STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY, *et al.*,

Defendants.

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,

v.

ANGLO AMERICAN PLC, individually and as successor in interest to ANGLO AMERICAN CORPORATION OF SOUTH AFRICA LTD.; DE BEERS PLC, individually and as successor in interest to DE BEERS S.A.; DE BEERS CENTENARY AG; DE BEERS CONSOLIDATED MINES LTD., n/k/a DE BEERS CONSOLIDATED MINES PROPRIETARY LTD.; DE BEERS UK LTD.; DE BEERS JEWELLERS LTD.; DE BEERS JEWELLERS US, INC.; ANGLO AMERICAN US HOLDINGS INC.; ELEMENT SIX US CORP.; ELEMENT SIX TECHNOLOGIES US CORP.; ELEMENT SIX TECHNOLOGIES (OR) CORP.; FIRST MODE HOLDINGS, INC.; PLATINUM GUILD INTERNATIONAL (U.S.A.) JEWELRY INC.; LIGHTBOX JEWELRY INC.; FOREVERMARK US INC.; ANGLO AMERICAN CROP NUTRIENTS (U.S.A.), LLC; CHARTER CONSOLIDATED LTD.; ESAB CORPORATION; CENTRAL MINING & INVESTMENT CORPORATION LTD.; CAPE HOLDCO LTD.; THE LAW

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

In Re: Asbestos Personal Injury Litigation
Coordinated Docket

FOURTH REPORT TO THE SUPREME COURT OF SOUTH CAROLINA PURSUANT TO ITS ORDER OF REMAND DATED JUNE 26, 2025

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

Third-Party Defendants.

Pursuant to the Supreme Court's Order of Remand, dated June 26, 2025, in which the Court asked that I submit monthly reports as to my progress in addressing the directives from the Court contained in its Remand Order, this will constitute my Fourth Report.

On October 6, 2025, I conducted an extensive Pre-Trial Hearing in the above third-party action. The Agenda for that Pre-Trial was included as an attachment to my Third Report, Dated September 24, 2025. At the Pre-Trial Hearing, I heard twelve complex motions and verbally ruled on them. Additionally, Third-Party Plaintiff Cape by its Receiver, and the Anglo American and DeBeers Third-Party Defendants announced a tentative settlement. Sometime after the announcement of the tentative settlement, I was advised that on September 30, 2025, Altrad Investment Authority and other related corporations had obtained from English Judge Marcus Smith of the High Court of Justice Business and Property Courts of England and Wales an Order purporting to restrain Mr. Protopapas as Receiver for Cape from taking any action in relation to settling claims involving the Cape parties. I was further advised that Mr. Justice Mann had set for hearing on October 20, 2025 an application by the Anglo American and DeBeers parties for an Order dissolving the injunction and allowing Anglo-DeBeers parties to enter into a settlement agreement with the Receiver.

On October 13, 2025, I filed the attached 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 Receivers' and Tibbs Plaintiffs' Motions to Confirm the Appointment of the Receiver. In this Order, I memorialized my rulings on all outstanding motions, pre-trial and otherwise. Defendants Altrad, Charter, ESAB, Central Mining, and related groups appealed my October 13, 2025 Order to the Court of Appeals of South Carolina.

On October 20, 21, and 22, 2025, I conducted the non-jury trial of Cape by its Receiver v. Anglo American and many others. Before the trial commenced, I ruled that the appeal of my October 13 order was an attempt to appeal an interlocutory, non-appealable order, and as such did not stay the trial. Defendants Altrad, Charter, Central Mining, and ESAB also made filings at the Supreme Court aimed at stopping the trial. I ruled that the Supreme Court's Remand Order required me to proceed, and a subsequent order of the Supreme Court provided that settlement orders could

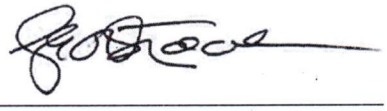
be signed by this court. The Court of Appeals dismissed the appeal to it on October 20, 2025 and sent down the remittitur. Additionally, I was then informed that English Judge Mann had granted Anglo's petition to withdraw the English Court's prohibition of Anglo's proposed settlement with the Receiver. I then announced that Anglo was dismissed, subject to approval by this Court of the Settlement Agreement. The trial then commenced against Altrad, Charter, Central Mining, ESAB, and the other related third-party defendants with the beginning of the presentation of the Plaintiff's case.

Altrad, Charter, Central Mining, ESAB, and related corporations declined to examine witnesses, voir dire experts, or participate in the trial, other than to assert, as each witness and all exhibits were submitted, that the Receivership was void and the trial a "jural nullity".

On the third day of trial, Plaintiff concluded its case. Plaintiff then announced that it was prepared to make its dispositive motions and closing arguments.

After discussion with the parties, I recessed the trial for 30 days to allow the preparation and submission of the Transcript of Record to this court. This recess will also allow the detailed examination by this court of the more than 250 exhibits containing thousands of pages of materials. This Court will be examining the transcript and exhibit materials, and conducting research in preparation to hear final arguments and any dispositive motions made by the parties. This Court will then rule from the bench on this case with a written order to follow.

Respectfully submitted,



Chief Justice (Ret.) Jean Hoefer Toal
Presiding Circuit Court Judge

Dated October 23, 2025
Columbia, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

Defendants.

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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.

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.

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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.

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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

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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

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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/orCharter, 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

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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

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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

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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.

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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").

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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

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[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.

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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

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[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").

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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]

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[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).

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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

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[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")

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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.

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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.*

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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

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[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.

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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

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[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.

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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

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[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).

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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

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[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).

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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:

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[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).

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> [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

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[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.").

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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

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[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.

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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?

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[78] *Id.* at 116.
[79] *Id.* at 24.
[80] *Id.* at 38, 63.
[81] *Id.* at 11-12, 30.
[82] *Id.* at 40, 57.

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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,

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[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.

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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

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[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.").

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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

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[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_000 95988 ("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.

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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

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[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.

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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).

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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 Oren[111] 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

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[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).

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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.

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> 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

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[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.

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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.

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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

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> 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.*

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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,

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[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).

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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

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[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).

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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 unrebutted 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

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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

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[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).

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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 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,

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[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).

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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

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[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

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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).

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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;

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[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.

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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]

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[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).

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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

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[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].

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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).

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[149] *Id.*
[150] *Welch* at *11.

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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,

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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]

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Richland Common Pleas

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

Case Number: 2023CP4001759

Type: Order/Other

So Ordered

Jean H. Toal

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