

COLUMBIA

3200 Devine Street
Columbia, SC 29205
P: 803.254.5445
F: 803.254.5007

SUMTER

126 N. Main Street
Sumter, SC 29150
P: 803.778.2471
F: 803.778.1643

CAMDEN

935 Broad Street
Camden, SC 29020
P: 803.432.1992
F: 803.432.0784

Reply To: Columbia

October 28, 2025

VIA Email and Hand Delivery
The Honorable Jean H. Toal
Chief Justice (Retired)
2418 Wheat Street
Columbia, SC 29205

RECEIVED

Oct 30 2025

S.C. SUPREME COURT

**Re: *John Tibbs, etc. vs. 3M Company, et al, C/A No. 2023-CP-0-01759 and
Isabella Park v. Armstrong International, et al., C/A No. 2024-CP-40-03014***

Dear Chief Justice Toal:

Please find enclosed copies of the following documents, filed electronically in the above-referenced cases on October 28, 2025:

1. Motion to Seal Confidential Settlement Agreement
2. Motion to Approve Confidential Settlement Agreement, Establish Qualified Settlement Fund, and Retain Jurisdiction Including Fees
3. Proposed Order Granting Motion to Approve Confidential Settlement Agreement between and among the Receiver for Cape PLC, South Carolina Asbestos Victims Compensation QSF LLC, and Anglo American US Holdings Inc. for itself and its affiliates
4. The Receiver's Report on Attorneys' Contingency Fee Request Related to Motion to Approve Settlement
5. The Receiver's Notice of Filing with the attached South Carolina Asbestos Victims Compensation QSF LLC Operating Agreement

As you will note, a Motion to Seal the Confidential Settlement Agreement has been filed. A copy of the executed Confidential Settlement Agreement is enclosed for the Court's *in camera* review and has not been filed electronically in the case.

Sincerely

Jonathan M. Robinson

JMR/dlf
Enclosures

cc: Counsel of record via electronic filing only (without enclosures)

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,

Plaintiff,

Vs.

3M COMPANY, et al.,

Defendants.

In Re: Asbestos Personal Injury Litigation
Coordinated Docket

Civil Action No. 2023-CP-40-01759

**MOTION TO SEAL CONFIDENTIAL
SETTLEMENT AGREEMENT**

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.

ESAB Corporation; *et al.*,

Third-Party Defendants

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

KEITH W. PARK, Individually and as the
Personal Representative of the Estate of
ISABELLA PARK,

Plaintiff,

Vs.

ARMSTRONG INTERNATIONAL, INC.,

Defendants.

In Re: Asbestos Personal Injury Litigation
Coordinated Docket

Civil Action No. 2021-CP-40-02727

**MOTION TO SEAL CONFIDENTIAL
SETTLEMENT AGREEMENT**

Pursuant to Rule 41.1, SCRCF, Peter D. Protopapas, in his capacity as the court-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd. (the “Receiver” and/or “Cape”) respectively submits the following Motion to Seal portions of the Confidential Master Settlement Agreement (the “Confidential Settlement Agreement”) between the Receiver and Anglo American US Holdings Inc. The Receiver requests this document be sealed and used solely for this Court’s in camera review.

APPLICABLE LAW

The Receiver files this motion pursuant to SCRCF 41.1, which sets out the procedures for parties to file a motion to file documents under seal. Rule 41.1(c) provides:

In determining whether to approve the filing of the settlement documents, in whole or in part, under seal, the court shall consider:

- (1) the public or professional significance of the lawsuit;
- (2) the perceived harm to the parties from the disclosure[;]
- (3) why alternatives other than sealing the documents are not available to protect legitimate private interests as identified by this Rule; and,
- (4) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

Each of the factors dictates the attachments should be sealed.

ANALYSIS

The Receiver seeks to file the Confidential Settlement Agreement under seal because sealing the settlement agreement best balances the harm that will result to the parties and the public due to the disclosure of the agreement with South Carolina’s recognition of the public importance of maintaining open court proceedings. As discussed herein, the factors listed in Rule 41.1(c)

weigh in favor of sealing this settlement agreement.

a. The public or professional significance of the lawsuit

This Court has previously found in sealing a settlement agreement in similar litigation that “although the litigation of asbestos suits is of great public importance, the specific terms of the liquidation of Receiver assets arising from a settlement between the Receiver and the settling insurance company does not have great public significance.” *See James Franklin Davis v. 3M Co.*, Richland County Case No. 2022-CP-40-02381 (Order filed March 31, 2023). The Confidential Settlement Agreement at issue in this Motion to Seal settles claims brought in connection with the Receiver’s third-party complaint. Although underlying asbestos litigation between Cape and asbestos plaintiffs may have great public significance, the Confidential Settlement Agreement the Receiver seeks to seal relates to third-party complaint and the Receiver’s attempts to marshal assets in accordance with the receivership court’s orders. South Carolina has recognized the importance of maintaining open court proceedings and records. *See* Rule 41.1(a), SCRCP. However, this recognition stems from an attempt to prevent the public harm that often arises from parties who enter into secret settlement agreements with the intention of hiding known dangers and liability from the public.

In the instant case, the dangers of asbestos are well-known by the public, and the Receiver is not attempting to hide harmful information from the public. The Receiver does not attempt to seal any documents related to underlying actions. The Confidential Settlement Agreement does not make any specific references to the allegations or litigation surrounding pending asbestos suits. Instead, the settlement agreement is a way for the Receiver and Anglo American US Holdings Inc. and its past, present and future parents, subsidiaries and affiliates, including Anglo American plc and De Beers plc and their former, present, and future subsidiaries, which include all Anglo

American and De Beers entities that have been named defendants in this litigation (collectively, “Anglo American-De Beers”). to resolve claims related to the third-party complaint. This agreement allows the Receiver to establish a Qualified Settlement Fund (“the QSF”). While the Confidential Settlement Agreement will be sealed, the Receiver will file the QSF Operating Agreement, which is an attachment to the Confidential Settlement Agreement, publicly with the Court. Therefore, although underlying asbestos suits may have great public significance, the specific settlement agreement here does not have great public significance because it is related to the Receiver’s third-party complaint.

b. The perceived harm to the parties from disclosure

Sealing the Confidential Settlement Agreement in this case will help the Receiver continue to fulfill his court-appointed duties. The Confidential Settlement Agreement between the Receiver and Anglo American US Holdings Inc. was created in settlement negotiations subject to an absolute mediation privilege between the parties with the expectation of confidentiality. The disclosure of the information contained in the Confidential Settlement Agreement could be misappropriated and could chill the Receiver’s ability to equitably resolve its remaining disputes in this case and any other pending cases, which would prevent South Carolina citizens who may have legitimate claims against Cape for asbestos exposure from receiving fair compensation.

c. Why alternatives other than sealing the documents are not available to protect legitimate private interests

Sealing the Confidential Settlement Agreement at this time is the only way to fairly balance and protect the interests of the public with the interests of the settling parties. The Receiver requests the Court seal the Confidential Settlement Agreement, but the Receiver will file the QSF Operating Agreement, which is an attachment to the Confidential Settlement Agreement, in the

public docket. Thus, the Receiver is only requesting the Court seal the amount necessary to protect the legitimate private interests of the Receiver, Cape, and Anglo American-De Beers.

d. Why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents

As discussed above, sealing the Confidential Settlement Agreement promotes the public interest because the public has an interest in ensuring the Receiver is able to effectively marshal the assets of Cape in accordance with the receivership courts orders, including an interest that any settlements of other pending or future claims against Cape will not be chilled in order to help compensate persons who have been injured due to the exposure to asbestos. The public has an interest in the QSF, and the Receiver will file the QSF Operating Agreement. However, the public does not have an interest in the Confidential Settlement Agreement and its terms.

CONCLUSION

The Receiver respectfully submits that the confidential nature of the Confidential Settlement Agreement renders it of the type that should be sealed and for in camera review only, and therefore respectfully requests that this Court seal the Confidential Settlement Agreement.

SMITH ROBINSON, LLC

/s/ Jonathan M. Robinson

Jonathan M. Robinson
3200 Devine Street
Columbia, SC 29205
jon@smithrobinsonlaw.com
(803) 254-5445

GALLIVAN, WHITE & BOYD, P.A.
John T. Lay, Jr., SC Bar No. 64526
Lindsay A. Joyner, SC Bar No. 77437
Olesya V. Bracey, SC Bar No. 101409
Eleanor L. Jones, SC Bar No. 104678
1201 Main Street, Suite 1200
PO Box 7368 (29202)

Columbia, SC 29201
jlay@gwblawfirm.com
ljoyner@gwblawfirm.com
obracey@gwblawfirm.com
ejones@gwblawfirm.com
(803) 779-1833

Troy S. Brown
Dana E. Becker
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
troy.brown@morganlewis.com
dana.becker@morganlewis.com
(215) 963-5000

Brady Edwards (*pro hac vice forthcoming*)
Lauren McCulloch Semlinger
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002
brady.edwards@morganlewis.com
lauren.semlinger@morganlewis.com
(713) 890-5467

Paul A. Scrudato
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
paul.scrudato@morganlewis.com
(212) 309-6000

Attorneys for Third-Party Plaintiff Peter D. Protopapas, in his capacity as the Court-appointed Receiver (the "Receiver") for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)

This 28th Day of October, 2025

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
JOHN A. TIBBS AND MARGARET B. TIBBS,	In Re: Asbestos Personal Injury Litigation Coordinated Docket
Plaintiff,	Civil Action No. 2023-CP-40-01759
Vs.	
3M COMPANY, et al.,	
Defendants.	

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
KEITH W. PARK, Individually and as the Personal Representative of the Estate of ISABELLA PARK,	In Re: Asbestos Personal Injury Litigation Coordinated Docket
Plaintiff,	Civil Action No. 2021-CP-40-02727
Vs.	
ARMSTRONG INTERNATIONAL, INC.,	
Defendants.	

**MOTION TO APPROVE CONFIDENTIAL SETTLEMENT AGREEMENT, ESTABLISH
QUALIFIED SETTLEMENT FUND, AND RETAIN JURISDICTION INCLUDING FEES**

Peter D. Protopapas, as the court-appointed Receiver (the “Receiver”) for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“Cape”), moves the Court for an order approving a proposed Confidential Master Settlement Agreement (the “Confidential Settlement Agreement”) by and among the Receiver and Anglo American US Holdings Inc.

In support of this Motion, the Receiver states as follows:

1. This Court appointed the Receiver to marshal, preserve, and, as appropriate, liquidate assets of Cape, and to take actions in the best interests of the receivership estate, subject to this Court's supervision and approval.

2. The Confidential Settlement Agreement will result in the resolution and releases of all disputes in South Carolina among the Receiver and Anglo American US Holdings Inc. and its affiliates, including Anglo American plc, De Beers plc, De Beers UK Ltd, De Beers Consolidated Mines (Pty) Ltd, De Beers Centenary AG, Anglo American Crop Nutrients (USA), LLC, De Beers Jewellers Limited, De Beers Jewellers (US), Inc., Element Six US Corporation, Element Six Technologies US Corporation, Forevermark US, Inc., Platinum Guild International (U.S.A.) Jewelry, Inc., and Lightbox Jewelry Inc. (collectively, the “**Anglo American-De Beers Third-Party Defendants**”). The Confidential Settlement Agreement provides for the transfer of funds to a qualified settlement fund, subject to this Court's continuing jurisdiction, known as the “**South Carolina Asbestos Victims Compensation QSF LLC**” (“**the Fund**”), managed by the Receiver. The Confidential Settlement Agreement represents a fair and reasonable compromise of matters in dispute in South Carolina between these parties and will protect the Anglo American-De Beers Third-Party Defendants from all claims filed in South Carolina by asbestos claimants arising out of, or relating to, injuries arising from alleged exposure to asbestos products. Approval will provide certain, immediate value to the estate, avoid the burden, cost, and risk of continued South Carolina litigation, and conserve judicial resources. Under the terms of this agreement, the Fund will defend and indemnify the Anglo American-De Beers Third-Party Defendants in the event they are sued in future South Carolina asbestos cases.

3. The Confidential Settlement Agreement will be submitted *in camera* to this Court for review. The Confidential Settlement Agreement and its performance are contingent upon the approval of this Court.

