the false and fraudulent representations, omissions, failures, and concealments set forth above, Met Life, Manville and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the Plaintiff John A. Tibbs and his father John H. Tibbs to rely upon said false and fraudulent representations, omissions, failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring

or calling for the use of asbestos and/or asbestos-containing products. Said misrepresentations were false, incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

219. Plaintiff John A. Tibbs and his father John H. Tibbs reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Met Life, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

220. As a direct and proximate result of the conspiracy and concert of action between Met Life, Manville and Raymark, the Plaintiff John A. Tibbs and his father John H. Tibbs were deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result brought asbestos dust or fibers home on their clothes, hair, shoes, and contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the Plaintiff has been damaged.

FOR AN ELEVENTH CAUSE OF ACTION
(Loss of Consortium)

For an Eleventh Distinct Cause of Action for Loss of Consortium, Plaintiff Margaret B. Tibbs Complains of Defendants, and Alleges as Follows:

221. Plaintiff incorporates by reference, the preceding paragraphs, where relevant.

222. Plaintiffs John A. Tibbs and Margaret B. Tibbs were married on or about June 23, 1962 and at all times relevant to their action were husband and wife.

223. Prior to his injuries as alleged, Plaintiff John A. Tibbs was able and did perform his spousal duties. As a proximate result thereof, subsequent to the injuries, Plaintiff John A. Tibbs has been unable to perform his spousal duties and the work and service usually performed in the

care, maintenance and management of the family home. As a proximate result thereof, Plaintiff Margaret B. Tibbs was deprived of the consortium of her spouse, including the performance of duties, all to Plaintiffs' damages, in an amount presently unknown to Plaintiffs but which will be proven at time of trial.

224. As a direct and proximate result of the acts of Defendants and/or their "alternate entities" and the severe injuries caused to Plaintiff John A. Tibbs as set forth herein, Plaintiff's spouse and co-Plaintiff Margaret B. Tibbs suffered loss of consortium, including but not by way of limitation, loss of services, marital relations, society, comfort, companionship, love and affection of her spouse, and has suffered severe mental and emotional distress and general nervousness. Plaintiff prays judgment against Defendants, their "alternate entities" and each of them, as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment, joint and several, against Defendants and/or their "alternate entities" in an amount to be proved at trial, as follows:

1. For Plaintiffs' actual damages according to proof, including pain and suffering, mental distress, as well as medical, surgical and hospital bills;
2. For loss of income or earnings according to proof;
3. For loss of care, comfort and society;
4. For punitive damages according to proof;
5. For cost of suit herein;
6. For damages for breach of implied warranty according to proof;
7. For damages for fraudulent misrepresentation according to proof;
8. For damages for conspiracy, concert of action (as to Defendant Metropolitan Life Insurance Company); and

9. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

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ATTORNEYS FOR PLAINTIFFS

April 5, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS and MARGARET B. TIBBS,	)	
	)	Civil Action No. 2023-CP-40-01759
Plaintiffs,	)	
	)	In Re:
v.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
*****	)	
	)	
CAPE PLC, individually and as successor in	)	
interest to CAPE ASBESTOS COMPANY	)	
LIMITED, by and through its duly appointed	)	
Receiver Peter D. Protopapas,	)	
	)	AFFIDAVIT OF ALTRAD
Third-Party Plaintiff,	)	INVESTMENT AUTHORITY SAS
	)	IN SUPPORT OF MOTION TO
v.	)	DISMISS THIRD-PARTY
	)	COMPLAINT FOR LACK OF
	)	PERSONAL JURISDICTION
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	
	)	

RICHARD MICHAEL ALCOCK, being first sworn under oath states as follows:

1. I am over the age of eighteen (18) years old. I am a resident of the United Kingdom. I have personal knowledge of the matters set forth herein. I am competent to give this Affidavit.
2. I am a director of Altrad Investment Authority SAS ("AIA"). I make the following statements based upon my own personal knowledge and belief.
3. On December 23, 2010, AIA was organized under the laws of France (registered number 529222879) as a French SAS (Société par Actions Simplifiée) and has always been organized under the laws of France.
4. AIA conducts no operations and does not have, and never has had, its principal place of business in South Carolina. AIA's head office is located at 16, Avenue de la Gardie, 34510 Florensac, France. AIA's administrative headquarters and effective place of business is located at 150 rue Le Pérugin, 34000 Montpellier, France.

5. AIA is a holding company for a group of companies which provide industrial services (principally for the oil and gas, energy, power generation, process, environment and construction sectors) and also the manufacturing and distribution of equipment dedicated to the construction and building market.
6. AIA has never milled, mined, or sold asbestos anywhere (and has never done so in South Carolina), and has never produced, manufactured, or distributed asbestos or asbestos-containing products for use in any state, including South Carolina.
7. AIA has never been registered as a foreign company authorized to transact business or otherwise licensed in South Carolina, and AIA has never transacted any business in South Carolina.
8. AIA has never had any members, managers, officers, or directors residing in or with a principal place of business in South Carolina, and the members, managers, officers, and directors of AIA have never held any member, manager, officer, or board meeting in South Carolina.
9. AIA has never had a registered agent in South Carolina.
10. AIA has never owned or operated any manufacturing, sales, distribution, or other facilities in South Carolina, and AIA has never had an office or agency in South Carolina.
11. AIA has never owned, leased, or held an interest in or possession of any real or tangible property within South Carolina and has no offices in South Carolina.
12. AIA has never had any employees deliberately working or residing in South Carolina, nor has AIA had any employees working incident to South Carolina.
13. Prior to retaining counsel for this lawsuit, AIA has never recruited any South Carolina residents, directly or through an intermediary located in South Carolina, for employment inside or outside of South Carolina.
14. AIA has never had a mailing address, post office box, bank account, or other account with any financial institution in South Carolina, and has no other indicia of residence within South Carolina.
15. AIA has never owed or paid corporate, employment, or real property taxes in South Carolina.
16. AIA has never paid sales tax to South Carolina.
17. AIA has never had insurance policies that afford coverage of any kind for specific entities located in South Carolina, and AIA has not sought to procure insurance for any person or property, tangible and intangible, in South Carolina.
18. AIA has never invested any dollars in business operations in South Carolina.

19. Prior to retaining counsel for this lawsuit, AIA has never entered into any contracts or ventures with any persons or entities within South Carolina, and AIA has had no such contracts, by mail or otherwise, with a South Carolina resident to be performed, in whole or in part, in South Carolina.
20. AIA has never contracted to supply services, goods, or things in South Carolina, and AIA has never supplied services or delivered goods or things in South Carolina.
21. AIA has never marketed or advertised, or engaged in solicitation with respect to, its goods, services, or general business in South Carolina.
22. AIA has not received tax deductions as a result of contributions made to any organizations in South Carolina.
23. AIA has never received any business incentives or tax credit from South Carolina to conduct business in South Carolina.
24. AIA has never appeared in a lawsuit or other legal proceeding in South Carolina.
25. AIA has never consented to the exercise of jurisdiction over it in South Carolina and has never initiated litigation in South Carolina.
26. AIA has never owned, used, possessed, or held a mortgage or other lien on any real property in South Carolina.
27. AIA has never owned a motorized vehicle registered in South Carolina and has never paid any automobile excise tax to any municipality or town located in South Carolina.
28. AIA has never owned a water vessel (boat) registered in South Carolina and has never paid any boat excise tax to any municipality or town located in South Carolina.
29. AIA has never acquired ownership, possession, or control of any asset or thing of value present within South Carolina.
30. AIA has never had any subsidiaries incorporated in South Carolina or with their principal place of business in South Carolina.
31. AIA has never entered into any franchise agreements between it and any entities licensed to do business in South Carolina.
32. AIA has never opened, conducted, engaged in, or carried on a business or business venture in South Carolina.
33. AIA has never committed a tortious act in whole or in part in South Carolina.
34. AIA has never caused tortious injury or death to persons or property within South Carolina arising out of an act or omission committed outside South Carolina.

35. AIA has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in South Carolina, and are so used or consumed.
36. AIA has never had any direct or indirect ownership interest, or any form of control, over North American Asbestos Corporation (“NAAC”), or any other direct or indirect subsidiary of NAAC.
37. Prior to 2017, AIA had no direct or indirect ownership interest, or any form of economic interest, in Third-Party Plaintiff Cape PLC, Cape Intermediate Holdings Limited, any direct or indirect subsidiary of Cape PLC, any direct or indirect subsidiary of Cape Intermediate Holdings Limited, or any predecessor or successor to those entities.
38. Prior to 2017, AIA exerted no direct or indirect influence or control, and never sought to directly or indirectly influence or control, over Third-Party Plaintiff Cape PLC, Cape Intermediate Holdings Limited, any direct or indirect subsidiary of Cape PLC, any direct or indirect subsidiary of Cape Intermediate Holdings Limited, or any predecessor or successor to those entities.
39. Prior to 2017, AIA had no affiliation or connection with Third-Party Plaintiff Cape PLC, Cape Intermediate Holdings Limited, any direct or indirect subsidiary of Cape PLC, any direct or indirect subsidiary of Cape Intermediate Holdings Limited, or any predecessor or successor to those entities.
40. Prior to 2017, Cape PLC was a publicly traded company on the London Stock Exchange, and its shares were owned by the general public.
41. In 2017, Altrad UK Limited, a wholly-owned subsidiary of AIA, acquired Cape PLC through a public tender offer to purchase all shares of Cape PLC, except the IDC Scheme Share, which resulted in Cape PLC becoming a wholly-owned subsidiary of Altrad UK Limited (“Cape PLC Acquisition”).
42. At no time has Cape PLC or any of its direct or indirect subsidiaries been combined with, merged into, or transferred their liabilities to AIA or any of AIA’s other direct or indirect subsidiaries, including in connection with the Cape PLC Acquisition.
43. Before and after the Cape Acquisition, AIA and all of its direct and indirect subsidiaries, including Cape PLC, have maintained their own separate corporate structures, observed corporate formalities, have duly appointed and functioning corporate management and executive officers, have maintained separate corporate records, have maintained appropriate corporate controls and accounting for all financial distributions and payments, have been adequately capitalized to meet their ongoing operational and financial obligations, if any, and in all ways have operated in a manner consistent with their existence as separate corporate entities.
44. Before and after the Cape Acquisition, AIA and all of its direct and indirect subsidiaries, including Cape PLC, have maintained separate bank accounts from each other, have not

commingled assets or funds with each other, have maintained separate books and records from each other, and have maintained appropriate corporate controls and accounting for all financial distributions and payments.

45. Cape PLC and its direct and indirect subsidiaries are distinct business entities with separate corporate structures, separate corporate formalities, and separate financials from its direct and indirect parent companies, including Altrad UK Limited and AIA.
46. AIA has never had any direct or indirect influence or control, or sought to directly or indirectly influence or control, any corporate entity, in a manner that prevents that organization from maintaining its independent existence and corporate structure, observing all corporate formalities, having duly appointed and functioning corporate management and executive officers, maintaining separate corporate records, maintaining appropriate corporate controls and accounting for all financial distributions and payments, being adequately capitalized to meet its ongoing operational and financial obligations, and in all ways operating in a manner consistent with its corporate existence as an independent entity.
47. Since the time of its organization, AIA has maintained its own separate corporate structure, observed all corporate formalities, has duly appointed and functioning corporate management and executive officers, has maintained corporate records, is adequately capitalized to meet its ongoing operational and financial obligations, maintained appropriate corporate controls and accounting for all financial distributions and payments, and in all ways has operated in a manner consistent with its corporate existence as an entity separate and apart from any other corporate entity, including its parent entities.
48. Since the time of its organization, AIA has maintained separate bank accounts from all other entities, has not commingled assets or funds with any other entity, has maintained separate books and records from all other entities, and has maintained appropriate corporate controls and accounting for all financial distributions and payments.

[Continued on next page]

49. AIA is a distinct business entity with a separate corporate structure, separate corporate formalities, and a separate existence from Third-Party Plaintiff Cape PLC and its predecessor or subsidiary companies.

Dated this 29th day of August, 2023.

Richard M Alcock
RICHARD MICHAEL ALCOCK

SWORN TO AND SUBSCRIBED BEFORE ME,
 ON THIS THE 29th DAY OF AUGUST, 2023

R B Houlker Notary Public

Notary Public for England and Wales United Kingdom

Commission Expires: On my death

Print Name: Roger Brierley Houlker



Roger Brierley Houlker
 Brookhouse Farm Sandy Lane
 Swettenham Congleton CW12 2LN
 01477 571256

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS and MARGARET B. TIBBS,	)	
	)	Civil Action No. 2023-CP-40-01759
Plaintiffs,	)	
	)	In Re:
v.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
*****	)	
	)	
CAPE PLC, individually and as successor in	)	
interest to CAPE ASBESTOS COMPANY	)	AFFIDAVIT OF MOHED ALTRAD
LIMITED, by and through its duly appointed	)	IN SUPPORT OF MOTION TO
Receiver Peter D. Protopapas,	)	DISMISS THIRD-PARTY
	)	COMPLAINT FOR LACK OF
Third-Party Plaintiff,	)	PERSONAL JURISDICTION
	)	
v.	)	
	)	
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	

MOHED ALTRAD, being first sworn under oath states as follows:¹

1. I am over the age of eighteen (18) years old. I have personal knowledge of the matters set forth herein. I am competent to give this Affidavit.
2. I am a citizen of France and reside in Montpellier, France.
3. I have never held or applied for United States citizenship.
4. I have never resided in the United States or South Carolina as a temporary or permanent resident.
5. I have never visited South Carolina for any purpose.
6. I am a 75-year-old French citizen with no connection to South Carolina whatsoever.

¹ References to "I" (e.g., "I have...") refer to Mr. Altrad in his personal capacity only (unless otherwise specified).

7. I have no assets of any sort in South Carolina.
8. I have never owned, leased or held interest in any real or tangible property in South Carolina.
9. I have never had any accounts at any banks or other financial institutions in South Carolina.
10. I have never had a mailing address, post office box, or other indicia of South Carolina residency.
11. I have never owned a motorized vehicle registered in South Carolina and have never paid any automobile excise tax to any municipality or town located in South Carolina.
12. I have never owned a water vessel (boat) registered in South Carolina and have never paid any boat excise tax to any municipality or town located in South Carolina.
13. I have never acquired ownership, possession, or control of any asset or thing of value present within South Carolina.
14. I have not sought to procure insurance for any person or property, tangible and intangible, in South Carolina.
15. I have never sought licensure, accreditation or any other type of certification or authorization to conduct business in or directed toward South Carolina.
16. I have never opened, conducted, engaged in, or carried on a business or business venture in South Carolina.
17. I have never invested any dollars in business operations in South Carolina.
18. Prior to retaining counsel for this lawsuit, I have never recruited any South Carolina residents, directly or through an intermediary located in South Carolina, for employment inside or outside of South Carolina.
19. I have never owed or paid corporate, employment, or real property taxes in South Carolina.
20. I have never paid sales tax to South Carolina.
21. I have never had any employees deliberately working or residing in South Carolina, nor have I had any employees working incident to South Carolina.
22. Prior to retaining counsel for this lawsuit, I have never entered into any contracts or ventures with any persons or entities within South Carolina, and I have executed no such contracts, by mail or otherwise, with a South Carolina resident to be performed, in whole or in part, in South Carolina.
23. I have never contracted to supply services, goods, or things in South Carolina, and I have never supplied services or delivered goods or things in South Carolina.

24. I have not received tax deductions as a result of contributions made to any organizations in South Carolina.
25. I have never appeared in a lawsuit or other legal proceeding in South Carolina.
26. I have never consented to the exercise of jurisdiction over it in South Carolina and have never initiated litigation in South Carolina.
27. I have never committed a tortious act in whole or in part in South Carolina.
28. I have never caused tortious injury or death to persons or property within South Carolina arising out of an act or omission committed outside South Carolina.
29. I have never had any personal involvement, in any capacity, in the milling, mining, or sale of asbestos anywhere in the world, nor have I ever had any personal involvement in the production, manufacture, or distribution of asbestos or asbestos-containing products for use in any state of the United States, including South Carolina.
30. I have never had any direct or indirect ownership interest, or any form of control, over North American Asbestos Corporation ("NAAC"), or any other direct or indirect subsidiary of NAAC.
31. Prior to 2017, I had no affiliation or connection with Third-Party Plaintiff Cape PLC, Cape Intermediate Holdings Limited, any direct or indirect subsidiary of Cape PLC, any direct or indirect subsidiary of Cape Intermediate Holdings Limited, or any predecessor or successor to those entities.
32. I am the President of Altrad Investment Authority SAS ("AIA").
33. I have an indirect ownership interest in AIA because I am the 100% shareholder of a separate entity that is a shareholder of AIA.
34. Prior to 2017, Cape PLC was a publicly traded company on the London Stock Exchange, and its shares were owned by the general public.
35. In 2017, Altrad UK Limited, a wholly-owned subsidiary of AIA, acquired Cape PLC through a public tender offer to purchase all shares of Cape PLC, except the IDC Scheme Share, which resulted in Cape PLC becoming a wholly-owned subsidiary of Altrad UK Limited.
36. I have never had any direct or indirect influence or control, or sought to directly or indirectly influence or control, any corporate entity, in a manner that prevents that organization from maintaining its independent existence and corporate structure, observing all corporate formalities, having duly appointed and functioning corporate management and executive officers, maintaining separate corporate records, maintaining appropriate corporate controls and accounting for all financial distributions and payments, being adequately capitalized to meet its ongoing operational and financial obligations, and in all ways operating in a manner consistent with its corporate existence as an independent entity.

37. I have never used the corporate form of any entity for any improper or fraudulent purpose to cause harm to anyone.
38. I have maintained my personal bank accounts separate and apart from business entities in which I have a direct or indirect ownership interest, and I have not commingled personal and corporate assets or funds.
39. I have never agreed to accept the imposition of personal liability for the acts or debts of any corporate entity named as a defendant or third-party defendant in this South Carolina lawsuit.

Dated this 29 day of August, 2023.



MOHED ALTRAD

SWORN TO AND SUBSCRIBED BEFORE ME,
ON THIS THE ____ DAY OF AUGUST, 2023

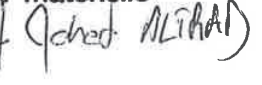
Notary Public for _____

Commission Expires: _____

Print Name: _____

[SEAL]



Vu pour certification matérielle
de la signature de 
Me Alexis Foucart
Le 29/8/23 -

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
ISABELLA PARK,	In Re: Asbestos Personal Injury Litigation
	Coordinated Docket
Plaintiff,	
v.	Civil Action No: 2021-CP-40-02727
ARMSTRONG INTERNATIONAL, <i>et al.</i> ,	ORDER ON RECEIVER'S MOTION TO
Defendants.	ENFORCE SUBPOENAS AGAINST
	CERTAIN UNDERWRITERS AT
	LLOYD'S LONDON, CONTINENTAL
	INSURANCE COMPANY, AND
	LIBERTY MUTUAL INSURANCE
	COMPANY

This matter came before the Court on the Receiver for Cape's Motion To Enforce Subpoenas Against Certain Underwriters at Lloyd's London, Continental Casualty Company, and Liberty Mutual Insurance Company ("Insurers") Pursuant to Rule 45, SCRCF. Having considered the Motion, related memoranda, including all opposition and reply briefing, and all supporting materials submitted to the Court, in addition to extensive argument on August 12, 2025, the Court rules as follows.

BACKGROUND

1. Park Plaintiffs filed an amended complaint naming Cape

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

On June 9, 2021, less than five months after her diagnosis, and only five days after filing her lawsuit, Ms. Park died from mesothelioma. On August 4, 2021, Ms. Park's son, Keith Park, was appointed as representative of Isabella Park's estate (the "Park Estate") by the Spartanburg Probate Court. *See* Certificate of Appointment in the matter of *Isabella F.D.R. Park*, Case No. 2021ES4201296, in the Probate Court for Spartanburg, South Carolina (Aug. 4, 2021).

On November 17, 2021, following his appointment as personal representative of Ms. Park's estate, Ms. Park's son, Keith, amended the complaint, appearing individually and as personal representative of the Park Estate (the "Park Plaintiffs"), to assert a wrongful death action. *See* First Amended Compl. *Park v. Armstrong Int'l, Inc., et al.*, No. 2021-CP-4002727 (Nov. 17, 2021). The amended complaint named "Cape Intermediate Holdings Limited f/k/a Cape Intermediate Holdings plc, individually and as successor-in-interest to Cape Asbestos Company" and "Cape plc, individually and as successor-in-interest to Cape Asbestos Company" as defendants. *Id.*

On December 23, 2021, Keith Park, again appearing individually and as personal representative of Ms. Park's estate, filed his second amended complaint. *See* Second Amended Compl. *Park v. Armstrong Int'l, Inc., et al.*, No. 2021-CP-4002727 (Dec. 23, 2021). The second amended complaint again named "Cape Intermediate Holdings Limited f/k/a Cape Intermediate Holdings plc, individually and as successor-in-interest to Cape Asbestos Company" and "Cape plc, individually and as successor-in-interest to Cape Asbestos Company" as defendants. *Id.* The second amended complaint added allegations and defendants unrelated to Cape.

2. Park Plaintiffs properly served Cape

In December 2021, the Park Plaintiffs served Cape Intermediate Holdings Ltd. and Cape plc with the First Amended Complaint through an English process server.¹ Neither Cape entity responded to the complaint. At the time that Cape was served with the complaint, Keith Park remained the personal representative of the Park Estate.

Third-Party Defendants to the *Tibbs* action notified this Court that on August 26, 2022, the Spartanburg Probate Court entered an order closing the Park Estate. It appears from the record that counsel for the Park Plaintiffs only became aware of this closure when the Third-Party Defendants in *Tibbs* raised the matter in filings in this Court. Once counsel were made aware that the estate had been closed, they took immediate steps to have Mr. Park reopen the Park Estate. At the time of this Court's August 12, 2025 hearing, the Park Estate had been reopened.

3. Park Plaintiffs moved to appoint a Receiver over Cape

On March 6, 2023, the Park Plaintiffs filed a motion for “this Court to appoint a receiver over Cape PLC and its subsidiaries, affiliates, successors, and assigns.” Motion to Appoint Receiver, *Park v. Armstrong Int’l, Inc., et al.*, No. 2021-CP-4002727 (Mar. 6, 2023) (“Appointment Motion”), at 1. The Appointment Motion was made under S.C. Code §§ 15-65-10(4) and (5), on the basis that Cape plc “is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.” and, with “its subsidiaries and affiliates...were and are private companies organized and existing under the laws of the United Kingdom, with its principal place

¹ The Park Plaintiffs ostensibly served only the First Amended Complaint and not the Second Amended Complaint on Cape because the First Amended Complaint was the complaint that named Cape for the first time in the action. The Second Amended Complaint was not served on Cape, ostensibly because Cape had already been served with an operative summons and complaint identifying the facts relevant to Cape and the claims asserted against Cape, and no such facts or claims were added in the Second Amended Complaint.

of business in England.” *Id.* Park Plaintiffs provided notice of the Motion to Appoint a Receiver to the Cape entities using international carrier DHL.

The Appointment Motion described Cape’s moral fraud in detail, referencing 34 exhibits from prior litigation that demonstrated Cape’s calculated decision to escape U.S. product liability litigation after decades of sales of raw asbestos fibers into the U.S. market, including specifically into South Carolina, while at the same time continuing sales to U.S. customers through a new Lichtenstein company, but using the same U.S. office and staff to interface with customers. *Id.* at 1-6. As the Park Plaintiffs described, Cape “concocted a scheme to avoid its legal responsibilities to persons injured from using those end products because, startlingly, Cape deemed itself as having—in its own words—no “moral responsibility” to those end users. Rather than defending its conduct in front of juries in the United States, Cape decided to simply accept default judgments in asbestos lawsuits and ultimately flee the country, knowing that nearly all the Company’s assets were in jurisdictions (namely, the U.K., South Africa, and Lichtenstein) where judgments in those lawsuits could not be enforced.” *Id.* at 1-2.

4. This Court appointed Peter D. Protopapas as Receiver over Cape

Based on the Park Plaintiffs’ detailed presentation of Cape’s moral fraud, and specifically Cape’s failure to respond to the Park Plaintiffs’ complaint as was expected by Cape’s course of conduct in U.S. litigation beginning in 1978, this Court appointed Peter D. Protopapas as Receiver over Cape, pursuant to S.C. Code §§ 15-65-10(4) and (5) on March 17, 2023. *Park v. Armstrong Int’l, Inc., et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) (the “Cape Appointment Order”). The Cape Appointment Order granted the receiver “the power and authority [to] fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be.” *Id.* at 1.

The Cape Appointment Order provided for a process by which the Receiver would investigate insurance coverage protective of Cape as follows:

Based on the Court's experience in other receivership matters, and in an effort to streamline these proceedings, the Court expects the Receiver to investigate the existence of all insurance coverages potentially available to the company in receivership. The Receiver will provide potential insurers with lists of work sites, contractors, and insurance brokers and agents to facilitate the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of the company in receivership or any company for whom the company in receivership did work as an "additional insured" under coverage written to another entity). The Court expects all insurers to comply with subpoenas issued by this Court and its receiver in effectuating these thorough searches.

Id. at 2-3.

5. The Receiver served subpoenas on Insurers

Pursuant to this Court's Appointment Order, the Receiver issued subpoenas to the Insurers through the South Carolina Department of Insurance on April 28, 2025. On May 13 and 15, 2025, the Insurers responded to the subpoenas with objections only, refusing to respond with any policy information for a list of reasons including that (1) the Receiver was not properly appointed, (2) the High Court of England and Wales entered an order enjoining Mr. Protopapas from acting as Receiver, (3) the Receiver improperly served the subpoenas through the South Carolina Department of Insurance, (4) and the subpoenas were overly broad.

ORDERS

1. Validity and effect of reopening Park Estate

The Insurers complain to this Court that because the Park Estate probate order lapsed on August 26, 2022, nothing done in this case during that period, including the motion to appoint a receiver, had any effect. In support of that theory, counsel cite this court to *Glenn v. E.I. DuPont de Nemours & Co.*, 254 S.C. 128, 134, 174 S.E. 155, 158 (1970) as well as *McCullar v. The Estate of Dr. William Cox Campbel*, 381 S.C. 205, 672 S.E.2d 784 (2018). Those cases addressed whether

a wrongful death lawsuit could move forward when a personal representative of an estate had not been appointed. That is not the case here.

Here, Isabella Park brought suit against Cape. Following her death, Keith Park was properly appointed and filed two amended complaints, each time naming Cape. Mr. Park filed these complaints while the Park Estate was open. While it is true that the Park Estate lapsed, this Court finds that the Park Estate was validly reopened on July 30, 2025. Pursuant to South Carolina Code § 62-3-701, the authority of the Personal Representative relates “back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter.”

A personal representative, pursuant to the Code, “may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.” *Id.* The reporter’s comment to S.C. Code § 62-3-701 observes that “the authority of the personal representative relates back to death and stems from his appointment,” and that “[t]he personal representative may ratify acts done by others prior to appointment.”

Therefore, all actions taken by or on behalf of the Personal Representative for the Park Estate, including service of the first amended complaint on Cape, the Park Plaintiffs’ motion to appoint the Receiver over Cape, and this Court’s order appointing the Receiver over Cape in the *Park* matter are valid.

2. Validity of the appointment of the Receiver for Cape

a. Analysis of alleged moral fraud on behalf of Cape

At the August 12 Hearing, Insurers argued that the Receiver could not issue the subpoenas because the Cape Appointment Order was invalid and therefore the receivership was an absolute nullity. Specifically, Insurers argued that the Court did not find that Cape engaged in moral fraud

sufficient to appoint a Receiver under S.C. Code § 15-65-10(5). Likewise, the South Carolina Supreme Court Order in *Tibbs v. 3M Company*, Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052 remanded the cases to this Court and directed the Court to ensure that the Cape Receivership Order “is based on findings of fact sufficient under *Welch* to justify the order.” Slip Op. at 4 (June 26, 2025).

This Court has evaluated the alleged moral fraud of Cape based on information received from two sources: (1) Plaintiff’s original Motion to Appoint the Receiver over Cape, filed on March 6, 2023 in *Park*, and (2) the Receiver’s Report, filed on July 11, 2025 in *Tibbs*.² This Court finds the following facts, as presented by Plaintiffs and the Receiver, respectively, constitute moral fraud sufficient to appoint a Receiver under S.C. Code § 15-65-10(5):

1. Moral fraud facts as presented in Plaintiffs’ March 6, 2023 motion

a. Cape establishes American presence and operations through NAAC

At its peak, from mines in Apartheid-era South Africa, Cape produced approximately 90%³ of the world’s supply of amosite asbestos, including asbestos imported and used in South Carolina.

For the “purpose of expediting and facilitating the movement” of asbestos from South African mines, on October 14, 1953, Cape Asbestos Company Ltd. (a U.K. entity) established the North American Asbestos Corporation (“NAAC”), a direct subsidiary that was part of the

² Having considered the timing of Plaintiffs’ presentation of the initial moral fraud facts prior to the appointment of the Receiver, the exhibits to which are not marked Confidential and appear to be Bates labeled and contain exhibit stickers from prior litigation; and the information provided by the Receiver in his Report of July 11, including that certain exhibits attached to the Report that contained communications between lawyers and their clients were obtained from an archive of materials from the University of Strathclyde in Glasgow, Scotland, this Court finds that all facts contained in Plaintiffs’ Motion and the Receiver’s Report, on which this Court relies in the following recitation of facts, were obtained from publicly available sources.

³ *Hammond v. North American Asbestos Corp.*, 454 N.E. 2d 210, (Ill. 1983)(confirming that Cape Asbestos supplies 90% of the world’s supply of amosite asbestos and virtually the sole supplier of longer fiber grades).

Company's "mining division" and domiciled in Illinois.⁴ NAAC had both marketing and distribution roles: (i) serving as Cape's sales agency in the United States, with sole authority to offer Cape products and responsibility for transmitting information about customer needs to Cape mines, and (ii) ensuring proper distribution of asbestos products and that shipments from Africa made it "all the way through to the customer's plant," including, on information and belief, to plants in South Carolina or through South Carolina ports.⁵ NAAC "effect[ively] . . . put the Mines at every U.S. port"⁶ and by 1970 was the "largest U.S. importer of Amphibole Fibres," which were "re-distributed from . . . warehouse locations in East Coast, Gulf Coast and West Coast Ports."⁷

Over its history, NAAC was "essentially a one-man operation" consisting of one salesman supported by four office clerical personnel (overseen by a board of directors made up of largely of Company lawyers or other Cape executives, until all Cape officials resigned in 1975 as a "sensible

⁴ See NAAC's Answers to Plaintiff's Requests for Production in *Paello v. Johns Manville Corp.*, in the District Court for Boulder County, Colorado, Case No. 80-cv-0089-2 (describing NAAC's history); CAPE000177, List of Cape Divisions (identifying NAAC as the sole U.S.-based entity of the Cape mining division); Letter from NAAC President C. Morgan to President of C-X Products Corp., Sept. 26, 1973, CAPE000869 (describing NAAC as "a division of Cape Asbestos Co. Ltd., with corporate offices in London").

⁵ See Letter from Cape Director to Lord Bissell & Kadyk, Oct. 6, 1953, CAPE000263-66 (describing intended business of NAAC, including that the company would receive a 2.5 percent commission or work on behalf of the Cape mining companies, "it being made clear that [NAAC] will have no authority to negotiate or make contracts, but shall act as a source of information and provide general assistance to the South African business"); Letter from Cape Group General Counsel A.J. Penna to Max Meyer of Lord Bissell, July 15, 1975, CAPE000333 (informing Cape's U.S. lawyer, "we feel that it would be a sensible precaution against Cape involvement in any future proceedings for [Cape's executives] to resign from the N.A.A.C. Board and I accordingly enclose their resignation letters"); NAAC Appointment Announcement, CAPE000729 (describing NAAC as "specialize[d] in marketing and distribution of Blue and Amosite asbestos in the United States, Canada, Mexico and the Caribbean"); NAAC Internal Memorandum dated Oct. 27, 1969, CAPE000988-89 (describing customer services).

⁶ NAAC Internal Memorandum dated Oct. 27, 1969, CAPE000988-89

⁷ Cape Newsletter, No. 5, No. 12, Dec. 1970, CAPE000878-79 at 1.

precaution” in light of U.S. litigation).⁸ In coordination with the global Cape network, however, NAAC sold asbestos to Cape’s numerous American-based clients, including, but not limited to, the U.S. Government, Keene Corporation (f/k/a Baldwin-Ehret-Hill), Carey, Fibreboard, GAF (f/k/a Ruberoid), Owens Corning, Johns-Manville and Pittsburgh Corning.⁹ These companies were giants among asbestos product manufacturers, and on information and belief, their products were used extensively in South Carolina. In addition, NAAC tried to influence public and corporate opinion about the safety of asbestos, including, but not limited to, rebutting emerging medical critiques of its safety.¹⁰ Cape Asbestos, moreover, dominated NAAC’s decision-making, with NAAC, for example, unable to “borrow one dollar without [Cape Asbestos’s] approval” and routinely forced to withdraw cash from the United States to pay dividends to Cape Asbestos (minimizing the assets on NAAC’s balance sheet).¹¹

⁸ See NAAC’s Answers to Plaintiff’s Requests for Production in *Paello v. Johns Manville Corp.*, in the District Court for Boulder County, Colorado, Case No. 80-cv-0089-2 CAPE000110–12 (describing NAAC’s lean staffing); Letter from J. Holtze (NAAC Secretary) to J. Morris, Group Chief Management Accountant of Cape Industries Ltd., Dec. 3, 1975, CAPE001514 (“Despite the volume of sales and profits of NAAC, our operation is a very small one, with only a total of 5 employees”); The Cape Asbestos Company Limited Notification of Subsidiary’s Particulars for NAAC, CAPE001528 (identifying six directors in 1970).

⁹ Letter from R. Cryor, President of NAAC, to R. Gaze of Cape, July 8, 1969, CAPE000994–95.

¹⁰ See, e.g., Letter from R. Gaze, Cape Chief Scientist to C. Morgan, NAAC President, July 7, 1977, CAPE000130 (discussing prioritizing efforts of Asbestos International Association to “organise a body of medical opinion that is prepared to stand up” to critical opinions).

¹¹ See, e.g., Letter from C. Morgan, NAAC President, to M. Meyer, Cape U.S. Lawyer, Feb. 25, 1976, CAPE001507 (“If I interpret this correctly, we are not entitled to borrow one dollar without [Cape’s] approval, which would severely limit NAAC’s management flexibility to extend credit to customers, maintain warehouse stocks and make prompt monthly payments to [Cape]” to meet dividend requirements); Letter from R. Dent of Cape to R. Cryor of NAAC, Apr. 13, 1959, CAPE000261–62 (1959 letter suggesting that Cape was “extremely cautious” in picking NAAC personnel who would “fit into [the Company’s] scheme of things . . . without causing embarrassment all around”); NAAC Annual Board Meeting Minutes, April 23, 1976, CAPE000816 (showing payment of \$250,000 dividend “which may be paid in monthly installments on or before December 1, 1976 to shareholders of record on June 1, 1976); Letter from R. Cryor of NAAC to Malcom Reid of Cape, Dec. 28, 1956, CAPE000931–32 (stating in 1956 that NAAC “think[s] of ourselves as being part of a coordinated group with responsibilities

- b. Cape accepts default judgments and liquidates NAAC to evade claimants

After the onset of asbestos-related product liability litigation in the 1970s, Cape became especially concerned with its own liability.¹² 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.¹³

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

to the whole, even though this may mean subordinating other and more profitable interests of NAAC," and expressing offense at being called "commission agents," which "implies an independent, lack of responsibility, and an emphasis on local self-interest").

¹² See, e.g., Letter from Cape's U.S. Lawyers at Lord Bissell to A.J. Penna, Cape General Counsel, Oct. 3, 1975, CAPE000351–56 (detailing "the objective under consideration," which was "an attempt to limit NAAC's and Cape's exposure to future United States litigation," in a six-page letter, with section headings including "INSURANCE," "STATUTE OF LIMITATIONS," "NAAC LIQUIDATION," "REPLACEMENT FOR NAAC," and "ENFORCEMENT of U.S. JUDGMENTS BY FOREIGN COURTS").

¹³ See Letter from C. Morgan of NAAC to S.M. Dougherty, of Cape's South African Mining subsidiary, Cape Asbestos South Africa (Pty.) Ltd., Feb. 2, 1978, CAPE000123 (NAAC discouraging Cape visits to the U.S. in 1978 or else negate "maneuvers" related to "continued problems with product liability litigation"); Letter from R. Gaze, Cape Chief Scientist, to C. Morgan, NAAC President, July 4, 1975, CAPE000152 (suggesting to "disassociate the Parent Company as fully as possible from the operating companies," and noting, "It would I think be as well for this letter not to appear on the office file and so I am sending it to your home"); Letter from R. Gaze, Cape Chief Scientist, to C. Morgan, NAAC President, June 20, 1975, CAPE000154 (raising whether to "do something to change the identity of NAAC in order to avoid exposing the company unnecessarily," while doing "everything possible to maintain a successful selling operation in the United States," and therefore requesting that Morgan reduce physical inventory at the NAAC warehouse, again sent to Morgan's home address); Letter from M. Meyer, Cape's U.S. Lawyer, to R. Dent of Cape, May 6, 1974, CAPE000166–67 (suggesting that "no one from Cape be an officer of NAAC since we want it to be as independent as possible **in order to avoid any contention that it is the alter ego of Cape** and that Cape is doing business in the United States" (emphasis added); Letter from Cape Group General Counsel A.J. Penna to Max Meyer of Lord Bissell, July 15, 1975, CAPE000333 (stating "that it would be a sensible precaution against Cape's involvement in any future proceedings for [Cape personnel] to resign from the N.A.A.C. Board," and enclosing resignation letters).

Hague Convention on March 8, 2022.¹⁴ 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.”¹⁵

Ultimately, to avoid paying damages to workers whom were made sick or died as the result of using its asbestos, Cape resolved to liquidate NAAC, effective January 31, 1978.¹⁶ Existing debts of NAAC were paid, with remaining assets transferred upstream to NAAC’s direct parent company at the time, Cape Industries Overseas Ltd. (a U.K. entity wholly owned by Cape Industries Ltd.).¹⁷ NAAC’s liquidation was central to Cape’s litigation-avoidance strategy, based on legal advice that no British or South African court would enforce a judgment against a Cape entity if it never appeared again in the United States.¹⁸

¹⁴ See Letter from Lord Bissell to T. Penna, Cape General Counsel, March 6, 1978, CAPE000550–51 (opining in 1978 “that it is most unlikely that any plaintiff would bother to pursue collection of any default judgments against Cape”); Telex from Lord Bissell, Cape’s U.S. lawyers, to A.J. Penna, Cape General Counsel, March 7, 1979, CAPE000702 (confirming receipt of correspondence stating that “U.K. and South African lawyers confirm that any resulting judgments will not be enforceable against Cape’s U.K. and South African assets” and that “the potential loss of all NAAC’s outstanding assets is not material in the Cape Group context”).

¹⁵ Piercing the Corporate Veil: Cape Industries and Multinational Corporate Liability for a Toxic Hazard, 1950–2004; Tweedale and Flynn, *Enterprise & Society*, June 2007, Vol. 8 No. 2 at 268–296 (1977 letter from Cape’s counsel).

¹⁶ See, e.g., Letter from J. Holtze of NAAC to J. Sparkes, Group Financial Controller of Cape Industries Ltd., Apr. 19, 1978, CAPE001035 (noting “[o]fficially, North American Asbestos Corporation closed on January 31, 1978” and requesting Cape Asbestos official to stop sending accounting memoranda to former NAAC officials, “for safety’s sake,” as “we are not supposed to be receiving any main that would tie us to Cape after the January 31, 1978 deadline”).

¹⁷ See Lord Bissell Internal Memorandum dated Aug. 24, 1979, CAPE000593 (noting “[a]fter payment of NAAC’s debts, it is intended that the assets of NAAC will be distributed to NAAC’s sole shareholder,” identified as “Cape Industries Overseas Ltd.”).

¹⁸ See, e.g., Letter from S. Milwid of Lord Bissell to A.J. Penna, Cape General Counsel, Dec. 23, 1975, CAPE000141–43 (advising Cape on default-judgment risk); Telex from S. Milwid of Lord Bissell to A.J. Penna, Cape General Counsel, May 24, 1978, CAPE000566 (agreeing that it would be in the “best interests of Cape companies other than NAAC” to make “no response” to litigation); Confidential and Work Product Memorandum from S. Milwid of Lord Bissell to E. Burkholder of Lord Bissell regarding Deposition of Geoffrey A. Higham (Cape executive), Nov. 28, 1984, CAPE000617–19 (summarizing 1984 deposition testimony regarding litigation strategy, and

Yet, Cape continued to contemplate schemes to facilitate the sale of asbestos to U.S. customers while minimizing its product-liability risk.¹⁹ For example, Continental Products Corporation (using the same physical address as NAAC in Chicago, Illinois) was formed to “act as a commission agent for the future sales of asbestos from South Africa” in the United States, with South African mines selling to a new Lichtenstein subsidiary called Associated Mines Company, which in turn sold asbestos to the United States under its own invoices.²⁰ The express “purpose of this corporate arrangement [was] to eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to lawsuits brought against it under theories of strict liability concerning products liability on the sale of asbestos in the United States.”²¹

2. Moral fraud facts as presented in the Receiver’s Report

On July 11, 2025, the Receiver submitted a report to this Court in *Tibbs* detailing the results of research performed into the moral fraud of Cape. *See Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (July 11, 2025). The Receiver’s detailed presentation covered much of the same

concluding, “[o]n the whole, from my review of this Abstract, it does not appear that Walker, in the 89 pages of the deposition, uncovered very much, particularly pertaining to the decision for the dissolution of NAAC”).

¹⁹ *See, e.g.*, Memorandum to File, Dec. 12-14, 1977, Cape Industries London, CAPE000728 (1977 meeting memorandum “to discuss liquidation of NAAC and formation of new off-shore company to service North American market”)

²⁰ Lord Bissell Memorandum dated April 7, 1978, CAPE000386 (also noting “Gerry Morgan [former NAAC President, now CPC President] was in Mexico City in January of this year and is supposed to have explained the new corporate arrangement to the Eureka group of companies’ officers”); *see also* Announcement of Continental Products Corporation, CAPE000531 (introducing Continental Products Corporation as “Agent to handle the North American requirements for Amosite and Crocidolite asbestos fibre,” and noting “our location will be the same as the former North American Asbestos Corporation,” and that “[a]lthough operating as a new organization, bot Joan Holtze and myself will endeavor to maintain the same service to our many customers and friends as offered at North American Asbestos Corporation.”).

²¹ Memorandum from A. Sarabia of Lord Bissell to M. Meyer of Lord Bissell, Jan. 23, 1978, CAPE000377–79.

ground as was presented in the Park Plaintiffs' Appointment Motion, supplemented with information the Receiver uncovered through his detailed investigation into Cape and its affiliates in carrying out his charge to marshal the assets of Cape. Because of the significant overlap between the Receiver's report and the Park Plaintiffs' factual recitation, the Court recounts the facts the Receiver presented in its July 11 Report related only to four categories: (1) Cape's concealment its early knowledge of asbestos health hazards from U.S. customers, (2) Cape's suppression of a 1962 report of the South African Pneumoconiosis Research Unit ("PRU"), (3) Cape's creation of a fake Lichtenstein company to continue its sales of asbestos to the U.S. market following the closure of NAAC, and (4) information related to Cape's modern moral fraud.

i. Cape obtains early knowledge of asbestos dangers from disease in its own manufacturing plants and lies about that knowledge to its U.S. customers

From the time that Cape started selling asbestos in the United States, it already had unique knowledge of the health hazards of asbestos as compared with any customer or consumer in the United States. Cape's own documents, combined with witness testimony, scientific data, and general historical knowledge, confirm this disturbing fact. Cape knew the asbestos it sold was dangerous while its customers usually did not.

In 1953, immediately before Cape opened its NAAC sales operation in Chicago,²² Cape published an 85-page brochure describing the company's origin, organization and operations.²³ Cape diagrammed its operations in the brochure.²⁴ Cape had four principal groups under its head

²² Prior to 1953, Cape used an "agent" in New York City to assist in marketing to U.S. buyers. See Letter from R. Dent to Lord Bissell (Sept. 18, 1953) ("We have recently discontinued our representation in America, which has hitherto been carried on in New York by Mr. A.W. Koehler, who runs a small selling agency, in which we were by far the largest of his principals.").

²³ *Cape asbestos, the story of the Cape Asbestos Company Limited, 1893-1953*.

²⁴ *Id.* at 50.

London office; branch selling offices (NAAC joined this branch when Cape formed it later the same year), UK product manufacturing factories, miscellaneous "English subsidiary companies," and overseas subsidiary companies.²⁵ Every one of these operations involved the exploitation of asbestos as a commercial raw material, from mining, to processing into finished products, to the sale of the fiber overseas.²⁶ The "overseas" companies, according to the diagram, were the asbestos mining operations in South Africa.²⁷ Cape noted that it would dispatch executives from London to "control [] the whole of Cape's operations in that country," meaning, South Africa.²⁸

Cape Asbestos Company began advertising its asbestos for sale in the United States in 1920. It advertised mainly in *Asbestos Magazine*, which was a monthly trade journal published in Philadelphia, Pennsylvania, and circulated nationally from 1919 to 1983. Cape advertised in virtually every issue until 1978—almost 600 issues. At the same time Cape began selling asbestos to U.S. customers, it developed first-hand knowledge about the dangers of asbestos exposure. In the early 1900s, workers at its Barking Plant in London began developing asbestosis, a noncancerous but often fatal lung condition.²⁹

Among other products, Barking manufactured a pre-formed pipe and block insulation named "Caposite".³⁰ Anthony Mendelle (who was deposed in 1984) was the Plant Manager at Barking from 1960 to 1968, following his work as the Production Manager at the same plant from

²⁵ *See id.*

²⁶ *See generally id.*

²⁷ *See generally id.*

²⁸ *Id.* at 56.

²⁹ *Cape Asbestos, the story of the Cape Asbestos Company Limited*, 1893-1953, at 50, 62; Cape Inquests (1929-1938) (summaries of coroner inquests revealing early recognition of asbestos-related worker deaths at Cape's U.K. facilities.).