CONCLUSION

WHEREFORE, the parties respectfully request that the Court enter the proposed approval order, for all of the following reasons:

- a. The proposed Confidential Settlement Agreement will provide substantial funding to the receivership estate for the benefit of South Carolina asbestos claimants asserting claims against the Anglo American-De Beers Third-Party Defendants, and
- b. The proposed Confidential Settlement Agreement will resolve present disputes between the settling parties and eliminate the need for future litigation between the parties.

Based on the foregoing, the Receiver respectfully requests that the proposed approval order be entered.

SMITH ROBINSON, LLC

/s/ Jonathan M. Robinson

Jonathan M. Robinson
3200 Devine Street
Columbia, SC 29205
jon@smithrobinsonlaw.com
(803) 254-5445

GALLIVAN, WHITE & BOYD, P.A.
John T. Lay, Jr., SC Bar No. 64526
Lindsay A. Joyner, SC Bar No. 77437
Olesya V. Bracey, SC Bar No. 101409
Eleanor L. Jones, SC Bar No. 104678

1201 Main Street, Suite 1200
PO Box 7368 (29202)
Columbia, SC 29201
jlay@gwblawfirm.com
ljoyner@gwblawfirm.com
obracey@gwblawfirm.com
ejones@gwblawfirm.com
(803) 779-1833

Troy S. Brown
Dana E. Becker
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
troy.brown@morganlewis.com
dana.becker@morganlewis.com
(215) 963-5000

Brady Edwards (*pro hac vice forthcoming*)
Lauren McCulloch Semlinger
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002
brady.edwards@morganlewis.com
lauren.semlinger@morganlewis.com
(713) 890-5467

Paul A. Scrudato
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
paul.scrudato@morganlewis.com
(212) 309-6000

Attorneys for Third-Party Plaintiff Peter D. Protopapas, in his capacity as the Court-appointed Receiver (the "Receiver") for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)

This 28th Day of October, 2025

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS AND MARGARET B. TIBBS,

In Re: Asbestos Personal Injury Litigation
Coordinated Docket

Plaintiff,

Civil Action No. 2023-CP-40-01759

Vs.

3M COMPANY, et al.,

**THE RECEIVER'S REPORT ON
ATTORNEYS' CONTINGENCY FEE
REQUEST RELATED TO MOTION
TO APPROVE SETTLEMENT**

Defendants.

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

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

Peter D. Protopapas, as the duly-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd., n/k/a Cape Intermediate Holdings Ltd. (“the Receiver”), submits this Report on the Receiver’s Attorney’s Fees and Costs along with evidence for this Court’s *in camera* review in connection with the motion to approve confidential settlement agreement with Anglo American US Holdings Inc. (“Anglo American”). The settlement marks the resolution of over two years of complex litigation between the Receiver and the Anglo American-

De Beers Third-Party Defendants¹. However, the case remains pending and began trial against the remaining Third-Party Defendants on October 20, 2025. For the following reasons, the Receiver requests that this Court approve the Receiver's attorneys' contingency fee request in connection with the motion to approve settlement. The Receiver seeks the Court's approval of the attorneys' contingency fee of forty percent (40%) of the gross settlement amount between the Receiver and Anglo American US Holdings Inc. (for itself and its affiliates) and approval of reimbursement of costs incurred by the law firms to date. In light of the attorneys' fee request, in part, to the Receiver's law firm, the Receiver does not request a Receiver fee for his work to date.

BACKGROUND

A. The Receiver's Investigation and the Subsequent Prosecution of this Action Required Expenditure of Significant Resources.

On March 17, 2023, this Court appointed a receiver for an entity identified as Cape PLC as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) pursuant to S.C. Code § 15-65-10(5), as well as § 15-65-10(4) in the alternative. Order, *Park et al. v. Armstrong Int'l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) ("Appointment Order"), at 1. Pursuant to the Appointment Order and South Carolina law, the Receiver has "power and authority [to] fully administer all assets of Cape, . . . engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape"—in proper satisfaction of claims against Cape — "whatever they may be." *Id.* The Appointment Order further vested the Receiver with "rights,

¹ These Third-Party Defendants included Anglo American US Holdings Inc., Anglo American plc, De Beers plc, De Beers Centenary AG, De Beers Consolidated Mines (Proprietary) Limited, De Beers UK Limited, Anglo American Crop Nutrients (USA), LLC, De Beers Jewellers Limited, De Beers Jewellers (US), Inc., Element Six US Corporation, Element Six Technologies US Corporation, Forevermark US, Inc., Platinum Guild International (U.S.A.) Jewelry, Inc., and Lightbox Jewelry Inc.

authority and powers with respect to” Cape’s property, including to “obtain from any . . . third party, any financial records belonging to or pertaining to” Cape. *Id.* at 2.

To fulfill his obligations to this Court, the Receiver performed his own investigation into, and sought information and documents from, the Third-Party Defendants regarding various facts alleged in the Third-Party Complaint, including their current or historical interests in Cape and South Africa asbestos, as well as their corporate interrelationships between and among each other, through written discovery requests, motions to compel, and deposition testimony.

The Receiver’s investigation in this case was significantly different than that of other receiverships because of the non-participation of certain Third-Party Defendants and the complicated nature of the liability case against them. The Receiver was required to locate and evaluate archives of documents in the United States and internationally – including in England, Scotland, and Australia – to fully understand the arrangement among the Third-Party Defendants for the mining of raw asbestos fiber in South Africa and ultimate sale to customers in South Carolina, as well as to locate evidence to establish successor liability for the modern entities identified in this case. This work included detailed research into archived materials, informational interviews with researchers and academics familiar with Cape and the Oppenheimer Group System, and careful study of the materials the Receiver located to build a complete declaratory judgment action. The Receiver’s lawyers spent more than one thousand hours on this historical case development, in large part because many of the Third-Party Defendants did not participate in discovery in this matter: almost every question the Receiver had required outside research to answer.

The Receiver also has engaged in significant discovery, motions practice, and briefing. The Receiver has produced 13,459 documents, totaling 260,126 pages, and received and reviewed

nearly 5,000 documents from the Anglo American-De Beers Third-Party Defendants. The Receiver's team has participated in countless meet and confers related to discovery issues that arose and taken five depositions in the case.

Since the filing of the Third-Party Complaint, the Receiver has filed at least 75 motions, opposition briefs, and other filings in this case. The filings in this case have been so extensive that the electronic filing case management system crashed in August 2025, and the parties were required to file materials traditionally for a period of time until the limits on the case management system could be increased. This Court has held eight status conferences and hearings in this matter on October 6, 2025, August 12, 2025, July 22, 2025, June 5, 2025, September 24, 2024, April 10, 2024, February 2, 2024, October 25, 2023. Each appearance before the Court required extensive preparation by the Receiver's team and related travel.

There have been 20 notices of appeal filed in the Court of Appeals arising from this case which necessitated extensive briefing on motions to dismiss and petitions for rehearing. Following the successful dismissal of those appeals, there were 10 petitions for writs of certiorari and numerous supplements to those petitions filed in the South Carolina Supreme Court, which necessitated extensive briefing and other appellate motions. There were additional filings at the appellate courts as to whether the bankruptcy stay involving ACL had any effect on the appeals involving the Cape receivership. Additionally, this case was removed to the federal court from June 28, 2024, to August 13, 2024, when the District Court granted the Receiver's motion to remand. The federal docket contains 76 docket entries in the less than two months that the case was pending in federal court.

Additionally, parties in this litigation have initiated litigation in foreign courts, including the United Kingdom, France, and Belgium, which has necessitated the Receiver and his counsel

to spend extensive time reviewing filings in foreign jurisdictions and correspondence relating to those filings and filing motions in the South Carolina circuit court and appellate courts to keep the South Carolina courts apprised of the foreign litigation. For example, since September 2024, the Receiver has been served over 120 times with filings related to foreign proceedings.

Trial in this matter started on October 20, 2025. Trial was previously scheduled in this case on April 15, 2024, December 9, 2025, and February 3, 2025, but was continued, in part, due to the non-participation and appeals. In preparing for the October trial, the Receiver hired expert witnesses and conducted extensive meetings with those expert witnesses to prepare their testimony for trial. These experts engaged in extensive file review, assisted the Receiver's team in developing trial strategies, prepared for their depositions, and prepared detailed presentations to be given to this Court at trial. The Receiver's team prepared trial exhibits, a trial witness list, and deposition designations; prepared for the cross-examination of potential witnesses; and prepared the Receiver's own trial presentation.

Given the complex nature of the dispute between the parties, combined with the long timeline of activities at issue in the case, the Receiver's team has dedicated substantial time and resources into creating a trial presentation and associated pre-trial memorandum that synthesized this complex information into a digestible form for the Court. This effort included carefully combing through the extensive document productions in the case, and all other written materials to distill the most important elements for trial; and preparing a concise yet appropriately detailed presentation for the trial, including an opening presentation, a closing presentation, and testimony from the Receiver's expert witnesses.

As of October 17, 2025, the Receiver's counsel have spent a total of 19,628.2 hours on this case, not including the time of the Receiver or his staff. Because the settlement does not end the case, the trial proceeded on October 20.

ARGUMENT

Counsel undertook this matter on a contingency fee basis with no guarantee of payment. In fact, no such case had ever succeeded in the past. Receiver and his counsel worked consistently in discovery and other motion practice to prepare the action for trial. Through the two-and-a-half years this matter has been pending, counsel undertook thousands of hours of work and incurred considerable costs.

This court may consider the traditional six-factor test to determine the amount of an award.

A. The Requested Attorney Fee Award is Consistent With the Six-Factor Analysis Under *Glasscock*

"The award of attorney fees and costs is a matter within the sound discretion of the trial judge." *Taylor v. Taylor*, 333 S.C. 209, 215, 508 S.E.2d 50, 54 (Ct. App. 1998). In determining the amount of attorney's fee to award, the Court should consider: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991). Considering these factors, the Receiver and his lawyers devoted significant time and resources to this action, and the negotiated attorney fee award properly reflects these efforts.

First, this action involved both a deep factual investigation into the corporate histories of the receivership entity and Third-Party Defendants as well as an analysis of complex legal issues. To address these issues, the Receiver required sophisticated lawyers who had knowledge of a range of issues.

Second, the Receiver's team worked thousands of hours in this litigation through the discovery, motions practice, appeal, and trial preparation in this case. The Receiver's team also incurred significant costs associated with investigation, discovery, expert engagement, and trial preparation in this case.

Third, the Receiver's team are known to the profession in South Carolina and elsewhere as elite lawyers in their areas of specialty. Specifically, for the last two years, Smith Robinson has been selected as a Best Law Firm, having received a Metropolitan Tier 1 recognition for the area of Commercial Litigation in Columbia, South Carolina. Further, both Jon Robinson and Murrell Smith of Smith Robinson have been elected for Membership in the American Board of Trial Advocates. Gallivan White and Boyd, founded more than seventy-five years ago, has received numerous honors and awards for its trial work. Its attorneys manage complex, high stakes litigation for clients and have tried hundreds of cases to verdict. It has been recognized as a Benchmark Litigation Highly Recommended Firm and been included in U.S. News & World Report's Best Law Firms list as well as has been ranked in Chambers USA multiple times. Additionally, GWB's attorneys have served in numerous leadership positions in legal organizations both in South Carolina and across the world, including the South Carolina Bar, the American Board of Trial Advocates, the International Association of Defense Counsel, the South Carolina Association of Defense Trial Attorneys, and the Association of Defense Trial Attorneys and maintains an exemplary reputation in the legal community. Additionally, the Morgan Lewis litigation team is highly-regarded, having received numerous accolades in insurance recovery and complex commercial litigation, including several consecutive years as Chambers ranked commercial litigators.

Fourth, because of the nature of the Receiver's role in marshaling the assets of a company, for a company that has avoided making assets available to claimants in the United States, the Receiver's team necessarily works entirely on a contingency fee basis. As a result, unless and until this Court considers an attorney fee award in this case, the Receiver's team has not been compensated for its work in connection with the Cape receivership.

Fifth and finally, the requested attorney fee and cost award is consistent with the customary legal fees for such actions and legal work, particularly considering the extensive litigation undertaken by the Receiver's team, as outlined hereinabove.