³⁰ *Cape Asbestos, the story of the Cape Asbestos Company Limited*, 1893-1953, at 62.

1956 to 1960.³¹ Mendelle saw first-hand the effects of asbestos exposure on plant workers—the plant had a "running total" of about 60 asbestosis cases a year, and more ominously, workers were also contracting mesothelioma, an incurable cancer of the lining of the lung that is usually fatal within a year of diagnosis.³² Mendelle was instrumental in the closure of the Barking Plant because of the number of workers dying from exposures at the Plant.³³ Mendelle testified that Caposite was a "major department" at Barking.³⁴ Caposite was made with 100% amosite asbestos.³⁵ Other operations used the two other types of asbestos, crocidolite and chrysotile.³⁶

It is here that two principal antagonists enter the Cape story—Richard Gaze and Walter Smithers. Smithers was the Barking Plant doctor starting in 1956 and was still working for Cape as of 1984, when Mendelle was deposed.³⁷ Richard Gaze worked at Barking from 1943 to 1963.³⁸ After 1963, Gaze rose to become the "Chief Scientist" at Cape and held senior management roles across the entire Cape asbestos operation for many years.³⁹ These included membership on the Board of Directors of numerous Cape asbestos subsidiaries.⁴⁰ The minutes of a "special meeting of the board of directors of the North American Asbestos Corporation" held on April 7, 1970, note that "[t]he chairman reported that Dr. Richard Gaze of Cape Asbestos, Ltd will have direct

³¹ Deposition of Anthony Mendelle at 3, *Smith v. Pittsburgh Corning Corp.*, Nos. GD81-20383 & GD81-20381 (Pa. Ct. Com. Pl. Allegheny Cnty. Nov. 13, 1984).

³² *Id.* at 11.

³³ *Id.* at 48-49.

³⁴ *Id.* at 40.

³⁵ *Id.* at 37.

³⁶ *Id.* at 41-42.

³⁷ *Id.* at 5.

³⁸ *Id.* at 7. The evidence in this case will place Gaze and Smithers squarely at the center of Cape's efforts to exploit asbestos for profit, to mislead others about the dangers of asbestos, and to hide what Cape actually knew about effects of asbestos exposure.

³⁹ *Id.* at 6.

⁴⁰ *Id.*

responsibility on behalf of the parent company for the operations of North American Asbestos Corporation.”⁴¹

Mendelle testified that Cape knew about asbestos and mesothelioma at Barking—because workers were dying of both asbestos-related diseases in the 1950s.⁴² Mendelle, Gaze and Smithers discussed mesothelioma and asbestosis at Barking, and that low exposures could cause mesothelioma.⁴³ Mendelle testified that “we knew there was an association” between amosite and mesothelioma well before a seminal article on asbestos disease was published in 1965 by Dr. Muriel Newhouse.⁴⁴ Newhouse spent time at Barking, and much of her data for the article came from her time investigating disease at the plant.⁴⁵ Mendelle said that he and Newhouse had numerous conversations about amosite as a cause of mesothelioma at Barking.⁴⁶ Mendelle was asked if workers in the Caposite operation—which used only amosite, as noted above—had developed mesothelioma, and he said “yes, many.”⁴⁷ Mendelle acknowledged that all three types of asbestos were used at Barking, and that the workers may have worked in departments other than the main Caposite operation.⁴⁸

Despite this knowledge, Dr. Gaze repeatedly told Cape's customers that “it is a fact that not one authenticated case of mesothelioma has been associated with amosite anywhere in the world.”⁴⁹ This letter was passed on to the President of one of Cape's major amosite customers in

⁴¹ NAAC Special Meeting Minutes (April 7, 1970).

⁴² Deposition of Anthony Mendelle at 11-12, *Smith v. Pittsburgh Corning Corp.*, Nos. GD-91-20838 & GD81=20381 (Pa. Ct. Com. Pl. Allegheny Cnty. Nov. 13, 1984).

⁴³ *Id.* at 11-12, 69.

⁴⁴ *Id.* at 56-57; Muriel L. Newhouse, *Asbestos in the Workplace and the Community*, 16 Ann. Occup. Hyg. 97 (1973).

⁴⁵ Mendelle Deposition, *supra*, at 58.

⁴⁶ *Id.* at 56-57.

⁴⁷ *Id.* at 66.

⁴⁸ *Id.* at 68.

⁴⁹ Letter from Gaze to Cryor (March 22, 1966) (emphasis in original).

the United States—Robert Buckley, of Pittsburgh Corning Corporation—and in his reply to Dr. Gaze, Mr. Buckley wrote: “. . . from your letter, I am assured that no customer's worker need be concerned about mesothelioma.”⁵⁰ In a memorandum to over twenty managers and sales personnel at Cape along with Dr. Gaze, the Cape Sales Director gave advice to the addressees of the memorandum “who are faced with questions on the possible dangers of to health involved in the use of asbestos based materials.”⁵¹ The Sales Director repeated exactly what Dr. Gaze wrote to Mr. Buckley at Pittsburgh Corning, noting first that Cape's Caposite line of products made solely with amosite “are now our principal asbestos products,” the Sales Director then stated that “not one case of mesothelioma [has been] associated with amosite asbestos.”⁵² Dr. Gaze later died from mesothelioma.

ii. *Cape's suppression of a 1962 Report involving its mining operations in South Africa that shows mesothelioma incidence from mining asbestos or living near asbestos mines.*

Cape had been mining asbestos in South Africa for over 50 years when it created NAAC. Scientists began seeing sporadic cases of the disease “mesothelioma” (also called “endothelioma” or “pleural sclerosis”) in the late 1940s and early 1950s. But it was a young pathologist from South Africa who first recognized the relationship between asbestos exposure and mesothelioma. Dr. Chris Wagner was appointed by the South African Government in 1954 as a research fellow to the Pneumoconiosis Research Unit (PRU) in Johannesburg. He took an interest in mesothelioma, visiting the Cape asbestos mines in South Africa, and then meeting with management officials at Cape and another asbestos mining company (Turner and Newell) in London where he was

⁵⁰ Letter from Buckley to Gaze (March 30, 1966).

⁵¹ Letter from Galloway (Aug 19, 1966).

⁵² *Id.*

“assured . . . that I was following a line of research which seemed to them to be of little value, and that I would be advised to follow other lines of investigation.”⁵³

Dr. Wagner reported a series of 33 mesothelioma cases in South African mine workers, and in people living near the mines, at the 1959 Pneumoconiosis Conference in Johannesburg. The formal scientific paper was published in 1960.⁵⁴ Wagner's investigation triggered the PRU to investigate mesothelioma at the South African asbestos mines.⁵⁵ Cape and other mining companies partially financed the study, which meant the mining companies were copied on all reports and had input on designing study parameters.⁵⁶

The investigators saw troubling indications of disease soon after the study began.⁵⁷ An October 6, 1961 memorandum of the PRU noted that it discussed early results with the "asbestos industry"—Cape, and others—and that the results showed that the incidence of asbestosis amongst miners and the ordinary population was "alarmingly high," and further that the incidence of mesothelioma, “although perhaps not large in terms of actual numbers—is very high from an epidemiological point of view.”⁵⁸ On April 30, 1962, the PRU memorialized its findings, recording mesothelioma numbers that startled researchers: “[a]n alarmingly high number of cases with mesothelioma of the pleura has been discovered in people who live or have lived in the North Western Cape and that there is evidence to suggest that this condition is associated with an exposure to asbestos dust inhalation which again need not be industrial.”⁵⁹ In other words,

⁵³ Letter from Christopher Wagner to Cape (November 30, 1994).

⁵⁴ *Id.*; see also Wagner, J.C., Sleggs, C.A., and Marchand, P, *Diffuse Pleural Mesothelioma and Asbestos Exposure in the North West Cape Province*, Br. J. Ind. Med. 17:260-65 (1960).

⁵⁵ Memo from Gear re: Proposed Study of Mesothelioma in South Africa (Nov. 29, 1960).

⁵⁶ *Id.*

⁵⁷ Letter from Naude to Diederichs (Oct. 6, 1961).

⁵⁸ *Id.*

⁵⁹ PRU Preliminary Report (April 30, 1962).

mesothelioma occurred not only in miners, but also in the general population that lived near the asbestos mines.⁶⁰ The investigators revealed that they were aware of 90 cases of mesothelioma, but they theorized that more cases existed that the study failed to capture due to its methodology.⁶¹

The preliminary results were equally alarming to Cape. Soon after Cape saw the October 1961 PRU results, it dispatched Dr. Smither to South Africa for an "investigation" even before the more detailed April 1962 report was circulated. The Receiver has located the 48-page report that Dr. Smither prepared for the company on his return from South Africa.⁶² The report opens:

[a]s a result of a decision taken at a meeting between Dr. R Gaze, Dr. J McKeurtan and myself at Park Street, London, on 31st October 1961, I was sent by the company to South Africa. My terms of reference were to study all aspects of mesothelioma and asbestosis reported in South Africa on medical matters, and generally to learn as much as possible about conditions in the industry in that country.⁶³

The Smither report is notable for several conclusions, but a few stand out. Dr. Smither (a physician) recommended that, despite the "alarming" conclusions that the PRU researchers had come to:

[m]y recommendation would be that the company should not support any future wide ranging survey of the industry with a view to discovering either asbestosis or mesothelioma. The reason for this is that the company is well aware of the problem and has some idea of its extent.⁶⁴

At that point, Cape's support for the PRU ended.⁶⁵ Smither aligned with Dr. McKeurtan—the top executive over Cape's mining subsidiaries in South Africa—who was "vigorously attacking" the conclusions of the PRU researchers.⁶⁶

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Smither, *Visit to South Africa* (August 1962).

⁶³ *Id.* at 2.

⁶⁴ *Id.* at 34.

⁶⁵ *See, e.g., id.*

⁶⁶ *Id.* at 35.

Another document the Receiver discovered shows the scope of Cape's assault on the PRU study. In a letter from L.G Walters, the Director of the PRU, to M. F. Baxter at the South Africa Council for Scientific and Industrial Research, Walters addresses a memorandum of the "asbestos producers committee."⁶⁷ Cape was a member of that committee.⁶⁸ Walters quotes from the "committee memorandum" in which it critiques the PRU investigation: "The whole survey appears to have been undertaken with the underlying object of implicating crocidolite asbestos as being directly responsible for the comparatively rare tumor known as mesothelioma of the pleura."⁶⁹

Walters noted that Smither identified 10 additional cases of mesothelioma during his visit to the Cape Prieska mine during his visit.⁷⁰ Smither's 48-page report notes that a local doctor named "Van Rooyen" was caring for "10 cases among colored people of what he now calls the 'Prieska picture.'"⁷¹ Smither advocated for removing the patients to Johannesburg for "investigation."⁷² Dr. Smither's recommendation was not medical or altruistic. He wrote in his Report that:

the advantage from the standpoint of the company is that these cases will be treated as a group, will be removed from the area of the conflict, if one may call it that, and will be taken some hundreds of miles away.⁷³

Smither went on to note that this move would bring "less attention from the politicians."⁷⁴ Dr. Smither was covering up the health hazards of Cape's asbestos by hiding Cape's victims.

⁶⁷ Letter from Walters to Baxter (July 19, 1962).

⁶⁸ *Id.* at 2 (the letter reveals Cape's membership by noting that the committee "recently brought their London Branch Medical Office (Dr. Smither) to this country to investigate the problem on their behalf.").

⁶⁹ *Id.* at 2.

⁷⁰ *Id.*

⁷¹ Smither, *Visit to South Africa* (August 1962) at 11-12.

⁷² *Id.*

⁷³ *Id.* at 13.

⁷⁴ *Id.*

Dr. Matthys van Rooyen—the local Prieska doctor caring for 10 mesothelioma patients—was deposed in 1996.⁷⁵ He testified that Cape periodically dispatched “executives” and doctors (presumably, Smither) from London to visit asbestos mines in South Africa.⁷⁶ Dr. Van Rooyen testified that he tried to warn Cape about the dangers of asbestos exposure, but met a chilly response: “I experienced opposition[] . . . whenever we talked about asbestos as a danger, people saw us as dangers . . . we had a lot of opposition from these people. But very definitely, from the chief executives of Cape Blue Mines.”⁷⁷

Dr. Van Rooyen's interest in mesothelioma began in 1957 then he wrote an article discussing two mesothelioma cases for the *South African Medical Journal*, explicitly attributing them to Prieska's blue-asbestos dust.⁷⁸ He then screened the community—miners and civilians alike—by taking thousands of chest X-rays and even persuaded the Pneumoconiosis Bureau to dispatch a mobile radiography unit to Cape's Prieska mine.⁷⁹ Determined to force action, he armed South African parliamentary member A.H. Stander with data and a speech describing Cape's mill as “spraying asbestos fiber” over the town, thus placing the issue before Parliament.⁸⁰ These uncompromising interventions—and the frank discussions he had with Cape managers—made him a “pest,” as Dr. Van Rooyen described the situation, in Cape's eyes.⁸¹

Cape retaliated against Dr. Van Rooyen. According to Van Rooyen's sworn deposition testimony, Cape threatened his livelihood:

Q: Was there any discussion about other doctors coming to Prieska?

⁷⁵ Deposition of Dr. Matthys van Rooyen, *In re Asbestos Personal Injury Cases, Arrington Lead*, No. 93-9-114 (Ms. Cir. Ct. Jones County, 1996).

⁷⁶ *Id.* at 135.

⁷⁷ *Id.* at 116.

⁷⁸ *Id.* at 24.

⁷⁹ *Id.* at 38, 63.

⁸⁰ *Id.* at 11-12, 30.

⁸¹ *Id.* at 40, 57.

A: That was one of the threats used very regularly. Now, why do I call it a threat? If you live in an area where you have a population of 16,000, there are two doctors there. They are still fit, and they can work hard. They do work. And if you take away a quarter or more of their practice by introducing a doctor or more in that area, you can definitely break them. And that is -- so that threat was used to me, personally, on more than one occasion. I don't accept it nicely, and I still don't.

Q: Did you have occasion to specifically have a conversation with one of the Cape executives regarding the effect of this discussion would have on the company?

A: Yes. . . . I remember distinctly that this was treated in a very superficial way. And the chap . . . he said that with our directors in London earning a million a year, do you think they would listen to you?⁸²

The final PRU report was published 1964 but it was not circulated outside of the PRU and the mining companies.⁸³ For reasons unknown, but perhaps to protect powerful industrial mining and economic interests in South Africa, the final report also said little about mesothelioma. Whatever the reason for this extremely limited circulation, Cape had copies of the final report and the preliminary reports, but never mentioned them publicly, and certainly never breathed a word of it to its U.S. customers. In fact, Cape disseminated exactly the opposite story. While it is true that the PRU was aware of what the mesothelioma survey revealed, and did not publicize the results, the PRU also was not in the business of selling raw asbestos for profit around the world. Cape certainly was. The PRU report was not discovered for 20 years until an enterprising journalist researching the Cape story for a documentary located it in an archive in South Africa.

Dr. Smither returned from South Africa on June 30, 1962.⁸⁴ Less than two weeks later, on July 12, 1962, Drs. Smither and Gaze attended a meeting in London of the Asbestosis Research

⁸² *Id.* at 41.

⁸³ Letter from Walters to Baxter (July 19, 1962).

⁸⁴ Smither, *Visit to South Africa* (August 1962) at 42.

Council (ARC).⁸⁵ The ARC was an industry group founded by Cape and another mining and asbestos products company, Turner & Newell.⁸⁶ The ARC sponsored research into asbestos disease and had a hand in shaping final reports given its funding of the studies.⁸⁷ Scientists and physicians from Queen's College in Cambridge, Reading University, and Cambridge University, and some industry representatives attended the July 12 meeting.⁸⁸ The Receiver located the 6-page detailed memorandum reporting the detailed minutes of the meeting.⁸⁹ As this group met to discuss asbestos disease, Dr. Smither and Dr. Gaze remained silent and reported nothing about the PRU study, nor even that Dr. Smither just returned from a three-week trip to South Africa to investigate mesothelioma in the mines.⁹⁰

i. Cape continues selling asbestos to the U.S. market through a fake Lichtenstein company – evading liability but continuing to profit.

As the Park Plaintiffs presented in their Appointment Motion, when Cape closed NAAC, it did *not* stop selling asbestos in the United States. The Receiver presented additional facts in its Report detailing the scheme to conceal its identity to U.S. litigants and continued selling the same South African asbestos fibers with the use of a Lichtenstein pass-through entity, Associated Minerals Corporation (“AMC”), to the same list of customers in the U.S. market. Anthony Penna, in-house counsel for Cape, referred to this scheme, which also included re-branding the entire

⁸⁵ ARC-19th meeting (July 12, 1962).

⁸⁶ See generally Geoffrey Tweedale, *Science or Public Relations? The Inside Story of the Asbestosis Research Council, 1957–1990*, 38 AM. J. INDUS. MED. (2000).

⁸⁷ *Id.* at 723-29.

⁸⁸ ARC-19th meeting (July 12, 1962).

⁸⁹ *Id.*

⁹⁰ See generally *id.*

NAAC operation as an independent entity under a new name, Continental Products Company (“CPC”), as only “a difference in form.”⁹¹

Cape disguised this scheme even from NAAC’s then-president, Charles Morgan, when Penna asked Morgan to consider opening CPC. While Cape averred that Morgan was well aware of the connection to Cape,⁹² in reality, the true scheme was on a need-to-know basis, and Morgan did not need to know anything. He was simply Cape’s U.S. puppet. Morgan testified that Penna “said he was the attorney representing Associated Minerals Corporation.”⁹³ Morgan testified that he did not know that Penna was contacting him on behalf of Cape.⁹⁴ He did not know who owned AMC, and no one had suggested to him that there was a relationship between Cape and it.⁹⁵

⁹¹ Testimony of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132247 (“It was a difference in form; and, as I have said, the Morgan company, new company, CPC, did carry on very much the same role that NAAC had carried on in trading terms.”); *id.* at Cape_Receiver_00132236 (“Our mining companies wished to continue selling asbestos in the United States, yes. . . . There needed to be an organization which could liaise with the customers.”), *id.* at Cape_Receiver_00132247 (“Certainly, Howard Tanner, the Sales Director of the South African mining companies was extremely keen to ensure that sales to America, that is there could be some continuation of sales to American customers.”).

⁹² *Id.* at Cape_Receiver_00132215 (“Q. And also the reason why you did not wish the new arrangements [related to Cape’s involvement in setting up CPC] to become publicly known? A. Yes, I did. I think that it probably omitted one additional reason – that certainly Mr. Morgan in his new entity would not have wanted it to be disclosed that he was dealing with a company that was still related to Cape.”).

⁹³ Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003.

⁹⁴ *Id.* at Cape_Receiver_00096063-4 (“Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that.”).

⁹⁵ *Id.* at Cape_Receiver_00096064 (“Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. Has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.”).

Once Morgan agreed to establish CPC, Cape's lawyers at the Lord Bissell firm in Chicago drew up the incorporation documents.⁹⁶ Rather than establishing a direct connection between the newly formed CPC and a Cape-named company, Penna spearheaded the creation of a Liechtenstein company, AMC, a seemingly unrelated entity, which was in truth an Oppenheimer subsidiary. As Penna described, "everyone was concerned whether they were mining companies or Cape Industries or any company that was a party to these sales should not by its actions put either the mining companies or Cape at risk."⁹⁷ "The Lichtenstein company was a separately constituted company but it certainly had no direct employees of its own. . . . It was primarily an invoicing company."⁹⁸ Cape's involvement was pervasive. Confronted with evidence, Penna was forced to admit, "Yes, it seems to be contemplated that Cape Asbestos Fibres would subscribe the initial capital."⁹⁹

Even before NAAC closed, Morgan reached out to customers to let them know of the formation of CPC, thereby ensuring a seamless sales transition between the companies.¹⁰⁰ To

⁹⁶ *Id.* Cape_Receiver_00095988 ("Q. Who drew the Articles of Incorporation? A. Mr. Max Meyer. At least I asked him to do this work for me. Who actually did the work I couldn't say.").

⁹⁷ Cape_Receiver_00132246.

⁹⁸ *Id.* at Cape_Receiver_00132239-40.

⁹⁹ *Id.*

¹⁰⁰ Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096022. ("I advised them that North American Asbestos was being liquidated, it was no longer to be in the position to supply them with fiber, I had made a connection where I thought I could supply them with fiber, I would like their consideration very much."); Ex. 81, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003, Cape_Receiver_00096063-4 ("Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that."); *id.* at Cape_Receiver_00096064 ("Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.").

ensure the success of the new venture, Morgan testified that CPC received a \$12,000 check “[c]are from North American Asbestos” to start the company.¹⁰¹

CPC’s offices were in the same building as NAAC had previously had its offices: “North American Asbestos was on the 29th floor and Continental Products Corporation took a lease on the 12th floor.”¹⁰² All of the NAAC filing cabinets that had been on the 29th floor were moved to the 12th floor, and all of the NAAC employees—Joan Holtze, Jean Canzoneri, and Sue Purrington—moved with Morgan to CPC.¹⁰³ CPC also took over the NAAC employees’ pension plan.¹⁰⁴ Joan Holtze testified that she sat at the same physical desk at CPC as she had when she worked for NAAC.¹⁰⁵ In this way, Cape hoped to escape liability, but continued selling asbestos fibers to virtually the same contact list using a shell game and companies in Liechtenstein and South Africa to conceal any connection between it and the United States.

A.R. Sarabia wrote a memorandum contained in the Lord Bissell client file to memorialize the new sales arrangements for the sale of Cape asbestos to the United States from Lichtenstein through CPC.¹⁰⁶ On June 26, 1978, Meyer wrote Penna advising that the Cape Mines would be protected from default judgments with the Lichtenstein company “between them and any operations in the United States.”¹⁰⁷ Penna described the Liechtenstein company—which had no employees and was just an invoicing entity, as being camouflaged to disguise from “plaintiffs in

¹⁰¹ *Id.* at Cape_Receiver_000 96000.

¹⁰² *Id.* at Cape_Receiver_00095991.

¹⁰³ *Id.* at Cape_Receiver_00095992-3.

¹⁰⁴ *Id.* at Cape_Receiver_00096066.

¹⁰⁵ Deposition of J. Holtze, Apr. 12, 1979, at Cape_Receiver_00097838-9.

¹⁰⁶ Memo to NAAC File re Liquidation of NAAC (April 7, 1978).

¹⁰⁷ Letter from M. Meyer to A. Penna (June 26, 1978). Meyer was in the thick of the plan to create CPC and in fact formed the corporation, according to Gerry Morgan, the President of NAAC at the time. *See* Dep. of C. Morgan May 18, 1982 at 39. In a memo dated Dec 19, 1983, a Lord Bissell Partner inquired of Meyer about his formation of CPC in 1978 but noted that there were no billing records at LBB relating to this work, Letter from Ingersoll to Meyer (Dec. 19, 1983).

future U.S. asbestos litigation” (Cape's words) the fact that the company was still selling asbestos in this country. On July 29, 1980, Mr. Meyer wrote Richard Gaze at Cape advising on a variety of issues, but in closing Meyer wrote on Lord Bissell letterhead: “My deposition was taken last Thursday in the four Bloomington cases. I guess the main thing that came out was that I know nothing or that I can’t remember anything.”¹⁰⁸

iii. *More recent activities of Cape, including its activities parallel to this action, demonstrate continued moral fraud*

Cape maintained its position of not appearing in U.S. courts when a complaint was filed against it in *Park*. Rather than completely ignoring the U.S. proceedings, however, Cape engaged in a course of conduct to attempt to weaken the effectiveness of this Court’s appointed receiver – *outside* of this Court.

First, Cape instituted a Part 8 Proceeding in the High Court of England and Wales against the Receiver personally to seek injunctions against his further work as the court-appointed receiver of Cape in South Carolina.¹⁰⁹ In support of its Part 8 Proceeding, Cape filed a series of sworn statements of Ran Oren¹¹⁰ and Cape’s U.K. lawyers. These sworn statements set forth Cape’s position on the facts that would require the English court to enjoin Mr. Protopapas from acting as the Receiver for Cape in South Carolina. This one-sided presentation included many incomplete statements as to the work of the receiver and this Court, including at least one incomplete statement

¹⁰⁸ Letter from M. Meyer to R. Gaze (July 29, 1980).

¹⁰⁹ While the *Tibbs* Third Party Defendants assert that improper service of Cape renders the Cape receivership an absolute nullity, Cape’s activities in foreign courts, including the Part 8 Proceeding in England and a parallel proceeding in France, make clear that Cape is fully apprised of this action, including all filings made in these proceedings, which are described in filings in the foreign proceedings, including in affidavits by Cape’s director.

¹¹⁰ Mr. Oren is the sole director of Cape Intermediate Holdings Limited and also serves as CEO of Altrad Investment Authority S.A.S, a third-party defendant in the Receiver’s declaratory judgment action in the *Tibbs* asbestos personal injury action.

from this Court during a hearing in September 2024. In his witness statement, Ran Oren stated to the U.K. Court:

It bears mentioning that at [the September 24, 2024] hearing, Toal J indicated her expectation that the Receiver's role would be "*to marshal the assets, including the bank accounts*" of the Cape Group. I have set out at length in Section I of Oren 1 the serious consequences this might have on the Cape Group, for example, under the power to obtain the financial records belonging to or pertaining to the Claimants, the Receiver could make direct contacts with the Claimants' bankers. That could cause disruption and interference in the Claimants' relationships with their banks, as it would be very difficult to control how that information was used by the Receiver.¹¹¹

This Court did not state in the September 24 hearing that the Receiver should gain control of and use the Cape bank accounts. Mr. Oren took this Court's statements regarding the broad statutory authority given to receivers in South Carolina out of context. In the hearing, this Court engaged with counsel for Anglo American and De Beers (defendants in the Receiver's third-party declaratory judgment action in *Tibbs*), Scott Balber, regarding the authority of the receiver to obtain documents from various sources relevant to the Cape receivership. The exchange occurred in the context of Mr. Balber noting that the Court had granted the Receiver the power to review and obtain documents from any financial institution, bank, credit union, or savings and loan, among other entities.¹¹² The Court responded that finding all relevant documents is not uncommon, and continued as follows:

The Court: But these corporations are alleged to be part of a single group that is financially responsible for the supply to places in North and South Carolina of asbestos that harmed you. **And part of what the receiver of the corporation is to do is to verify that by looking at financial records.**

The first receivership I was ever involved in was as a practitioner. . . when we put [a life insurance company] into a state receivership, a South Carolina receivership, to marshal its assets, pay its creditors,

¹¹¹ Ran Oren Witness Statement 2 at ¶ 50 (emphasis in original) (citations omitted).

¹¹² Transcript of Sept. 24, 2024 hearing at 42.

make at least some recompense to even its shareholders, and move forward with the sale of the business in that regard. That's common in receiverships.

So, I want you to understand that that's not some provision in my order that's unique to this situation, it's very common in this state.

Mr. Balber: Understood, Judge. And my point was exactly that – not to be presumptuous, but **I suspect in the receivership scenario you just described, you and your partners obtained access to the insurance company's documents, right, as part of the exercise and used those documents for the purpose of marshaling assets, identifying and paying creditors, et cetera. That's all we want here.** All we want is the same thing. We want this receiver to obtain the documents of the entity in its receivership, Cape, and provide the documents to us that are relevant. Because I think we all want to know . . . what does Cape's documents say about this liability avoidance scheme. [What] do Cape's documents say about whether my clients were controlling it, directing it, part of it or not. . . . I'm pretty optimistic they will not say that, but I think we all need to know what Cape's documents say.

The Court: Right. Also, of course, **part, again, of what the receiver must do is to marshal the assets, including bank accounts and others. And that's why that is in there . . . And it seems to me that you two groups of lawyers to to be able to figure out a fair way to navigate that without totally disrupting the privacy of your clients.** And protective orders are a way to do that. Some limitations on scope [] are a way to do that. But that's why those provisions are there.¹¹³

This explanatory exchange was made in the context of how and why South Carolina receivers marshal *documents*. Both Mr. Balber and this Court were well aware that the discussion was about the general powers of South Carolina receivers and, more specifically, the role and nature of the Cape receiver here. In that context, the discussion was about how best to access relevant historical financial records to determine the validity of the allegations that “these corporations are alleged to be part of a single group that is financially responsible for the supply to places in North and South

¹¹³ *Id.* at 44-45 (emphasis added).

Carolina.”¹¹⁴ While both parties were aware that South Carolina receivership law does allow the actual marshalling of a company’s bank accounts, neither the Court nor Mr. Balber were discussing whether the Receiver could take over Cape’s financial accounts in England or elsewhere.¹¹⁵

Based in part on Cape’s inaccurate portrait of this Court as acting beyond the scope of South Carolina law in the appointment of the Receiver, on November 22, 2024, Cape obtained an injunction against this Receiver individually and in his personal capacity in the High Court of England and Wales. The order purportedly enjoined the receiver from acting as receiver for Cape worldwide, including before this court. This was done in direct violation of the Barton Doctrine and the explicit language in the receivership order that the receiver “may not be sued outside this court without obtaining the receiver’s consent or an order of this court prior to doing so.”

The South Carolina Supreme Court characterized the U.K. Order as “shocking and indefensible.”

Second, Cape’s English lawyers have used the U.K. Order to intimidate the Receiver from continuing to act in his court-appointed capacity as the Receiver for Cape. In a series of letters starting in November 2024, the lawyers have threatened the Receiver with personal financial penalties and criminal sanctions with one objective in mind—to stymie the judicial process here in South Carolina that exists to serve South Carolina claimants.

¹¹⁴ *Id.* at 44.

¹¹⁵ This was not the only statement of this Court that the Altrad UK subsidiaries took out of context. Paragraph 19 of the second Paul Brehony witness statement not only references the same statement of this Court explained above but also takes the statement that the Court will “pray the biggest prayer I have we don’t have any other people involved in this matter who try to appeal my order” out of context. Second Witness Statement of Paul Brehony, at 19(d). It is not clear what Brehony suggests with this quote, but it is likely something other than what those familiar with the receiverships understand in the context of the serial appeals of nearly every order of this Court in this action.

Having benefitted from a decades-long litigation avoidance scheme, Cape's aggressive conduct to avoid potential U.S. liability in this case is no surprise. Cape most recently demonstrated its zealous commitment to litigation avoidance above all else when its lawyers wrote to the Receiver threatening him against "taking any steps in respect of" a lawsuit that the Pittsburgh Corning Bankruptcy Trust filed against Cape in this Court, and alluding to potential criminal and monetary judgments against the receiver personally.

Third, Cape has threatened insurance companies against providing the Receiver with insurance information relevant to the Cape receivership in response to subpoenas issued by the Receiver. Ran Oren, in his capacity as sole director of Cape Intermediate Holdings Limited, threatened at least four insurance companies against responding to a subpoena for insurance information issued from this court and in these proceedings.

Cape's actions in the last year can best be described as a "conscious intent to defeat, delay, or hinder" creditors of Cape.

b. The facts as presented are sufficient to establish Cape's moral fraud

In *Welch v. Advance Auto Parts*, the South Carolina Supreme Court upheld this Court's appointment of a receiver over Atlas Turner under S.C. Code § 15-65-10(5), finding that "Atlas Turner engaged in moral fraud against the trial court, the state of South Carolina, and Respondent." 916 S.E.2d at 332. Third-Party Defendants argue that *Welch* requires that a defendant engage in fraudulent conduct during the course of a case, including failure to comply with a trial court's orders, or concealing information from an opposing party and the court in discovery. Neither *Welch* nor the authorities on which *Welch* rely require the type of discovery abuse Third-Party Defendants suggest.

To the contrary, *Welch* explains that the South Carolina Supreme Court has “upheld the appointment of a Receiver before judgment where the plaintiff has made a prima facie showing that the defendant intends to fraudulently avoid or defeat the plaintiff’s recovery.” *Welch*, 916 S.E.2d at 330. *Welch* cited the South Carolina Supreme Court’s decision in *Virginia-Carolina Chemical Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177 (1909), for the proposition that “when a debtor is trying to defeat his creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts—then a court of equity will grant any relief within its jurisdiction appropriate and effective to protect creditors against the fraud without requiring the creditor to run the risk of losing his debt from the delay of obtaining judgment and a return of nulla bona on the execution.” 84 S.C. 214, 220-21, 66 S.E. 177, 179.

Welch notes that Atlas Turner’s first line of defense “when faced with lawsuits—for allegedly causing serious injury and death to American workers and citizens related to the pernicious products it sold for profit even after the lethal risk these products posed was known—its tactic has been to claim that, if the courts exerted jurisdiction over them, it would offend the traditional notions of fair play and substantial justice due process guarantees. When that ploy fails, Atlas Turner’s version of due process is to refuse to abide by court orders requiring it to answer basic information. It is alleged that Atlas Turner has come into our state, turned profits by selling its hazardous wares in our state, and inflicted grievous harm on citizens in our state. Then, when the shadow of the courthouse door falls upon it, it insists it was never here, and if a court asks anything about it, it responds: we have nobody who knows anything.” *Welch*, 916 S.E.2d at 331 (internal citations omitted). While Third-Party Defendants argue that moral fraud must present during the pendency of South Carolina litigation, the Supreme Court’s explanation of Atlas

Turner's conduct indicates that Atlas Turner's moral fraud began decades before the Welch case came into being—both in terms of the company's conduct related to the sale of its products *and* its development of a litigation strategy designed to ignore orders of courts that properly exercised jurisdiction over it.

Cape's conduct, like Atlas Turner's, was the product of company policy. Cape, however, was far more ruthless and deliberate than Atlas Turner.

Cape mined and distributed the most dangerous forms of asbestos in a manner far outstripping the damage done by Atlas Turner. Asbestos is a mineral that is mined from the ground.¹¹⁶ There are three commercial types of asbestos: chrysotile, amosite and crocidolite.¹¹⁷ Amosite and crocidolite—which are by far the most harmful to humans—were mined by Cape in South Africa.¹¹⁸ Asbestos fiber is processed at the mines and then sold to manufacturers of asbestos-containing products, such as pipe insulation and brake linings.¹¹⁹

Cape had a near monopoly on the global supply of amosite and crocidolite.¹²⁰ There were fewer than five principal asbestos mining companies world-wide, such as Cape.¹²¹ Unlike the small group of miners, the defendant in *Welch*—Atlas Turner—was one product manufacturer of many hundreds.¹²² Most of the manufacturers of asbestos-containing thermal insulation products in the

¹¹⁶ Robert L. Virta, *Asbestos: Geology, Mineralogy, Mining, and Uses*, U.S. Geological Survey Open-File Rep. 02-149, at 5 (2002).

¹¹⁷ *See Id.*

¹¹⁸ Jock McCulloch, *Surviving Blue Asbestos: Mining and Occupational Disease in South Africa* 115 (2002).

¹¹⁹ Virta at 13.

¹²⁰ Jock McCulloch, *Asbestos Blues: Labour, Capital, Physicians & the State in South Africa* 27 (James Currey 2002).

¹²¹ *Id.* at 30.

¹²² *See, e.g.*, “Asbestos Manufacturers,” The Mesothelioma Center (Nov. 14, 2024), <https://www.asbestos.com/companies/>.

United States filed for bankruptcy, and more than 60 of these companies established trusts to compensate asbestos victims.¹²³

Certain asbestos mining companies, like Cape, were the source of all the amosite and crocidolite asbestos fibers used in South Carolina and the rest of the United States.¹²⁴ Cape was the spigot through which hundreds of thousands of tons of asbestos flowed from its mines to almost 40 states, over 500 individual customers such as Johns-Manville Corp. and Pittsburgh Corning, and to 750 manufacturing plants.¹²⁵ Cape sold asbestos direct to customers in South Carolina, as well.¹²⁶ Cape was aware that its asbestos could ultimately expose people in any of the 50 states, regardless of where the products were manufactured.¹²⁷ Cape is therefore fundamentally different from Atlas Turner, which manufactured a product, spray limpet insulation, from the asbestos fiber it mined and sold that product to customers in the United States, including in South Carolina.

¹²³ Ex. U.S. Gov't Accountability Off., GAO-11-819, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts Highlights* (2011) (report noting that “about 100 companies have declared bankruptcy at least partially due to asbestos-related liability” and that “since 1988, 60 trusts have been established to pay claims”).

¹²⁴ J.S. Harington & N.D. McGlashan, *South African Asbestos: Production, Exports, and Destinations, 1959–1993*, 33 AM. J. INDUS. MED. 321, 323 (1998) (reporting that in the early-1960s North America was a major recipient of South-African amosite and crocidolite exports). Karen Selby, *Mesothelioma in South Africa*, ASBESTOS.COM (Apr. 17, 2025), <https://www.asbestos.com/mesothelioma/south-africa/> (noting South Africa supplied 97 % of the world’s crocidolite and “practically all” amosite and that the mines were owned by companies including Cape Asbestos); *See also, e.g.*, North American Asbestos Corporation, “States Where Suits Have Been Filed and States We Shipped Asbestos To,” at Cape_Receiver_00138819–21; North Am. Asbestos Corp., Customer List, at Cape_Receiver_00138265–282) (Oct. 6, 1976).

¹²⁵ *See id.*

¹²⁶ N. Am. Asbestos Corp., NAAC Sales List, NAAC-ML-025040; Ex. 69.

¹²⁷ Deposition of Richard Gaze at 26, *Yandle v. PPG Indus., Inc.*, No. TY-74-3-CA (E.D. Tex. June 4–5, 1975).

Further, the conduct of Atlas Turner touched people who used or worked around its products. Cape is different—its conduct touched every person who used or worked around **any asbestos-containing product** made by a multitude of manufacturers containing Cape asbestos.¹²⁸

The scale of Cape's asbestos fiber sales into the U.S. market, its indifference to the harm these sales would cause in light of the scope of its unique, early knowledge of the health hazards of asbestos, and the ruthlessness of its campaign to avoid U.S. liability from the raw asbestos fibers it sold to be used in every state in this country—a campaign that continues to this day—provides the foundation for Cape's unparalleled moral fraud.

On this foundation, Cape concocted a scheme to fully conceal assets that could be answerable to U.S. asbestos claimants to whom Cape deemed it has no "moral responsibility" more egregious than Atlas Turner's conduct in terms of its current and past disrespect for the South Carolina judicial system. Rather than appear in South Carolina to answer the *Park* complaint, or to object to the appointment of the Receiver, Cape ignored the existence of the action. Instead of engaging with the U.S. court system, it instituted parallel proceedings in England designed to ensure that if *Park*, any other plaintiff, or the Receiver sought to enforce any future judgment in England, it would be barred from doing so because another court already had considered the issues presented in an un rebutted presentation by Cape. Most recently, to further solidify its position should any party attempt to domesticate a U.S. order in England, Cape and Altrad, both entities within the same corporate group, entered into a settlement agreement to avoid a ruling against Altrad. Altrad's lawyers requested that a proceeding to confirm the appropriateness of that settlement agreement – again a one-sided presentation to an English court –take place before this

¹²⁸ Receiver for Cape PLC's Proposed Amended Third-Party Complaint, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. June 20, 2025).

Court's scheduled trial on the Receiver's third-party action against Altrad. All of these actions are undertaken to avoid enforcement of any judgment against Cape, without the risk of engaging in proceedings in a U.S. court.

Cape's conduct, as documented at length by both the Park Plaintiffs and the Receiver, demonstrate precisely the type of moral fraud – “a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts” – the South Carolina Supreme Court held was sufficient to justify the appointment of a receiver in *Welch*.

c. Analysis of facts related to the danger of Cape's insolvency under S.C. Code § 15-65-10(4)

This Court appointed the Receiver over Cape under S.C. Code §§ 15-65-10(4) and (5). In addition to this Court's finding that Cape's moral fraud was sufficient to justify the appointment of a receiver over Cape under § 15-65-10(5), this Court finds that Cape's financial position renders it in danger of insolvency under § 15-65-10(4). The publicly available information regarding Cape suggests that Cape Intermediate Holdings Limited (“CIHL”) is in danger of insolvency for two reasons.

First, CIHL is in imminent danger of insolvency because it is a non-operating shell company in a corporate structure subject to the full control of an ultimate parent – Altrad Investment Authority S.A.S. – that could eliminate, shift, or move the company at any time. This means that even though CIHL appears to declare an annual dividend each year, those are the profits of another company that are being funneled up the corporate chain to Altrad, and those profits easily could be shielded from plaintiffs. This is how the system was designed.

CIHL is a UK-registered holding company with no employees, physical assets, customer contracts, or operational footprint.¹²⁹ It exists solely as a corporate shell.¹³⁰ Ran Oren, Altrad Investment Authority S.A.S.’s CEO, is the sole officer and director of CIHL.¹³¹ CIHL acts as a pass-through entity for profits of four entities it wholly owns: Cape Insulation Ltd., Cape Industries Ltd., Cape Building Products Ltd., and Altrad Services Ltd.¹³² Importantly, though, the three Cape entities – Cape Insulation Ltd., Cape Industries Ltd., and Cape Building Products Ltd. – are legacy Cape companies that generate no revenue.

Altrad Services Ltd., which became a CIHL subsidiary *after* Altrad purchased Cape in 2017, is the only operational entity in the CIHL structure. In 2024, for example, Altrad Services Ltd. declared a £ 24,769,000 dividend based on its operating profits for that year.¹³³ Because CIHL wholly owns Altrad Services Ltd., that full dividend went to CIHL. CIHL, in turn, did not hold any portion of the dividend itself, but instead declared the full £ 24,769,000 as a dividend to its shareholder.¹³⁴ Because of this, it is unclear whether CIHL holds any funds at all at any given moment – let alone sufficient funds to pay a judgment in the *Park* claim.

Indeed, the CIHL annual reports in the years prior to the Receiver’s appointment demonstrate a shift in CIHL’s ability to pay its own debts. In evaluating CIHL as a going concern, the 2020 Annual Report stated, “the director believes that the company is well placed to manage

¹²⁹ See CIHL Annual Report 3, 12, 14 (2025) (“Cape Intermediate Holdings had no employees in the current or prior year.”); *id.* at 3 (“The Company is a non-trading holding company”).

¹³⁰ See *id.* at 13 (“the director was not remunerated for his services to the Company during the year. No director accrued retirement benefits . . . during the current or previous year. [CIHL] had no employees during the current or prior year.”).

¹³¹ *Id.* at 8.

¹³² See *id.* at 13; see also Altrad Services Ltd. Annual Report 33 (2025); Cape Insulation Ltd. Annual Report 9 (2025); Cape Industries Ltd. Annual Report 9 (2025); Cape Building Products Ltd. Annual Report 9 (2025).

¹³³ See Altrad Services Ltd. Annual Report at 9 (2025).

¹³⁴ See CIHL Annual Report at 7 (declaring 24,769,000 as dividends received for 2024).

its business risks in the coming years.”¹³⁵ The same section in the 2021 CIHL Annual Report, however, relied on Altrad to pay any CIHL debts in order for CIHL to remain a going concern: “The director has a reasonable expectation that [CIHL] will continue in operational existence for the foreseeable future having received a letter of support from [AIA]. This letter confirms continuing support for 12 months from the date of signing of these financial statements. The director has reviewed the resources of [AIA] and have concluded there is sufficient scope and headroom in its resources to adequately support [CIHL] over the next 12 months.”¹³⁶

This is further supported by the Altrad Group financial statements, which establish that CIHL has no money to pay asbestos claims other than a limited claim fund for asbestos claims of certain former Cape U.K. employees – funds that are untouchable for U.S. plaintiffs who sue CIHL for their asbestos-related diseases.

Altrad purchased Cape in 2017. Altrad publishes financial results are part of a “Group” filing of all entities related to Altrad. According to Altrad’s Interim Consolidated Financial Statements dated February 28, 2025, CIHL does not appear to maintain funds to pay any asbestos claims. Instead, Altrad reports only that “Management believes that, assuming no significant deterioration in business performance and no material change in legal precedence or judgments, the Group will be able to fund its subsidiary Cape Claims Services Limited to meet all claims to be settled under the Scheme of Arrangement settlement plan and the Group has sufficient funds to satisfy all other *UK claims* settled outside the Scheme of Arrangement.”¹³⁷

¹³⁵ CIHL Annual Report at 6 (2020).

¹³⁶ CIHL Annual Report at 6 (2021).

¹³⁷ Altrad Grp., Interim Consolidated Financial Statements at 32 (Feb. 28, 2025) (emphasis added).

The Scheme of Arrangement to which Altrad refers is a 2006 court-ordered scheme for the payment of asbestos disease claims from former UK employees of certain Cape subsidiaries.¹³⁸ According to a 2022 annual report, Altrad Group had set aside £118 million to address certain *non-U.S.* historical claims relating to asbestos exposure, but also disclosed AIA's letter of support of it as a going concern.¹³⁹ However, according to an April 2025 news article, "Altrad's spokesperson told *The Times* it had never manufactured or sold asbestos but continues to support Cape's compensation scheme, which has paid over £60m to former employees who developed cancer following asbestos exposure, with a further £70m set aside."¹⁴⁰ This would mean Altrad only has £70m left to pay asbestos claims under the Scheme of Arrangement, and again, that is a restricted fund designed to pay certain UK claimants. A complete lack of clarity exists as to the actual amount of funds available to pay Cape claims as well as whether CIHL actually can access those funds. What is clear, though, is *none* of those funds are intended for U.S. plaintiffs.

CIHL is only funded for a limited period each year – theoretically the time between when Altrad Services pays its dividend and CIHL declares that money fully as a dividend to its parent - and even that structure is subject to change by Altrad at any time. Further, any funds earmarked for payment of asbestos claims by any Cape-related structure are not within CIHL and are limited to certain *non-U.S.* claimants. This narrow definition of future claims, combined with the fact that CIHL is a non-operational holding company, establishes the danger of imminent insolvency for CIHL.

¹³⁸ See *id.*

¹³⁹ Altrad Services Limited Annual Report (2022), at Cape_Receiver_00248438 ("The Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. Where claims are determined to have merit, the costs are provided for and claims are settled in the ordinary course, otherwise claims are defended.").