For all these reasons, the *Glasscock* factors weigh in favor of approving the requested attorney fee award.

The Receiver's effort in this action—undertaken at his own expense and at the expense of the three firms he hired to represent him on a contingent fee basis—were significant. In sum, the Receiver's counsel have spent a total of 19,628.2 hours on this case as of October 17, 2025. This does not include the time of the Receiver or his staff. The Receiver hired extremely capable local South Carolina counsel to represent him in the litigation, and he also hired a highly regarded national law firm with experience in asbestos litigation to support the Receiver's efforts. These efforts were in addition to and supported by highly capable lawyers and professional staff at the Receiver's law firm.

CONCLUSION

The Receiver was required to engage in the extensive work described above because of the complicated nature of the action and Third-Party Defendants' vigorous defenses. Accordingly, the Receiver respectfully requests that the Court exercise its sound discretion and approve the

Receiver's contingent attorney fees as outlined in the motion to approve the confidential settlement agreement submitted to the Court.

SMITH ROBINSON, LLC

/s/ Jonathan M. Robinson

Jonathan M. Robinson
3200 Devine Street
Columbia, SC 29205
jon@smithrobinsonlaw.com
(803) 254-5445

GALLIVAN, WHITE & BOYD, P.A.
John T. Lay, Jr., SC Bar No. 64526
Lindsay A. Joyner, SC Bar No. 77437
Olesya V. Bracey, SC Bar No. 101409
Eleanor L. Jones, SC Bar No. 104678
1201 Main Street, Suite 1200
PO Box 7368 (29202)
Columbia, SC 29201
jlay@gwblawfirm.com
ljoyner@gwblawfirm.com
obracey@gwblawfirm.com
ejones@gwblawfirm.com
(803) 779-1833

Troy S. Brown
Dana E. Becker
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
troy.brown@morganlewis.com
dana.becker@morganlewis.com
(215) 963-5000

Brady Edwards (*pro hac vice forthcoming*)
Lauren McCulloch Semlinger
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002
brady.edwards@morganlewis.com
lauren.semlinger@morganlewis.com

(713) 890-5467

Paul A. Scrudato
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
paul.scrudato@morganlewis.com
(212) 309-6000

Attorneys for Third-Party Plaintiff Peter D. Protopapas, in his capacity as the Court-appointed Receiver (the "Receiver") for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)

This 28th Day of October, 2025

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
JOHN A. TIBBS AND MARGARET B. TIBBS,	In Re: Asbestos Personal Injury Litigation Coordinated Docket
Plaintiff,	Civil Action No. 2023-CP-40-01759
Vs.	
3M COMPANY, et al.,	
Defendants.	
STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
KEITH W. PARK, Individually and as the Personal Representative of the Estate of ISABELLA PARK,	In Re: Asbestos Personal Injury Litigation Coordinated Docket
Plaintiff,	Civil Action No. 2021-CP-40-02727
Vs.	
ARMSTRONG INTERNATIONAL, INC.,	
Defendants.	

NOTICE OF FILING

NOW COMES the undersigned, as counsel of record for Third Party Plaintiff, Peter D. Protopapas, as Receiver for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd. (hereinafter “The Receiver”) and files a copy of the South Carolina Asbestos Victims Compensation QSF LLC Operating Agreement.

SMITH ROBINSON, LLC

/s/ Jonathan M. Robinson

Jonathan M. Robinson
3200 Devine Street
Columbia, SC 29205
jon@smithrobinsonlaw.com
(803) 254-5445

GALLIVAN, WHITE & BOYD, P.A.
John T. Lay, Jr., SC Bar No. 64526
Lindsay A. Joyner, SC Bar No. 77437
Olesya V. Bracey, SC Bar No. 101409
Eleanor L. Jones, SC Bar No. 104678
1201 Main Street, Suite 1200
PO Box 7368 (29202)
Columbia, SC 29201
jlay@gwblawfirm.com
ljoyner@gwblawfirm.com
obracey@gwblawfirm.com
ejones@gwblawfirm.com
(803) 779-1833

Troy S. Brown
Dana E. Becker
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
troy.brown@morganlewis.com
dana.becker@morganlewis.com
(215) 963-5000

Brady Edwards (*pro hac vice forthcoming*)
Lauren McCulloch Semlinger
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002
brady.edwards@morganlewis.com
lauren.semlinger@morganlewis.com
(713) 890-5467

Paul A. Scrudato
MORGAN, LEWIS & BOCKIUS LLP

101 Park Avenue
New York, NY 10178
paul.scrudato@morganlewis.com
(212) 309-6000

Attorneys for Third-Party Plaintiff Peter D. Protopapas, in his capacity as the Court-appointed Receiver (the "Receiver") for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)

This 28th Day of October, 2025

SOUTH CAROLINA ASBESTOS VICTIMS COMPENSATION QSF LLC OPERATING AGREEMENT

This SOUTH CAROLINA ASBESTOS VICTIMS COMPENSATION QSF LLC OPERATING AGREEMENT (the “**Operating Agreement**”) for the establishment and operation of a settlement fund, including any and all sub-funds, is declared to be effective (the “**Effective Date**”) upon approval by a court of competent jurisdiction (the “**Court**”) which shall retain and have continuing jurisdiction over the Fund. This Operating Agreement is entered into by Peter D. Protopapas in his capacity as the court-appointed South Carolina Receiver for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (the “**Receiver**”) as the sole Member and the Manager (the “**Manager**”) of the limited liability company now established under the law of the State of South Carolina known as “South Carolina Asbestos Victims Compensation QSF, LLC” (the “**Fund**”).

WITNESSETH:

WHEREAS, in settlement of certain disputes, Anglo American US Holdings Inc., (“**Transferor**”) (as further identified on Schedule 1 herein) and the Receiver, acting pursuant to his authority and solely in such capacity, have entered into a Confidential Master Settlement Agreement (the “**Settlement Agreement**”) which has or shall be approved by a court of competent jurisdiction and which will resolve all disputes in South Carolina among the Receiver, the Transferor and its affiliates including Anglo American plc, De Beers plc, De Beers UK Ltd., De Beers Consolidated Mines (Pty) Ltd., De Beers Centenary AG, Anglo American Crop Nutrients (USA), LLC, De Beers Jewellers Limited, De Beers Jewellers (US), Inc., Element Six US Corporation, Element Six Technologies US Corporation, Forevermark US, Inc., Platinum Guild International (U.S.A.) Jewelry, Inc., and Lightbox Jewelry Inc. (collectively, “**Anglo American-De Beers Entities**”). **WHEREAS**, the Transferor, as set forth on Schedule 1 to this Operating Agreement, including all subsequent transferors, have agreed to be Transferors pursuant to Section 468B of the Internal Revenue Code;

WHEREAS, this Fund, together with all other additional proceeds or other assets that may become available to the Receiver (“**Other Assets**”), will be responsible for resolving Cape Asbestos Suits (as defined below), to the extent that such Other Assets have not paid or reimbursed such costs and expenses, but only to such extent, and to meet administrative costs and expenses of this Fund, including without limitation tax and investment fees and expenses;

WHEREAS, this Fund is excess of all such Other Assets;

WHEREAS, this Fund, including any and all Sub-Funds, are intended to qualify as a “Settlement Fund” within the meaning of Section 1.468B-1 of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended;

WHEREAS, the parties to this Operating Agreement acknowledge and agree that the funds and other assets and things of value transferred to the Fund and all earnings thereon or additions thereto are to be held, administered and distributed in accordance with the following provisions;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, it is agreed as follows:

Article I

General Fund Provisions

1.1 Name of Fund. This Fund shall be known as and properly referred to as the **South Carolina Asbestos Victims Compensation QSF LLC (“the Fund”)**.

1.2 Fund Purposes. The purposes of this Fund shall be (i) to provide funds which may be used to resolve South Carolina claims, actions, suits, losses, rights, damages, costs, fees, expenses, obligations, liabilities, and causes of action of every character, nature (whether sounding in tort, contract, warranty, or any other theory of law, or equity), kind or description whatsoever, known or unknown, past, present, or future, foreseen or unforeseen, and suspected or unsuspected, arising out of, or relating to, injuries arising from alleged exposure to Cape Asbestos Products (as defined in the Settlement Agreement), that are brought in South Carolina by any person or entity (whether it is an asbestos claimant, an asbestos trust, or others) (“**Cape Asbestos Suits**”); (ii) to provide funds to be used to pay the legal fees of the Receiver and lawyers engaged by the Receiver; (iii) to provide funds to be used to pay any settlement or to satisfy any final judgment or award entered against the Receiver in connection with any claims, causes of action, demands, proceedings, or investigations (whether threatened, pending, or future) asserted against the Receiver in his capacity as the Receiver; (iv) to provide advances to pay for legal fees and settlement costs of Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“**Cape**”) pending reimbursement or indemnification by other responsible third parties; (v) to secure certain future potential contingent obligations pursuant to the terms of the Settlement Agreement, which terms are expressly incorporated herein by reference; (vi) to pay for administrative and management costs as provided for herein; and (vii) to do all things necessary or appropriate in connection with the foregoing.

1.3 Distributions and Advances; Other Assets. Distributions from the Fund shall be made to meet Fund purposes, in the discretion of the Manager, or to meet any legal obligation of the Fund. Advances from the Fund may be made, in lieu of a distribution, when one or more parties are responsible for meeting fees, expenses, demands, costs or liabilities properly payable by the Fund. The determination to make a distribution or an advance may be made in the discretion of the Manager. Distributions or advances to pay for or fund Cape Asbestos Suits may be made at any time, pursuant to Article 1.2 (iv) of this Operating Agreement. Payments from the Fund for Cape Asbestos Suits may be made at any time to supplement other available assets that have been used to fund Cape Asbestos Suits or have been deposited in the Fund. Advances from the Fund shall be evidenced by a promissory note in the form attached as: Schedule 2. All advances shall be recorded as receivables. The Manager may in the future adopt certain standards for distributions or advances to meet the costs of Cape Asbestos Suits.

1.4 Fund is Irrevocable. This Fund is irrevocable and may not be revoked, amended and modified, in whole or in part; *provided, however*, notwithstanding the foregoing to the contrary (i) the Manager of this Fund shall have the exclusive power and authority to petition the court that retains jurisdiction over the Fund to reform this Fund, in whole or in part, to the extent said court determines it necessary or reasonable in order for this Fund or the Manager to function or be used to serve the Fund purposes set forth herein and to serve and meet the needs of the parties hereto, and (ii) upon written agreement of each of the parties hereto and without approval of the court, the Fund instrument may be amended to accomplish one or more of the purposes of the Fund as set

forth herein, to maintain the Fund's qualification as a Qualified Settlement Fund as set forth below or to transfer the Fund to a successor escrow fund, trust or other entity designated by the parties hereto which will carry out the purposes of this Fund. Notwithstanding the provisions of this Section 1.4, neither the Fund nor the Manager of the Fund may amend the terms of the Operating Agreement to the detriment of the Transferor or to otherwise make the Fund or the Operating Agreement inconsistent with the terms and conditions of the Settlement Agreement.

1.5 Separate and Independent Fund. This Fund shall at all times be held and remain as a separate and independent fund.

1.6 Duration of Fund. This Fund shall remain in existence from the date of its creation until December 31, 2055, or until such earlier date as the Fund is exhausted or the court which has kept jurisdiction over the Fund has approved a distribution of the Fund as set forth in Section 3.4 below (the "**Termination Date**").

1.7 Situs of Fund. This Fund shall have as its situs Columbia, South Carolina; *provided, however*, that in the event the Manager deems it in the best interest of the Fund and the potential distributees of funds hereunder, the Manager may establish some or all of the Fund assets and/or the situs of the Fund in any other state or judicial district within the continental United States.

1.8 Definitions. All terms shall have the meanings set forth in the Settlement Agreement or in this Operating Agreement, and any governing instrument applicable to its Managers.

1.9 The Settlement Agreement. All provisions of the Settlement Agreement are incorporated herein, and, to the maximum extent permitted by law, the Fund and the Fund Manager agree to be bound by the terms and conditions of the Settlement Agreement.