¹⁴⁰ <https://www.healthandsafetyinternational.com/article/1913269/former-asbestos-firm-offers-victims-3m-gag-clause>

Second, since 1978, Cape has avoided liability to U.S. litigants by refusing to appear in U.S. courts. As demonstrated above, Cape has gone to great lengths to protect itself against these liabilities, including creating a Liechtenstein offshore company. Faced with the possibility that U.S. litigants may now be able to access funds to pay future claims, and given that Cape is not a stand-alone company, but instead is a holding company within a large corporate structure, one should expect that Altrad will do anything to avoid its historical liabilities, including rendering the company fully insolvent. Indeed, Altrad already has informed the Receiver that it has entered into a “settlement agreement” with itself (between two Altrad entities) to release Mohed Altrad from any liabilities not only in *Park* and *Tibbs* but also in every other future U.S. personal injury action against any Cape entity.¹⁴¹

3. Grant of Receiver’s Motion to Enforce Subpoenas Against Insurers

In addition, the Insurers opposed the Receiver’s Motion to Enforce on the contention that the Receiver’s subpoenas requiring production were invalid. Sections 15-9-270 and 38-5-70 of the South Carolina Code, however, allow subpoenas to be served upon insurers registered with the South Carolina Department of Insurance by service on the Department of Insurance as the Insurers’ statutory agent for service of process.

Section 38-5-70 provides in pertinent part that

Every insurer shall, before being licensed, appoint in writing the director and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it must be served and in this writing shall agree that any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon the insurer . . .

¹⁴¹ Cape, Altrad, and Sparrows, Agreement for Full and Final Settlement and Release of Claims (2025).

Section 15-9-270 explains the procedure required for a party to serve an insurance company and if met “[t]his service is considered sufficient service upon the company.” The procedures outlined in sections 15-9-270 and 38-5-70 “were intended by the legislature to be methods of obtaining jurisdiction over a foreign insurance company.” *Equilease Corp. v. Weathers*, 275 S.C. 478, 483, 272 S.E.2d 789, 791 (1980); see also *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 9, 753 S.E.2d 537, 541 (2014) (holding the purpose of sections 15-9-270 and 38-5-70 is “provide an insured with a method to obtain service of process on insurance companies.”).

This Court further relies on the Opinion of the Attorney General, issued November 1, 2022, to Gwendolyn Fuller McGriff, Deputy Director and General Counsel of the South Carolina Department of Insurance, regarding this issue, which states, “It is this Office’s opinion that a court would likely find the language used in S.C. Code §§ 15-9-270 and 38-5-70 is broad enough to include subpoenas within the types of process that are subject to the substituted service procedures thereunder,” and advises the Department of Insurance to “act in accordance with the present broad language of the statute.” Based in part upon the Attorney General’s analysis, I find that the Receiver properly served the subpoenas through the Department of Insurance.

Finally, the Insurers argue that the Receiver’s request for information related to Cape beginning in 1930 is overly broad. Pursuant to the Insurers’ arguments and the Receiver’s agreement, this Court orders that the Insurers must search for and produce all materials related to Cape beginning in 1964 to 1993.

Accordingly, the Receiver's Motion to Enforce Subpoenas is **GRANTED**, and Insurers have until 30 days to provide fulsome responses to the Receiver.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

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

Case Number: 2021CP4002727

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2025-10-10 16:06:55 page 43 of 43

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JOHN A. TIBBS and MARGARET B. TIBBS,
Plaintiffs,
v.
3M COMPANY *et al.*,

Defendants.

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as
successor in interest to ANGLO AMERICAN
CORPORATION OF SOUTH AFRICA LTD.,
et al.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

**ORDER ON ALTRAD DEFENDANTS'
NOTICE OF RECENT SUPREME COURT
AUTHORITY VOIDING THIRD PARTY
LITIGATION, RENEWED MOTION TO
DISMISS AND MOTION TO STRIKE ALL
FILINGS AND ORDERS IN THE THIRD-
PARTY CASE AND THE RECEIVER'S
AND TIBBS PLAINTIFFS' MOTIONS TO
CONFIRM THE APPOINTMENT OF THE
RECEIVER**

This matter came before the Court on (i) Altrad Defendants' Notice of Recent Supreme Court Authority Voiding Third Party Litigation, Renewed Motion to Dismiss and Motion to Strike All Filings and Orders in the Third-Party Case and (ii) the Receiver for Cape and the Tibbs Plaintiffs' Motion to Confirm the Appointment of the Receiver.¹ Having considered the Motions, related memoranda, including all opposition and reply briefing, and all supporting materials submitted to the Court, in addition to extensive argument on August 12, 2025, the Court rules as follows.

¹ Anglo American plc's Motion and associated filings are not being ruled on in this Order because Anglo American plc has settled their case with the Receiver.

PROCEDURAL BACKGROUND

1. Procedural Background of *Park*

a. Park Plaintiffs filed an amended complaint naming Cape

On June 4, 2021, Isabella Park filed a lawsuit asserting personal injury claims arising from asbestos exposure against (among others) Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd. *See* Compl., *Park v. Armstrong Int’l, Inc., et al.*, No. 2021-CP-4002727 (June 4, 2021), at 1, 7. Ms. Park sought relief after being “diagnosed with mesothelioma caused by exposure to asbestos dust and fibers” unintentionally “brought home” for years “as a result of her husband’s work with and around asbestos-containing products.” *Id.* at ¶ 4.

On June 9, 2021, less than five months after her diagnosis, and only five days after filing her lawsuit, Ms. Park died from mesothelioma. On August 4, 2021, Ms. Park’s son, Keith Park, was appointed as representative of Isabella Park’s estate (the “Park Estate”) by the Spartanburg Probate Court. *See* Certificate of Appointment in the matter of *Isabella F.D.R. Park*, Case No. 2021ES4201296, in the Probate Court for Spartanburg, South Carolina (Aug. 4, 2021).

On November 17, 2021, following his appointment as personal representative of Ms. Park’s estate, Ms. Park’s son, Keith, amended the complaint, appearing individually and as personal representative of the Park Estate (the “Park Plaintiffs”), to assert a wrongful death action. *See* First Amended Compl. *Park v. Armstrong Int’l, Inc., et al.*, No. 2021-CP-4002727 (Nov. 17, 2021). The amended complaint named “Cape Intermediate Holdings Limited f/k/a Cape Intermediate Holdings plc, individually and as successor-in-interest to Cape Asbestos Company” and “Cape plc, individually and as successor-in-interest to Cape Asbestos Company” as defendants. *Id.*

On December 23, 2021, Keith Park, again appearing individually and as personal representative of Ms. Park's estate, filed his second amended complaint. *See* Second Amended Compl. *Park v. Armstrong Int'l, Inc., et al.*, No. 2021-CP-4002727 (Dec. 23, 2021). The second amended complaint again named "Cape Intermediate Holdings Limited f/k/a Cape Intermediate Holdings plc, individually and as successor-in-interest to Cape Asbestos Company" and "Cape plc, individually and as successor-in-interest to Cape Asbestos Company" as defendants. *Id.* The second amended complaint added allegations and defendants unrelated to Cape.

b. Park Plaintiffs properly served Cape

In December 2021, the Park Plaintiffs served Cape Intermediate Holdings Ltd. and Cape plc with the First Amended Complaint through an English process server.² Neither Cape entity responded to the complaint. At the time that Cape was served with the complaint, Keith Park remained the personal representative of the Park Estate.

Third-Party Defendants to the *Tibbs* action notified this Court that on August 26, 2022, the Spartanburg Probate Court entered an order closing the Park Estate. It appears from the record that counsel for the Park Plaintiffs only became aware of this closure when the Third-Party Defendants in *Tibbs* raised the matter in filings in this Court. Once counsel were made aware that the estate had been closed, they took immediate steps to have Mr. Park reopen the Park Estate. At the time of this Court's August 12, 2025 hearing, the Park Estate had been reopened.

c. Park Plaintiffs moved to appoint a Receiver over Cape

² The Park Plaintiffs ostensibly served only the First Amended Complaint and not the Second Amended Complaint on Cape because the First Amended Complaint was the complaint that named Cape for the first time in the action. The Second Amended Complaint was not served on Cape, ostensibly because Cape had already been served with an operative summons and complaint identifying the facts relevant to Cape and the claims asserted against Cape, and no such facts or claims were added in the Second Amended Complaint.

On March 6, 2023, the Park Plaintiffs filed a motion for “this Court to appoint a receiver over Cape PLC and its subsidiaries, affiliates, successors, and assigns.” Motion to Appoint Receiver, *Park v. Armstrong Int’l, Inc., et al.*, No. 2021-CP-4002727 (Mar. 6, 2023) (“Appointment Motion”), at 1. The Appointment Motion was made under S.C. Code §§ 15-65-10(4) and (5), on the basis that Cape plc “is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.” and, with “its subsidiaries and affiliates...were and are private companies organized and existing under the laws of the United Kingdom, with its principal place of business in England.” *Id.* Park Plaintiffs provided notice of the Motion to Appoint a Receiver to the Cape entities using international carrier DHL.

The Appointment Motion described Cape’s moral fraud in detail, referencing 34 exhibits from prior litigation that demonstrated Cape’s calculated decision to escape U.S. product liability litigation after decades of sales of raw asbestos fibers into the U.S. market, including specifically into South Carolina, while at the same time continuing sales to U.S. customers through a new Lichtenstein company, but using the same U.S. office and staff to interface with customers. *Id.* at 1-6. As the Park Plaintiffs described, Cape “concocted a scheme to avoid its legal responsibilities to persons injured from using those end products because, startlingly, Cape deemed itself as having—in its own words—no ‘moral responsibility’ to those end users. Rather than defending its conduct in front of juries in the United States, Cape decided to simply accept default judgments in asbestos lawsuits and ultimately flee the country, knowing that nearly all the Company’s assets were in jurisdictions (namely, the U.K., South Africa, and Lichtenstein) where judgments in those lawsuits could not be enforced.” *Id.* at 1-2.

d. This Court appointed Peter D. Protopapas as Receiver over Cape

Based on the Park Plaintiffs’ detailed presentation of Cape’s moral fraud, and specifically Cape’s failure to respond to the Park Plaintiffs’ complaint as was expected by Cape’s course of conduct in U.S. litigation beginning in 1978, this Court appointed Peter D. Protopapas as Receiver over Cape, pursuant to S.C. Code §§ 15-65-10(4) and (5) on March 17, 2023. *Park v. Armstrong Int’l, Inc., et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) (the “Cape Appointment Order”). The Cape Appointment Order granted the receiver “the power and authority [to] fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be.” *Id.* at 1.

2. Procedural Background of *Tibbs*

a. Tibbs Plaintiff sued Cape

On April 5, 2023, John A. Tibbs and Margaret B. Tibbs (the “Tibbs Plaintiffs”) filed a lawsuit asserting personal injury claims arising from asbestos exposure against (among others) “Cape PLC, individually and as successor in interest to Cape Industries Ltd. f/k/a Cape Asbestos Company Ltd. and its subsidiaries and global affiliates.” *See Compl., Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (April 5, 2023), at 1, 7. Mr. Tibbs sought relief after being diagnosed with lung cancer. *Id.* at 1. Plaintiffs alleged that Mr. Tibbs “was exposed to asbestos during the course of his career at various job sites, primarily located in South Carolina and North Carolina. He was also exposed to asbestos fibers carried home on the clothing and person of his father while he also worked as a superintendent of maintenance at various jobsites while Plaintiff John A. Tibbs lived in the family home.” *Id.* at 15. Plaintiffs sued Cape as a “Product Defendant,” alleging that “[a]t all times material hereto, CAPE PLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos/and or

asbestos-containing products, materials, or equipment, including but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina.” *Id.* at 23.

On May 3, 2023, the Tibbs Plaintiffs filed an amended complaint against (among others) “Cape PLC, individually and as successor in interest to Cape Industries Ltd. f/k/a Cape Asbestos Company Ltd. and its subsidiaries and global affiliates.” See First Amended Compl., *Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (May 3, 2023), at 2, 8. Plaintiffs’ claims against Cape remained the same. See *id.* at 17, 28.

b. Tibbs Plaintiffs served Cape’s Receiver, and the Receiver filed a general denial on behalf of Cape.

The Tibbs Plaintiffs served Cape’s Receiver with the Complaint and the Amended Complaint. On June 29, 2023, the Receiver answered the Amended Complaint with a General Denial. See *Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (June 29, 2023).

c. Receiver filed Third-Party Action against Anglo American, De Beers, Charter, and Altrad

Following his appointment in *Park* and his receipt of service of the Complaint and Amended Complaint in *Tibbs*, on June 30, 2023, the Receiver filed a third-party action against, among others, ESAB Corporation, Altrad Investment Authority SAS, and Mohed Altrad. See Third-Party Compl., *Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (June 30, 2023). The Receiver’s third-party declaratory judgment action seeks declarations as to the nature of the relationships among Charter, Central Mining, and Cape; the status of the named Third-Party Defendants as successors to Cape and/or Charter, and Central Mining; and that the Third-Party Defendants were unjustly enriched by their participation in Cape’s scheme.

The Third-Party Defendants filed motions to dismiss and dissolve the Cape receivership after receipt of the Third-Party Complaint. This Court held a hearing on the Third-Party

Defendants' motions on October 25, 2023. On December 6, 2023, this Court, having considered those arguments, denied the motions in a written order. *See Order Denying Certain Third Party Defendants' Motions to Dissolve Receivership, Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (Dec. 6, 2023).

On May 21, 2025, the South Carolina Supreme Court entered an order in a separate receivership over the insurance assets of another entity, Atlas Turner. *See Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (2025). In *Welch*, the Court upheld this Court's appointment of a receiver over the insurance assets of Atlas Turner under S.C. Code § 15-65-10(5), but it narrowed one definition in the order to conform with the insurance-only receivership that this Court had instituted.

ORDERS

1. Validity and effect of reopening Park Estate

Third-Party Defendants complain to this Court that because the Park Estate probate order lapsed on August 26, 2022, nothing done in the *Park* case during that period, including the motion to appoint a receiver, had any effect. In support of that theory, counsel cite this court to *Glenn v. E.I. DuPont de Nemours & Co.*, 254 S.C. 128, 134, 174 S.E. 155, 158 (1970) as well as *McCullar v. The Estate of Dr. William Cox Campbel*, 381 S.C. 205, 672 S.E.2d 784 (2018). Those cases addressed whether a wrongful death lawsuit could move forward when a personal representative of an estate had not been appointed. That is not the case here.

Here, Isabella Park brought suit against Cape. Following her death, Keith Park was properly appointed and filed two amended complaints, each time naming Cape. Mr. Park filed these complaints while the Park Estate was open. While it is true that the Park Estate lapsed, this Court finds that the Park Estate was validly reopened on July 30, 2025. Pursuant to South Carolina

Code § 62-3-701, the authority of the Personal Representative relates “back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter.”

A personal representative, pursuant to the Code, “may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.” *Id.* The reporter’s comment to S.C. Code § 62-3-701 observes that “the authority of the personal representative relates back to death and stems from his appointment,” and that “[t]he personal representative may ratify acts done by others prior to appointment.”

Therefore, all actions taken by or on behalf of the Personal Representative for the Park Estate, including service of the first amended complaint on Cape, the Park Plaintiffs’ motion to appoint the Receiver over Cape, and this Court’s order appointing the Receiver over Cape in the *Park* matter are valid.

2. Validity of the appointment of the Receiver for Cape and its authority to bring the third-party action in *Tibbs*

a. Validity of the Park Estate

Third-Party Defendants in *Tibbs*, Altrad Investment Authority S.A.S. (“Altrad”) and ESAB Corporation (“ESAB”) (together, “Third-Party Defendants”) argue in their Motions to Dismiss the Third-Party Complaint and Dissolve the Cape Receivership and in their Oppositions to the Receiver’s Motion to Confirm Appointment of Receiver in *Tibbs* that the Receiver’s Third-Party Complaint must be dismissed because the lapse of the authority of the Park Estate personal representative makes the Receiver’s appointment a nullity.

For the reasons set forth above, pursuant to South Carolina Code § 62-3-701, the authority of the Park Estate Personal Representative relates “back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those

occurring thereafter.” As a result, this Court finds that the Park Estate Personal Representative relates back to the time that this Court appointed the Cape Receiver on March 17, 2023; therefore, Mr. Protopapas had the authority to bring the Third-Party Complaint in *Tibbs* on June 30, 2023.

b. Analysis of alleged moral fraud on behalf of Cape

Third-Party Defendants in *Tibbs* argue that the Cape Receivership should be dissolved, or that the Motion to Confirm the Appointment of the Receiver should be denied, because the Court did not find that Cape engaged in moral fraud sufficient to appoint a Receiver under S.C. Code § 15-65-10(5). Likewise, the South Carolina Supreme Court Order in *Tibbs v. 3M Company*, Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052 remanded the cases to this Court and directed the Court to ensure that the Cape Receivership Order “is based on findings of fact sufficient under *Welch* to justify the order.” Slip Op. at 4 (June 26, 2025).

This Court has evaluated the alleged moral fraud of Cape based on information received from two sources: (1) Plaintiff’s original Motion to Appoint the Receiver over Cape, filed on March 6, 2023 in *Park*, and (2) the Receiver’s Report, filed on July 11, 2025 in *Tibbs*.³ This Court finds the following facts, as presented by Plaintiffs and the Receiver, respectively, constitute moral fraud sufficient to appoint a Receiver under S.C. Code § 15-65-10(5):

1. Moral fraud facts as presented in Plaintiff’s March 6, 2023 motion

³ Having considered the timing of Plaintiffs’ presentation of the initial moral fraud facts prior to the appointment of the Receiver, the exhibits to which are not marked Confidential and appear to be Bates labeled and contain exhibit stickers from prior litigation; and the information provided by the Receiver in his Report of July 11, including that certain exhibits attached to the Report that contained communications between lawyers and their clients were obtained from an archive of materials from the University of Strathclyde in Glasgow, Scotland, this Court finds that all facts contained in Plaintiff’s Motion and the Receiver’s Report, on which this Court relies in the following recitation of facts, were obtained from publicly available sources.

a. Cape establishes American presence and operations through NAAC

At its peak, from mines in Apartheid-era South Africa, Cape produced approximately 90%⁴ of the world's supply of amosite asbestos, including asbestos imported and used in South Carolina.

For the "purpose of expediting and facilitating the movement" of asbestos from South African mines, on October 14, 1953, Cape Asbestos Company Ltd. (a U.K. entity) established the North American Asbestos Corporation ("NAAC"), a direct subsidiary that was part of the Company's "mining division" and domiciled in Illinois.⁵ NAAC had both marketing and distribution roles: (i) serving as Cape's sales agency in the United States, with sole authority to offer Cape products and responsibility for transmitting information about customer needs to Cape mines, and (ii) ensuring proper distribution of asbestos products and that shipments from Africa made it "all the way through to the customer's plant," including, on information and belief, to

⁴ *Hammond v. North American Asbestos Corp.*, 454 N.E. 2d 210, (Ill. 1983)(confirming that Cape Asbestos supplies 90% of the world's supply of amosite asbestos and virtually the sole supplier of longer fiber grades).

⁵ See NAAC's Answers to Plaintiff's Requests for Production in *Paello v. Johns Manville Corp.*, in the District Court for Boulder County, Colorado, Case No. 80-cv-0089-2 (describing NAAC's history); CAPE000177, List of Cape Divisions (identifying NAAC as the sole U.S.-based entity of the Cape mining division); Letter from NAAC President C. Morgan to President of C-X Products Corp., Sept. 26, 1973, CAPE000869 (describing NAAC as "a division of Cape Asbestos Co. Ltd., with corporate offices in London").

plants in South Carolina or through South Carolina ports.⁶ NAAC “effect[ively] . . . put the Mines at every U.S. port”⁷ and by 1970 was the “largest U.S. importer of Amphibole Fibres,” which were “re-distributed from . . . warehouse locations in East Coast, Gulf Coast and West Coast Ports.”⁸

Over its history, NAAC was “essentially a one-man operation” consisting of one salesman supported by four office clerical personnel (overseen by a board of directors made up of largely of Company lawyers or other Cape executives, until all Cape officials resigned in 1975 as a “sensible precaution” in light of U.S. litigation).⁹ In coordination with the global Cape network, however, NAAC sold asbestos to Cape’s numerous American-based clients, including, but not limited to, the U.S. Government, Keene Corporation (f/k/a Baldwin-Ehret-Hill), Carey, Fibreboard, GAF (f/k/a Ruberoid), Owens Corning, Johns-Manville and Pittsburgh Corning.¹⁰ These companies were giants among asbestos product manufacturers, and on information and belief, their products

⁶ See Letter from Cape Director to Lord Bissell & Kadyk, Oct. 6, 1953, CAPE000263–66 (describing intended business of NAAC, including that the company would receive a 2.5 percent commission or work on behalf of the Cape mining companies, “it being made clear that [NAAC] will have no authority to negotiate or make contracts, but shall act as a source of information and provide general assistance to the South African business”); Letter from Cape Group General Counsel A.J. Penna to Max Meyer of Lord Bissell, July 15, 1975, CAPE000333 (informing Cape’s U.S. lawyer, “we feel that it would be a sensible precaution against Cape involvement in any future proceedings for [Cape’s executives] to resign from the N.A.A.C. Board and I accordingly enclose their resignation letters”); NAAC Appointment Announcement, CAPE000729 (describing NAAC as “specialize[d] in marketing and distribution of Blue and Amosite asbestos in the United States, Canada, Mexico and the Caribbean”); NAAC Internal Memorandum dated Oct. 27, 1969, CAPE000988–89 (describing customer services).

⁷ NAAC Internal Memorandum dated Oct. 27, 1969, CAPE000988–89

⁸ Cape Newsletter, No. 5, No. 12, Dec. 1970, CAPE000878–79 at 1.

⁹ See NAAC’s Answers to Plaintiff’s Requests for Production in *Paello v. Johns Manville Corp.*, in the District Court for Boulder County, Colorado, Case No. 80-cv-0089-2 CAPE000110–12 (describing NAAC’s lean staffing); Letter from J. Holtze (NAAC Secretary) to J. Morris, Group Chief Management Accountant of Cape Industries Ltd., Dec. 3, 1975, CAPE001514 (“Despite the volume of sales and profits of NAAC, our operation is a very small one, with only a total of 5 employees”); The Cape Asbestos Company Limited Notification of Subsidiary’s Particulars for NAAC, CAPE001528 (identifying six directors in 1970).

¹⁰ Letter from R. Cryor, President of NAAC, to R. Gaze of Cape, July 8, 1969, CAPE000994–95.

were used extensively in South Carolina. In addition, NAAC tried to influence public and corporate opinion about the safety of asbestos, including, but not limited to, rebutting emerging medical critiques of its safety.¹¹ Cape Asbestos, moreover, dominated NAAC's decision-making, with NAAC, for example, unable to "borrow one dollar without [Cape Asbestos's] approval" and routinely forced to withdraw cash from the United States to pay dividends to Cape Asbestos (minimizing the assets on NAAC's balance sheet).¹²

b. Cape accepts default judgments and liquidates NAAC to evade claimants

After the onset of asbestos-related product liability litigation in the 1970s, Cape became especially concerned with its own liability.¹³ Thus, Cape Asbestos went through tortured

¹¹ See, e.g., Letter from R. Gaze, Cape Chief Scientist to C. Morgan, NAAC President, July 7, 1977, CAPE000130 (discussing prioritizing efforts of Asbestos International Association to "organise a body of medical opinion that is prepared to stand up" to critical opinions).