1.10 Sub-Funds. This Fund shall have the authority to create and maintain separate Sub-Funds which shall be separate and independent funds, in accordance with any documentary requirements establishing such Sub-Funds, but subject at all times to the general terms of this Operating Agreement and any and all orders establishing the Fund and retaining jurisdiction over this Fund or modifying the terms of such order or of this Operating Agreement. The Manager of the Fund may form one or more Sub-Funds at any time, in his discretion, or as required by any pertinent document, including (without limitation) Sub-Funds that are designated for a specific liability or settlement, Sub-Funds that may secure or provide for the satisfaction of a specific obligation, contingent or otherwise, and Sub-Funds securing any obligation to a Transferor.

Article II **Deposits**

2.1 Deposit. The Transferor shall fund the Fund with the "Settlement Sum," as defined by its Settlement Agreement.

2.2 Maintenance of Funds. The funds deposited by the Transferor shall be invested and maintained as provided for by Article V of this Operating Agreement.

Article III **Funding, Distributions and Advances**

3.1 **Limitation on Distributions and Advances.** No funding shall be made into this Fund and no distribution or advance may be made from the Fund until and unless (i) an order is received from a court of competent jurisdiction approving the Fund as part of the Settlement Agreement; and (ii) the foregoing court has retained continuing jurisdiction over this Fund. The foregoing conditions are referred to in this Article III as the “**Conditions Precedent.**”

3.2 **Distributions or Advances for Cape Asbestos Suits.** The Manager may make distributions to pay for the costs and expenses of meeting Cape Asbestos Suit obligations to the extent there is no other responsive asset or responsible party for meeting such expenses. Claimants shall serve Cape Asbestos Suits on Cape Intermediate Holdings Ltd. in England, but the Manager has discretion to waive such requirement. To the extent such expenses are the responsibility of third parties, the Manager may advance funds to pay for the costs and expenses of defending against and paying otherwise unreimbursed expenses associated with the defense and settlement of Cape Asbestos Suits (“**Asbestos Claim Expenses**”), pending reimbursement of such asbestos claim expenses by otherwise responsible parties. Such advances will be repaid upon receipt of such funds from responsible parties, and, pending receipt of such reimbursements, shall bear and cumulate interest at the rate of four percent (4.00%) simple interest per annum. To the extent funds are not received from third parties to pay for the Asbestos Claim Expenses subject of such advances on or prior to the Date of Termination of the Fund, then the obligation to repay such advances shall be canceled and voided *ab initio*. Any and all advances shall be documented by one or more promissory notes in the form annexed as Schedule 2 to this Operating Agreement.

3.3 **Distributions.** When permitted to do so, the Manager shall make distributions to pay Asbestos Claim Expenses as follows:

(a). The Manager shall make distributions hereunder solely with respect to qualifying liabilities as defined in Section 1.468B-1(c) of the Treasury Regulations;

(b). Prior to making any such distribution, the Receiver shall present Required Documentation (as defined herein) to substantiate that qualifying expenditures have been paid or incurred;

(c). Required Documentation shall consist of a declaration under penalty of perjury signed by the Receiver to the effect that qualifying expenditures have been incurred (the “**Declaration**”) in the form annexed at Schedule 3, together with copies of any relevant invoices; and

(d). Receipt of the Declaration and invoices by the Receiver shall constitute conclusive proof that claim expenditures have been paid or incurred. Receipt of the signed Declaration and invoices shall relieve the Manager of any duties or obligations of any kind or nature to verify that expenditures were paid or incurred.

3.4 **Distribution Upon Expiration of Term of Fund.** In the event this Fund shall be in existence at the expiration of approximately thirty (30) years from the date of its creation, *i.e.*,

December 31, 2055, this Fund shall terminate and the Manager shall, within a reasonable time thereafter and, after paying all accrued administrative expenses, taxes and other obligations of the Fund, distribute the remaining income and principal of this Fund to the extent of its unreimbursed or incurred Asbestos Claim Expenses as provided for herein, distribute all Sub-Funds as required pursuant to documents establishing such Sub-Funds, and, if there is any remaining income and principal of this Fund, to a qualified Section 501(c)(3) organization or organizations which have been organized and operated exclusively for charitable or educational purposes as designated in writing by the Manager from the approved organizations listed in Schedule 4 to this Operating Agreement.

Article IV **Manager**

4.1 Initial Manager. The Receiver is hereby appointed and named as the Manager of this Fund, and such appointment shall become effective upon the acceptance of such responsibilities by execution of this Operating Agreement. The Receiver in his capacity as Manager may form a legal entity, including a corporation, partnership, trust, limited liability company, or limited partnership, to act as the Manager so long as the Receiver has control, voting or otherwise, over the entity.

4.2 Successor Managers. All successor Managers of this Fund shall be appointed by the Receiver or the successor receivers of Cape, subject at all times to approval by the court, if and to the extent required.

4.3 Resignation and Removal. Subject to the Receiver Order, including any amended or supplemental Receiver Order, a Manager of this Fund may resign at any time upon ten (10) days written advance notice to each of the parties hereto, or may be removed by the court by petition of an interested party. Each resigned or removed Manager shall execute all documents and do all acts necessary to vest title of the Fund in the successor Manager. No successor Manager shall be personally responsible for any act or failure to act of a predecessor Manager.

4.4 Fees and Expenses of Manager. The Manager shall be entitled to reasonable compensation for the performance of his duties as Manager. The Manager is entitled to pay reasonable fees and expenses of other parties the Manager employs or retains to assist the Manager with the administration of this Fund, including but not limited to attorneys, accountants, and such other agents and consultants as the Manager, in his sole discretion, deems appropriate to accomplish the purposes of this Fund, *provided, however*, employment and payment of such parties' fees and expenses by the Manager shall not diminish the compensation of the Manager. Such compensation, fees and expenses shall be paid currently and be a proper expense of the income or principal or both of the Fund.

4.5 Indemnification. The Manager shall not be liable, except for his own gross negligence or willful misconduct and, except with respect to claims based on such gross negligence or willful misconduct that are successfully asserted against the Manager. Except as provided in the preceding sentence, this Fund shall and hereby agrees to indemnify and hold harmless the Manager (and any successor Manager) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising

out of and in connection with this Fund. In addition, this Fund shall and hereby agrees to indemnify and hold harmless the Receiver (and any successor Receiver) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with the Receiver in his capacity as the Receiver or Manager.

4.6 In no event shall the Manager be liable for indirect, punitive, special or consequential damages.

Article V

Investment of Fund

5.1 **General Intent.** It is the purpose and intent of this Fund to maximize the amount of the Fund, including investment income, available to provide a source of funds for Asbestos Claim Expenses.

Article VI

Fund Administration, Record Keeping and Accountings

6.1 **Fund Administration.** This Fund shall be administered by the Manager under the supervision of the Court. The Manager may administer this Fund and the assets of this Fund without prior or subsequent court approval or orders for actions consistent with the Court's Orders. Nothing herein shall prevent the Manager hereof, in the Manager's sole discretion, from seeking and receiving a declaratory judgment from the Court when the Manager deems same appropriate in connection with any matter involving the administration of the Fund. Further, to the extent any of the provisions of this Operating Agreement is incomplete or unclear, there is a change in applicable law, including tax laws, or there is a change in circumstances that frustrates the intent and purpose of this Fund, or is detrimental to Cape, the Manager, in the sole discretion of the Manager, is authorized and empowered to have the Court, upon notice to all parties hereto, reform this Operating Agreement.

6.2 **Fund Accounting.** The Fund shall prepare no less often than annually a detailed Fund accounting setting forth all receipts and disbursements to or from this Fund, as well as the beginning and ending inventory of Fund assets, in accordance with the Manager's generally provided fiduciary accountings. Given the nature of this Fund, it is specifically directed that the Manager shall not be obligated to prepare its accounting reflecting transactions of this Fund as both income or principal receipts and disbursements, and instead, may account for the receipts and disbursements of this Fund without differentiation as to income or principal transactions. In this respect, the Manager is specifically authorized and directed not to account for the transactions applicable to this Fund under or in accordance with any applicable state statutes generally known as the Principal and Income Acts.

6.3 **Court Reporting.** The Manager shall periodically report to the Court the Fund activities. No Manager serving hereunder shall be obligated to file any bond to secure the faithful performance of his duties hereunder.

Article VII

Powers of Manager

7.1 **General Powers.** Except as otherwise specifically provided herein, the initial Manager named herein, as well as all successor Managers of this Fund, shall have full power and authority to administer this Fund and the assets contained herein, which powers and authority shall include all the powers and authority set forth herein as well as all other powers and authority conferred by applicable law. The initial Manager and all Successor Managers shall have the power and authority to name agents and to designate functions and responsibilities to such agents, subject at all times to the powers and supervision of the Manager and to the provisions of this Fund.

Article VIII

Tax Matters – Internal Revenue Code § 468B Qualified Settlement Fund

8.1 The Manager shall take all actions which are consistent with classification of the Fund as a Qualified Settlement Fund within the meaning of Treasury Regulations Sections 1.468B-1, *et seq.*, such that all transfers to the Fund by any Transferor will be excludable from the gross income of the Fund.

8.2 Upon establishment of the Fund and in accordance with Treasury Regulations Section 1.468B-2(k)(4), the Manager shall apply for an Employer Identification Number or shall have previously obtained for the Manager pursuant to Internal Revenue Service Form SS-4.

8.3 If applicable, the Manager and all applicable Transferors, or any Transferor as the case may be, shall fully cooperate in filing a relation-back election under Treasury Regulations Section 1.468B-1(j)(2) to treat the Fund as coming into existence as a qualified settlement fund as of the earliest possible date.

8.4 In accordance with Treasury Regulations Section 1.468B-2(k)(1), the Manager shall cause to be filed, on behalf of the Fund, all required federal, state and local tax returns. Each Transferor shall supply to the Manager and to the United States Internal Revenue Service the statement described in the Treasury Regulations no later than February 15 of the year following the calendar year in which such Transferor makes a transfer to the Fund.

8.5 In accordance with Treasury Regulations Section 1.468B-2(j), the taxable year of the Fund shall be the calendar year and the Fund shall use an accrual method of accounting, within the meaning of Treasury Regulations Section 446(c).

8.6 Anything in this Operating Agreement to the contrary notwithstanding, the Manager shall take all such actions as he deems necessary to comply with applicable laws to assure that the Fund will be treated as a Qualified Settlement Fund under Code Section 468B and the Treasury Regulations promulgated thereunder. Further, the Manager may amend, either in whole or in part, any administrative provision of this Operating Agreement which causes unanticipated tax consequences or liabilities inconsistent with the foregoing, or conform to the administrative provisions of this Operating Agreement Fund to the requirements of taxing authorities or tax counsel to the Fund.

Article IX
Miscellaneous Provisions

9.1 Notices. In the event any entity hereto shall desire or be required to give notice to any other party hereto, then such notice shall be in writing addressed to the party who is to receive such notice and deposited in the United States mail with postage prepaid and sent registered or certified mail, return receipt requested, to the following addresses:

If to the Receiver: Peter D. Protopapas
Receiver, Cape PLC, now known as Cape Intermediate
Holdings Ltd., as successor in interest to Cape
Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)
Rikard & Protopapas, LLC
2110 N. Beltline Boulevard
Columbia, South Carolina 29204
Phone: 803.978.6111
Email: pdp@rplegalgroup.com

with a copy to: John T. Lay, Jr.
Gallivan White Boyd
1201 Main Street, Suite 1200
Columbia, South Carolina 29201
E-mail: jlay@GWBlawfirm.com

If to South Carolina
Asbestos Victims
Compensation QSF
LLC: Peter D. Protopapas
Receiver, Cape PLC, now known as Cape Intermediate
Holdings Ltd., as successor in interest to Cape
Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)
Rikard & Protopapas, LLC
2110 N. Beltline Boulevard
Columbia, South Carolina 29204
Phone: 803.978.6111
Email: pdp@rplegalgroup.com

with a copy to Jonathan M. Robinson
Smith Robinson
3200 Devine Street
Columbia, SC 29205
E-mail: jon.robinson@smithrobinsonlaw.com

If to Anglo American
US Holdings Inc. c/o Corporation Service Company
112 S. French Street, Suite 105A
Wilmington, Delaware 19801

with copy to: Company Secretary

17 Charterhouse Street
 London, EC1N 6RA, UK
 E-mail: cosecadmin@angloamerican.com

with copy to:

Scott S. Balber
 Benjamin C. Rubinstein
 Herbert Smith Freehills Kramer New York LLP
 1177 Avenue of the Americas
 New York, New York 10036
 Phone: 212-715-9100
 E-mail: scott.balber@hsfkramer.com
benjamin.rubinstein@hsfkramer.com

with copy to:

James H. Elliott, Jr.
 Richardson Plowden & Robinson, P.A.
 235 Magrath Darby Blvd., Ste. 100
 Mt. Pleasant, SC 29464
 Phone: 843.805.6550
 Email: jelliott@richardsonplowden.com

In the event any entity hereto desires to change the address to which its notices shall be sent, or in the event any entity shall relocate or change its address, such party shall immediately provide notice as herein provided to each of the other entities hereto. In addition, this section shall be amended to include information for any additional Transferor.