¹² See, e.g., Letter from C. Morgan, NAAC President, to M. Meyer, Cape U.S. Lawyer, Feb. 25, 1976, CAPE001507 ("If I interpret this correctly, we are not entitled to borrow one dollar without [Cape's] approval, which would severely limit NAAC's management flexibility to extend credit to customers, maintain warehouse stocks and make prompt monthly payments to [Cape]" to meet dividend requirements); Letter from R. Dent of Cape to R. Cryor of NAAC, Apr. 13, 1959, CAPE000261–62 (1959 letter suggesting that Cape was "extremely cautious" in picking NAAC personnel who would "fit into [the Company's] scheme of things . . . without causing embarrassment all around"); NAAC Annual Board Meeting Minutes, April 23, 1976, CAPE000816 (showing payment of \$250,000 dividend "which may be paid in monthly installments on or before December 1, 1976 to shareholders of record on June 1, 1976); Letter from R. Cryor of NAAC to Malcom Reid of Cape, Dec. 28, 1956, CAPE000931–32 (stating in 1956 that NAAC "think[s] of ourselves as being part of a coordinated group with responsibilities to the whole, even though this may mean subordinating other and more profitable interests of NAAC," and expressing offense at being called "commission agents," which "implies an independent, lack of responsibility, and an emphasis on local self-interest").

¹³ See, e.g., Letter from Cape's U.S. Lawyers at Lord Bissell to A.J. Penna, Cape General Counsel, Oct. 3, 1975, CAPE000351–56 (detailing "the objective under consideration," which was "an attempt to limit NAAC's and Cape's exposure to future United States litigation," in a six-page letter, with section headings including "INSURANCE," "STATUTE OF LIMITATIONS," "NAAC LIQUIDATION," "REPLACEMENT FOR NAAC," and "ENFORCEMENT of U.S. JUDGMENTS BY FOREIGN COURTS").

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.¹⁴

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, 2022.¹⁵ 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."¹⁶

¹⁴ See Letter from C. Morgan of NAAC to S.M. Dougherty, of Cape's South African Mining subsidiary, Cape Asbestos South Africa (Pty.) Ltd., Feb. 2, 1978, CAPE000123 (NAAC discouraging Cape visits to the U.S. in 1978 or else negate "maneuvers" related to "continued problems with product liability litigation"); Letter from R. Gaze, Cape Chief Scientist, to C. Morgan, NAAC President, July 4, 1975, CAPE000152 (suggesting to "disassociate the Parent Company as fully as possible from the operating companies," and noting, "It would I think be as well for this letter not to appear on the office file and so I am sending it to your home"); Letter from R. Gaze, Cape Chief Scientist, to C. Morgan, NAAC President, June 20, 1975, CAPE000154 (raising whether to "do something to change the identity of NAAC in order to avoid exposing the company unnecessarily," while doing "everything possible to maintain a successful selling operation in the United States," and therefore requesting that Morgan reduce physical inventory at the NAAC warehouse, again sent to Morgan's home address); Letter from M. Meyer, Cape's U.S. Lawyer, to R. Dent of Cape, May 6, 1974, CAPE000166–67 (suggesting that "no one from Cape be an officer of NAAC since we want it to be as independent as possible **in order to avoid any contention that it is the alter ego of Cape** and that Cape is doing business in the United States" (emphasis added); Letter from Cape Group General Counsel A.J. Penna to Max Meyer of Lord Bissell, July 15, 1975, CAPE000333 (stating "that it would be a sensible precaution against Cape's involvement in any future proceedings for [Cape personnel] to resign from the N.A.A.C. Board," and enclosing resignation letters).

¹⁵ See Letter from Lord Bissell to T. Penna, Cape General Counsel, March 6, 1978, CAPE000550–51 (opining in 1978 "that it is most unlikely that any plaintiff would bother to pursue collection of any default judgments against Cape"); Telex from Lord Bissell, Cape's U.S. lawyers, to A.J. Penna, Cape General Counsel, March 7, 1979, CAPE000702 (confirming receipt of correspondence stating that "U.K. and South African lawyers confirm that any resulting judgments will not be enforceable against Cape's U.K. and South African assets" and that "the potential loss of all NAAC's outstanding assets is not material in the Cape Group context").

¹⁶ Piercing the Corporate Veil: Cape Industries and Multinational Corporate Liability for a Toxic Hazard, 1950-2004; Tweedale and Flynn, Enterprise & Society, June 2007, Vol. 8 No. 2 at 268-296 (1977 letter from Cape's counsel).

Ultimately, to avoid paying damages to workers whom were made sick or died as the result of using its asbestos, Cape resolved to liquidate NAAC, effective January 31, 1978.¹⁷ Existing debts of NAAC were paid, with remaining assets transferred upstream to NAAC's direct parent company at the time, Cape Industries Overseas Ltd. (a U.K. entity wholly owned by Cape Industries Ltd.).¹⁸ NAAC's liquidation was central to Cape's litigation-avoidance strategy, based on legal advice that no British or South African court would enforce a judgment against a Cape entity if it never appeared again in the United States.¹⁹

Yet, Cape continued to contemplate schemes to facilitate the sale of asbestos to U.S. customers while minimizing its product-liability risk.²⁰ For example, Continental Products Corporation (using the same physical address as NAAC in Chicago, Illinois) was formed to "act as a commission agent for the future sales of asbestos from South Africa" in the United States, with South African mines selling to a new Lichtenstein subsidiary called Associated Mines

¹⁷ See, e.g., Letter from J. Holtze of NAAC to J. Sparkes, Group Financial Controller of Cape Industries Ltd., Apr. 19, 1978, CAPE001035 (noting "[o]fficially, North American Asbestos Corporation closed on January 31, 1978" and requesting Cape Asbestos official to stop sending accounting memoranda to former NAAC officials, "for safety's sake," as "we are not supposed to be receiving any main that would tie us to Cape after the January 31, 1978 deadline").

¹⁸ See Lord Bissell Internal Memorandum dated Aug. 24, 1979, CAPE000593 (noting "[a]fter payment of NAAC's debts, it is intended that the assets of NAAC will be distributed to NAAC's sole shareholder," identified as "Cape Industries Overseas Ltd.").

¹⁹ See, e.g., Letter from S. Milwid of Lord Bissell to A.J. Penna, Cape General Counsel, Dec. 23, 1975, CAPE000141-43 (advising Cape on default-judgment risk); Telex from S. Milwid of Lord Bissell to A.J. Penna, Cape General Counsel, May 24, 1978, CAPE000566 (agreeing that it would be in the "best interests of Cape companies other than NAAC" to make "no response" to litigation); Confidential and Work Product Memorandum from S. Milwid of Lord Bissell to E. Burkholder of Lord Bissell regarding Deposition of Geoffrey A. Higham (Cape executive), Nov. 28, 1984, CAPE000617-19 (summarizing 1984 deposition testimony regarding litigation strategy, and concluding, "[o]n the whole, from my review of this Abstract, it does not appear that Walker, in the 89 pages of the deposition, uncovered very much, particularly pertaining to the decision for the dissolution of NAAC").

²⁰ See, e.g., Memorandum to File, Dec. 12-14, 1977, Cape Industries London, CAPE000728 (1977 meeting memorandum "to discuss liquidation of NAAC and formation of new off-shore company to service North American market")

Company, which in turn sold asbestos to the United States under its own invoices.²¹ The express “purpose of this corporate arrangement [was] to eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to lawsuits brought against it under theories of strict liability concerning products liability on the sale of asbestos in the United States.”²²

2. *Moral fraud facts as presented in the Receiver’s report*

On July 11, 2025, the Receiver submitted a report to this Court in *Tibbs* detailing the results of research performed into the moral fraud of Cape. *See Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (July 11, 2025). The Receiver’s detailed presentation covered much of the same ground as was presented in the Park Plaintiffs’ Appointment Motion, supplemented with information the Receiver uncovered through his detailed investigation into Cape and its affiliates in carrying out his charge to marshal the assets of Cape. Because of the significant overlap between the Receiver’s report and the Park Plaintiffs’ factual recitation, the Court recounts the facts the Receiver presented in its July 11 Report related only to four categories: (1) Cape’s concealment its early knowledge of asbestos health hazards from U.S. customers, (2) Cape’s suppression of a 1962 report of the South African Pneumoconiosis Research Unit (“PRU”), (3) Cape’s creation of

²¹ Lord Bissell Memorandum dated April 7, 1978, CAPE000386 (also noting “Gerry Morgan [former NAAC President, now CPC President] was in Mexico City in January of this year and is supposed to have explained the new corporate arrangement to the Eureka group of companies’ officers”); *see also* Announcement of Continental Products Corporation, CAPE000531 (introducing Continental Products Corporation as “Agent to handle the North American requirements for Amosite and Crocidolite asbestos fibre,” and noting “our location will be the same as the former North American Asbestos Corporation,” and that “[a]lthough operating as a new organization, bot Joan Holtze and myself will endeavor to maintain the same service to our many customers and friends as offered at North American Asbestos Corporation.”).

²² Memorandum from A. Sarabia of Lord Bissell to M. Meyer of Lord Bissell, Jan. 23, 1978, CAPE000377–79.

a fake Lichtenstein company to continue its sales of asbestos to the U.S. market following the closure of NAAC, and (4) information related to Cape's modern moral fraud.

i. Cape obtains early knowledge of asbestos dangers from disease in its own manufacturing plants and lies about that knowledge to its U.S. customers

From the time that Cape started selling asbestos in the United States, it already had unique knowledge of the health hazards of asbestos as compared with any customer or consumer in the United States. Cape's own documents, combined with witness testimony, scientific data, and general historical knowledge, confirm this disturbing fact. Cape knew the asbestos it sold was dangerous while its customers usually did not.

In 1953, immediately before Cape opened its NAAC sales operation in Chicago,²³ Cape published an 85-page brochure describing the company's origin, organization and operations.²⁴ Cape diagrammed its operations in the brochure.²⁵ Cape had four principal groups under its head London office: branch selling offices (NAAC joined this branch when Cape formed it later the same year), UK product manufacturing factories, miscellaneous "English subsidiary companies," and overseas subsidiary companies.²⁶ Every one of these operations involved the exploitation of asbestos as a commercial raw material, from mining, to processing into finished products, to the sale of the fiber overseas.²⁷ The "overseas" companies, according to the diagram, were the asbestos

²³ Prior to 1953, Cape used an "agent" in New York City to assist in marketing to U.S. buyers. See Letter from R. Dent to Lord Bissell (Sept. 18, 1953) ("We have recently discontinued our representation in America, which has hitherto been carried on in New York by Mr. A.W. Koehler, who runs a small selling agency, in which we were by far the largest of his principals.").

²⁴ *Cape asbestos, the story of the Cape Asbestos Company Limited, 1893-1953*.

²⁵ *Id.* at 50.

²⁶ *See id.*

²⁷ *See generally id.*

mining operations in South Africa.²⁸ Cape noted that it would dispatch executives from London to "control [] the whole of Cape's operations in that country," meaning, South Africa.²⁹

Cape Asbestos Company began advertising its asbestos for sale in the United States in 1920. It advertised mainly in *Asbestos Magazine*, which was a monthly trade journal published in Philadelphia, Pennsylvania, and circulated nationally from 1919 to 1983. Cape advertised in virtually every issue until 1978—almost 600 issues. At the same time Cape began selling asbestos to U.S. customers, it developed first-hand knowledge about the dangers of asbestos exposure. In the early 1900s, workers at its Barking Plant in London began developing asbestosis, a noncancerous but often fatal lung condition.³⁰

Among other products, Barking manufactured a pre-formed pipe and block insulation named “Caposite”.³¹ Anthony Mendelle (who was deposed in 1984) was the Plant Manager at Barking from 1960 to 1968, following his work as the Production Manager at the same plant from 1956 to 1960.³² Mendelle saw first-hand the effects of asbestos exposure on plant workers—the plant had a "running total" of about 60 asbestosis cases a year, and more ominously, workers were also contracting mesothelioma, an incurable cancer of the lining of the lung that is usually fatal within a year of diagnosis.³³ Mendelle was instrumental in the closure of the Barking Plant because of the number of workers dying from exposures at the Plant.³⁴ Mendelle testified that Caposite was

²⁸ See generally *id.*

²⁹ *Id.* at 56.

³⁰ *Cape Asbestos, the story of the Cape Asbestos Company Limited*, 1893-1953, at 50, 62; Cape Inquests (1929-1938) (summaries of coroner inquests revealing early recognition of asbestos-related worker deaths at Cape’s U.K. facilities.).

³¹ *Cape Asbestos, the story of the Cape Asbestos Company Limited*, 1893-1953, at 62.

³² Deposition of Anthony Mendelle at 3, *Smith v. Pittsburgh Corning Corp.*, Nos. GD81-20383 & GD81-20381 (Pa. Ct. Com. Pl. Allegheny Cnty. Nov. 13, 1984).

³³ *Id.* at 11.

³⁴ *Id.* at 48-49.

a "major department" at Barking.³⁵ Caposite was made with 100% amosite asbestos.³⁶ Other operations used the two other types of asbestos, crocidolite and chrysotile.³⁷

It is here that two principal antagonists enter the Cape story—Richard Gaze and Walter Smithers. Smithers was the Barking Plant doctor starting in 1956 and was still working for Cape as of 1984, when Mendelle was deposed.³⁸ Richard Gaze worked at Barking from 1943 to 1963.³⁹ After 1963, Gaze rose to become the "Chief Scientist" at Cape and held senior management roles across the entire Cape asbestos operation for many years.⁴⁰ These included membership on the Board of Directors of numerous Cape asbestos subsidiaries.⁴¹ The minutes of a "special meeting of the board of directors of the North American Asbestos Corporation" held on April 7, 1970, note that "[t]he chairman reported that Dr. Richard Gaze of Cape Asbestos, Ltd will have direct responsibility on behalf of the parent company for the operations of North American Asbestos Corporation."⁴²

Mendelle testified that Cape knew about asbestos and mesothelioma at Barking—because workers were dying of both asbestos-related diseases in the 1950s.⁴³ Mendelle, Gaze and Smithers discussed mesothelioma and asbestosis at Barking, and that low exposures could cause mesothelioma.⁴⁴ Mendelle testified that "we knew there was an association" between amosite and

³⁵ *Id.* at 40.

³⁶ *Id.* at 37.

³⁷ *Id.* at 41-42.

³⁸ *Id.* at 5.

³⁹ *Id.* at 7. The evidence in this case will place Gaze and Smithers squarely at the center of Cape's efforts to exploit asbestos for profit, to mislead others about the dangers of asbestos, and to hide what Cape actually knew about effects of asbestos exposure.

⁴⁰ *Id.* at 6.

⁴¹ *Id.*

⁴² NAAC Special Meeting Minutes (April 7, 1970).

⁴³ Deposition of Anthony Mendelle at 11-12, *Smith v. Pittsburgh Corning Corp.*, Nos. GD-91-20838 & GD81=20381 (Pa. Ct. Com. Pl. Allegheny Cnty. Nov. 13, 1984).

⁴⁴ *Id.* at 11-12, 69.

mesothelioma well before a seminal article on asbestos disease was published in 1965 by Dr. Muriel Newhouse.⁴⁵ Newhouse spent time at Barking, and much of her data for the article came from her time investigating disease at the plant.⁴⁶ Mendelle said that he and Newhouse had numerous conversations about amosite as a cause of mesothelioma at Barking.⁴⁷ Mendelle was asked if workers in the Caposite operation—which used only amosite, as noted above—had developed mesothelioma, and he said “yes, many.”⁴⁸ Mendelle acknowledged that all three types of asbestos were used at Barking, and that the workers may have worked in departments other than the main Caposite operation.⁴⁹

Despite this knowledge, Dr. Gaze repeatedly told Cape's customers that “it is a fact that not one authenticated case of mesothelioma has been associated with amosite anywhere in the world.”⁵⁰ This letter was passed on to the President of one of Cape's major amosite customers in the United States—Robert Buckley, of Pittsburgh Corning Corporation—and in his reply to Dr. Gaze, Mr. Buckley wrote: “. . . from your letter, I am assured that no customer's worker need be concerned about mesothelioma.”⁵¹ In a memorandum to over twenty managers and sales personnel at Cape along with Dr. Gaze, the Cape Sales Director gave advice to the addressees of the memorandum “who are faced with questions on the possible dangers of to health involved in the use of asbestos based materials.”⁵² The Sales Director repeated exactly what Dr. Gaze wrote to Mr. Buckley at Pittsburgh Corning, noting first that Cape's Caposite line of products made solely

⁴⁵ *Id.* at 56-57; Muriel L. Newhouse, *Asbestos in the Workplace and the Community*, 16 Ann. Occup. Hyg. 97 (1973).

⁴⁶ Mendelle Deposition, *supra*, at 58.

⁴⁷ *Id.* at 56-57.

⁴⁸ *Id.* at 66.

⁴⁹ *Id.* at 68.

⁵⁰ Letter from Gaze to Cryor (March 22, 1966) (emphasis in original).

⁵¹ Letter from Buckley to Gaze (March 30, 1966).

⁵² Letter from Galloway (Aug 19, 1966).

with amosite “are now our principal asbestos products,” the Sales Director then stated that “not one case of mesothelioma [has been] associated with amosite asbestos.”⁵³ Dr. Gaze later died from mesothelioma.

- ii. *Cape’s suppression of a 1962 Report involving its mining operations in South Africa that shows mesothelioma incidence from mining asbestos or living near asbestos mines.*

Cape had been mining asbestos in South Africa for over 50 years when it created NAAC. Scientists began seeing sporadic cases of the disease “mesothelioma” (also called “endothelioma” or “pleural sclerosis”) in the late 1940s and early 1950s. But it was a young pathologist from South Africa who first recognized the relationship between asbestos exposure and mesothelioma. Dr. Chris Wagner was appointed by the South African Government in 1954 as a research fellow to the Pneumoconiosis Research Unit (PRU) in Johannesburg. He took an interest in mesothelioma, visiting the Cape asbestos mines in South Africa, and then meeting with management officials at Cape and another asbestos mining company (Turner and Newell) in London where he was “assured . . . that I was following a line of research which seemed to them to be of little value, and that I would be advised to follow other lines of investigation.”⁵⁴

Dr. Wagner reported a series of 33 mesothelioma cases in South African mine workers, and in people living near the mines, at the 1959 Pneumoconiosis Conference in Johannesburg. The formal scientific paper was published in 1960.⁵⁵ Wagner's investigation triggered the PRU to investigate mesothelioma at the South African asbestos mines.⁵⁶ Cape and other mining companies

⁵³ *Id.*

⁵⁴ Letter from Christopher Wagner to Cape (November 30, 1994).

⁵⁵ *Id.*; see also Wagner, J.C., Sleggs, C.A., and Marchand, P, *Diffuse Pleural Mesothelioma and Asbestos Exposure in the North West Cape Province*, Br. J. Ind. Med. 17:260-65 (1960).

⁵⁶ Memo from Gear re: Proposed Study of Mesothelioma in South Africa (Nov. 29, 1960).

partially financed the study, which meant the mining companies were copied on all reports and had input on designing study parameters.⁵⁷

The investigators saw troubling indications of disease soon after the study began.⁵⁸ An October 6, 1961 memorandum of the PRU noted that it discussed early results with the “asbestos industry”—Cape, and others—and that the results showed that the incidence of asbestosis amongst miners and the ordinary population was “alarmingly high,” and further that the incidence of mesothelioma, “although perhaps not large in terms of actual numbers—is very high from an epidemiological point of view.”⁵⁹ On April 30, 1962, the PRU memorialized its findings, recording mesothelioma numbers that startled researchers: “[a]n alarmingly high number of cases with mesothelioma of the pleura has been discovered in people who live or have lived in the North Western Cape and that there is evidence to suggest that this condition is associated with an exposure to asbestos dust inhalation which again need not be industrial.”⁶⁰ In other words, mesothelioma occurred not only in miners, but also in the general population that lived near the asbestos mines.⁶¹ The investigators revealed that they were aware of 90 cases of mesothelioma, but they theorized that more cases existed that the study failed to capture due to its methodology.⁶²

The preliminary results were equally alarming to Cape. Soon after Cape saw the October 1961 PRU results, it dispatched Dr. Smither to South Africa for an “investigation” even before the more detailed April 1962 report was circulated. The Receiver has located the 48-page report that Dr. Smither prepared for the company on his return from South Africa.⁶³ The report opens:

⁵⁷ *Id.*

⁵⁸ Letter from Naude to Diederichs (Oct. 6, 1961).

⁵⁹ *Id.*

⁶⁰ PRU Preliminary Report (April 30, 1962).

⁶¹ *Id.*

⁶² *Id.*

⁶³ Smither, *Visit to South Africa* (August 1962).

[a]s a result of a decision taken at a meeting between Dr. R Gaze, Dr. J McKeurtan and myself at Park Street, London, on 31st October 1961, I was sent by the company to South Africa. My terms of reference were to study all aspects of mesothelioma and asbestosis reported in South Africa on medical matters, and generally to learn as much as possible about conditions in the industry in that country.⁶⁴

The Smither report is notable for several conclusions, but a few stand out. Dr. Smither (a physician) recommended that, despite the "alarming" conclusions that the PRU researchers had come to:

[m]y recommendation would be that the company should not support any future wide ranging survey of the industry with a view to discovering either asbestosis or mesothelioma. The reason for this is that the company is well aware of the problem and has some idea of its extent.⁶⁵

At that point, Cape's support for the PRU ended.⁶⁶ Smither aligned with Dr. McKeurtan—the top executive over Cape's mining subsidiaries in South Africa—who was "vigorously attacking" the conclusions of the PRU researchers.⁶⁷

Another document the Receiver discovered shows the scope of Cape's assault on the PRU study. In a letter from L.G Walters, the Director of the PRU, to M. F. Baxter at the South Africa Council for Scientific and Industrial Research, Walters addresses a memorandum of the "asbestos producers committee."⁶⁸ Cape was a member of that committee.⁶⁹ Walters quotes from the "committee memorandum" in which it critiques the PRU investigation: "The whole survey appears

⁶⁴ *Id.* at 2.

⁶⁵ *Id.* at 34.

⁶⁶ *See, e.g., id.*

⁶⁷ *Id.* at 35.

⁶⁸ Letter from Walters to Baxter (July 19, 1962).

⁶⁹ *Id.* at 2 (the letter reveals Cape's membership by noting that the committee "recently brought their London Branch Medical Office (Dr. Smither) to this country to investigate the problem on their behalf.").

to have been undertaken with the underlying object of implicating crocidolite asbestos as being directly responsible for the comparatively rare tumor known as mesothelioma of the pleura."⁷⁰

Walters noted that Smither identified 10 additional cases of mesothelioma during his visit to the Cape Prieska mine during his visit.⁷¹ Smither's 48-page report notes that a local doctor named "Van Rooyen" was caring for "10 cases among colored people of what he now calls the 'Prieska picture.'"⁷² Smither advocated for removing the patients to Johannesburg for "investigation."⁷³ Dr. Smither's recommendation was not medical or altruistic. He wrote in his Report that:

the advantage from the standpoint of the company is that these cases will be treated as a group, will be removed from the area of the conflict, if one may call it that, and will be taken some hundreds of miles away.⁷⁴

Smither went on to note that this move would bring "less attention from the politicians."⁷⁵ Dr. Smither was covering up the health hazards of Cape's asbestos by hiding Cape's victims.