Notices shall be deemed received for all purposes related to this Operating Agreement five (5) business days after the mailing of such notice as herein provided, whether or not an entity to whom a notice is sent accepts delivery of such notice or for any other reason fails to receive such notice. It shall be the responsibility of each entity to keep informed all the other entities as to their current address. Further, each successor or substitute to an entity listed herein shall be bound by the terms of these notice provisions the same as if such successor or substitute entity was an initial entity to this Operating Agreement.

9.2 Binding Effect. This Operating Agreement shall be binding upon each of the parties hereto, and each party's successor, and assign (to the extent permitted under this Operating Agreement).

9.3 Paragraph Captions and Severability of Provisions. The captions for each of the paragraphs are for convenience only and are not intended to have any specific meaning. Each of the provisions of this Operating Agreement is separate and severable, and if a provision of this Operating Agreement is determined by the court to be unenforceable, the remaining provisions of this Operating Agreement shall remain in full force and effect.

9.4 Applicable Law. This Fund and the Operating Agreement shall be governed and interpreted in accordance with the internal law of the State of South Carolina, except as respects tax matters, which shall be governed by federal law, specifically the Internal Revenue Code.

IN WITNESS WHEREOF, this Operating Agreement has been signed and sealed by the parties hereto to be effective and irrevocable on the day and year first above-written.

Receiver of Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)

By: _____

Name: Peter D. Protopapas

Title: Receiver

Date: October __, 2025

Accepted and agreed:

MANAGER and MEMBER

By: _____

Name: Peter D. Protopapas

Title: Manager and Sole Member

Date: October __, 2025

Schedule 1 to Operating Agreement

Name and Addresses of Transferor:

Amount Transferred

Escrow Account of Herbert Smith Freehills
Kramer New York LLP, on behalf of Anglo
American US Holdings Inc.

Settlement Sum as defined in the Settlement
Agreement

Schedule 2 to Operating Agreement**[FORM OF PROMISSORY NOTE FOR ADVANCES FOR
ASBESTOS CLAIM EXPENSES]**

\$ _____

Date

For value received, _____ (“**Maker**”), promises to pay to the South Carolina Asbestos Victims Compensation QSF, LLC (“**Payee**”), in lawful money of the United States of America, the principal sum of _____ Dollars (US \$ _____), together with interest in arrears on the unpaid principal balance at an annual rate equal to four percent (4.0%) simple interest, in the manner provided below. Interest shall be calculated on the basis of a year of 365 or 366 days, as applicable, and charged for the actual number of days elapsed.

This Note has been executed and delivered pursuant to and in accordance with the terms and conditions of the South Carolina Asbestos Victims Compensation QSF, LLC Operating Agreement (the “**Agreement**”) and is subject to the terms and conditions of the Agreement, which are, by this reference, incorporated herein and made a part hereof. Capitalized terms used in this Note without definition shall have the respective meanings set forth in the Agreement.

1. Payments.

1.1 Principal and Interest. The principal amount of this Note and all accrued but unpaid interest shall be payable concurrently with the receipt of reimbursement from a third party (including liability insurers) by Maker with respect to Asbestos Claim Expenses (as defined in Section 3.2 of the Agreement). Such payment shall be made on a dollar-for-dollar basis to the extent of such third-party reimbursements, and any remaining unpaid principal and interest shall be repaid concurrently with the receipt of additional reimbursements from third parties with respect to Asbestos Claim Expenses. To the extent such third party reimbursements are not received for Asbestos Claim Expenses with respect to which funds have been advanced pursuant to the terms of this Note within thirty (30) years from the effective date of the Agreement, Maker’s obligation to repay any sums pursuant to this Note shall be canceled and voided *ab initio*.

1.2 Manner of Payment. All payments of principal and interest on this Note shall be made by check at Columbia, South Carolina or at such other place in the United States of America as Payee shall designate to Maker in writing or by wire transfer of immediately available funds to an account designated by Payee in writing. If any payment of principal or interest on this Note is due on a day which is not a Business Day, such payment shall be due on the next succeeding Business Day, and such extension of time shall be taken into account in calculating the amount of interest payable under this Note. “Business Day” means any day other than a Saturday, Sunday or legal holiday in the State of South Carolina.

1.3 Prepayment. Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment.

2. Defaults.

2.1 Events of Default. The occurrence of any one or more of the following events with respect to Maker shall constitute an event of default hereunder (“**Event of Default**”):

(a). If Maker shall fail to pay when due any payment of principal or interest on this Note and such failure continues for fifteen (15) days after Payee notifies Maker therein writing.

(b). If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a “**Bankruptcy Law**”), Maker shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (iv) make an assignment for the benefit of its creditors; or (v) admit in writing its inability to pay its debts as they become due.

(c). If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Maker in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Maker or substantially all of Maker’s properties, or (iii) orders the liquidation of Maker, and in each case the order or decree is not dismissed within 120 days.

(d). Notice by Maker. Maker shall notify Payee in writing within five days after the occurrence of any Event of Default of which Maker acquires knowledge.

2.2 Remedies. Upon the occurrence of an Event of Default hereunder (unless all Events of Default have been cured or waived by Payee), Payee may, at its option (i) by written notice to Maker, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from Maker all sums due under this Note. Maker shall pay all reasonable costs and expenses incurred by or on behalf of Payee in connection with Payee’s exercise of any or all of its rights and remedies under this Note, including, without limitation, reasonable attorneys’ fees.

3. Miscellaneous.

3.1 Waiver. The rights and remedies of Payee under this Note shall be cumulative and not alternative. No waiver by Payee of any right or remedy under this Note shall be effective unless in a writing signed by Payee. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege by Payee will preclude any other or further exercise of such right, power or privilege by Payee. To the

maximum extent permitted by applicable law, (a) no claim or right of Payee arising out of this Note can be discharged by Payee, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing signed by Payee; (b) no waiver that may be given by Payee will be applicable except in the specific instance for which it is given, and (c) no notice to or demand on Maker will be deemed to be a waiver of any obligation of Maker or of the right of Payee to take further action without notice or demand as provided in this Note. Maker hereby waives presentment, demand, protest and notice of dishonor and protest.

3.2 Notices. Any notice required or permitted to be given hereunder shall be given in accordance with the Operating Agreement.

3.3 Severability. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid and unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4 Governing Law. This Note will be governed by the law of the State of South Carolina without regard to conflict of laws principles.

3.5 Parties in Interest. This Note shall bind Maker and its successors and assigns. This Note shall not be assigned or transferred by Payee without the express prior written consent of Maker, except by will or, in default thereof, by operation of law.

3.6 Section Headings, Construction. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation. All references to “**Section**” or “**Sections**” refer to the corresponding Section or Sections of this Note unless otherwise specified.

All words used in this Note will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words “hereof” and “hereunder” and similar references refer to this Note in its entirety and not to any specific section or subsection hereof.

IN WITNESS WHEREOF, Maker has executed and delivered this Note as of this date first stated above.

By: _____

Name: _____

Title: _____

Schedule 3 to Operating Agreement

[DECLARATION CONCERNING ASBESTOS CLAIM EXPENSES]

I, _____, hereby certify that the Receiver for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.), has incurred Asbestos Claim Expenses in the amount of \$ _____, consisting of the following:

<u>Payee</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____
_____	_____

Copies of invoices for the expenditures, all of which have been paid in full, shall be maintained at the corporate headquarters and are available for inspection by representatives of the Receiver/Manager during regular business hours upon reasonable notice.

**Receiver for Cape PLC, now known as
Cape Intermediate Holdings Ltd., as
successor in interest to Cape Industries
Ltd. (f/k/a Cape Asbestos Company Ltd.)**

Dated: _____

By: _____
Title: _____

Schedule 4 to Operating Agreement

The residuary beneficiaries are as follows:

College of Charleston
Clemson University
University of South Carolina

The Manager reserves the right to add or substitute other universities to the list provided above and to determine the final allocation of the funds to each residuary beneficiary at any time on or before the termination of the South Carolina Asbestos Victims Compensation QSF LLC as provided for by Sections 1.6 and 3.4 of the Operating Agreement.

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

John A. Tibbs and Margaret B. Tibbs,) Civil Action No. 2023-CP-40-01759

Plaintiffs,

VS.

3M Company, *et al.*,

Defendants.

ALTRAD DEFENDANTS'
OBJECTION TO THE RECEIVER'S
MOTIONS OF OCTOBER 28, 2025

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

Third-Party Plaintiff,

VS.

Anglo American PLC, *et al.*,

Third-Party Defendants.

At the close of business on October 28, 2025, the putative Receiver filed a series of materials through which he seeks the Court’s hurried approval of a “settlement agreement” between the Anglo Defendants and the putative Receiver, and to do so in secret. The Court should reject such efforts.

As the Court is aware, the South Carolina Supreme Court has ordered the putative Receiver to respond by November 3, 2025, to petitions for extraordinary relief in Appellate Case Nos. 2025-002120 and 2025-002121. The putative Receiver's close-of-business filings to approve a secret settlement agreement appear to be an attempt to bypass and preempt scrutiny by the Supreme Court of the legality of these proceedings.

Through the close-of-business filings, the putative Receiver is again purporting to enter contracts in the name of Cape Intermediate Holdings Limited—an active English company that is not a party to these proceedings or any other in South Carolina, is not subject to jurisdiction in South Carolina, and whose directors have specifically instructed the Receiver that he has no authority to do anything at all in the company’s name.

The close-of-business filings indicate that the putative Receiver and his counsel are requesting to keep 40% of the undisclosed payment from the Anglo Defendants, and then put the rest into a “qualified settlement fund” for the putative Receiver to pay both “claimants” (§ 1.2(i) of the proposed “QSF Operating Agreement”) as well as himself and his counsel even more (§§ 1.2(ii) and 4.4 of the proposed “QSF Operating Agreement”) in the name of CIHL.

Confirming the point that the putative Receiver is attempting to create liability for this active English company, the proposed QSF Operating Agreement instructs that “claimants” should serve their lawsuits on CIHL directly, but that the Receiver retains discretion to waive service on behalf of CIHL before paying “claimants” in CIHL’s name. (*See* § 3.2 of the proposed “QSF Operating Agreement” (“Claimants shall serve Cape Asbestos Suits on Cape Intermediate Holdings Ltd. in England, ***but the Manager has discretion to waive such requirement.***”)) (emphasis added).)

The putative Receiver’s attempt to seize these “boardroom” functions from CIHL (which, again, is not even before this Court or any other in South Carolinian)) and to engage in litigation activities that reach beyond the case in which he was supposedly appointed are both in direct defiance of the Supreme Court’s decisions in *Welch* and *Tibbs*. The fact that the putative Receiver is asking the Court to keep all of these efforts secret and under seal is particularly troubling, especially while the Supreme Court is examining this situation.

Accordingly, the Altrad Defendants object to the Court's consideration of any of the materials that the putative Receiver filed on October 28, 2025—the proposed “settlement agreement,” the proposed “qualified settlement fund,” the motion to seal—as the putative Receivership is a nullity as a matter of law (in both this case and in *Park*) and the Court lacks jurisdiction to even consider the putative Receiver's motions (in both this case and in *Park*).