Dr. Matthys van Rooyen—the local Prieska doctor caring for 10 mesothelioma patients—was deposed in 1996.⁷⁶ He testified that Cape periodically dispatched "executives" and doctors (presumably, Smither) from London to visit asbestos mines in South Africa.⁷⁷ Dr. Van Rooyen testified that he tried to warn Cape about the dangers of asbestos exposure, but met a chilly response: "I experienced opposition[] . . . whenever we talked about asbestos as a danger, people

⁷⁰ *Id.* at 2.

⁷¹ *Id.*

⁷² Smither, *Visit to South Africa* (August 1962) at 11-12.

⁷³ *Id.*

⁷⁴ *Id.* at 13.

⁷⁵ *Id.*

⁷⁶ Deposition of Dr. Matthys van Rooyen, *In re Asbestos Personal Injury Cases, Arrington Lead*, No. 93-9-114 (Ms. Cir. Ct. Jones County, 1996).

⁷⁷ *Id.* at 135.

saw us as dangers . . . we had a lot of opposition from these people. But very definitely, from the chief executives of Cape Blue Mines.”⁷⁸

Dr. Van Rooyen's interest in mesothelioma began in 1957 then he wrote an article discussing two mesothelioma cases for the *South African Medical Journal*, explicitly attributing them to Prieska's blue-asbestos dust.⁷⁹ He then screened the community—miners and civilians alike—by taking thousands of chest X-rays and even persuaded the Pneumoconiosis Bureau to dispatch a mobile radiography unit to Cape's Prieska mine.⁸⁰ Determined to force action, he armed South African parliamentary member A.H. Stander with data and a speech describing Cape's mill as “spraying asbestos fiber” over the town, thus placing the issue before Parliament.⁸¹ These uncompromising interventions—and the frank discussions he had with Cape managers—made him a “pest,” as Dr. Van Rooyen described the situation, in Cape's eyes.⁸²

Cape retaliated against Dr. Van Rooyen. According to Van Rooyen's sworn deposition testimony, Cape threatened his livelihood:

Q: Was there any discussion about other doctors coming to Prieska?

A: That was one of the threats used very regularly. Now, why do I call it a threat? If you live in an area where you have a population of 16,000, there are two doctors there. They are still fit, and they can work hard. They do work. And if you take away a quarter or more of their practice by introducing a doctor or more in that area, you can definitely break them. And that is -- so that threat was used to me, personally, on more than one occasion. I don't accept it nicely, and I still don't.

Q: Did you have occasion to specifically have a conversation with one of the Cape executives regarding the effect of this discussion would have on the company?

⁷⁸ *Id.* at 116.

⁷⁹ *Id.* at 24.

⁸⁰ *Id.* at 38, 63.

⁸¹ *Id.* at 11-12, 30.

⁸² *Id.* at 40, 57.

A: Yes. . . . I remember distinctly that this was treated in a very superficial way. And the chap . . . he said that with our directors in London earning a million a year, do you think they would listen to you?⁸³

The final PRU report was published 1964 but it was not circulated outside of the PRU and the mining companies.⁸⁴ For reasons unknown, but perhaps to protect powerful industrial mining and economic interests in South Africa, the final report also said little about mesothelioma. Whatever the reason for this extremely limited circulation, Cape had copies of the final report and the preliminary reports, but never mentioned them publicly, and certainly never breathed a word of it to its U.S. customers. In fact, Cape disseminated exactly the opposite story. While it is true that the PRU was aware of what the mesothelioma survey revealed, and did not publicize the results, the PRU also was not in the business of selling raw asbestos for profit around the world. Cape certainly was. The PRU report was not discovered for 20 years until an enterprising journalist researching the Cape story for a documentary located it in an archive in South Africa.

Dr. Smither returned from South Africa on June 30, 1962.⁸⁵ Less than two weeks later, on July 12, 1962, Drs. Smither and Gaze attended a meeting in London of the Asbestosis Research Council (ARC).⁸⁶ The ARC was an industry group founded by Cape and another mining and asbestos products company, Turner & Newell.⁸⁷ The ARC sponsored research into asbestos disease and had a hand in shaping final reports given its funding of the studies.⁸⁸ Scientists and physicians from Queen's College in Cambridge, Reading University, and Cambridge University,

⁸³ *Id.* at 41.

⁸⁴ Letter from Walters to Baxter (July 19, 1962).

⁸⁵ Smither, *Visit to South Africa* (August 1962) at 42.

⁸⁶ ARC-19th meeting (July 12, 1962).

⁸⁷ See generally Geoffrey Tweedale, *Science or Public Relations? The Inside Story of the Asbestosis Research Council, 1957–1990*, 38 AM. J. INDUS. MED. (2000).

⁸⁸ *Id.* at 723-29.

and some industry representatives attended the July 12 meeting.⁸⁹ The Receiver located the 6-page detailed memorandum reporting the detailed minutes of the meeting.⁹⁰ As this group met to discuss asbestos disease, Dr. Smither and Dr. Gaze remained silent and reported nothing about the PRU study, nor even that Dr. Smither just returned from a three-week trip to South Africa to investigate mesothelioma in the mines.⁹¹

i. *Cape continues selling asbestos to the U.S. market through a fake Lichtenstein company – evading liability but continuing to profit.*

As the Park Plaintiffs presented in their Appointment Motion, when Cape closed NAAC, it did *not* stop selling asbestos in the United States. The Receiver presented additional facts in its Report detailing the scheme to conceal its identity to U.S. litigants and continued selling the same South African asbestos fibers with the use of a Lichtenstein pass-through entity, Associated Minerals Corporation (“AMC”), to the same list of customers in the U.S. market. Anthony Penna, in-house counsel for Cape, referred to this scheme, which also included re-branding the entire NAAC operation as an independent entity under a new name, Continental Products Company (“CPC”), as only “a difference in form.”⁹²

Cape disguised this scheme even from NAAC’s then-president, Charles Morgan, when Penna asked Morgan to consider opening CPC. While Cape averred that Morgan was well aware

⁸⁹ ARC-19th Meeting (July 12, 1962).

⁹⁰ *Id.*

⁹¹ *See generally id.*

⁹² Testimony of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132247 (“It was a difference in form; and, as I have said, the Morgan company, new company, CPC, did carry on very much the same role that NAAC had carried on in trading terms.”); *id.* at Cape_Receiver_00132236 (“Our mining companies wished to continue selling asbestos in the United States, yes. . . . There needed to be an organization which could liaise with the customers.”), *id.* at Cape_Receiver_00132247 (“Certainly, Howard Tanner, the Sales Director of the South African mining companies was extremely keen to ensure that sales to America, that is there could be some continuation of sales to American customers.”).

of the connection to Cape,⁹³ in reality, the true scheme was on a need-to-know basis, and Morgan did not need to know anything. He was simply Cape's U.S. puppet. Morgan testified that Penna "said he was the attorney representing Associated Minerals Corporation."⁹⁴ Morgan testified that he did not know that Penna was contacting him on behalf of Cape.⁹⁵ He did not know who owned AMC, and no one had suggested to him that there was a relationship between Cape and it.⁹⁶

Once Morgan agreed to establish CPC, Cape's lawyers at the Lord Bissell firm in Chicago drew up the incorporation documents.⁹⁷ Rather than establishing a direct connection between the newly formed CPC and a Cape-named company, Penna spearheaded the creation of a Liechtenstein company, AMC, a seemingly unrelated entity, which was in truth an Oppenheimer subsidiary. As Penna described, "everyone was concerned whether they were mining companies or Cape Industries or any company that was a party to these sales should not by its actions put either the mining companies or Cape at risk."⁹⁸ "The Lichtenstein company was a separately constituted company but it certainly had no direct employees of its own. . . . It was primarily an

⁹³ *Id.* at Cape_Receiver_00132215 ("Q. And also the reason why you did not wish the new arrangements [related to Cape's involvement in setting up CPC] to become publicly known? A. Yes, I did. I think that it probably omitted one additional reason – that certainly Mr. Morgan in his new entity would not have wanted it to be disclosed that he was dealing with a company that was still related to Cape.").

⁹⁴ Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003.

⁹⁵ *Id.* at Cape_Receiver_00096063-4 ("Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that.").

⁹⁶ *Id.* at Cape_Receiver_00096064 ("Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. Has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.").

⁹⁷ *Id.* Cape_Receiver_00095988 ("Q. Who drew the Articles of Incorporation? A. Mr. Max Meyer. At least I asked him to do this work for me. Who actually did the work I couldn't say.").

⁹⁸ Cape_Receiver_00132246.

invoicing company.”⁹⁹ Cape’s involvement was pervasive. Confronted with evidence, Penna was forced to admit, “Yes, it seems to be contemplated that Cape Asbestos Fibres would subscribe the initial capital.”¹⁰⁰

Even before NAAC closed, Morgan reached out to customers to let them know of the formation of CPC, thereby ensuring a seamless sales transition between the companies.¹⁰¹ To ensure the success of the new venture, Morgan testified that CPC received a \$12,000 check “[c]are from North American Asbestos” to start the company.¹⁰²

CPC’s offices were in the same building as NAAC had previously had its offices: “North American Asbestos was on the 29th floor and Continental Products Corporation took a lease on the 12th floor.”¹⁰³ All of the NAAC filing cabinets that had been on the 29th floor were moved to the 12th floor, and all of the NAAC employees—Joan Holtze, Jean Canzoneri, and Sue Purrington—moved with Morgan to CPC.¹⁰⁴ CPC also took over the NAAC employees’ pension plan.¹⁰⁵ Joan Holtze testified that she sat at the same physical desk at CPC as she had when she

⁹⁹ *Id.* at Cape_Receiver_00132239-40.

¹⁰⁰ *Id.*

¹⁰¹ Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096022. (“I advised them that North American Asbestos was being liquidated, it was no longer to be in the position to supply them with fiber, I had made a connection where I thought I could supply them with fiber, I would like their consideration very much.”); Ex. 81, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003, Cape_Receiver_00096063-4 (“Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that.”); *id.* at Cape_Receiver_00096064 (“Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.”).

¹⁰² *Id.* at Cape_Receiver_000 96000.

¹⁰³ *Id.* at Cape_Receiver_00095991.

¹⁰⁴ *Id.* at Cape_Receiver_00095992-3.

¹⁰⁵ *Id.* at Cape_Receiver_00096066.

worked for NAAC.¹⁰⁶ In this way, Cape hoped to escape liability, but continued selling asbestos fibers to virtually the same contact list using a shell game and companies in Liechtenstein and South Africa to conceal any connection between it and the United States.

A.R. Sarabia wrote a memorandum contained in the Lord Bissell client file to memorialize the new sales arrangements for the sale of Cape asbestos to the United States from Lichtenstein through CPC.¹⁰⁷ On June 26, 1978, Meyer wrote Penna advising that the Cape Mines would be protected from default judgments with the Lichtenstein company “between them and any operations in the United States.”¹⁰⁸ Penna described the Liechtenstein company—which had no employees and was just an invoicing entity, as being camouflaged to disguise from “plaintiffs in future U.S. asbestos litigation” (Cape’s words) the fact that the company was still selling asbestos in this country. On July 29, 1980, Mr. Meyer wrote Richard Gaze at Cape advising on a variety of issues, but in closing Meyer wrote on Lord Bissell letterhead: “My deposition was taken last Thursday in the four Bloomington cases. I guess the main thing that came out was that I know nothing or that I can’t remember anything.”¹⁰⁹

iii. More recent activities of Cape, including its activities parallel to this action, demonstrate continued moral fraud

Cape maintained its position of not appearing in U.S. courts when a complaint was filed against it in *Park*. Rather than completely ignoring the U.S. proceedings, however, Cape engaged

¹⁰⁶ Deposition of J. Holtze, Apr. 12, 1979, at Cape_Receiver_00097838-9.

¹⁰⁷ Memo to NAAC File re Liquidation of NAAC (April 7, 1978).

¹⁰⁸ Letter from M. Meyer to A. Penna (June 26, 1978). Meyer was in the thick of the plan to create CPC and in fact formed the corporation, according to Gerry Morgan, the President of NAAC at the time. See Dep. of C. Morgan May 18, 1982 at 39. In a memo dated Dec 19, 1983, a Lord Bissell Partner inquired of Meyer about his formation of CPC in 1978 but noted that there were no billing records at LBB relating to this work, Letter from Ingersoll to Meyer (Dec. 19, 1983).

¹⁰⁹ Letter from M. Meyer to R. Gaze (July 29, 1980).

in a course of conduct to attempt to weaken the effectiveness of this Court’s appointed receiver – *outside* of this Court.

First, Cape instituted a Part 8 Proceeding in the High Court of England and Wales against the Receiver personally to seek injunctions against his further work as the court-appointed receiver of Cape in South Carolina.¹¹⁰ In support of its Part 8 Proceeding, Cape filed a series of sworn statements of Ran Oren¹¹¹ and Cape’s U.K. lawyers. These sworn statements set forth Cape’s position on the facts that would require the English court to enjoin Mr. Protopapas from acting as the Receiver for Cape in South Carolina. This one-sided presentation included many incomplete statements as to the work of the receiver and this Court, including at least one incomplete statement from this Court during a hearing in September 2024. In his witness statement, Ran Oren stated to the U.K. Court:

It bears mentioning that at [the September 24, 2024] hearing, Toal J indicated her expectation that the Receiver’s role would be “*to marshal the assets, including the bank accounts*” of the Cape Group. I have set out at length in Section I of Oren 1 the serious consequences this might have on the Cape Group, for example, under the power to obtain the financial records belonging to or pertaining to the Claimants, the Receiver could make direct contacts with the Claimants’ bankers. That could cause disruption and interference in the Claimants’ relationships with their banks, as it would be very difficult to control how that information was used by the Receiver.¹¹²

This Court did not state in the September 24 hearing that the Receiver should gain control of and use the Cape bank accounts. Mr. Oren took this Court’s statements regarding the broad statutory

¹¹⁰ While the Third-Party Defendants assert that improper service of Cape renders the Cape receivership an absolute nullity, Cape’s activities in foreign courts, including the Part 8 Proceeding in England and a parallel proceeding in France, make clear that Cape is fully apprised of this action, including all filings made in these proceedings, which are described in filings in the foreign proceedings, including in affidavits by Cape’s director.

¹¹¹ Mr. Oren is the sole director of Cape Intermediate Holdings Limited and also serves as CEO of Altrad Investment Authority S.A.S, a third-party defendant in the Receiver’s declaratory judgment action in the *Tibbs* asbestos personal injury action.

¹¹² Ran Oren Witness Statement 2 at ¶ 50 (emphasis in original) (citations omitted).

authority given to receivers in South Carolina out of context. In the hearing, this Court engaged with counsel for Anglo American and De Beers (defendants in the Receiver's third-party declaratory judgment action in *Tibbs*, with whom the Receiver has recently resolved his claims) regarding the authority of the receiver to obtain documents from various sources relevant to the Cape receivership. The exchange occurred in the context of counsel noting that the Court had granted the Receiver the power to review and obtain documents from any financial institution, bank, credit union, or savings and loan, among other entities.¹¹³ The Court responded that finding all relevant documents is not uncommon, and continued as follows:

The Court: But these corporations are alleged to be part of a single group that is financially responsible for the supply to places in North and South Carolina of asbestos that harmed you. **And part of what the receiver of the corporation is to do is to verify that by looking at financial records.**

The first receivership I was ever involved in was as a practitioner. . . when we put [a life insurance company] into a state receivership, a South Carolina receivership, to marshal its assets, pay its creditors, make at least some recompense to even its shareholders, and move forward with the sale of the business in that regard. That's common in receiverships.

So, I want you to understand that that's not some provision in my order that's unique to this situation, it's very common in this state.

Mr. Balber: Understood, Judge. And my point was exactly that – not to be presumptuous, but **I suspect in the receivership scenario you just described, you and your partners obtained access to the insurance company's documents, right, as part of the exercise and used those documents for the purpose of marshaling assets, identifying and paying creditors, et cetera. That's all we want here.** All we want is the same thing. We want this receiver to obtain the documents of the entity in its receivership, Cape, and provide the documents to us that are relevant. Because I think we all want to know . . . what does Cape's documents say about this liability avoidance scheme. [What] do Cape's documents say about whether

¹¹³ Transcript of Sept. 24, 2024 hearing at 42.

my clients were controlling it, directing it, part of it or not. . . . I'm pretty optimistic they will not say that, but I think we all need to know what Cape's documents say.

The Court: Right. Also, of course, **part, again, of what the receiver must do is to marshal the assets, including bank accounts and others. And that's why that is in there . . . And it seems to me that you two groups of lawyers to to be able to figure out a fair way to navigate that without totally disrupting the privacy of your clients.** And protective orders are a way to do that. Some limitations on scope [] are a way to do that. But that's why those provisions are there.¹¹⁴

This explanatory exchange was made in the context of how and why South Carolina receivers marshal *documents*. Both Mr. Balber and this Court were well aware that the discussion was about the general powers of South Carolina receivers and, more specifically, the role and nature of the Cape receiver here. In that context, the discussion was about how best to access relevant historical financial records to determine the validity of the allegations that “these corporations are alleged to be part of a single group that is financially responsible for the supply to places in North and South Carolina.”¹¹⁵ While both parties were aware that South Carolina receivership law does allow the actual marshalling of a company's bank accounts, neither the Court nor Mr. Balber were discussing whether the Receiver could take over Cape's financial accounts in England or elsewhere.¹¹⁶

Based in part on Cape's inaccurate portrait of this Court as acting beyond the scope of South Carolina law in the appointment of the Receiver, on November 22, 2024, Cape obtained an

¹¹⁴ *Id.* at 44-45 (emphasis added).

¹¹⁵ *Id.* at 44.

¹¹⁶ This was not the only statement of this Court that the Altrad UK subsidiaries took out of context. Paragraph 19 of the second Paul Brehony witness statement not only references the same statement of this Court explained above but also takes the statement that the Court will “pray the biggest prayer I have we don't have any other people involved in this matter who try to appeal my order” out of context. Second Witness Statement of Paul Brehony, at 19(d). It is not clear what Brehony suggests with this quote, but it is likely something other than what those familiar with the receiverships understand in the context of the serial appeals of nearly every order of this Court in this action.

injunction against this Receiver individually and in his personal capacity in the High Court of England and Wales. The order purportedly enjoined the receiver from acting as receiver for Cape worldwide, including before this court. This was done in direct violation of the Barton Doctrine and the explicit language in the receivership order that the receiver “may not be sued outside this court without obtaining the receiver's consent or an order of this court prior to doing so.”

The South Carolina Supreme Court characterized the U.K. Order as “shocking and indefensible.”

Second, Cape’s English lawyers have used the U.K. Order to intimidate the Receiver from continuing to act in his court-appointed capacity as the Receiver for Cape. In a series of letters starting in November 2024, the lawyers have threatened the Receiver with personal financial penalties and criminal sanctions with one objective in mind—to stymie the judicial process here in South Carolina that exists to serve South Carolina claimants.

Having benefitted from a decades-long litigation avoidance scheme, Cape’s aggressive conduct to avoid potential U.S. liability in this case is no surprise. Cape most recently demonstrated its zealous commitment to litigation avoidance above all else when its lawyers wrote to the Receiver threatening him against “taking any steps in respect of” a lawsuit that the Pittsburgh Corning Bankruptcy Trust filed against Cape in this Court, and alluding to potential criminal and monetary judgments against the receiver personally.

Third, Cape has threatened insurance companies against providing the Receiver with insurance information relevant to the Cape receivership in response to subpoenas issued by the Receiver. Ran Oren, in his capacity as sole director of Cape Intermediate Holdings Limited, threatened at least four insurance companies against responding to a subpoena for insurance information issued from this court and in these proceedings.

Cape's actions in the last year can best be described as a "conscious intent to defeat, delay, or hinder" creditors of Cape.

c. The facts as presented are sufficient to establish Cape's moral fraud

In *Welch v. Advance Auto Parts*, the South Carolina Supreme Court upheld this Court's appointment of a receiver over Atlas Turner under S.C. Code § 15-65-10(5), finding that "Atlas Turner engaged in moral fraud against the trial court, the state of South Carolina, and Respondent." 916 S.E.2d at 332. Third-Party Defendants argue that *Welch* requires that a defendant engage in fraudulent conduct during the course of a case, including failure to comply with a trial court's orders, or concealing information from an opposing party and the court in discovery. Neither *Welch* nor the authorities on which *Welch* rely require the type of discovery abuse Third-Party Defendants suggest.

To the contrary, *Welch* explains that the South Carolina Supreme Court has "upheld the appointment of a Receiver before judgment where the plaintiff has made a prima facie showing that the defendant intends to fraudulently avoid or defeat the plaintiff's recovery." *Welch*, 916 S.E.2d at 330. *Welch* cited the South Carolina Supreme Court's decision in *Virginia-Carolina Chemical Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177 (1909), for the proposition that "when a debtor is trying to defeat his creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts—then a court of equity will grant any relief within its jurisdiction appropriate and effective to protect creditors against the fraud without requiring the creditor to run the risk of losing his debt from the delay of obtaining judgment and a return of nulla bona on the execution." 84 S.C. 214, 220-21, 66 S.E. 177, 179.

Welch notes that Atlas Turner's first line of defense

when faced with lawsuits—for allegedly causing serious injury and death to American workers and citizens related to the pernicious products it sold for profit even after the lethal risk these products posed was known—its tactic has been to claim that, if the courts exerted jurisdiction over them, it would offend the traditional notions of fair play and substantial justice due process guarantees. When that ploy fails, Atlas Turner’s version of due process is to refuse to abide by court orders requiring it to answer basic information. It is alleged that Atlas Turner has come into our state, turned profits by selling its hazardous wares in our state, and inflicted grievous harm on citizens in our state. Then, when the shadow of the courthouse door falls upon it, it insists it was never here, and if a court asks anything about it, it responds: we have nobody who knows anything.

Welch, 916 S.E.2d at 331 (internal citations omitted). While Third-Party Defendants argue that moral fraud must present during the pendency of South Carolina litigation, the Supreme Court’s explanation of Atlas Turner’s conduct indicates that Atlas Turner’s moral fraud began decades before the *Welch* case came into being—both in terms of the company’s conduct related to the sale of its products *and* its development of a litigation strategy designed to ignore orders of courts that properly exercised jurisdiction over it.

Cape’s conduct, like Atlas Turner’s, was the product of company policy. Cape, however, was far more ruthless and deliberate than Atlas Turner.

Cape mined and distributed the most dangerous forms of asbestos in a manner far outstripping the damage done by Atlas Turner. Asbestos is a mineral that is mined from the ground.¹¹⁷ There are three commercial types of asbestos: chrysotile, amosite and crocidolite.¹¹⁸ Amosite and crocidolite—which are by far the most harmful to humans—were mined by Cape in

¹¹⁷ Robert L. Virta, *Asbestos: Geology, Mineralogy, Mining, and Uses*, U.S. Geological Survey Open-File Rep. 02-149, at 5 (2002).