For the avoidance of doubt, the Altrad Defendants incorporate by reference each of their prior filings with respect to all issues related to this putative receivership, including their Omnibus Response to the Receiver's Numerous Filings which was filed with this Court on October 19, 2025; their objections at the proceedings stated on October 20, 2025; as well as all of their other filings and objections to date that have been filed with any court which spell out in great detail the numerous jurisdictional defects.

The Altrad Defendants continue to object to these proceedings as improper, and they do not waive any arguments, but instead specifically preserve all such arguments and defenses, including in particular the lack of personal jurisdiction in this Court. Additionally, to the extent not inconsistent with anything herein, the Altrad Defendants adopt and join all objections and arguments presented by the Charter Defendants.

Signature Page Attached

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
Kevin A. Hall
S.C. Bar No. 15063
kevin.hall@wbd-us.com
M. Elizabeth O'Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

*Attorneys for Appellants Mohed Altrad and Altrad
Investment Authority SAS*

October 20, 2025

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

Third-Party Defendants Charter Consolidated Ltd. (“Charter”), ESAB Corporation (“ESAB”), and Central Mining and Investment Corporation Ltd. (“Central Mining,” and together with ESAB and Central Mining, “Charter Third-Party Defendants”), by and through their undersigned counsel, respectfully submit these objections to the court exercising any jurisdiction in this case and to the purported receiver’s motions filed on October 28, 2025.¹

¹ By filing these objections, Charter Third-Party Defendants do not waive, but instead specifically preserve, their objections to personal jurisdiction in South Carolina. Moreover, Charter Third-Party Defendants do not waive, but instead specifically preserve, all other objections previously made regarding these proceedings through their written motions, oral arguments, and in responsive

On October 28, 2025, the putative Receiver and third-party plaintiff (“Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas”) filed a series of motions² through which he requested the Court to 1) consider a “confidential settlement agreement” between third-party Anglo Defendants and the putative Receiver in camera (without disclosure to other third-party defendants), 2) grant a motion to seal the “confidential settlement agreement,” 3) grant a motion approving the settlement agreement (without disclosing the amount), 4) approve payment of 40% of the undisclosed amount to the Receiver’s law firm (and also the law firms of Smith Robinson, Gallivan White and Boyd, and Morgan Lewis), and 5) approve the transfer of the remaining 60% of the undisclosed amount into a confidential “qualified settlement fund” to be “managed by the Receiver.”

Charter Third-Party Defendants object to the putative Receiver’s requests and to the jurisdiction of the circuit court to consider the requests. Among other reasons, Charter Third-Party Defendants respectfully submit that this court does not have jurisdiction over matters related to the putative Receiver’s authority to act because exclusive jurisdiction over those issues remains with the appellate courts; the Court of Appeals’ October 20, 2025 order dismissing the October 14, 2025, appeals demonstrates that the remittitur has not been returned to this court. *See Lancaster v.*

pleadings, including that the Court lacks subject matter jurisdiction, that the purported Receiver was unlawfully appointed, that the purported Receiver is a nullity and lacks standing, and that all third-party claims against Charter Third-Party Defendants should be dismissed for failure to state a claim.

² Motion To Seal Confidential Settlement Agreement; Motion To Approve Confidential Settlement Agreement, Establish Qualified Settlement Fund, And Retain Jurisdiction Including Fees; and The Receiver’s Report On Attorneys’ Contingency Fee Request Related To Motion To Approve Settlement.

Georgia-Pac. Corp., 403 S.C. 136, 138, 742 S.E.2d 867, 868 (2013) (“we hereby remind the bench and bar that action on a settlement may not be taken by the lower court, except with regard to matters not affected by the appeal, while the matter is pending before this Court”). Any orders issued without jurisdiction would be void.³

Even if the purported Receiver and this court have jurisdiction to file and consider the above reference settlement motions (which they do not), the purported Receiver has not provided the parties to this case sufficient information to fully understand/consider/oppose the above reference requests. Non-disclosed information includes, but is not limited to: terms of the settlement agreement, the amount of the settlement funds to be paid, the amount of funds to be deposited in the QSF, any limitations as to the purported Receiver’s authority to spend the QSF funds, whether the funds collected in the QSF will be limited to satisfying the claims of the Tibbs plaintiffs, whether a plan is in place to return funds if the court determines that the purported Receiver lacked authority to accept the funds, and whether the purported Receiver will be required to post a bond prior to disbursement of any funds.

Charter Third-Party Defendants also incorporate by reference their “Third-Party Defendants Charter Consolidated Ltd., ESAB Corporation, And Central Mining And Investment Corporation Ltd.’s Omnibus Response To Receiver’s Filings And Objections To Trial” filed on October 20, 2025, as well as each of their prior filings with respect to all issues related to this putative receivership, their objections at the proceedings stated on October 20, 2025; as well as all of their other filings and objections to date that have been filed with any court. The Charter Third-

³ Charter Third-Party Defendants object to the putative Receiver accepting or disbursing funds prior to a final decision from the appellate courts as to the authority of the purported Receiver to act for any Cape entity in *Tibbs*, *Park* or any other matter.

Party Defendants, to the extent not inconsistent with anything herein, adopt and join all objections and arguments presented by the Altrad Third-Party Defendants.

Respectfully submitted,

Dated: October 29, 2025

GORDON REES SCULLY MANSUKHANI, LLP

By: /s/ A. Victor Rawl, Jr.

A. Victor Rawl, Jr. (S.C. Bar No. 09261)

Email: vrawl@grsm.com

677 King Street, Suite 450

Charleston, South Carolina 29403

Tel.: (843)714-2501

Attorneys For Third-Party Defendants Charter Consolidated Ltd., ESAB Corporation, and Central Mining And Investment Corporation Ltd.

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,

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

v.

3M COMPANY *et al.*,

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

Defendants.

.....

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

**THE RECEIVER'S RESPONSE TO THE
ALTRAD DEFENDANTS' OBJECTION TO
THE RECEIVER'S MOTIONS OF
OCTOBER 28, 2025**

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.

Third-Party Plaintiff Peter D. Protopapas, in his capacity as the Court-appointed Receiver (the "Receiver") for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) ("Cape"), by and through undersigned counsel, hereby submits this response to the Altrad Defendants' Objection to the Receiver's Motions of October 28, 2025. The Altrad Defendants have admitted that Altrad bears

responsibility for the harm that Cape (its subsidiary) caused to workers exposed to Cape's asbestos. Altrad has admitted that it must compensate Cape's victims in the United Kingdom but refuses to do the same for similarly situated American workers. Altrad's hypocrisy in objecting to the Anglo settlements is part of their larger fraudulent scheme to avoid their responsibilities to American workers.¹

Since the commencement of this case, the Altrad Defendants have refused to participate in the litigation—refusing to participate in discovery (including basic jurisdictional discovery), refusing to produce any witnesses, refusing to abide by the orders of the trial and appellate courts, and, as late as last week, refusing to participate in the trial on the merits of this case. What the Altrad Defendants have done is employ a strategy to avoid their liabilities in the United States by distributing propaganda, threatening the Receiver, its lawyers, and the courts through international proceedings with criminal and monetary penalties to coerce the immediate halt of this litigation, and tortiously interfering with the Receiver's ability to settle with participating defendants who have chosen not to violate our court rules and orders. The ultimate goal of these efforts is to avoid, at all costs, any responsibility for the tens of thousands of deaths and countless cases of mesothelioma resulting from the mining and mass distribution of asbestos throughout the United States by Altrad-owned Cape.² The very asbestos liabilities the Altrad Defendants deny in the

¹ See Altrad Services Limited Annual Report (2022), at Cape_Receiver_00248438, Ex. 30 to Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order, *Tibbs v. 3M Company, et al.*, C/A No. 2023-CP-40-01759 (filed July 11, 2025) (“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.”).

² See, e.g., Memo from A. Sarabia to Meyer (Jan. 23, 1978) (detailing Cape's liability- avoidance scheme post-dissolution of NAAC), Ex. 15 to Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order, *Tibbs v. 3M Company, et al.*, C/A No. 2023-CP-40-01759 (filed July 11, 2025).

United States have been called to task in other countries, such as the United Kingdom, where they have been required to establish funds for the mass victims they left behind.³ In fact, the Altrad Defendants have admitted its responsibility for Cape Asbestos claims in its annual reports.

Despite its role in the worldwide distribution of hundreds of thousands of tons of asbestos from its mines to almost 40 states, over 500 individual customers such as Johns-Manville Corp. and Pittsburgh Corning, and 750 manufacturing plants, the Altrad-acquired-company Cape's avoidance scheme has left U.S. companies and victims behind to deal with the aftermath, having devastating impacts here. In contrast to Cape's avoidance strategy, 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.⁴ Aside from blanket denials by counsel, the Altrad Defendants have never permitted any evidence to be presented to refute Cape's extensive contacts with South Carolina. In fact, the unrefuted evidence to the contrary establishes Cape was responsible for asbestos in South Carolina.⁵

³ A recent report was issued by the U.K. All-Party Parliamentary Group (APPG) on Occupational Safety and Health relating to a request by an asbestos victims' support group for mesothelioma research funding by Altrad. The APPG was composed of Peers and Members of Parliament. The report notes that "Altrad is the ultimate parent company of Cape. It purchased Cape in 2017 and has benefitted substantially from the transaction." See APPG Report (2025) at 7, Ex. 23 to Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order, *Tibbs v. 3M Company, et al.*, C/A No. 2023-CP-40-01759 (filed July 11, 2025). The report noted that, on numerous occasions, Altrad lawyers (representing the parent in claims against Cape) "threatened to report" claimants' attorneys to the Solicitors Regulations Authority for requesting or disclosing certain documents relating to Cape. See generally *id.* Mr. Oren's unfavorable conduct in dealing with the victims' support group features prominently in the APPG Report. See *id.* at 10.

⁴ 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").

⁵ NAAC Customer Lists, Ex. 8 to Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order, *Tibbs v. 3M Company, et al.*, C/A No. 2023-CP-40-01759 (filed July 11, 2025).; NAAC Sales List, Ex. 9 to Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order, *Tibbs v. 3M Company, et al.*, C/A No.

This latest attempt to shield itself from the inevitable truths that would be revealed from a trial in open court, a process which they refuse to engage, utilizes the Altrad Defendants' familiar playbook to discredit the parties and courts through propaganda messaging in order to avoid addressing the merits of the claims against them.

ATTEMPTS TO INTERFERE WITH CONTRACT TO SETTLE

The vitriolic attacks by the Altrad Defendants against the Receiver, who is seeking to establish a fund for injured South Carolina workers, evidences the depths that the Altrad Defendants will go to avoid any cracks in their long-standing litigation avoidance scheme in the United States, even if that means denying South Carolinians a long overdue pathway to the same opportunities to recover for asbestos-related illnesses and death available in the U.K. Six days before trial was set to begin on October 20, 2025, the Altrad Defendants and the Charter Defendants improperly appealed the latest interlocutory order of the circuit court to the Court of Appeals. This order, issued on October 13, 2025, confirmed, in accordance with the Supreme Court's instructions in the June remand order, that the Receiver was authorized to conduct his work in the *Tibbs* case and denied the re-filed motions to dismiss the third-party complaint and strike all pleadings by the Receiver due to the Altrad and Charter Defendants' continued objections to the receivership. The Court of Appeals dismissed the notices of appeal as interlocutory on October 20, 2025 citing the Supreme Court's remand Order dated June 26, 2025 in *Tibbs v. 3M Co.*, S.C. Sup. Ct. ("Appeals will be summarily dismissed, or requested relief will be summarily granted, if any party continues with this inappropriate behavior. Our intention is to reach and address the merits of issues").

2023-CP-40-01759 (filed July 11, 2025).

Prior to the commencement of the trial on October 20, 2025, the Altrad Defendants again sought to circumvent the U.S. judicial process in seeking to enjoin the settlement between the Receiver and another defendant in the action. The Altrad Defendants launched the effort in the U.K. despite the Supreme Court's warnings about impropriety of such efforts. After the Receiver and certain Third-Party Defendants ("Anglo American/De Beers and affiliates") announced a settlement of pending South Carolina litigation, the Altrad Defendants used additional threats of foreign litigation and imprisonment to interfere with the Receiver and the Anglo American/De Beers and affiliates settlement.

Specifically, on October 7, 2025, Signature Litigation LLP sent a letter to Herbert Smith Freehills Kramer LLP (U.K. and U.S. offices) concerning the *Tibbs* action pursued "in the name of CIHL." Ex. A at 2. The letter states that (i) the AADB entities (Anglo American/De Beers and affiliates) "now proposed to enter, or have already entered, into a settlement" with the Receiver on the third-party claims; (ii) Signature, purporting to speak for CIHL/Cape, demands an immediate undertaking that the AADB entities "NOT . . . enter into any such settlement agreement with Mr Protopapas," sets a 1:00 p.m. BST October 8, 2025 deadline, and threatens urgent injunctive relief; and (iii) any settlement with the Receiver would be a nullity, would constitute contempt of the English High Court, and would expose counterparties (and their officers and advisers) to contempt.

Despite these efforts, at the commencement of the October 20, 2025 trial, it was discovered that the Altrad Defendants' counsel was in possession of and was then instructed by the Court to produce a copy of, an order issued in the U.K. hours earlier which granted the Anglo-American and De Beers affiliates' request to consummate its settlement with the Receiver without fear of contempt, and the circuit court dismissed these defendants from the case. As noted in the U.K. order, the settlement recognizes the Receiver's authority is limited to claims asserted in South

Carolina and the resulting Qualified Settlement Fund is limited to claims brought in South Carolina.

The Altrad Defendants and their counsel have refused to adhere to our court rules and orders and continue to seek to avoid any discovery of any evidence or an open trial. Efforts to prevent willing parties from settling fly in the face of South Carolina jurisprudence. The South Carolina Supreme Court issued an Order related to this matter on September 25, 2025, clarifying that “nothing in the June 26, 2025 order prevents trial court proceedings from continuing in the normal course. . . , including the filing of and decisions on motions to approve settlement agreements.” Order, *Tibbs v. 3M Co. et al.*, Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916, 2024-002114, 2024-002116, 2024-002117, 2025-000052 (Sept. 25, 2025). The circuit court addressed precisely this conduct in open court on October 6, 2025, admonishing the Altrad Defendants’ counsel that he lacks authority to interfere with other defendants’ settlements—“I certainly don’t think you’ve got the authority . . . to try to interfere with the ability of Anglo to settle its responsibilities as it sees them”—and emphasized that the court “intend[s] to move forward with these settlements and to move forward with this trial.” Ex. A, Excerpt from Oct. 6, 2025 Hearing Transcript at pp. 29, 43, *Tibbs v. 3M Company, et al.*, C/A No. 2023-CP-40-01759. She further explained that “the notion that you could interfere with the legitimate desires of other participants in this litigation to settle their matters is something that I can’t comprehend.” *Id.* at pp. 44–45.

LAW AND DISCUSSION

South Carolina rules allow settlement agreements, like the one in this case, to be filed under seal with the Court as long as the requirements of Rule 41.1(c) of the South Carolina Rules of Civil Procedure are met. The Receiver addressed each requirement in the motion to seal, which is under

the Court's consideration. The Altrad Defendants, while filing a general objection, have not made any arguments that the requirements of Rule 41.1(c) are not met. The Altrad Defendants have further not identified any interest in the confidential settlement agreement being filed publicly. Further, as the Receiver discussed in the motion to seal, the South Carolina Asbestos Victims Compensation QSF LLC Operating Agreement—which is the document the public has an interest in—has been filed on the public docket.

Instead, the Altrad Defendants attempt to impugn the Receiver and this Court for allowing “secret” settlements. The Altrad Defendants have known about the confidential settlement agreement since October 6, 2025, when it was placed on the record in open court, and the settling parties requested that the Court review the confidential settlement agreement in camera in connection with its approval. Further, the Altrad Defendants, who are not parties to the settlement agreement, do not have standing to object to the settlement between the Receiver and the other third-party defendants. *See Riley v. Ford Motor Co.*, 414 S.C. 185, 197, 777 S.E.2d 824, 831 (2015) (“Settlements are not designed to benefit nonsettling third parties. They are instead created by the settling parties in the interests of these parties. If the position of a nonsettling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle. A defendant who fails to bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do.” (quoting *Lard v. AM/FM Ohio, Inc.*, 901 N.E.2d 1006, 1018 (2009))).

As the Court is aware, across the asbestos docket, various litigants, including insurance companies, have entered into settlement agreements with the receiver for various entities with the expectation of confidentiality. Through these settlements and the efforts of the Receiver in other asbestos cases, nearly \$100 million in previously undisclosed, unknown, or hidden insurance

policies have been paid to asbestos cancer victims and their families in South Carolina cases. These insurance companies have insisted that the agreements remain confidential and have refused to consent to the disclosure of the settlement agreements. *See* Exhibit B, Notice of Filing of Receivership Reporting Presentation at pp. 46–49. Even the Altrad Defendants’ counsel recently advocated for the confidentiality of settlement agreements for his other clients. *Id.* Interestingly, the Altrad Defendants’ counsel takes a different position when advocating for his insurance clients. In fact, just two months ago, the Altrad Defendants’ counsel- the very same counsel condemning these asbestos settlements, on behalf of its client Travelers, entered into a confidential settlement agreement with the receiver for Heat & Frost Insulation Company, Inc., which was sealed pursuant to Rule 41.1(c). *See* Exhibit C, Excerpt from August 27, 2025 Hearing Transcript, *Protopapas v. Heat & Frost Insulation Co., et al.*, C/A No. 2023-CP-40-01466 (Aug. 27, 2025); Order Granting Motion to Approve a Settlement, *Love v. 3M Company, et al.*, C/A No. 2021-CP-40-06190 (filed Oct. 13, 2025). Instead of making proper arguments based on South Carolina law, the Altrad Defendants allude to some nefarious reason behind sealing a confidential settlement agreement as allowed by Rule 41.1(c)—a legitimate action which their counsel has consented to, and insisted on, in other receiverships.

Further, despite the Altrad Defendants’ continued sniping, the Receiver is not attempting to bypass scrutiny from the Supreme Court. The Receiver has, at all times, attempted to move the case forward so it can be presented to the Supreme Court on a final order and a full record in accordance with South Carolina law and appellate procedure. The Supreme Court remanded this matter to this Court “for all purposes” and only retained jurisdiction over the Receiver’s pending motion for sanctions. *See* Order, *Tibbs v. 3M Company, et al.*, Appellate Case No. 2025-001499 (filed June 26, 2025). Thus, jurisdiction lies with this Court. And, the Supreme Court has

confirmed this Court's jurisdiction to approve settlements. *See Order, Tibbs v. 3M Company, et al.*, Appellate Case No. 2025-001499 (filed Sept. 25, 2025). The pending requests for extraordinary writs are currently being briefed and have not been ruled on by the Supreme Court; therefore, the filing of the interlocutory extraordinary requests have not transferred any jurisdiction to the Supreme Court.

By: /s/ Jonathan M. Robinson

Jonathan M. Robinson
SMITH ROBINSON, LLC
3200 Devine Street
Columbia, SC 29205
803-254-5445
jon.robinson@smithrobinsonlaw.com

John T. Lay, Jr., SC Bar No. 64526
Gray T. Culbreath, SC Bar No. 11907
Lindsay A. Joyner, SC Bar No. 77437
Eleanor L. Jones, SC Bar No. 104678
GALLIVAN, WHITE & BOYD, P.A.
1201 Main Street, Suite 1200
PO Box 7368 (29202)
Columbia, SC 29201
jlay@gwblawfirm.com
gculbreath@gwblawfirm.com
ljoyner@gwblawfirm.com
ejones@gwblawfirm.com
(803) 779-1833

Lauren McCulloch Semlinger
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002
brady.edwards@morganlewis.com
lauren.semlinger@morganlewis.com
(713) 890-5467

Paul A. Scrudato
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
paul.scrudato@morganlewis.com
(212) 309-6000

Attorneys for the Receiver

October 29, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

JOHN A. TIBBS AND
MARGARITE B. TIBBS,

Plaintiff,

vs.

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

3M COMPANY, ET AL.,

Defendants.

(Caption continued on the following page.)

H E A R I N G
BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Monday, October 6, 2025

TIME START: 11:33 a.m.

TIME END: 1:04 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: Sheri L. Byers, RPR
Magna Legal Services
866.624.6221
www.MagnaLS.com

1 Your Honor that responds to the Supreme Court's
2 June remand instructions.

3 There are threshold questions that have got
4 to be addressed by this Court before anything
5 else can happen. And so on that basis, you
6 know, we want the record to reflect that we are
7 quite puzzled by this notion of settlement. We
8 don't see how that can even happen. But also
9 the motion to amend itself is a nullity. It
10 doesn't exist. It is not filed by somebody that
11 has standing to file anything.

12 And I'm glad to walk you through that. We
13 did that in the July hearing, and we did that in
14 the August hearing.

15 THE COURT: We had quite a fulsome hearing
16 on precisely these matters.

17 MR. CARROLL: Yes, ma'am. Two of them.

18 THE COURT: And I indicated by letter
19 ruling what I would rule in that regard. And
20 you can be assured that those orders will be
21 filed as well.

22 MR. CARROLL: But they haven't been filed,
23 and that's my point.

24 THE COURT: I understand that. But you and
25 I differ radically about whether or not other

1 parties in this litigation have the ability to
2 settle with the receiver, but we also disagree
3 very, very radically about what it means to
4 appoint a receiver, a state receiver, and what
5 the ambit of that state receiver's authority is.

6 And that, of course, has been indicated by
7 what I said in the previous hearings we've had
8 on this matter.

9 But you have responded to this matter. You
10 have filed an answer in this matter.

11 MR. CARROLL: Yes, ma'am. So that there
12 would be none of this notion of default.

13 THE COURT: Well, I'm sorry, but you filed
14 an answer in this matter. And that -- and you
15 appealed rulings made in connection with your
16 posture as a participating defendant. And those
17 matters went all the way to the Supreme Court
18 who then remanded to me all of these matters.

19 So I don't think you can avoid whatever
20 consequences will come to your failure to
21 participate in these matters by simply making
22 these broad statements that the actions of
23 others in connection with this matter are
24 somehow something that you can challenge.

25 MR. CARROLL: Your Honor, very early -- I'm

1 sorry, I thought you were done.

2 THE COURT: You've got a very different
3 notion of how this Court can operate in the
4 light of the directives that were given to the
5 court in the Tibbs case and in the subsequent
6 memorandum orders by the court. Those matters
7 are clearly back in the jurisdiction of this
8 trial court to deal with, and I will deal with
9 them.

10 But I can assure you that I will not simply
11 stop these proceedings on the basis of what you
12 just argued about, the lack of the receiver's
13 authority. And I made that very clear in what I
14 said in June about this matter. And I don't
15 intend to vary from that.

16 So just so you understand, you can put
17 those things on the record if you like, but I
18 don't believe that they are consistent with the
19 receivership law of South Carolina nor with the
20 directives I've been given by the Supreme Court.
21 We have two very different views about that
22 memorandum from the Supreme Court.

23 And what I've got to do is to translate the
24 activities I take as trial Court into orders
25 that are reviewable by the Court, and I intend

1 to do that in a complex order that presents
2 everything at one time so we don't continue to
3 have this yo-yo back and forth with every action
4 that's taken between the appellate courts and
5 this Court.

6 Because what has happened uniformly in the
7 past, that not one of those appeals has been
8 found to have merit. But we've had a huge delay
9 in trying to deal with this matter because every
10 action that's taken, whether you have the
11 authority to appeal or not, you have appealed
12 and tried to stop the Court from moving forward
13 with the ordinary course of handling this
14 matter.

15 So that's the view of this Court on the
16 matter. You don't agree with that, but
17 understand what I perceive to be the directive
18 of the Supreme Court to me on this matter and
19 the responsibility I have as the presiding trial
20 judge in this matter, and I intend to move
21 forward with these settlements and to move
22 forward with this trial. Just so you
23 understand.

24 MR. CARROLL: Yes, ma'am. And the June
25 order gave very clear instructions that have not

1 THE COURT: I understand that that's your
2 position.

3 MR. CARROLL: And not only that, not only
4 is there an actual contract on that point, but
5 it was handed to a different English court, and
6 they had a trial last week -- or two weeks ago.
7 And his honor issued a ruling that was quite
8 thorough last week that says this contract is
9 enforcement.