¹¹⁸ *See Id.*

South Africa.¹¹⁹ Asbestos fiber is processed at the mines and then sold to manufacturers of asbestos-containing products, such as pipe insulation and brake linings.¹²⁰

Cape had a near monopoly on the global supply of amosite and crocidolite.¹²¹ There were fewer than five principal asbestos mining companies world-wide, such as Cape.¹²² Unlike the small group of miners, the defendant in *Welch*—Atlas Turner—was one product manufacturer of many hundreds.¹²³ Most of the manufacturers of asbestos-containing thermal insulation products in the United States filed for bankruptcy, and more than 60 of these companies established trusts to compensate asbestos victims.¹²⁴

Certain asbestos mining companies, like Cape, were the source of all the amosite and crocidolite asbestos fibers used in South Carolina and the rest of the United States.¹²⁵ Cape was the spigot through which hundreds of thousands of tons of asbestos flowed from its mines to almost 40 states, over 500 individual customers such as Johns-Manville Corp. and Pittsburgh Corning,

¹¹⁹ Jock McCulloch, *Surviving Blue Asbestos: Mining and Occupational Disease in South Africa* 115 (2002).

¹²⁰ Virta at 13.

¹²¹ Jock McCulloch, *Asbestos Blues: Labour, Capital, Physicians & the State in South Africa* 27 (James Currey 2002).

¹²² *Id.* at 30.

¹²³ See, e.g., “Asbestos Manufacturers,” The Mesothelioma Center (Nov. 14, 2024), <https://www.asbestos.com/companies/>.

¹²⁴ Ex. U.S. Gov’t Accountability Off., GAO-11-819, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts Highlights* (2011) (report noting that “about 100 companies have declared bankruptcy at least partially due to asbestos-related liability” and that “since 1988, 60 trusts have been established to pay claims”).

¹²⁵ J.S. Harington & N.D. McGlashan, *South African Asbestos: Production, Exports, and Destinations, 1959–1993*, 33 AM. J. INDUS. MED. 321, 323 (1998) (reporting that in the early-1960s North America was a major recipient of South-African amosite and crocidolite exports). Karen Selby, *Mesothelioma in South Africa*, ASBESTOS.COM (Apr. 17, 2025), <https://www.asbestos.com/mesothelioma/south-africa/> (noting South Africa supplied 97 % of the world’s crocidolite and “practically all” amosite and that the mines were owned by companies including Cape Asbestos); See also, e.g., North American Asbestos Corporation, “States Where Suits Have Been Filed and States We Shipped Asbestos To,” at Cape_Receiver_00138819–21; North Am. Asbestos Corp., Customer List, at Cape_Receiver_00138265–282) (Oct. 6, 1976).

and to 750 manufacturing plants.¹²⁶ Cape sold asbestos direct to customers in South Carolina, as well.¹²⁷ Cape was aware that its asbestos could ultimately expose people in any of the 50 states, regardless of where the products were manufactured.¹²⁸ Cape is therefore fundamentally different from Atlas Turner, which manufactured a product, spray limpet insulation, from the asbestos fiber it mined and sold that product to customers in the United States, including in South Carolina.

Further, the conduct of Atlas Turner touched people who used or worked around its products. Cape is different—its conduct touched every person who used or worked around **any asbestos-containing product** made by a multitude of manufacturers containing Cape asbestos.¹²⁹

The scale of Cape's asbestos fiber sales into the U.S. market, its indifference to the harm these sales would cause in light of the scope of its unique, early knowledge of the health hazards of asbestos, and the ruthlessness of its campaign to avoid U.S. liability from the raw asbestos fibers it sold to be used in every state in this country—a campaign that continues to this day—provides the foundation for Cape's unparalleled moral fraud.

On this foundation, Cape concocted a scheme to fully conceal assets that could be answerable to U.S. asbestos claimants to whom Cape deemed it has no "moral responsibility" more egregious than Atlas Turner's conduct in terms of its current and past disrespect for the South Carolina judicial system. Rather than appear in South Carolina to answer the *Park* complaint, or to object to the appointment of the Receiver, Cape ignored the existence of the action. Instead of engaging with the U.S. court system, it instituted parallel proceedings in England designed to

¹²⁶ *See id.*

¹²⁷ N. Am. Asbestos Corp., NAAC Sales List, NAAC-ML-025040; Ex. 69.

¹²⁸ Deposition of Richard Gaze at 26, *Yandle v. PPG Indus., Inc.*, No. TY-74-3-CA (E.D. Tex. June 4–5, 1975).

¹²⁹ Receiver for Cape PLC's Proposed Amended Third-Party Complaint, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. June 20, 2025).

ensure that if *Park*, any other plaintiff, or the Receiver sought to enforce any future judgment in England, it would be barred from doing so because another court already had considered the issues presented in an un rebutted presentation by Cape. Most recently, to further solidify its position should any party attempt to domesticate a U.S. order in England, Cape and Altrad, both entities within the same corporate group, entered into a settlement agreement to avoid a ruling against Altrad. Altrad's lawyers requested that a proceeding to confirm the appropriateness of that settlement agreement – again a one-sided presentation to an English court – take place before this Court's scheduled trial on the Receiver's third-party action against Altrad. All of these actions are undertaken to avoid enforcement of any judgment against Cape, without the risk of engaging in proceedings in a U.S. court.

Cape's conduct, as documented at length by both the Park Plaintiffs and the Receiver, demonstrate precisely the type of moral fraud – “a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts” – the South Carolina Supreme Court held was sufficient to justify the appointment of a receiver in *Welch*.

d. Analysis of facts related to the danger of Cape's insolvency under S.C. Code § 15-65-10(4)

This Court appointed the Receiver over Cape under S.C. Code §§ 15-65-10(4) and (5). In addition to this Court's finding that Cape's moral fraud was sufficient to justify the appointment of a receiver over Cape under § 15-65-10(5), this Court finds that Cape's financial position renders it in danger of insolvency under § 15-65-10(4). The publicly available information regarding Cape suggests that Cape Intermediate Holdings Limited (“CIHL”) is in danger of insolvency for two reasons.

First, CIHL is in imminent danger of insolvency because it is a non-operating shell company in a corporate structure subject to the full control of an ultimate parent – Altrad

Investment Authority S.A.S. – that could eliminate, shift, or move the company at any time. This means that even though CIHL appears to declare an annual dividend each year, those are the profits of another company that are being funneled up the corporate chain to Altrad, and those profits easily could be shielded from plaintiffs. This is how the system was designed.

CIHL is a UK-registered holding company with no employees, physical assets, customer contracts, or operational footprint.¹³⁰ It exists solely as a corporate shell.¹³¹ Ran Oren, Altrad Investment Authority S.A.S.’s CEO, is the sole officer and director of CIHL.¹³² CIHL acts as a pass-through entity for profits of four entities it wholly owns: Cape Insulation Ltd., Cape Industries Ltd., Cape Building Products Ltd., and Altrad Services Ltd.¹³³ Importantly, though, the three Cape entities – Cape Insulation Ltd., Cape Industries Ltd., and Cape Building Products Ltd. – are legacy Cape companies that generate no revenue.

Altrad Services Ltd., which became a CIHL subsidiary *after* Altrad purchased Cape in 2017, is the only operational entity in the CIHL structure. In 2024, for example, Altrad Services Ltd. declared a £ 24,769,000 dividend based on its operating profits for that year.¹³⁴ Because CIHL wholly owns Altrad Services Ltd., that full dividend went to CIHL. CIHL, in turn, did not hold any portion of the dividend itself, but instead declared the full £ 24,769,000 as a dividend to its

¹³⁰ See CIHL Annual Report 3, 12, 14 (2025) (“Cape Intermediate Holdings had no employees in the current or prior year.”); *id.* at 3 (“The Company is a non-trading holding company”).

¹³¹ See *id.* at 13 (“the director was not remunerated for his services to the Company during the year. No director accrued retirement benefits . . . during the current or previous year. [CIHL] had no employees during the current or prior year.”).

¹³² *Id.* at 8.

¹³³ See *id.* at 13; see also Altrad Services Ltd. Annual Report 33 (2025); Cape Insulation Ltd. Annual Report 9 (2025); Cape Industries Ltd. Annual Report 9 (2025); Cape Building Products Ltd. Annual Report 9 (2025).

¹³⁴ See Altrad Services Ltd. Annual Report at 9 (2025).

shareholder.¹³⁵ Because of this, it is unclear whether CIHL holds any funds at all at any given moment – let alone sufficient funds to pay a judgment in the *Park* claim.

Indeed, the CIHL annual reports in the years prior to the Receiver’s appointment demonstrate a shift in CIHL’s ability to pay its own debts. In evaluating CIHL as a going concern, the 2020 Annual Report stated, “the director believes that the company is well placed to manage its business risks in the coming years.”¹³⁶ The same section in the 2021 CIHL Annual Report, however, relied on Altrad to pay any CIHL debts in order for CIHL to remain a going concern: “The director has a reasonable expectation that [CIHL] will continue in operational existence for the foreseeable future having received a letter of support from [AIA]. This letter confirms continuing support for 12 months from the date of signing of these financial statements. The director has reviewed the resources of [AIA] and have concluded there is sufficient scope and headroom in its resources to adequately support [CIHL] over the next 12 months.”¹³⁷

This is further supported by the Altrad Group financial statements, which establish that CIHL has no money to pay asbestos claims other than a limited claim fund for asbestos claims of certain former Cape U.K. employees – funds that are untouchable for U.S. plaintiffs who sue CIHL for their asbestos-related diseases.

Altrad purchased Cape in 2017. Altrad publishes financial results as part of a “Group” filing of all entities related to Altrad. According to Altrad’s Interim Consolidated Financial Statements dated February 28, 2025, CIHL does not appear to maintain funds to pay any asbestos claims. Instead, Altrad reports only that “Management believes that, assuming no significant deterioration in business performance and no material change in legal precedence or judgments,

¹³⁵ See CIHL Annual Report at 7 (declaring 24,769,000 as dividends received for 2024).

¹³⁶ CIHL Annual Report at 6 (2020).

¹³⁷ CIHL Annual Report at 6 (2021).

the Group will be able to fund its subsidiary Cape Claims Services Limited to meet all claims to be settled under the Scheme of Arrangement settlement plan and the Group has sufficient funds to satisfy all other **UK claims** settled outside the Scheme of Arrangement.”¹³⁸

The Scheme of Arrangement to which Altrad refers is a 2006 court-ordered scheme for the payment of asbestos disease claims from former UK employees of certain Cape subsidiaries.¹³⁹ According to a 2022 annual report, Altrad Group had set aside £118 million to address certain **non-U.S.** historical claims relating to asbestos exposure, but also disclosed AIA’s letter of support of it as a going concern.¹⁴⁰ However, according to an April 2025 news article, “Altrad’s spokesperson told *The Times* it had never manufactured or sold asbestos but continues to support Cape’s compensation scheme, which has paid over £60m to former employees who developed cancer following asbestos exposure, with a further £70m set aside.”¹⁴¹ This would mean Altrad only has £70m left to pay asbestos claims under the Scheme of Arrangement, and again, that is a restricted fund designed to pay certain UK claimants. A complete lack of clarity exists as to the actual amount of funds available to pay Cape claims as well as whether CIHL actually can access those funds. What is clear, though, is **none** of those funds are intended for U.S. plaintiffs.

CIHL is only funded for a limited period each year – theoretically the time between when Altrad Services pays its dividend and CIHL declares that money fully as a dividend to its parent - and even that structure is subject to change by Altrad at any time. Further, any funds earmarked

¹³⁸ Altrad Grp., Interim Consolidated Financial Statements at 32 (Feb. 28, 2025) (emphasis added).

¹³⁹ *See id.*

¹⁴⁰ Altrad Services Limited Annual Report (2022), at Cape_Receiver_00248438 (“The Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. Where claims are determined to have merit, the costs are provided for and claims are settled in the ordinary course, otherwise claims are defended.”).

¹⁴¹ <https://www.healthandsafetyinternational.com/article/1913269/former-asbestos-firm-offers-victims-3m-gag-clause>

for payment of asbestos claims by any Cape-related structure are not within CIHL and are limited to certain *non-U.S.* claimants. This narrow definition of future claims, combined with the fact that CIHL is a non-operational holding company, establishes the danger of imminent insolvency for CIHL.

Second, since 1978, Cape has avoided liability to U.S. litigants by refusing to appear in U.S. courts. As demonstrated above, Cape has gone to great lengths to protect itself against these liabilities, including creating a Liechtenstein offshore company. Faced with the possibility that U.S. litigants may now be able to access funds to pay future claims, and given that Cape is not a stand-alone company, but instead is a holding company within a large corporate structure, one should expect that Altrad will do anything to avoid its historical liabilities, including rendering the company fully insolvent. Indeed, Altrad already has informed the Receiver that it has entered into a “settlement agreement” with itself (between two Altrad entities) to release Mohed Altrad from any liabilities not only in *Park* and *Tibbs* but also in every other future U.S. personal injury action against any Cape entity.¹⁴²

e. The Receiver’s authority to act in Tibbs

The Third-Party Defendants argue that the Receiver has acted beyond the scope of his authority by filing the Third-Party Action in *Tibbs*. Additionally, the South Carolina Supreme Court Order in *Tibbs v. 3M Company*, Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052 remanded the cases to this Court and directed the Court to “[e]nsure the receiver has been authorized to conduct its work by an order filed in the specific case as to which the work is to take place.” Slip Op. at 4 (June 26,

¹⁴² Cape, Altrad, and Sparrows, Agreement for Full and Final Settlement and Release of Claims (2025).

2025). The Order further notes, “[t]he receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.” *Id.*

This Court finds that the Receiver referenced the Cape Receiver Appointment Order multiple times in *Tibbs*, including first in the Third-Party Complaint. See Third-Party Complaint at 10 (“On March 17, 2023, this Court appointed the Receiver to undertake actions to administer all assets of Third-Party Plaintiff. See Cape PLC Receivership Order.”). The parties filed the Cape Receiver Appointment Order as an exhibit to at least 23 filings in *Tibbs*, including in the Receiver’s Omnibus Memorandum in Opposition to Third-Party Defendants’ Motions to Dismiss, filed on October 18, 2023.¹⁴³

This Court finds that the Receiver was authorized to file the Third-Party Complaint in *Tibbs* to seek declarations as to the nature of the relationships among Charter, Central Mining, and Cape;

¹⁴³ The full list is as follows: (1) Motion to Dissolve, Arranco US, LLC, Hawk Bidco (US), Inc., & Sparrows Offshore LLC, Aug. 21, 2023, Ex. E, (2) Motion to Dismiss, Altrad Invesmtent Authority S.A.S., Sept. 1, 2023, Ex. 9 (3) Memo in Opposition to MTD, Cape Receiver, Oct. 18, 2023, Ex. 1; (4) Motion to Dissolve, Lightbox Jewelry Inc, Oct. 26, 2023, Ex. A; (5) Motion to Dissolve, Anglo American Crop Nutrients USA LLC, Oct. 26, 2023, Ex. A; (6) Motion to Dissolve, Anglo American Us Holdings Inc, Oct. 26, 2023, Ex. A; (7) Motion to Dissolve, De Beers Jewellers US Inc, Oct. 26, 2023, Ex. A.; (8) Motion to Dissolve, Element Six Technologies (OR) Corp, Oct. 26, 2023, Ex. A; (9) Motion to Dissolve, First Mode Holdings Inc, Oct. 26, 2023, Ex. A; (10) Motion to Dissolve, Forevermark U.S., Inc, Oct. 26, 2023, Ex. A; (11) Motion to Dissolve, Platinum Guild International Usa Jewelery Inc, Oct. 26, 2023, Ex. A; (12) Motion to Dissolve, Anglo American US Holdings Inc, Oct. 26, 2023, Ex. A; (13) Motion to Dismiss, Anglo American plc, Dec. 21, 2023, Ex. A; (14) MTD for Lack of SMJ, De Beers plc, Dec. 21, 2023, Ex. A; (15) MTD for Lack of SMJ, De Beers Centenary AG, Dec. 21, 2023, Ex. A; (16) MTD for Lack of SMJ, De Beers UK Limited, Dec. 21, 2023, Ex. A; (17) MTD for Lack of SMJ, De Beers Consolidated Mines Proprietary, Dec. 21, 2023, Ex. A; (18) MTD for Lack of SMJ, Anglo American plc, Dec. 21, 2023, Ex. A; (19) Motion to Dissolve, Anglo American Plc, June 24, 2025, Ex. B; (20) Memo in Opposition to Receiver’s MTC, Anglo American plc, July 18, 2025, Ex. 2 at 48-51; (21) Supp. Memo in Support of Motion to Dissolve, Anglo American plc, July 31, 2025, Ex. A; (22) Receiver’s Resp. in Opp. to TPD’s Motions to Dissolve, Cape Receiver, Aug. 5, 2025, Ex. A; and (23) Receiver’s Resp. to the Submission of Mohed Altrad, Cape Receiver, Aug. 5, 2025, Ex. D.

the status of the named Third-Party Defendants as successors to Cape and/or Charter and Central Mining; and that the Third-Party Defendants were unjustly enriched by their participation in Cape's scheme.

f. Clarification of Scope of Receivership Appointment Order

Finally, Third-Party Defendants argue that the Receiver has undertaken certain actions that are beyond the scope of the authority that should be granted to a receiver in South Carolina because certain language in *Welch* – in particular, language related to limiting the receivership to the entity's insurance assets – limits all South Carolina receiverships in the same manner. Additionally, the South Carolina Supreme Court Order in *Tibbs v. 3M Company*, Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052 remanded the cases to this Court and directed the Court to ensure “that the receiver’s scope of authority is limited as set forth in *Welch*.” Slip Op. at 4 (June 26, 2025).

First, as to the Third-Party Defendants’ contention that *Welch* requires limitation of this Court’s appointment only to Cape’s insurance assets, this Court finds that *Welch* does not require such a limitation. The *Welch* opinion recognized this Court’s limitation on the Atlas receiver’s powers to marshal only the insurance assets of Atlas Turner.¹⁴⁴ This Court appointed the Receiver “with the power and authority [to] fully administer **all insurance assets** of Atlas Turner, Inc.,” and specified that the order “includes the right and obligation to **administer any insurance or indemnification assets of Atlas** as well as any claims related to the actions or failure to act of Atlas insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of Atlas against which [] Atlas may have claims.”¹⁴⁵

¹⁴⁴ See Ex. 2, Order on Plaintiffs’ Motion to Appoint A Receiver, *Welch v. 3M Co.*, No. 2022-CP-40-03834 at 6 (S.C. Ct. Com. Pl. Jun. 21, 2023).

¹⁴⁵ *Id.* (emphasis added).

The Cape receiver order includes no such limitation.¹⁴⁶ The receivership court appointed the Receiver “with the power and authority [to] fully administer **all assets of Cape**,” and specifying that the order included, but was “**not limited to**” “the right and obligation to **administer any insurance assets of Cape** as well as any claims related to the actions or failure to act of Cape’s insurance carriers.”¹⁴⁷

This difference stems, in part, from the relative participation of these entities in U.S. asbestos litigation: because Atlas appeared in U.S. litigation but hid its insurance assets from plaintiffs, this Court found that it needed a receiver to determine the scope of insurance resources available to pay claims when Atlas was not forthcoming with such information. Cape, on the other hand, refused to participate whole cloth, which necessitated a broader appointment in light of facts known from the motion to appoint a receiver as to Cape’s decades-old scheme of liability avoidance.

In the context of the Atlas Turner insurance assets receivership order, the South Carolina Supreme Court questioned the court’s definition of Insurance Assets – a definition *not* present in the Cape receivership order because, again, the Cape receivership is more broadly defined. The definition included the following: “other information which is reasonably calculated to lead to the discovery of admissible evidence about those insurance policies or any other assets which are related to, touch or are otherwise relevant to such insurance.”¹⁴⁸

The Court found that definition too broad in the context of an insurance assets receivership: “We find equity only allows insurance policies that have the potential to cover Mr. Welch’s injuries

¹⁴⁶ See Ex. 70, Order Appointing Receiver, *Park v. Armstrong Int’l, Inc.*, No. 2021-CP-40-02727 at 1 (S.C. Ct. Com. Pl. Mar. 16, 2023).

¹⁴⁷ *Id.* (emphasis added).

¹⁴⁸ [citation].

to be included in this definition, and we reverse and vacate the portion of this definition that allows the Receiver to have power over ‘any other assets which are related to, touch or are otherwise relevant to such insurance.’”¹⁴⁹

Nothing in *Welch* order requires application of this holding to South Carolina receiverships generally. Indeed, *Welch* recognized that a court may specify the assets included in the receivership: “it is well established that a Receiver has the right and duty to collect and accumulate the property and assets of the defendant specified in the appointment order, including its rights and claims.”¹⁵⁰

Second, as to the contention by the Third-Party Defendants that the Cape Receiver Appointment Order is otherwise overly broad, this Court acknowledges that certain portions of the Order can be clarified to better reflect the facts of the Cape receivership. This Court clarifies the *Park* Cape Receiver Appointment Order as follows:

1. The Court clarifies that the entity in receivership is “Cape Intermediate Holdings Limited, formerly known as Cape plc from 1989-2011, Cape Industries Limited from 1974 to 1989, and Cape Asbestos Company Ltd. from 1893 to 1974.”
2. The Court clarifies that Cape Intermediate Holdings Limited is not dissolved and has not forfeited its charter. However, failed to answer the *Park* case.
3. The Court adopts all findings of fact as to Cape’s moral fraud made herein to establish the appropriateness of appointment of the Receiver under S.C. Code §15-65-10(5).

¹⁴⁹ *Id.*

¹⁵⁰ *Welch* at *11.

4. The Court adopts all findings of fact as to Cape's financial position so as to render it in danger of insolvency, therefore establishing the appropriateness of appointment of the Receiver under S.C. Code § 15-65-10(4).
5. The Court limits the authority of the Receiver to administer the assets of Cape responsive asbestos personal injury claims properly brought in South Carolina, as is appropriate given Cape's moral fraud in making the conscious decision not to participate in asbestos personal injury litigation in South Carolina despite having made direct sales of asbestos fiber into South Carolina.
6. The Court clarifies that upon appointment as Receiver over Cape, the Receiver was permitted to accept service on behalf of Cape through all the same mechanisms as service may be made on any corporation in South Carolina.
7. The Court clarifies that although the eleven enumerated activities in which the Court permitted the Cape Receiver to engage on page 2 of the Appointment Order are activities in which South Carolina receivers ordinarily may engage, these activities do not reflect the scope of the Cape Receiver's charge, with the exception of point 10, the power to "hire any person or company necessary to accomplish any right or power under this Order." Additionally, point 8, relating to financial records belonging to the Defendant, is relevant, but should be and is clarified to reflect that the scope of the Receiver's charge includes the right to obtain from any third party copies of any records belonging or pertaining to the assets of Cape responsive to asbestos personal injury claims properly brought in South Carolina, including prior legal representation of Cape. The Court therefore strikes this paragraph from the appointment order, and replaces it with the following language: "In addition to the powers of the Receiver set forth herein,

the Receiver shall have the right to (1) hire any person or company necessary to accomplish any right or power under this Order and (2) obtain from any third party copies of any records belonging or pertaining to the assets of Cape responsive to asbestos personal injury claims properly brought in South Carolina, including prior legal representation of Cape.”

8. The Court confirms that the Receiver’s litigation activity to date has been conducted within the scope of the Appointment Order.

IT IS SO ORDERED.

[JUDGE’S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

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

Case Number: 2023CP4001759

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2025-10-10 16:08:09 page 49 of 49