10 We continue to not recognize the
11 receivership, which is, again, back to my
12 earlier point about I don't know how my
13 colleagues on -- at Anglo can settle, quote,
14 settle with the receivership. Perhaps they're
15 paying Mr. Protopapas' individual capacity. But
16 I don't think they can actually settle with a
17 receiver because they have a court in England,
18 too, now saying English law does not recognize
19 this receivership.

20 And the points that the English court --

21 THE COURT: Well, the English court does
22 not recognize the authority of the American
23 courts in this situation at all. Our own court
24 had its own view of that. And, you know, the
25 activities in 1776 had some effect on the

1 independence of American courts and --

2 MR. CARROLL: Sure.

3 THE COURT: -- the authority of American
4 courts. And as far as I'm concerned, that's not
5 something that I need to revisit. I'm operating
6 under the framework that my own appellate court
7 has given me and the responsibility they have
8 given me on this remand.

9 MR. CARROLL: Yes, ma'am.

10 THE COURT: You've argued those things
11 before. Our court has not agreed with you on
12 that and has remanded the thing to me with
13 certain instructions. And nothing I've done so
14 far has contradicted to what they've asked me to
15 do in any respect, in my view.

16 MR. CARROLL: Well, I take it --

17 THE COURT: But I certainly don't think
18 you've got the authority under any view of our
19 own law or what you think is applicability in
20 English law to try to interfere with the ability
21 of Anglo to settle its responsibilities as it
22 sees them.

23 And I look with great concern on
24 codefendants in this case. It's one thing for
25 you to take the position as what the Court's

1 authority may be with respect to your clients,
2 Altrad. It's quite another thing for you to try
3 to blow up the settlements that other defendants
4 are making. How you got the authority or the
5 standing to do that is something I don't quite
6 understand.

7 MR. CARROLL: Your Honor, I'm simply
8 pointing out that Anglo appears to have made a
9 contract with somebody that doesn't exist.

10 THE COURT: Mr. Carroll, this is not some
11 academic law school exercise in talking about
12 the law. You've either got the authority to try
13 to interfere with the legitimate business
14 judgments that other defendants have made in
15 this action or you don't. And I am not going to
16 allow defendants who have made -- considered
17 business judgments about their own posture in
18 this matter to be told that your disagreement
19 with what they are doing is some reason for this
20 Court not to act.

21 The Court is going to act. The Court is
22 going to rule, as I indicated I will rule, as
23 the authority of the receiver. You can do what
24 you want to do with your clients in that regard.
25 But the notion that you could interfere with the

1 legitimate desires of other participants in this
2 litigation to settle their matters is something
3 that I can't comprehend.

4 I also can't comprehend how you personally
5 can on the one hand take this position with
6 respect to Altrad and on the other hand
7 representing USF&G and others who have interests
8 in some phase of this thing on their behalf and
9 seek settlements.

10 So I -- you know, that's something you have
11 to work out on your own, but I'm not going to
12 let it influence the responsibility the Court
13 has directed me on with respect to bringing
14 these other matters to conclusion.

15 MR. CARROLL: Well, Your Honor, I'm
16 simply -- again, I don't want to venture into
17 the notion of waiver. And when I hear the
18 contract has been entered on behalf --
19 reportedly on behalf of the company that has
20 told Mr. Protopapas that he has no authority to
21 speak for them, I feel like that I have to at
22 least point that out on the record lest I be
23 told I have waived something later.

24 THE COURT: All right.

25 MR. CARROLL: I appreciate your point about

INSURER POSITIONS REGARDING DISCLOSURE



“I have come to know Peter Protopapas through his work as court-appointed receiver and my work as counsel for an insurance carrier. We have had many disagreements. Throughout, Mr. Protopapas has conducted himself professionally, including in connection with the negotiation of settlement agreements to resolve our disagreements where we have been able to do so. For settlements that we entered on the condition of confidentiality, we ask the Court to respect that term of the agreement as part of the bargained-for consideration. ”

- James Ruggeri (Hartford Counsel)

INSURER POSITIONS REGARDING DISCLOSURE

INSURER	CONSENT?
Admiral	No
Allstate	No
Arrowood	No
Century Indemnity Co.	No
Continental Insurance Co.	No
Cobbs Allen & Hall (broker)	No
Correll Insurance Group (broker)	No
Employers Mutual Casualty	No
Employers Insurance Co. of Wausau	No
Federal Insurance Company	No
Fireman's Fund	No
First State / Hartford / Twin City	No
Nationwide Indemnity Co.	No



INSURER POSITIONS REGARDING DISCLOSURE

INSURER	CONSENT?
Sentry Insurance	No
State Auto Property & Casualty	YES if asked
Stokes Farnham (broker)	No
TIG Insurance Company	No
Travelers Casualty & Surety / AETNA / USF&G	No
United States Fire Ins. Co	No
Zurich American Ins. Co / Enstar (U.S.) Inc.	No

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

PETER D. PROTOPAPAS,
RECEIVER,

Plaintiffs,

vs.

C/A No.: 2023-CP-40-01466

HEAT AND FROST INSULATION CO.,
INC. ET AL.,

Defendants.

(Caption continued on the following page.)

H E A R I N G
BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Wednesday, August 27, 2025
TIME START: 9:29 a.m.
TIME END: 9:54 a.m.
LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina
REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202

1 that have been consummated. The 16 or so
2 settlements that we have entered into.

3 And so, Your Honor, with this, the Court, I
4 have the documents printed, including the
5 Confidential Settlement Agreement, which is
6 mostly confidential for the settlement number.

7 May I present those to the Court?

8 THE COURT: Certainly.

9 MR. PROTOPAPAS: Your Honor, I have flagged
10 a page in the Confidential Settlement Agreement.

11 THE COURT: I see that page that indicates
12 the payments, transfers, and assignments to be
13 made in connection with the Heat and Frost QSF
14 and the settlement with Travelers.

15 MR. PROTOPAPAS: Correct, Your Honor. And
16 the number itself, as the Court will notice, is
17 in line with prior settlements that we have
18 entered into with carriers with a similar
19 six-month or such policies.

20 What we would ask the Court to do is allow
21 the receivership to liquidate the asset, place
22 it into the Qualified Settlement Fund for
23 payment to meritorious claims, which will then
24 come before the court for either wrongful death
25 or survival approval and such, to prove that

1 Travelers will have no more responsibility with
2 Heat and Frost. That they will get their peace
3 and will no longer have to defend or indemnify.

4 I ask that the court approve a 33 and
5 one-third contingency contract for our attorneys
6 Smith Robinson, Morgan Lewis, and Rikard &
7 Protopapas. As you see here, neither I nor my
8 law firm nor anyone where I have an interest or
9 anyone with interest is asking for any
10 compensation for any of the activities of the
11 receivership. Those will be waived as is
12 traditionally or has been my mode of operation
13 is to not charge for the service of the
14 receivership until the Qualified Settlement Fund
15 is fully funded.

16 And here, Your Honor, there are no other
17 known insurers for Heat and Frost. We will,
18 along with Southern, and to a similar extent
19 Covil, will perform in the courtroom, respond to
20 discovery and do those things that are necessary
21 to properly field, defend, and evaluate cases
22 and resolve them when appropriate.

23 And that the good news I think is Heat and
24 Frost is now in a windup for the next eight to
25 nine years. And I'll be coming to the court

1 with further motions for the plan of the next
2 eight or nine years for the court to review and
3 consider.

4 But I'm glad to announce that as it
5 pertains to Heat and Frost, this insulation
6 contractor, that it is not going to be an active
7 litigation coverage party in your courtroom,
8 that that has now come to a conclusion with this
9 proposed settlement, if the court would approve.

10 If the court has any questions, we're more
11 than happy to answer.

12 THE COURT: I will be making a report on
13 this matter at the conclusion of these
14 proceedings as an amendment to my second report
15 to the South Carolina Supreme Court about the
16 receiverships pursuant to the order of remand in
17 the Tibbs case. So I want to be sure this
18 record reflects that this receivership activity
19 is taken in connection with the third-party
20 action, which Protopapas, as receiver, brought
21 against Heat and Frost in connection with its
22 insurance of Heat and Frost for its liability in
23 the Love case but also managed to reach a
24 mediated settlement of its liability more
25 broadly than that.

1 This is consistent with the activities of
2 the receiver in the many other cases in which
3 I've appointed receivers. I appoint receivers
4 in every instance except for the outlier of the
5 Cape litigation in cases where the potential
6 insured defendant in an asbestos case fails to
7 reply to the complaint lodged in the case is
8 found to be defunct generally but at least
9 allegedly has assets, they being insurance
10 policies covering the torts alleged in the
11 complaint. And I appoint a receiver for the
12 purpose of marshaling the assets.

13 And that marshaling of assets is done in
14 two ways: First of all, the receiver, as the
15 representative of the company for which I
16 appointed you, Mr. Protopapas, as receiver,
17 tenders to the -- makes a search of potential
18 coverage. And when the receiver locates
19 potential coverage, the receiver tenders to the
20 insurance company the complaint in this case and
21 then proceeds to work with the insurance company
22 quite often reaching a settlement, not only in
23 the case in which the receiver was appointed,
24 but in other cases on the asbestos docket where
25 the insurer has policies which may cover the

1 torts alleged in those complaints. And that is
2 precisely what's been done here.

3 So I want that on the record so that the
4 court, when it examines my reports, will begin
5 to understand exactly how receivers are used in
6 South Carolina in the asbestos docket.

7 So I thank you for your presentation.

8 I turn now, Mr. Carroll, to you
9 representing Travelers.

10 MR. CARROLL: Yes, ma'am.

11 THE COURT: Please proceed.

12 MR. CARROLL: Your Honor, I have nothing to
13 add to Mr. Protopapas' presentation.

14 THE COURT: All right. And just to be sure
15 that I have on the record exactly what's
16 happened, Travelers has settled its potential
17 obligation as the insurer for Heat and Frost in
18 this matter and in other matters that may
19 involve Heat and Frost that are on the asbestos
20 docket in South Carolina. And with that
21 settlement will be absolved of any further
22 claims for the asbestos cases in this state.

23 Am I understanding settlement documents
24 correctly?

25 MR. CARROLL: Yes, ma'am.

1 THE COURT: So this activity has been done
2 with the cooperation and agreement of Travelers
3 Insurance Company?

4 MR. CARROLL: Yes, ma'am.

5 THE COURT: Very good. Thank you, sir.

6 Does anyone else wish to be heard on this
7 matter?

8 Very good.

9 Mr. Protopapas, I will be happy to sign the
10 proposed order. Now what I am curious about,
11 and I just flipped through this quickly, I
12 noticed that there is kind of a generalized
13 approval of the appearance of Mr. Robinson's
14 firm as attorney. But I don't see a specific
15 listing of the attorneys fees that I would
16 approve.

17 Do you have something like that in these
18 papers?

19 MR. PROTOPAPAS: Not as specific,
20 Your Honor. We can certainly edit what we
21 present as a proposed order. The settlement
22 amount is -- we have deemed confidential, though
23 I presented in camera.

24 THE COURT: Yeah, certainly the attorney's
25 fees would have that same post posture. But I

1 think it would be well if they are -- now that
2 the activity has come to a close with respect to
3 Heat and Frost for you to submit a proposed
4 order approving the attorneys fees they seek in
5 this matter.

6 MR. PROTOPAPAS: I will do that,
7 Your Honor.

8 THE COURT: Very good. Why don't you just
9 get that together and present it all as a
10 package to me, and I'll sign them all and file
11 them.

12 MR. PROTOPAPAS: Thank you, Your Honor.

13 THE COURT: Thank you, sir.

14 The next thing on the docket is a Receiver
15 Status Report on the Beaty receivership. And
16 quite honestly, I had hoped that we would be
17 able to dispose of the Beaty receivership today,
18 but as I understand it, attorneys for Chubb sent
19 me an email this morning saying that if anything
20 other than a status report was going to be
21 discussed, that they wanted to be present.

22 What's the -- so I put that in the record
23 by way of Mr. Robinson, I'm asking you and Mr.
24 Protopapas, what is the status?

25 MR. ROBINSON: Your Honor, Mr. Bell sent a